FILED
MAY 28 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IOWA BEEF PROCESSORS, INC.,	)	
Petitioner-Appellant,	)	Filed May 28, 1987
vs.	)	
WALTER H. FARRAND, JR.,	)	7-96
Respondent-Appellee.	)	86-1442

145

Appeal from the Iowa District Court for Polk County (AA 948), Ray Hanrahan, Judge.

The Industrial Commissioner awarded workers' compensation benefits to a former employee of Iowa Beef Processors (IBP). IBP contends the benefit award is not supported by substantial evidence. **AFFIRMED.**

Harry W. Dahl III, Des Moines, for petitioner-appellant.

Thomas J. Logan of Hopkins & Huebner, Des Moines, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

HAYDEN, J.

Petitioner, Iowa Beef Processors, Inc., appeals the Industrial Commissioner's award of worker's compensation based upon respondent's industrial disability on 25% of the body as a whole. The decision has been affirmed by the Polk County District Court. We affirm.

Claimant, Walter H. Farrand, Jr., was employed as a packing house worker at Iowa Beef Processors from April 1976 until February 1983. On August 19, 1980, claimant was injured while hooking up beef in a trailer at petitioner's plant. A two hundred and fifty pound carcass fell off a hook and landed on his shoulder and back. He suffered a disc protrusion in the fourth lumbar interspace of his back. The injury was not serious enough to warrant surgery. As a result of this injury claimant was hospitalized for five days on orders of Dr. Robert A. Hayne. Claimant was again struck by a falling beef carcass on May 19, 1982. Due to this injury he was unable to work. On June 2, 1982, Dr. Hayne performed a lumbar laminectomy, removing a loose fragment of disc at the fourth lumbar interspace on the left side.

After thirty days of bed rest claimant returned to work at the same rate of pay but different duties. Prior to the 1982 injury he had been involved in unskilled, physical work including the loading of beef and driving a truck. Upon returning to work he was assigned to the driving of a forklift and restricted to a forty pound lifting limitation. In October 1982 Dr. Hayne examined claimant and concluded he had an impairment from the surgery of 9% of the body as a whole.

Claimant was laid off in February 1983; petitioner shut down the Ft. Dodge plant because of lack of cattle. In March of 1983 claimant met with a rehabilitation counselor for the Iowa Commission for the Blind. He suffers from retinitis pigmentosa, or tunnel vision, making him legally blind. The

commissioner provided rehabilitative car upholstery classes at Des Moines Area Community College, which he attended during the layoff. Also during the layoff claimant had another appointment with Dr. Hayne because he had been experiencing numbness in his legs. After the examination Dr. Hayne concluded respondent had numbness in both of his legs, that his disability had risen to 12% total, and recommended respondent have rehabilitation training to prevent him from having to do any heavy lifting. On June 15, 1983, Mr. Farrand filed a petition for review-reopening with the industrial commission.

Claimant received a call back from the layoff in August 1983. During the time of the layoff his back condition worsened. He called Dr. Hayne who advised him to seek rehabilitation training for an occupation that did not require heavy lifting. Claimant testified he gave a note from Dr. Hayne to his attorney to be sent to petitioner. Petitioner contends it never received any medical report on him. During August several attempts were made to get the medical report to petitioner; all were unsuccessful. As a result of this failure claimant was terminated on August 22, 1983. Upon finishing rehabilitation training he opened an automobile reupholstering shop in his home. He has suffered a huge loss of earnings in the transition from his employment with petitioner to his current work.

On January 21, 1985, following a hearing, a Deputy Industrial Commission awarded benefits based on 25% of the body as a whole for the May 19, 1982, injury and ordered petitioner to pay claimant's medical bills. Claimant appealed this decision. The Industrial Commissioner affirmed the deputy's decision on November 25, 1985. Pursuant to section 17A.19, Iowa Code (1985), petitioner appealed the Commissioner's final decision to the district court. On September 18, 1986, the district court affirmed the decision of the Industrial Commissioner. From this decision IBP has appealed.

Petitioner contends the decision of the district court in affirming the Industrial Commissioner's award of 25% industrial disability was unsupported by substantial evidence in the record when viewed as a whole. We disagree.

Our review of the Industrial Commissioner's decision is governed by Iowa Code section 17A.19. Doerfer Division of CCA v. Nicol, 359 N.W.2d 428, 432 (Iowa 1984). Our scope of review under this section is not de novo. Armstrong v. State of Iowa Buildings and Grounds, 382 N.W.2d 161, 165 (Iowa 1986). The Commissioner's findings have the effect of a jury verdict. Id. Beier Glass Co. v. Burndige, 329 N.W.2d 280, 282 (Iowa 1983). Those findings are applied broadly and liberally to uphold rather than defeat the Commissioner's decision, and such findings are binding on appeal unless the contrary is demanded as a matter of law. Briar Cliff College v. Campolo, 360 N.W.2d 91, 93 (Iowa 1984). We review the district court's appeal decision for errors of law and reapply section 17A.19(8) standards to the agency action to determine whether our conclusions are the same as those of the district court. Nicol, 359 N.W.2d at 432.

Initially we note this injury arose from the accident which occurred on May 12, 1982. The only question on appeal is whether the evidence presented supported an award of 25% industrial disability. Petitioner contends the award is not supported by the evidence and seeks a reversal and remand for redetermination of industrial disability.

To disturb the findings of the Industrial Commissioner with respect to the amount of respondent's industrial disability, petitioner must establish the evidence required a different finding as a matter of law. Armstrong, 382 N.W.2d at 168 (1986). Industrial disability measures the loss of earning capacity rather than just physical or mental impairment. See Olson v. Goodyear Service Stores, 255 Iowa 1112, 1121, 125 N.W.2d 251, 257 (1963). In making the determination

of industrial disability the Commissioner must consider claimant's functional impairment, age, education, work experience, and adaptability to retraining to the extent that any of these affect his prospects for relocation in the job market. Klein v. Furnas Electric Co., 384 N.W.2d 370, 374 (Iowa 1986)

The commission found: claimant was forty-one years old, he has a tenth grade education; his work experience, prior to rehabilitation, consisted of manual labor; as a result of the 1982 injury he suffered 12% functional impairment to the body as a whole; he cannot lift more than forty pounds or do excessive straining, twisting, or bending; he has experienced a large decrease in annual gross income; and he still suffers great pain from the injury to his back After a careful review of the record we find there is substantial evidence to support the agency's finding that claimant's industrial disability is 25%

AFFIRMED.