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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-248 / 92-1101

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DONALD LAHR TRUCKING and CIGNA INSURANCE COMPANIES,
Petitioners-Appellees,

vs.

LYNN SITES,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Respondent appeals a district court ruling reversing the Industrial Commissioner's decision which awarded him workers' compensation benefits. **REVERSED.**

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

John M. Bickel and Diane Kutzko of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for appellees.

Heard by Oxberger, C.J., and Schlegel, J., and McCartney, S.J.*

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

Lynn Sites began working for Donald Lahr Trucking (Lahr) in 1985 as a truck driver. As part of his job he was required to load and unload his own truck. Sites left his job with Lahr in 1988 to work with his brother driving trucks for Hawkeye Refrigeration. After about four months, Sites was forced to leave that employment because he was convicted of driving while intoxicated.

On November 16, 1988, Sites resumed employment with Lahr. On January 11, 1989, Sites was injured during the course of his employment. While closing some hatches, he was blown by the wind off the top of his trailer. Sites was able to hold on to a rail and lift himself back onto the top of the trailer. He immediately felt pain in his back.

Sites sought chiropractic treatment for his back. When this did not give him any relief, he sought treatment from Dr. Martin Roach, an orthopedist. Dr. Roach diagnosed Sites as having spinal stenosis of the lower lumbar segments secondary to overload syndrome from work injury. Dr. Roach determined Sites has a 10% functional impairment rating. Dr. Arnold Delbridge, another orthopedist, gave Sites an 11% functional impairment rating after examination. A third orthopedic surgeon placed this impairment at 20%.

Dr. Roach released Sites for a trial period of work September 1989. Sites attempted to resume his job as a

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truck driver for a period of two weeks. At the end of this period Sites experienced increased pain in his left leg, arm, and back. Dr. Roach released Sites to return to work full-time on September 19, 1989, with some restrictions. Sites has been permanently restricted from lifting more than twenty-five pounds and from repetitive twisting, bending or stooping. Dr. Roach also indicated that Sites had a high risk for future back problems if he became employed as a truck driver.

Lahr's workers' compensation carrier was CIGNA Insurance Companies. CIGNA hired Intracorp to assist Sites in rehabilitation and finding a new job. Sites was directed to join a Job Partnership Training Act (JPTA) program in Dubuque. Sites did not complete the course. Testing indicated Sites reads at a seventh grade level and is not a good candidate for retraining.

Sites lives in Dundee, Iowa, which has a population of about 170. No jobs were available for Sites in Dundee. Sites insisted that he needed to earn at least $7.00 per hour in order to justify the cost of commuting from Dundee to Waterloo, Dubuque, or Cedar Rapids. However, the type of entry-level jobs for which Sites qualified paid minimum wage. In addition, Sites refused to work evenings or weekends. Because of these self-imposed restrictions, Candice Kaelber of Intracorp concluded Sites lacked motivation to find alternative employment.

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Eventually, Sites obtained a job as a bartender at the Eagles Club in Manchester. He earns $4.35 per hour and works at least twenty hours per week.

After he was injured, Sites filed a claim for workers' compensation benefits. An administrative hearing on the case was held on March 21, 1991. Lahr sought to introduce the testimony of Susan Voelker and William Brunsmann. The deputy industrial commissioner excluded their testimony because the employer had failed to supplement its answers to interrogatories to include these two witnesses, even after Sites had formally asked the employer to supplement its answers.

The parties agreed there was an employer-employee relationship and that the injury arose out of and in the course of Sites' employment. Although Sites sought 100% industrial disability under the odd-lot doctrine, the deputy concluded Sites did not come within such doctrine.

The deputy considered Sites' functional impairment, in addition to his age, education, work experience, and motivation to determine his industrial disability, or loss of earning capacity. The deputy concluded Sites had a 45% industrial disability. The deputy also determined Sites had gross weekly wages of $438.85 while employed by Lahr, and his compensation rate was $259.45.

The industrial commission affirmed and adopted the deputy's decision as the final agency action in this case.

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Lahr and CIGNA filed a petition for judicial review. The district court reversed and remanded. The court determined there was not substantial evidence in the record to support the commissioner's conclusion that Sites had a 45% industrial disability. The court remanded for reconsideration of the industrial disability rating. The court found that the deputy's exclusion of Voelker's and Brunsmanns' testimony was an abuse of discretion. The court also remanded for a recomputation of Sites' rate of compensation. Sites has appealed.

I. In proceedings brought under the Iowa Administrative Procedure Act, the district court functions in an appellate capacity to correct legal error committed by the agency. Office of Consumer Advocate v. Iowa State Commerce Commission, 465 N.W.2d 280, 281 (Iowa 1991). On appeal, we apply the standards of Iowa Code section 17A.19(8) to assess whether our conclusions coincide with those reached by the district court. Id. Our review is ordinarily confined to determining whether the district court correctly applied the law. Id.

II. Sites contends that the district court erred in reversing the industrial commissioner's finding on the issue of industrial disability and that the commissioner's finding that he sustained a 45% industrial disability is supported by substantial evidence.

The industrial commissioner's factual findings are binding on judicial review if the evidence is in dispute or

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if reasonable minds could draw different inferences from it. Gallardo v. Firestone Tire & Rubber Co., 482 N.W.2d 393, 395 (Iowa 1992). The test is whether the commissioner's decision is supported by substantial evidence. Id. Evidence is substantial if a reasonable person would find it adequate to reach a conclusion. Id.

Industrial disability means reduced earning capacity. Guyton v. Irving Jensen Co., 373 N.W.2d 101, 103 (Iowa 1985). Bodily impairment is merely one factor in gauging industrial disability. Id. Other factors include the worker's age, intelligence, education, motivation, qualifications, experience, and the effect of the injury on the worker's ability to obtain suitable work. Id. The industrial commissioner must consider all of these factors as they bear on the employee's actual employability. Id. at 104.

Upon considering the record, we conclude there is substantial evidence to support the commissioner's conclusion Sites had a 45% industrial disability. The evidence showed Sites had a functional impairment of between 10% to 11%. He was thirty-seven years old at the time of the hearing. Sites reads at a seventh grade level. Sites was only qualified to perform jobs which required few job skills. He has experience in manual labor and in truck driving. The injury has precluded him from working at many of the jobs for which he may be suited.

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The district court found Sites lacked motivation to seek appropriate work by remaining in Dundee.

This factor is in dispute, but reasonable minds could, from the circumstances, draw different inferences. The decision of the commissioner in this instance is supported by substantial evidence. In any event, the commissioner did take into account a lower motivation on Sites' part in determining industrial disability.

We conclude the district court erred in finding the commissioner's decision was not supported by substantial evidence. The commissioner's findings should be broadly and liberally construed to uphold, rather than defeat, his decision. Second Injury Fund v. Hodgins, 461 N.W.2d 454, 455 (Iowa 1990). An agency's findings of fact are binding on the court in a judicial review proceeding unless contrary findings are dictated as a matter of law. Sioux City Brick & Tile Co. v. Employment Appeal Board, 449 N.W.2d 634, 639 (Iowa 1989). We are buttressed in our conclusion by the approach courts take to workers' compensation cases--it is our general policy to liberally construe workers' compensation statutes in favor of the worker. Hodgins, 461 N.W.2d at 455.

We reverse the district court's decision remanding this case to the commissioner for reconsideration of the industrial disability rating. We affirm the decision of the industrial commissioner.

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III. Sites also contends the district court erred in reversing the commissioner's exclusion of two of the employer's witnesses. The district court found a complete record of the discovery in the case was not available to the deputy when she made her ruling. The court determined that without the full record, there was no way to determine whether the employer was required under Iowa Rule of Civil Procedure 122(d) to supplement its answers to interrogatories. The court concluded the commissioner erred by affirming the decision of the deputy.

Violations of discovery rules may warrant sanctions. Sullivan v. Chicago & Northwestern Transportation Co., 326 N.W.2d 320, 324 (Iowa 1982). The imposition of discovery sanctions by a district court is discretionary, and will not be reversed unless there has been an abuse of discretion. Id.; Eaton v. Meester, 464 N.W.2d 691, 693 (Iowa App. 1990).

Among the interrogatories sent to the employer on January 9, 1990, Sites requested the employer to identify each person it planned to call as a witness at trial. The employer answered the interrogatories on February 21, 1990, but did not identify Susan Voelker or William Brunsmann as potential witnesses. On December 19, 1990, Sites formally requested the employer to supplement its answers. The employer did not supplement any answers. All discovery was to be completed by January 20, 1991.

The employer did not identify Voelker and Brunsmann as witnesses until fifteen days before the trial on March 21, 1991, or more than fourteen months after the first interrogatories. The commissioner found the employer had failed to comply with rule 122(d) by failing to supplement its interrogatory answers.

We find the deputy had sufficient information before her to rule on the issue of whether the employer was required to supplement the answers. The employer's interrogatory answers were introduced into evidence at the hearing and the deputy reviewed these answers before issuing her ruling. Also, Sites requested supplementation, and thus, under rule 122(d), the employer had a duty to supplement its answers.

We agree with the commissioner's conclusion that the employer violated rule 122(d). We find no abuse of discretion in the imposition of the discovery sanction given. We reverse the district court on this issue and affirm the industrial commissioner.

IV. Finally, Sites contends the district court erred in reversing the commissioner's calculation of his rate of compensation. The court stated that because it was remanding the case on other grounds, Sites' rate of compensation should also be reconsidered.

Sites admits there was conflicting evidence concerning his rate of pay with Lahr. However, as we noted above, the industrial commissioner's factual findings are binding on

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us 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, 395 (Iowa 1992).

We conclude there is substantial evidence in the record to support the commissioner's finding that Sites' workers' compensation rate of compensation was $259.45. We reverse the district court order remanding the case on this issue and we affirm the industrial commissioner.

We reverse the district court decision in this case. We affirm the decision of the industrial commissioner. Costs of this appeal are assessed to the employer, Donald Lahr Trucking, and the insurance carrier, CIGNA Insurance Companies.

REVERSED.