

FILED

DEC 21 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-462 / 89-85

JUDITH A. FISHER,

154

Petitioner-Appellant,

vs.

QUAKER OATS COMPANY and IDEAL MUTUAL INSURANCE COMPANY,

Respondents-Appellees.

Appeal from the Iowa District Court for Linn County, L.
Vern Robinson, Judge.

Petitioner appeals the district court decision affirming the industrial commission's rejection of her claim for workers' compensation. **AFFIRMED.**

Robert R. Rush and Matthew J. Nagle of Lynch, Dallas, Smith & Harman, Cedar Rapids, for petitioner-appellant.

James E. Shipman and Richard G. Hileman, Jr., of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, for respondents-appellees.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Appellant Judith A. Fisher is employed by Quaker Oats Company as a production worker. In 1978 she injured her back in a fall while working. She was found to have a five percent permanent impairment to the body as a whole and was given a ten percent industrial disability rating. Fisher received fifty weeks of permanent partial disability payments. She was eventually able to return to work. Fisher experienced back problems in January 1984 when she bent over in her home to clean and something popped in her back. She missed two weeks of work.

Fisher filed a petition for review-reopening alleging her second injury was the result of her first job-related injury. A deputy industrial commissioner held, after hearing, that she failed to establish either a change of condition or that the original injury was a proximate cause of the claimed current disability. Fisher appealed to the industrial commissioner and when the commissioner affirmed the deputy's holding, to the district court. The court concluded there was substantial evidence in the record to support the commissioner and affirmed.

Fisher now appeals. She asserts the commissioner's finding the 1978 work injury was not a proximate cause of her disability beginning in 1984 was not supported by substantial evidence in the record made before the agency when the record is viewed as a whole. She further argues

she established a causal connection between the the two injuries and she established a change in circumstances. She asks us to find she is therefore entitled to additional benefits. We affirm.

Our scope of review of decisions of the industrial commissioner has been clearly set out by the supreme court:

A review of the industrial commissioner's decision is governed by Iowa Code Section 17A.19. . . . The scope of review is not de novo. . . . The commissioner's findings have the effect of a jury verdict. . . . Those findings are applied broadly and liberally to uphold rather than defeat the commissioner's decision; they are binding on appeal unless a contrary result is demanded as a matter of law. The above rules are applicable in the district court review. We review the district court's appeal decision for errors of law. In this pursuit we reapply the section 17A.19(8) standards to the agency action to determine whether our conclusions are the same as those of the district court. The question on judicial review is not whether the evidence might support a different finding but whether evidence supports findings the commissioner actually made. The substantial evidence test is applied to the entire record; evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. (Citations omitted.)

Armstrong v. State of Iowa Buildings and Grounds, 382 N.W.2d 161, 165-6 (Iowa 1986).

In order to receive increased compensation, Fisher must prove the 1978 injury was a proximate cause of her subsequent back problems. Blacksmith v. All-American, Inc., 290 N.W.2d 348, 353 (Iowa 1980). She argues the treating physician's testimony, when considered together with his office notices and letter of December 19, 1984,

does establish a causal connection between the two injuries. Fisher asks this court to accept her contention the industrial commissioner and district court either misconstrued or failed to properly consider the evidence. We do not agree.

Fisher failed to prove a causal connection existed. Dr. Lehman's letter of December 19, 1984, states her current problems are an "exacerbation of symptoms" which are a "continuation of the previously treated injury resulting in your chronic low back pain." This opinion, which was offered almost a year after the incident in her home the previous January, does not establish that connection. The doctor's statement does not even specify what specific problems Fisher is experiencing in December 1984.

There is no evidence in the record which can be characterized as the "unshaken opinion" of the physician in Langford v. Kellar Excavating, 191 N.W.2d 667, 670 (Iowa 1971). The district court was correct in finding Dr. Lehman's opinions do not reach the level of the unequivocal testimony at issue in Langford.

The finding Fisher failed to carry her burden of proof to establish a causal connection between the 1978 injury and the incident in 1984 is well supported by the evidence, viewed as a whole. Therefore, she is not entitled to recover those expenses incurred as a result of the January 1984 injury.

Fisher contends there has been a change in her condition substantial enough to justify an increase of the previous award. She must show either a worsening or deterioration of her condition not contemplated at the time of the first award, Bousfield v. Sisters of Mercy, 86 N.W.2d 109, 113 (1957), or a failure to improve to the extent originally anticipated. Meyers v. Holiday Inn of Cedar Falls, 272 N.W.2d 24, 26 (Iowa App. 1978).

The testimony of Fisher's primary physician is "there was no significant difference in her permanent impairment from that which I estimated in 1981." The commissioner's conclusion Fisher failed to prove there had been a change in condition attributable to the 1978 injury is clearly a reasonable one.

The decision of the industrial commissioner is fully supported by the evidence and the law is correctly applied.

AFFIRMED.