IN THE COURT OF APPEALS OF IOWA

No. 6-478 / 95-1863

FILED
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CLERK SUPREME COURT

DONNA CONOVER,
Appellant,

vs.

UNITED TECHNOLOGIES/SCHLEGEL and **PACIFIC EMPLOYERS INSURANCE CO.,**
Appellees.

Appeal from the Iowa District Court for Lee County, William Dowell, Judge.

Donna Conover appeals the district court's ruling affirming the industrial commissioner's decision denying her workers' compensation benefits. **AFFIRMED.**

James Hoffman, Keokuk, for appellant.

Harry W. Dahl, Des Moines, for appellees.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Donna Conover appeals the district court's ruling affirming the Industrial Commissioner's ("Commissioner") decision denying her workers' compensation benefits. She argues the district court erred in upholding the Commissioner's determination that her injury did not arise out of and in the course of her employment.

Scope of review. We review an agency's decision for errors of law and do not exercise a de novo review. *Kostelac v. Feldman's, Inc.*, 497 N.W.2d 853, 856 (Iowa 1993). Under Iowa Code section 17A.19(8)(f), we can reverse only if the decision is unsupported by substantial evidence when viewed as a whole. *Cobb v. Employment Appeal Bd.*, 506 N.W.2d 445, 447 (Iowa 1993). Findings of the Commissioner have the effect of a jury verdict and the Commissioner, not the court, weighs the evidence; we should broadly and liberally apply those findings in order to uphold, rather than defeat the Commissioner's decision. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981) (citing *Holmes v. Bruce Motor Freight, Inc.*, 215 N.W.2d 296, 298 (Iowa 1974)).

Commissioner's ruling. The district court upheld the Commissioner's ruling that Conover failed to prove a causal connection between her employment and her respiratory condition. The claimant in a workers' compensation proceeding bears the burden of proving, by a preponderance of the evidence, the injury arose out of and in the course of one's employment. *Kostelac*, 497 N.W.2d at 856. In terms of causation, "a possibility is insufficient; a probability is necessary." *Id.*

In the course of Conover's work, she came into contact with the chemicals toluene and mono-coat. In 1990 she began to experience respiratory problems and claimed her condition was aggravated when she was in the workplace. Conover was also a heavy smoker, smoking one to two packs a day for more than ten years.[1] Conover claims the greatest weight should have been given to the testimony of Dr. Beckert whose diagnosis was chemical bronchitis caused by exposure to fumes at the Schlegel plant. Dr. Beckert saw Conover on February 19, 1990, on April 19, 1990, and again on May 1, 1990. At the later date, he determined Conover had pulmonary fibrosis, which was not work-related. It was not until the summer of 1992 that Dr. Beckert changed his diagnosis to chemical bronchitis. However, Dr. Beckert also noted Conover's symptoms were consistent with a long history of smoking. Significantly, Dr. Beckert, contrary to his diagnosis, signed a release dated July 27, 1993, allowing Conover to return to work on August 2, 1993, with no work restrictions.

On June 19, 1990, Conover saw Dr. Hakes who diagnosed Conover with chronic lung disease/asthma, but noted her condition was not employment-related. On August 7, 1990, Dr. Hakes diagnosed Conover with chest pains, which he also felt were not work-related. Both Drs. Weiss and Wood noted Conover's history of

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[1] At the time of the hearing, Conover testified she had quit smoking for over four months. We do not find this significant in our analysis.

smoking. Dr. Wood observed Conover developed symptoms consistent with smoking: coughing, and an upper respiratory infection "sound[ing] very much like bronchitis.

The Commissioner as the finder of fact has the duty of weighing the evidence and deciding what is the more credible evidence establishing a probable cause of Conover's "injury." It was thus up to the agency to carefully sift through the evidence and weigh the expert testimony. The Commissioner's findings included:

> It is expressly found that claimant's condition and symptoms are consistent with those to be expected after a long period of cigarette smoking. It is further expressly found that the evidence does not establish that claimant's condition or symptoms are either produced by or aggravated by chemical exposure in the work environment. In this determination, greater weight is given to the opinions of Dr. From than the opinions of Dr. Beckert. Dr. From's opinion is consistent with claimant's long-term history of cigarette smoking as well as with the findings and impressions of Drs. Hakes, Weiss and Wood.

We conclude the Commissioner's decision was supported by substantial evidence, and the district court did not err in its affirmance of the Commissioner's decision. We accordingly affirm.

AFFIRMED.