

IN THE COURT OF APPEALS OF IOWA

No. 4-525 / 94-188

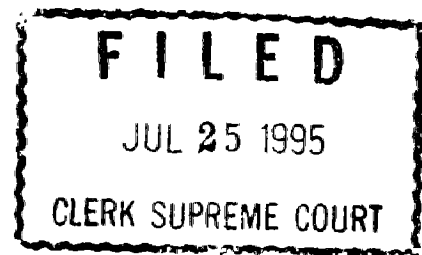
JOHN MILLER,

Appellant,

vs.

**JIMMY DEAN MEAT COMPANY and
TRAVELERS INSURANCE COMPANY,**

Appellees.



Appeal from the Iowa District Court for Polk County, Richard Morr, Judge.

The petitioner appeals the district court's ruling on judicial review affirming the industrial commissioner's denial of petitioner's claim for workers' compensation benefits. **AFFIRMED.**

Steven C. Jayne, Des Moines, for appellant.

Glenn Goodwin of Finley, Alt, Smith, Scharnberg & May, P.C., Des Moines,
for appellees.

Considered by Donielson, C.J., Habhab, J., and McCartney, S.J.*

*Senior judge from the 2nd judicial district serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

The appellant, John Miller, appeals the decree of the district court which in turn affirmed and ratified findings and conclusions of the deputy industrial commissioner and of the industrial commissioner which denied the claim of the appellant (claimant) that he was entitled to workmen's compensation benefits.

The claimant worked for the employer (appellee) in its meat packing plant. His work entailed the handling of fresh meat which in turn and in part had been cooled by the use of dry ice. He contends that exposure to the carbon dioxide (CO₂) generated from the dry ice has caused him serious neurologic brain damage.

These contentions were denied by the industrial commissioner and, on appeal, by the district court. Claimant asserts that the commissioner failed to accord sufficient weight to the testimony of the expert witness testifying for the claimant, that the commissioner required him to satisfy an inappropriate standard of proof and that the district court erred in affirming the conclusion of the commissioner that the claimant failed to prove proximate cause between the exposure to carbon dioxide and the organic brain syndrome offered by him.

We affirm such findings and conclusions and the said district court decree.

Proceedings such as these brought under the Iowa Administrative Procedures Act, the district court functions as an appellate court to correct any legal error committed by the agency. *Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 465 N.W.2d 280 (Iowa 1991). On appeal, we apply the standards of Iowa

Code section 17A.19(a)(8) to assess whether our conclusions coincide with those reached by the district court. *Id.*

Our review is confined to determining whether or not the district court correctly applied the law. *Id.*

The full findings of the commissioner are binding on our review if the evidence is in dispute or if reasonable minds could draw different inferences from it. *Gallardo v. Firestone Tire & Rubber Co.*, 482 N.W.2d 393 (Iowa 1992). We determine whether or not the decision of the commissioner, and in this case affirmed by the district court, is supported by substantial evidence. *Id.* We consider evidence to be substantial if a reasonable person would find it adequate to reach a conclusion. *Id.*

The findings of the commissioner are liberally and broadly construed to uphold, rather than to defeat, his decision. *Second Injury Fund v. Hodgins*, 461 N.W.2d 454 (Iowa 1990). The findings of fact made by the commissioner are binding on appeal unless contrary findings are dictated as a matter of law. *Sioux City Brick & Tile Co. v. Empl. App. Bd.*, 449 N.W.2d 634 (Iowa 1989).

Applying these standards of review, we now turn to the record.

The principal issue is whether or not the exposure to CO₂ would cause the injury. There is no question but that there was an inordinate amount of CO₂ in the work atmosphere in which claimant was employed. Causation, however, between that factor and his injury must be established.

The claimant worked for the employer for the better part of nine years and suffered his disability in 1987 prior to termination of his employment. For a period of time his wife and his supervisors in the meat packing plant noticed a disintegration on the part of the claimant to follow instructions to perform his work.

Examinations of the claimant at the Mayo Clinic reflected that the claimant had a localized brain disorder found in the prominent frontal lobe area.

Both medical experts retained by the claimant and the medical expert retained by the employer opined that any brain injury caused by CO₂ (resulting in a lack of oxygen to the brain) would produce a widespread or diffuse effect throughout the brain and would not affect only the frontal lobe. The claimant's treating physician opined that he was "unaware of any direct toxicity of carbon dioxide exposure on the nervous system." Mayo Clinic physicians were unable to confirm the "possibility of carbon dioxide toxicity." They would not even express an opinion as to the "possibility" let alone the "probability" of such causation. The primary treating physician, a neurologist, testified that CO₂ does not have a toxic effect upon the nervous system.

Claimant asserts that even though causation may not have been established the expert testimony must be considered in conjunction with nonexpert testimony in effecting causation citing *Anderson v. Oscar Mayer & Co.*, 217 N.W.2d 531 (Iowa 1974). That case, however, holds that the conjunction of both expert and nonexpert testimony together may be sufficient to establish causation, but that in any event the

fact finder must make the decision. Here, the fact finder found that causation had not been sufficiently established.

The complaint of the claimant that the fact finder did not give sufficient credence to the testimony of his physician is not borne out by the record. Given the irreconcilable nature of some of the testimony, the fact finder was forced to the conclusion that causation had not been established.

We find that there was substantive evidence to support the findings of fact made by the commissioner.

Claimant further asserts that the commissioner abused his discretion in applying sanctions occasioned by the failure of an employee of the defendant to provide certain work records. The commissioner, as a sanction, assessed costs to the employer. Again, our review is to correct an error of law. *Henry v. Dep't of Transp.*, 426 N.W.2d 383 (Iowa 1988). Consequently, our review is limited to the question of whether or not the commissioner abused his discretion.

The claimant seeks to have the testimony of the expert testifying for the employer stricken from the record and likewise asks that the cross-examination of his own expert be excluded. This would, by fiat, give claimant his case contrary to the findings of fact. The medical testimony was not involved in the request of the claimant for disclosure, and the claimant was well aware of all the testimony offered on behalf of the employer. This was a question of medical causation and his requested sanctions strike too far and too deep under these circumstances. We cannot

find that the commissioner, under the circumstances, reasonably failed to impose sanctions and that those sanctions are well within the discretion of the commissioner.

Based upon the foregoing, we therefore affirm the findings of the commissioner and the district court in disallowing benefits. Costs of appeal are taxed to the appellant.

AFFIRMED.