



IN THE COURT OF APPEALS OF IOWA

ABBOTT, ARNE, SCHWINDT, INC.)	
Appellant,)	Filed May 31, 1979
vs.)	
IOWA OCCUPATIONAL SAFETY AND)	
HEALTH REVIEW COMMISSION:)	
L. JOHN ROSSI, Commissioner;)	113
ALLEN J. MEIER, Commissioner;)	<u>2-61931</u>
ALICE VAN WERT, Commissioner;)	
and JERRY L. ADDY, Commissioner)	
of Labor,)	
Appellees.)	

Appeal from Wayne District Court - Thomas S. Bown, Judge.

Plaintiff appeals from the district court's ruling upholding defendant commission's finding of an OSHA violation, alleging that a defense witness was not qualified to testify as an expert and that substantial evidence did not exist to support the commission's finding. - AFFIRMED.

Denis Y. Reed, of McMilien & Reed, Des Moines, for Appellant.

Thomas J. Miller, Attorney General of Iowa, and Thomas D. McGrane, Assistant Attorney General, for Appellees.

Submitted to Oxberger, C. J., and Donielson, Enell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff appeals from the district court's ruling upholding the decision of the Iowa Occupational Safety and Health Review Commission which found plaintiff in violation of an OSHA standard requiring shoring of trenches in unstable soil and assessed a \$500 penalty. Plaintiff asserts that defendant commission's witness was not qualified to render an expert opinion on soil stability and that the evidence was insufficient to support the agency's finding of an OSHA violation. We affirm.

I. The receipt of opinion testimony, lay or expert, is a matter lying within the sound discretion of the trial court. Ganrud v. Smith, 206 N.W.2d 311, 314 (Iowa 1973). An appellate court will not reverse a ruling by the trial court absent a manifest abuse of that discretion to the prejudice of the complaining party. Id. The discretion of the trial court ceases when the record shows as a matter of law that the witness is not qualified. Id. A question is established as a matter of law when the evidence is so overwhelming that but one reasonable inference or conclusion may be drawn therefrom. Harper v. Cedar Rapids Television Co., 244 N.W.2d 732, 737 (Iowa 1976); Gutton v. Stephen, 239 N.W.2d 159, 162 (Iowa 1976).

Here it cannot be said as a matter of law that defense witness, Arthur Orduna, was not qualified to testify as an expert concerning soil conditions at the worksite. The issue of qualification to testify is relative to the topic about which the person is asked to render an opinion. Hunt v. State, 252 N.W.2d 715, 721 (Iowa 1977). Although Orduna is primarily a mining engineer, his educational background in geology, which included course work in structural geology and sedimentation, and his occupational experiences in underground mining and excavation and in construction inspection as a Labor Safety Officer with the Iowa Bureau of Labor qualify him to testify concerning the make-up, characteristics and stability of the soil at this particular worksite. We also note that Orduna was asked to testify concerning soil conditions that persons with noticeably lesser qualifications in soil engineering were expected to evaluate on a daily working basis, compare case at bar with Id., and that defendant commission stated that Orduna's testimony would be received and weighed according to his particular expertise. The trial court correctly upheld the commission's ruling allowing Orduna to testify as an expert witness.

II. We further find that substantial evidence existed to support the trial court's ruling affirming defendant commission's finding of a violation of an OSHA regulation by plaintiff. Auxier v. Woodward State Hospital School, 266 N.W.2d 139, 143 (Iowa 1978), cert. denied ___ U.S. ___, 99 S. Ct. 319, 58 L.Ed. 324 (1979). Evidence is substantial when reasonable minds would accept it as adequate to reach a conclusion. General Tel. Co. of the Midwest v. Iowa State Commerce Commission, 275 N.W.2d 364, 370 (Iowa 1979). Even if the table on angular reposes is only illustrative of the OSHA standard in question and not a part of it, a review of the record shows that substantial evidence did exist to support the commission's findings and rulings. The trial court's order affirming the commission was proper.

AFFIRMED.