

IN THE COURT OF APPEALS OF IOWA

No. 9-124 / 98-942

GARY HERMANCE,

Petitioner-Appellant,

vs.

**WEISSMAN IRON & METAL, INC.
and CNA INSURANCE COMPANY,**

Respondents-Appellees.

FILED
APR 30 1999

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Petitioner appeals from the district court's ruling on judicial review affirming the industrial commissioner's finding that he did not suffer a permanent disability.

AFFIRMED.

Robert D. Fulton, Waterloo, for appellant.

Coreen K. Bezdicek of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, L.L.P., Des Moines, for appellees.

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

ZIMMER, J.

Gary Hermance appeals a district court ruling affirming the industrial commissioner's finding that as a result of a work-related injury he did not suffer permanent disability, and experienced a temporary total disability from only February 19, 1992 to May 12, 1992. He contends the industrial commissioner erred in ruling it did not have the power to consider certain equitable arguments raised by Hermance. He further contends the district court erred in determining the industrial commissioner's decision was supported by substantial evidence. We affirm.

I. Backgrounds Facts and Proceedings. On February 19, 1992, Hermance was an employee of Weissman Iron & Metal, Inc. ("Weissman"). While performing his duties of disassembling a semi-tractor, he sustained an injury when the cab portion of the semi-tractor fell and struck him a glancing blow to the head. Hermance was taken to a hospital emergency room where a treating physician had x-rays taken of Hermance's skull and spine. While these x-rays were negative, later medical and psychological exams indicated Hermance had suffered some head injury. Hermance sustained only minimal outward physical head trauma, and no stitches or similar techniques were required to treat the wound. On May 12, he received medical authorization to return to work.

In April 1993, Hermance filed a petition with the Iowa industrial commissioner seeking workers' compensation benefits. Hermance claimed the February 19 incident resulted in a closed head injury, i.e. brain injury, causing depression, altered personality, inability to work, need for constant supervision, inability to carry a

drivers' license, and seizures. He argued he was a "non-functional" person experiencing psychological disability and was consequently unable to work. He argued that at the very least, his injury exacerbated pre-existing conditions.

The deputy commissioner arbitrated the dispute between Hermance and Weissman, who contended Hermance had not incurred a compensable disability. The deputy commissioner found that prior to the accident Hermance suffered from preexisting post-traumatic stress disorder. She concluded Hermance had been injured in the accident (a fact ultimately conceded by Weissman), but that the accident had not caused brain injury. She further found the injury had not caused temporary or permanent disability, and had not worsened any pre-existing conditions. The deputy commissioner specifically stated it was impossible to determine that Hermance's behavior after the accident was much different than before the accident.

The industrial commissioner affirmed the arbitration decision, stating Hermance had not proven his accident caused a brain injury and/or permanent psychological disability. She did find he had suffered a temporary total disability from February 19, 1992 to May 12, 1992, and ordered defendants to pay Hermance temporary total disability benefits for that period. In reaching her conclusions, the industrial commissioner noted in particular that given the similarity between Hermance's psychological condition and treatments before the work injury and after it, it could not be said he had proven his work injury caused psychological disability. Stating the agency lacked equitable jurisdiction to do so, she also refused to consider an equitable estoppel argument raised by Hermance.

Hermance appealed the industrial commissioner's ruling to the district court. The court determined there was substantial evidence in the record supporting the commissioner's decision. It deferred to the industrial commissioner's finding that the evidence and expert testimony offered by Weissman was more credible than the evidence and expert testimony offered by Hermance. The court further concluded the commissioner correctly refused to consider Hermance's equitable arguments.

Hermance contends on appeal there is not substantial evidence to support the industrial commissioner's findings that he did not suffer a brain injury in the accident and that his medical and psychological conditions are not much different than before the accident. He also contends the commissioner erred in concluding it did not have authority to consider his equitable arguments.

II. Scope of Review. Under Iowa Code section 17A.19(8), our review of agency action is to determine whether our conclusions are the same as those of the district court. *See Sherman v. Pella Corp.*, 576 N.W.2d 312, 316 (Iowa 1998). We may reverse, modify, affirm or remand to the agency for further proceedings if the substantial rights of a party have been prejudiced and the agency's action: (1) is affected by errors of law; (2) is not supported by substantial evidence in the whole record; or (3) is characterized by abuse of discretion. *See Iowa Code* § 17A.19(8)(e)–(g) (1997); *Sherman v. Pella Corp.*, 576 N.W.2d at 316; *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997).

Evidence is “substantial if reasonable minds would accept it as adequate to reach the same finding. The question is not whether evidence might support a

different finding, but whether the evidence supports the findings actually made.”

Kiesecker v. Webster City Custom Meats, 528 N.W.2d 109, 110 (Iowa 1995) (citations omitted). We will not interfere with the agency’s findings unless the evidence is uncontradicted and reasonable minds could not draw different inferences. See *Longford v. Kellar Excavating & Grading, Inc.*, 191 N.W.2d 667, 668 (Iowa 1971).

III. Equitable Estoppel. Hermance contends the industrial commissioner erred as a matter of law when she determined she lacked jurisdiction to consider whether the doctrine of equitable estoppel prevents Weissman from relying upon medical opinions of two doctors in denying compensability of the injury. He essentially argues Weissman voluntarily provided employment-related injury benefits for over three years based on the medical opinions of certain other doctors to whom Weissman had directed Hermance for treatment. He claims Weissman intended him to rely upon the help of these doctors and that he did so to his detriment. Hermance contends Weissman cannot now contest compensable injury and benefits because such conduct is inconsistent with Weissman’s previous conduct of providing benefits; and by that previous conduct Weissman has implicitly acknowledged Hermance’s injury.

Administrative agencies do not have inherent powers. See *State v. Horton*, 509 N.W.2d 452, 453 (Iowa 1993). Agency power and jurisdiction is expressly conferred by or necessarily inferred from statutory authority. *Id.*; *Northwestern Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 682 (Iowa 1991). The industrial commissioner,

therefore, has only those powers and jurisdiction granted it by statute; it does not otherwise possess common law or inherent powers. *See Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979); *Travelers Ins. Co. v. Sneddon*, 249 Iowa 393, 395, 86 N.W.2d 870, 872 (Iowa 1957). The industrial commissioner may not hear arguments or claims for equitable relief unless jurisdiction over such arguments or claims is granted by statutory authority. *See Ford v. Barcus*, 155 N.W.2d 507, 509–11 (Iowa 1968); *Doyle v. Dugan*, 229 Iowa 724, 729–732, 295 N.W. 128, 130–32 (Iowa 1940)

Hermance cites Iowa Code section 17A.19(8) for the proposition the industrial commissioner may consider equitable arguments. However, that statute grants the courts power to order equitable or legal relief when reviewing agency action. It says nothing of the powers of the agency. Hermance also cites various cases for the proposition that the commissioner has the general authority to consider claims for equitable relief. However, the case law Hermance cites states only that a reviewing court may grant equitable relief, not that an agency has equitable jurisdiction. *See Schoenfeld v. FDL Foods*, 560 N.W.2d at 598 (reviewing court “may affirm, reverse, modify, or grant any other appropriate equitable or legal relief”); *Squealer Feeds v. Pickering*, 530 N.W.2d 678, 681 (Iowa 1995).

To the extent Hermance finds support for his position in *Travelers Insurance Company v. Sneddon*, we determine the out-of-state cases therein cited to which he refers allow an agency to proceed in equity because that authority is statutorily granted. *See generally Travelers Ins. Co. v. Sneddon*, 249 Iowa at 396–404, 86

N.W.2d at 873–77. Furthermore, while we agree with Hermance’s argument that the commissioner is granted equitable powers under Iowa Code section 85.43, that statute is narrowly tailored — it grants equitable authority only for the specific task of apportioning compensation benefits to a surviving spouse and dependent child of an employee who dies from a work-related injury. *See* Iowa Code §§ 85.31, 85.45 (1997). The narrow grant of equitable jurisdiction under Iowa Code section 85.43 is insufficient to permit the commissioner to consider Hermance’s claims.

Having carefully reviewed the arguments raised by Hermance as well as applicable statutory law, we agree with the district court that the industrial commissioner properly concluded she did not have jurisdiction to consider Hermance’s equitable arguments. The commissioner has no authority, expressed or implied, to consider the equitable estoppel arguments Hermance raises. We agree with the determination of the district court and affirm the industrial commissioner’s decision in this matter.

IV. Entitlement to Industrial Disability. Hermance argues the industrial commissioner’s finding that the February 19, 1992 accident did not cause permanent disability or temporary disability beyond May 12 is not supported by substantial evidence. Upon reviewing the record as a whole, we determine the commissioner’s findings are supported by substantial evidence, and decline to overturn those findings on appeal.

To succeed on his petition, Hermance bears the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the claimed

disability. *See Sherman v. Pella Corp.*, 576 N.W.2d at 321. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only factor. *See Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 354 (Iowa 1980).

Hermance claims he sustained a brain injury as a result of the accident at Weissman. He further claims this injury has caused depression, change of personality, inability to work, the need for twenty-four hour supervision, seizures, and an inability to carry a drivers' license.

The record reveals extensive evidence documenting the nature and severity of Hermance's injury and its mental and physical effects upon him. There is also extensive evidence describing Hermance's mental and physical health prior to the accident. Having reviewed the entire record, we are satisfied there is substantial evidence to sustain the decision of the industrial commissioner that while Hermance did suffer a head injury in the accident, it did not cause brain injury, epileptic disorder, or a permanent psychological condition.

The record contains extensive physical evidence Hermance did not suffer a brain injury. Five doctors performed various tests on Hermance following the incident, including x-ray, MRI, neurological, and neuropsychological examinations. These exams produced normal, unremarkable results that did not evidence brain injury. Secondary evidence also supported the conclusion there had been no brain injury: the accident caused minimal physical head trauma; Hermance did not lose

consciousness after the injury;¹ and he was later able to remember the accident itself, as well as events immediately before and after the accident.

There is some evidence in the record supporting Hermance's claims regarding seizures. However, based on other factors in the record including the apparent inconsistency between increased seizure symptoms and improved EEG, the industrial commissioner questioned the credibility of this evidence. We give great deference to the commissioner's findings of fact, and in this matter find no reason to challenge the commissioner. *See Paveglio v. Firestone Tire & Rubber Co.*, 167 N.W.2d 636, 640 (Iowa 1969) (industrial commissioner's findings have the force of a jury verdict); *Musselman v. Central Tel. Co.*, 261 Iowa 352, 356, 154 N.W.2d 128, 130 (Iowa 1967) (the court broadly and liberally construes the industrial commissioner's findings of fact to uphold rather than defeat the decision).

In addition, we determine there is substantial evidence in the record indicating the symptoms of which Hermance currently complains are not significantly different than those experienced before the accident. Expert testimony was received that past medical, psychological, and cognitive history is important in ascertaining whether a brain injury has been sustained. According to the expert testimony, this history is important in understanding how the brain was working prior to and after the alleged injury and is critical in attributing a change in brain function to brain injury. The

¹ There is some dispute as to whether Hermance was knocked unconscious during the accident. However, there is extensive evidence in the record demonstrating Hermance was not rendered unconscious during the accident.

record contains a detailed psychological history of Hermance and provides ample evidence that his current psychological condition is no different than it was before the accident. Hermance has undergone repeated, long-term evaluation and treatment for post-traumatic stress disorder, depression, and adult personality disorder. His prior medical history reveals a range of symptoms similar to the depressive reactions to the injury now claimed, including poor concentration, lack of memory, and difficulty in interacting with others. This evidence strongly supports the industrial commissioner's conclusion that Hermance neither suffered a brain injury during the accident nor sustained a temporary or permanent psychological disability as a result of the accident.

Furthermore, this evidence supports the conclusion that the injury Hermance sustained on February 19 did not aggravate a pre-existing condition. Hermance does not deny his past medical and psychological history. He nevertheless alleges his current condition is not a result of past problems but rather of his injury at Weissman Iron. He implicitly argues his prior treatment regimen has resolved or at least controlled many of his past problems.

The record indicates, however, that up to the time of the accident, Hermance continued to complain of and receive out-patient counseling and medical treatment for various symptoms of depression. In fact, thirteen days prior to the incident, the record shows his psychological condition had so degraded that his treating physicians were considering a change in his medication. Hermance cannot recover for a pre-

existing condition. *See Nicks v. Davenport Produce Co.*, 254 Iowa 130, 135, 115 N.W.2d 812, 815 (Iowa 1962).

Hermance indirectly challenges on appeal some of the expert medical and psychological testimony relied on by the commissioner. However, as the finder of fact, the commissioner rather than the court determines the weight to be accorded expert testimony. *See Bodish v. Fischer, Inc.*, 257 Iowa 516, 521, 133 N.W.2d 867, 870 (1965). The commissioner need not, as a matter of law, give more weight to the testimony of a treating physician than it gives the testimony of a physician who examines the patient in anticipation of litigation. *See Rockwell Graphic Systems, Inc. v. Prince*, 366 N.W.2d 187, 192 (Iowa 1985). The commissioner is free to accept or reject expert testimony, in whole or in part. *See Sondag v. Ferris Hardware*, 220 N.W.2d 903, 908 (Iowa 1974). Only in rare cases will we challenge the commissioner in such matters. *See, e.g., Sherman v. Pella Window Corp.*, 576 N.W.2d at 321 (citing *Sondag v. Ferris Hardware*, 220 N.W.2d at 908, for the proposition that if the industrial commissioner rejects uncontroverted expert testimony, it must state reasons for doing so). We discern no reason to challenge the commissioner's use of the expert testimony in this case.

We determine there is substantial evidence supporting the decision of the industrial commissioner. Our determination accords with the district court's conclusions. The court's conclusions and the decision of the industrial commissioner are therefore affirmed.

V. Summary. We determine the industrial commissioner properly decided it did not have jurisdiction to consider Hermance's equitable claims. We further conclude substantial evidence supports the industrial commissioner's determination on Hermance's petition for work-related disability benefits.

AFFIRMED.

No. 98-942. [9-124] HERMANCE v. WEISSMAN

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. **AFFIRMED.** Heard by Streit, P.J., and Vogel, and Zimmer, JJ. Opinion by Zimmer, J. (12 pages \$4.80)

Gary Hermance appeals a district court ruling affirming the industrial commissioner's finding that as a result of a work-related injury he did not suffer permanent disability, and experienced a temporary total disability from only February 19, 1992 to May 12, 1992. **OPINION HOLDS: *Equitable Estoppel*.** Hermance contends the industrial commissioner erred as a matter of law when she determined she lacked jurisdiction to consider whether the doctrine of equitable estoppel prevents Weissman from relying upon medical opinions of two doctors in denying compensability of the injury. He essentially argues Weissman voluntarily provided employment-related injury benefits for over three years based on the medical opinions of certain other doctors to whom Weissman had directed Hermance for treatment. He claims Weissman intended him to rely upon the help of these doctors and that he did so to his detriment. Hermance contends Weissman cannot now contest compensable injury and benefits because such conduct is inconsistent with Weissman's previous conduct of providing benefits; and by that previous conduct Weissman has implicitly acknowledged Hermance's injury. However, administrative agencies do not have inherent powers. Agency power and jurisdiction is expressly conferred by or necessarily inferred from statutory authority. The industrial commissioner may not hear arguments or claims for equitable relief unless jurisdiction over such arguments or claims is granted by statutory authority. We conclude the commissioner has no authority, expressed or implied, to consider the equitable estoppel arguments Hermance raises. We agree with the district court that the industrial commissioner properly concluded she did not have jurisdiction to consider Hermance's equitable arguments. ***Entitlement to Industrial Disability.*** Hermance argues the industrial commissioner's finding that the February 19, 1992 accident did not cause permanent disability or temporary disability beyond May 12 is not supported by substantial evidence. Upon reviewing the record as a whole, we determine the commissioner's findings are supported by substantial evidence. Our determination accords with the district court's conclusions. The court's conclusions and the decision of the industrial commissioner are therefore affirmed.