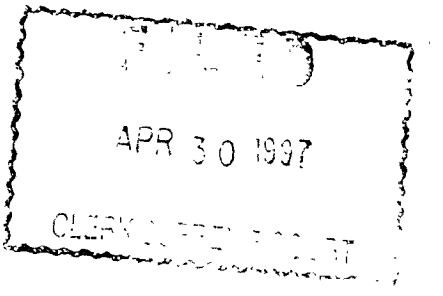
IN THE COURT OF APPEALS OF IOWA

No. 6-705 / 95-1991



DAHL FORD, DAVENPORT, INC., and FARM BUREAU MUTUAL INSURANCE COMPANY,

Plaintiffs-Appellants,

vs.

NORMAN HOUSLEY,

Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge.

The employer and its workers' compensation carrier appeal from the district court's affirmance of the Industrial Commissioner's award of workers' compensation benefits to claimant. **AFFIRMED.**

Angela A. Swanson of Morain, Burlingame, Pugh & Koop, West Des Moines, for appellant.

Thomas H. Preacher of Stafne, Lewis, Jasper, Alexander & Preacher, Bettendorf, for appellee.

Considered by Sackett, P.J., Cady, and Vogel, JJ.

PER CURIAM

This is an appeal by an employer claiming the district court should not have affirmed the Industrial Commissioner's award of workers' compensation benefits to claimant. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In 1986, Norman Housley began employment with Dahl Ford as an automobile painter. In 1989 he injured his back when he slipped on ice. The injury caused pain in his lower back and right leg. Because he was unable to fully perform the duties required of a painter he became an assistant manager. Housley entered into a special case settlement for this injury.

On March 12, 1991, Housley injured his back again when he attempted to assist another employee to remove the hood from a pickup truck. This injury caused pain on the left side of his back. Housley never returned to his employment at Dahl. Based on the March 1991 injury, Dr. Barbara Dierschke gave Housley a 30% disability rating of the body as a whole for the March 1991 injury. Dr. Robert Chesser concluded Housley had a 14% impairment, and Dr. John Koch gave him a 5% whole person impairment.

Housley filed a claim for workers' compensation benefits based on the March 12, 1991 injury. At the an administrative hearing, Housley and William Phillips testified about the March 12, 1991, incident. Another employee, Floyd Millam,

testified he could not recall the incident. Housley's supervisor, Richard Smith, testified he heard about the incident several days after it happened.

A deputy Industrial Commissioner denied benefits. The Industrial Commissioner reversed the deputy. The commissioner noted that Housley was able to perform the duties of his job until the 1991 injury. Also, tests showed only bulging disks before the 1991 injury, and herniated disks afterwards. The commissioner concluded Housley had a 45% industrial disability, and 30% of this amount was related to his 1991 back injury. On judicial review, the district court affirmed the commissioner. The employer appeals.

I. The employer contends the district court erred by affirming the decision of the Industrial Commissioner. It relies on the decision of the deputy, which concluded Housley failed to show he suffered a work related injury in 1991. Dr. Dierschke's notes from March 14, 1991, contain no reference to an injury on March 12. From this absence, the deputy concluded no injury had actually occurred. The employer believes Housley was not injured in March 1991, and that he suffers only from a continuation of the symptoms of his 1989 injury.

We review to determine whether the agency decision is supported by substantial evidence when viewing the record as a whole. Iowa Code §17A.19(8)(1991); *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1991). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach the given conclusion. *Honeywell v. Allen Drilling Co.*, 506

N.W.2d 434, 435 (Iowa 1993). The question is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230, 232 (Iowa App. 1990).

The commissioner made the following findings:

> In light of the testimony of Claimant, his co-worker and his supervisor, and in light of the later notations by Dr. Dierschke concerning the March 12, 1991 incident, it is more likely that Dr. Dierschke's notes are in error, than it is that Claimant has fabricated the incident and somehow arranged for two other witnesses to corroborate his fabrication. It is concluded that Claimant did suffer either a new injury or an aggravation of his 1989 injury to his back on March 12, 1991.

As noted by the commissioner, his findings are supported by the testimony of Housley, Phillips, and Smith. We find there is substantial evidence to support the commissioner's findings.

II. The employer contends the district court erred by affirming the Industrial Commissioner's apportionment of 30% of Housley's industrial disability to his injury of March 12, 1991. It claims that at most Housley suffered only a temporary aggravation of a preexisting condition which resolved itself with no permanent disability. The employer believes Housley's primary problem remains the right side of his back.

In order to disturb the findings of the Industrial Commissioner with respect to the extent of an employee's industrial disability, a party must establish that the evidence required a different finding as a matter of law. *Klein v. Furnas Electric Co.*, 384 N.W.2d 370, 374 (Iowa 1986). Industrial disability is arrived at by determining

the loss to the employee's earning capacity. *Mortimer v. Freuhauf Corp.*, 502 N.W.2d 12, 14 (Iowa 1993).

We determine the employer has not met his burden to show a different result is required as a matter of law. The evidence showed Housley experienced a decrease in earning capacity from about $28,000 per year to about $20,000 per year following his first injury. After the second injury, however, he experienced a greater reduction in earning capacity. He was unable to work full-time. At the time of the administrative hearing Housley was working part-time as a real estate agent and had not yet made any sales. We affirm the apportionment of industrial disability.

We affirm the decisions of the district court and Industrial Commissioner awarding Housley worker's compensation benefits.

AFFIRMED.