

IN THE COURT OF APPEALS OF IOWA

No. 2-133 / 91-1367

JOHN W. BUGELY,

Appellant,

vs.

AMES PROCESSED FOOD CO., INC., Employer, and
IOWA MUTUAL INSURANCE COMPANY, Insurance Carrier,

Appellees.

FILED

MAY 28 1992

CLERK SUPREME COURT

98

Appeal from the Iowa District Court for Polk County,
Gene L. Needles, Judge.

Petitioner appeals from a district court ruling
affirming the industrial commissioner's decision.

AFFIRMED.

Fredd J. Haas of Humphrey & Haas, P.C., Des Moines, for
appellant.

Roy M. Irish of Patterson, Lorentzen, Duffield,
Timmons, Irish, Becker & Ordway, Des Moines, for appellees.

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

OXBERGER, C.J.

Claimant, John Bugely, appeals from a district court ruling affirming the decision of the industrial commissioner denying claimant permanent partial disability benefits for his May 9, 1985, work-related injury.

In April 1978, claimant began working for Ames Processed Food Company. He worked initially as a warehouse employee, then as a driver, and finally as a supervisor.

John had a history of back problems. In October 1978, he fell at work, hitting his back. Dr. Grant, who first treated him in 1978, diagnosed his back condition as spondylolysis with spondylolisthesis. Dr. Grant performed surgery on the back in February 1979. Dr. Grant released John to work without restrictions on May 31, 1979. John was off work until May 1980. He wore a back brace, underwent physical therapy. On January 29, 1981, Dr. Grant opined that John had a permanent partial impairment of thirty percent of the body as a whole as a result of the 1978 injury.

A claim activity report filed with Industrial Services indicates that John received temporary total disability benefits and 150 weeks of permanent partial disability benefits as a result of the October 1978 injury.

On May 9, 1985, John sustained an injury which arose out of and in the course of his employment when he turned or twisted and felt a sharp pain in his middle-lower back.

On August 12, 1985, Dr. Grant performed a spinal fusion of John's fifth lumbar. Dr. Grant released him to return to work on January 13, 1986, with no restrictions. In October 1986, Dr. Grant placed work restrictions on John based on the fact he had an eight-year history of back problems. In a report dated October 30, 1986, Dr. Grant opined that John's permanent partial impairment was twenty percent. Dr. Grant felt John's back was more stable following the fusion surgery.

The employer discharged John on December 31, 1986, for economic reasons unrelated to his back problems. In June 1987, Dr. Grant opined that John's permanent partial impairment was twenty-five percent.

After his discharge, John was employed as an over-the-road truck driver for Pride Leasing. In February 1987, he was injured when he slipped on a step on his truck. In February 1987, John left Pride Leasing over a pay dispute. On January 1, 1988, he experienced an episode of back pain which required hospitalization.

John filed an original notice and petition on July 10, 1987, for the May 9, 1985, work-related injury. An arbitration hearing was held on July 6, 1988. The deputy industrial commissioner issued a proposed decision. The deputy determined that John sustained an injury on May 9, 1985, which arose out of and in the course of his employment, and the injury caused a temporary aggravation

of a preexisting condition. The deputy found, however, that John failed to prove a causal connection between his May 9, 1985, work injury and his permanent disability, and denied permanent partial disability benefits. The industrial commissioner adopted the deputy's proposed decision as the final agency action on September 28, 1990.

John filed a petition for judicial review on October 19, 1990. The district court affirmed the decision of the industrial commissioner and John appeals.

SCOPE OF REVIEW: The Iowa Administrative Procedure Act, Iowa Code section 17A, governs judicial review of industrial commissioner decisions. The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. To make that determination this court applies the standards of section 17A.19(8) to the agency action to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

CAUSAL CONNECTION: We consider whether the industrial commissioner correctly determined the May 9, 1985 incident was not causally related to the disability upon which Bugely bases his claim. Bugely asserts the industrial commissioner's decision is in error because the commissioner only looked at the functional impairment and restrictions. He argues the commissioner should have computed and fixed the percentage of Bugely's disability, before deciding whether a causal connection existed. Bugely reasons that because disability in this case means industrial disability or reduced earning capacity, the question of causal connection is not linked solely to functional impairment.

The employer asserts the commissioner's finding there was no causal connection between the May 1985 incident and any resulting disability precluded the necessity to consider the other factors involved in evaluating industrial disability. We agree.

The deputy industrial commissioner stated:

The undersigned cannot conclude that claimant has established that the injury of May 9, 1985, caused the disability on which he now bases his claim or that the injury of May 9, 1985, materially aggravated the underlying condition.

We find substantial evidence in the record that supports this conclusion. Iowa Code section 85.3(1) requires an employee's personal injury arise out of and in the course of employment. An accident arises out of employment when there is a causal connection between the accident and the disability. Burt v. John Deere Waterloo Tractor Works, 73 N.W.2d 732, 738 (Iowa 1955). Bugely suffers from an eight-year problem of back trouble. Dr. Grant testified Bugely's current status is a result of that long-standing history of back problems. The trial court agreed with the industrial commissioner that no causal connection existed between the May 9, 1985 incident and Bugely's claim for disability. Absent any causal connection, we find the industrial commissioner correctly denied permanent partial disability benefits to Bugely. We will not disturb this finding on appeal.

Costs are taxed to the appellant.

AFFIRMED.