## SUPREME COURT OF IOWA

# Jacobson Transportation Company and Liberty Mutual Insurance v. Russell Harris

Jacobson Transportation · No. No. 08-0065 · Decided February 12, 2010

### SUMMARY

The Supreme Court of Iowa held that the workers' compensation commissioner properly excluded three unusually low-earning weeks from Russell Harris's average weekly wage calculation and replaced them with earlier weeks that more fairly represented his customary earnings. The court interpreted Iowa Code section 85.36(6) to permit replacement of atypical weeks even when an employee's earnings ordinarily fluctuate. It vacated the court of appeals' decision and affirmed the district court judgment.

### CASE DETAILS

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| COURT | Supreme Court of Iowa |
| WRITING FOR THE COURT | Hecht, Justice |
| JURISDICTION | Iowa |
| DECIDED | February 12, 2010 |
| DOCKET | No. 08-0065 |
| DISPOSITION | vacated |
| PROCEDURAL POSTURE | On further review from the Iowa Court of Appeals, following judicial review of a workers' compensation commissioner's decision calculating the claimant's weekly compensation rate. |
| STANDARD OF REVIEW | For factual errors, the court reviews whether the commissioner's findings are supported by substantial evidence. For legal interpretation, the court determines whether the commissioner's interpretation is erroneous and substitutes its judgment. For application of law to fact, the court disturbs the decision only if it is based on an irrational, illogical, or wholly unjustifiable application of law to fact. |
| PRECEDENTIAL VALUE | published opinion |
| PARTIES | Jacobson Transportation Company, Liberty Mutual Insurance v. Russell Harris |

## TOPICS

workers compensation · statutory interpretation · judicial review of agency action · standard of review · appellate procedure

## PRACTICE AREAS

workers compensation · administrative law · appellate procedure

## QUESTIONS PRESENTED

1. Whether Iowa Code section 85.36(6) permits the workers' compensation commissioner to replace weeks of unusually low earnings when the employee's weekly earnings normally fluctuate because the employee is paid by output.
2. Whether the commissioner acted irrationally, illogically, or wholly unjustifiably by excluding three low-earning weeks but not excluding higher-earning weeks in calculating Harris's average weekly earnings.

## HOLDINGS

1. An employee paid by output may have customary earnings even when weekly earnings fluctuate. Under Iowa Code section 85.36(6), a week may be replaced when its earnings do not fairly represent the employee's usual or typical earnings; the employee need not provide a specific explanation for the variance, and the magnitude of the departure from usual earnings may itself justify replacement.
2. The commissioner reasonably excluded Harris's three exceptionally low-earning weeks and replaced them with earlier weeks that more fairly represented his customary earnings. The decision to exclude the low weeks but not the high weeks was not irrational, illogical, or wholly unjustifiable.

## KEY QUOTATIONS

> *"Accordingly, to determine what weeks should be included in the compensation rate calculation one must ask whether the earnings attributable to a particular week are customary, not whether a particular absence from work is anticipated."* (at 10)

> *"Ascertainment of an employee's customary earnings does not turn on a determination of what earnings are guaranteed or fixed; rather, it asks simply what earnings are usual or typical for that employee."* (at 11)

> *"His decision to replace three low weeks of earnings with weeks in which Harris's weekly earnings fairly represented customary earnings was not irrational, illogical, or wholly unjustifiable."* (at 15)

## FACTUAL BACKGROUND

Russell Harris worked as an over-the-road truck driver for Jacobson Transportation Company and was paid by the mile without a guaranteed minimum amount of work each week. His weekly earnings therefore varied, but three of the thirteen weeks preceding his December 2003 work injury produced substantially lower earnings than his broader earnings history. After the injury, Harris became unable to continue driving and was found permanently and totally disabled. The workers' compensation commissioner excluded the three unusually low weeks and substituted earlier weeks with earnings that more fairly represented Harris's customary earnings.

## PROCEDURAL HISTORY

A deputy workers' compensation commissioner found Harris permanently and totally disabled and calculated his average weekly earnings using the thirteen weeks immediately preceding his injury. On appeal within the agency, the workers' compensation commissioner excluded three unusually low-earning weeks and replaced them with earlier weeks that more fairly represented Harris's customary earnings. The Iowa District Court for Polk County affirmed the commissioner's decision. The Iowa Court of Appeals affirmed the disability determination but reversed the compensation-rate calculation and reinstated the deputy commissioner's lower calculation. The Supreme Court of Iowa granted further review, vacated the Court of Appeals decision, and affirmed the district court judgment.

## DISPOSITION

vacated

## CASES CITED

- Hanigan v. Hedstrom Concrete Prods., Inc., 524 N.W.2d 158 (Iowa 1994)
- Meyer v. IBP, Inc., 710 N.W.2d 213 (Iowa 2006)
- Griffin Pipe Prods. Co. v. Guarino, 663 N.W.2d 862 (Iowa 2003)
- Thilges v. Snap-On Tools Corp., 528 N.W.2d 614 (Iowa 1995)
- Weishaar v. Snap-On Tools Corp., 582 N.W.2d 177 (Iowa 1998)