

IN THE COURT OF APPEALS OF IOWA

No. 6-038 / 95-912

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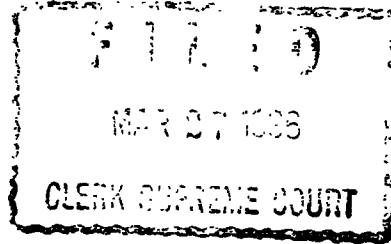
GENEVA HURLEY,

Petitioner-Appellee.

vs.

SHELLER-GLOBE CORPORATION,

Respondent-Appellant.



Appeal from the Iowa District Court for Linn County, Thomas M. Horan,
Judge.

Respondent-employer appeals from the district court's ruling on judicial review reversing the industrial commissioner's decision denying petitioner-employee workers' compensation benefits and remanding the case to the commissioner for a specific ruling petitioner sustained a compensable injury in July 1988. **REVERSED.**

Harry W. Dahl, Des Moines, for appellant.

James M. Peters of Simmons, Perrine, Albright & Ellwood, P.L.C., Cedar
Rapids, for appellee.

Considered by Habhab, P.J., Huitink, J., and Peterson, S.J.*

* Senior judge from the First Judicial District serving on this court by order
of the Iowa Supreme Court.

HABHAB, P.J.

Respondent Sheller-Globe Corporation employed petitioner Geneva Hurley in its vinyl car parts manufacturing business. While working for Sheller-Globe, Hurley claims to have suffered two back injuries in March 1986 and July 1988. However, she initially filed claims with a group health insurer indicating those injuries were not related to work. Hurley now claims she misstated the cause of those injuries because Sheller-Globe management had misled her on whether those injuries were compensable because they involved aggravation of a prior back condition. Hurley's treating physician, Dr. James Turner, ultimately indicated Hurley had a functional impairment of twenty percent due to the back condition which was one-third due to a 1978 injury, one-third due to the 1986 injury, and one-third due to her work from 1986 until 1988. Another examining physician, Dr. Thomas Carlstrom, who was chosen by Sheller-Globe, indicated Hurley sustained a ten percent impairment of the body as a whole due to the repetitive nature of the job. He indicated one-third of the impairment was due to aggravation from work and the remainder of the impairment was due to a 1978 injury and a home injury.

Hurley filed claims for workers' compensation benefits for the 1986 and 1988 injuries in May 1989. Sheller-Globe contested the claims. The industrial commissioner found the claims for the 1986 injury were time-barred and denied the claim for the 1988 injury because Hurley did not credibly establish her injury as work-related. On judicial review, the district court ultimately reversed the industrial

commissioner's decision denying the claim for her 1988 injury. The district court determined the commissioner had failed to adequately address the medical testimony establishing causation. On appeal, our court affirmed the decision of the district court. *Hurley v. Sheller-Globe Corp.*, 512 N.W.2d 796 (Iowa App. 1993).

In the decision on remand, entered on December 22, 1994, the industrial commissioner again denied Hurley's claim for the 1988 injury. The commissioner again found Hurley was not a credible witness regarding the cause of her injury. The commissioner further found the physicians' opinions could not be given much weight. The commissioner concluded the cause of her disability in 1988 could have been her 1986 surgery, her work, or home injuries. The commissioner concluded Hurley had not proven her disability was caused by the alleged 1988 injury.

On December 30, 1994, Hurley filed a petition for judicial review challenging the commissioner's decision. On May 16, 1995, after a hearing, the district court entered a ruling reversing the industrial commissioner's decision and remanding the case to the commissioner for a decision finding a compensable injury. The district court determined the commissioner's rejection of the medical evidence was arbitrary and unreasonable. The district court also noted the doctors' opinions were uncontroverted by other expert testimony. The district court concluded the commissioner improperly rejected the medical evidence on causation.

Sheller-Globe appeals.

Our review of cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors of law. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230, 231 (Iowa App. 1990). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. *Budding v. Iowa Dep't of Job Serv.*, 337 N.W.2d 219, 221 (Iowa App. 1983). To make that determination, this court applies the standards of Iowa Code section 17A.19(8) (1993) to determine whether our conclusions are the same as the district court's. *Jackson County Pub. Hosp. v. Public Employment Relations Bd.*, 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 191 (Iowa 1984).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it arose out of and in the course of employment. *Dunlavey v. Economy Fire & Casualty Co.*, 526 N.W.2d 845, 849 (Iowa 1995). In determining whether an injury has a direct causal connection with the employment, or arose independently thereof, it is essentially within the domain of expert testimony. *Id.* at 853; *Musselman v. Central Tel. Co.*, 261 Iowa 352, 360, 154 N.W.2d 128, 132 (1967).

The weight to be given expert testimony is for the finder of fact, the commissioner in this case, and that weight may be affected by the completeness of the premise given the expert and other surrounding circumstances. *Dunlavey*, 526

N.W.2d at 853; *Deaver v. Armstrong Rubber Co.*, 170 N.W.2d 455, 464 (Iowa 1969) (citing *Bodish v. Fischer, Inc.*, 257 Iowa 516, 521-22, 133 N.W.2d 867, 870 (1965)).

The industrial commissioner is not compelled to accept the opinion of any testifying medical expert. *Musselman*, 261 Iowa at 360, 154 N.W.2d at 132; *Hurley*, 512 N.W.2d at 798. Expert opinion testimony, even if uncontroverted, may be accepted or rejected in whole or in part by the trier of fact. *Hurley*, 512 N.W.2d at 798; *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1991).

If the commissioner decides to disregard uncontroverted expert medical testimony, then the commissioner must state reasons for doing so. *Sondag v. Ferris Hardware*, 220 N.W.2d 903, 908 (Iowa 1974); *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 510 (Iowa 1973); *Hurley*, 512 N.W.2d at 798. The fact finder may not arbitrarily or totally reject offered testimony; he or she has the duty to weigh it and determine its credibility. *Langford v. Kellar Excavating & Grading, Inc.*, 191 N.W.2d 667, 669 (Iowa 1971); *Hurley*, 512 N.W.2d at 798.

The commissioner, in his ruling upon remand, did not reject or disregard the opinions of Dr. Turner and Dr. Carlstrom. The commissioner did find, however, the doctors' opinions could not be given much weight. In making these findings, the commissioner gave clear statements regarding his reasons for the conclusions he reached. The commissioner made the following comments concerning his determination of how much weight the doctors' opinions should be given:

Dr. Turner's opinion is not reliable and can be given little weight. Dr. Turner was not aware of the lifting episodes in July and September 1988. His opinion is based upon an inaccurate history. In addition, his opinion that claimant's impairment was due to incidents from 1986 through 1988 does not distinguish between work and nonwork incidents and he could not separate things since the 1986 surgery. Also, Dr. Turner could not tell whether there was a new protrusion of disk material that was not present since his 1986 surgery.

Dr. Carlstrom apparently was aware of the lifting incidents at home. He suggested restrictions in 1990 would be the same as after the 1978 operation. But Dr. Carlstrom attributed a portion of claimant's impairment to the 1978 incident and a portion to claimant's work. Dr. Carlstrom, like Dr. Turner, made no distinction between work that may have resulted in claimant's condition in 1986 and claimant's condition in 1988. Also, Dr. Carlstrom based his opinion on the basis of repetitive injuries but claimant attributed her problems to standing at work. Because Dr. Carlstrom's opinions failed to distinguish between work prior to and after 1986, his opinion can be given little weight. Even if Dr. Carlstrom's opinion was given weight, it would do little to support claimant's burden of proving that she has a permanent disability as a result of an alleged injury in 1988 because he suggested that there would be no difference in restrictions from 1978 and 1990.

The commissioner did exactly what was asked of him on remand. He weighed the evidence, determined the credibility, and stated reasons supporting his conclusion the doctors' opinions should not be given much weight. *See Hurley*, 512 N.W.2d at 798.

Expert opinion which is based upon an incomplete history may be given less weight or totally rejected. *Musselman*, 261 Iowa at 360, 154 N.W.2d at 133. This is the reason given by the commissioner in determining why Dr. Turner's opinion should be given less weight. We find this to be a legitimate reason in the case before us and conclude the commissioner did not err in so finding.

We also find the commissioner gave valid reasons for determining Dr. Carlstrom's opinion should not be given much weight. The commissioner listed a number of legitimate reasons to support its finding. None of the stated reasons is seriously challenged by Hurley in his brief. We find the commissioner did not act arbitrarily in giving Dr. Carlstrom's opinion little weight since valid, legitimate reasons were given by the commissioner.

We find the commissioner did not err in his reconsideration of the causation issue on remand. Accordingly, we reverse the ruling of the district court.

REVERSED.