IN THE COURT OF APPEALS OF IOWA

No. 6-479 / 95-1877

000301

JANE M. ROGERS,

Petitioner-Appellant,

vs.

COVENANT MEDICAL CENTER,

Respondent-Appellee.

FILED
MAY 29 '97
CLERK SUPREME COURT

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

Petitioner appeals from the district court's decision on judicial review affirming the industrial commissioner's workers' compensation award to petitioner. **AFFIRMED.**

Mark W. Fransdal of Redfern, Mason, Dieter, Larsen & Moore, Cedar Falls, for appellant.

Fred L. Morris of Peddicord, Wharton, Thune & Spencer, P.C., Des Moines, for appellee.

Heard by Habhab, C.J., and Sackett and Cady, JJ.

HABHAB, C.J.

Petitioner Jane Rogers is a licensed practical nurse (LPN) who worked for respondent Covenant Medical Center in Waterloo. Prior to her work injury, Rogers was employed full-time as an LPN at Covenant regularly receiving overtime amounting to approximately four hours per week. On September 23, 1989, Rogers suffered a back injury while restraining a violent patient. Rogers had a slow recovery from her injury which required physical therapy over the course of several years. Covenant attempted to accommodate Rogers' condition by providing her part-time nursing employment. In January 1991, Rogers' treating physician released her to return to full-time work. However, he eventually imposed permanent lifting restrictions of twenty-pound maximum lifting and fifteen-pound repetitive lifting. These restrictions prevented Rogers from returning to a floor nursing position and required her to obtain a nursing position which did not involve patient care.

In December 1991, Rogers took a part-time position at Covenant as ambulatory resource coordinator. Although this position was part-time, she eventually began working a minimum of thirty hours a week and averaged seventy hours a pay period between October 1993 and April 1994. By 1993, her salary was more than what she had received prior to her injury.

Rogers filed a claim for workers' compensation benefits with the industrial commissioner. A deputy industrial commissioner entered an arbitration decision determining Rogers' back injury caused a forty percent loss of her earning capacity.

On Covenant's appeal, the industrial commissioner determined Rogers suffered only a fifteen percent earnings loss. Rogers filed a petition for judicial review. On September 28, 1995, the district court entered a ruling affirming the industrial commissioner's decision.

Rogers appeals. She contends evidence presented at the hearing established she has suffered a forty percent industrial disability. She argues there is not substantial evidence within the record to support the industrial commissioner's reduction of her industrial disability to fifteen percent and, as such, the decision was arbitrary.

Judicial review of the actions of an administrative agency is governed by the standards of Iowa Code section 17A.19(8). *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 233 (Iowa 1996). The court acts in an appellate capacity by reviewing the agency's decision solely to correct any errors of law. *Id.* The agency's decision is final if it is supported by substantial evidence and is correct in its conclusions of law. *Id.* The possibility of drawing two inconsistent conclusions from the same evidence does not prevent the agency's decision from being supported by substantial evidence. *Id.* The findings of the industrial commissioner are akin to a jury verdict, and we broadly apply them to uphold the commissioner's decision. *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1984). We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence. *See* Iowa Code § 17A.19(8)(f) (1997).

The evidence reveals that in her current position Rogers earns $10.89 per hour. She earned only $9.22 per hour on the date of her injury. At the time of the hearing she was working a temporary full-time schedule consisting of seventy-two hours every two weeks. Rogers argues the loss of her ability to work full time has resulted in a loss of earnings. She argues that this, coupled with her loss of employment opportunities, supports the arbitration award of a forty percent industrial disability. In our review of the record, we find the district court did not err in affirming the industrial commissioner's reduction of Rogers' industrial disability rating from forty percent to fifteen percent.

As Rogers has established the work injury caused a permanent physical limitation upon activity involving the body as a whole, the degree of the permanent limitation must be measured pursuant to Iowa Code section 85.34(2)(u). "In determining the extent of a claimant's body-as-a-whole industrial disability, the question is 'the extent to which the injury reduced [the claimant's] earning capacity.'" *Thilges v. Snap-on Tools Corp.*, 528 N.W.2d 614, 616 (Iowa 1995)(citing *Guyton v. Irving Jensen Co.*, 373 N.W.2d 101,104 (Iowa 1985)). This inquiry is not satisfied by merely considering limitations of a claimant's ability to perform physical activity associated with employment. *Id.* A number of criteria are considered when determining industrial disability including, but not limited to, age, education, qualifications, experience, and the claimant's inability, due to the injury, to be employed in occupation for which he or she is fit. *See McSpadden v. Big Ben Coal,*

288 N.W.2d 181, 192 (Iowa 1980). While functional disability is a consideration, it is not alone determinative. *Id.*

Rogers' injury precludes her from further employment as an LPN and has limited her prospects for employment. Absent Covenant Medical Center's accommodations and retraining, her employment prospects would not be good. However, the record reveals Rogers has had a good employment relationship with Covenant since 1980 and this relationship remains stable. The position she holds is meaningful and has not been created solely to accommodate her. Rogers enjoys her new position. Her hours have increased to the point where they are now nearly full time.

In reducing Rogers' industrial disability to fifteen percent, the industrial commissioner found, in part, the following:

> Claimant, a high school graduate with an LPN certificate, sustained a work-related injury that now forecloses her from employment as an LPN floor nurse. While the claimant has a functional impairment that is low (2%), she has a lifting restriction of not more than 20 pounds maximally and 15 pounds on a repetitive basis. The work restriction imposed by Dr. Delbridge effectively forecloses the claimant from working in the profession she occupied for 10 years prior to her injury. Clearly claimant is a motivated individual. But for . . . employer's willingness to accommodate claimant's work restriction . . . her prospects for employment, without retraining, would not be good. On the other hand, the record established that claimant is in a stable employment relationship with an employer that has continuously employed her since 1980. . . . Evidence of a stable employment relationship includes: Claimant has received a total of five pay raises since her return to work; . . . employer has provided the claimant with meaningful work (claimant is not in a make work situation); claimant enjoys her work as ambulatory resource

> coordinator; . . . employer has fully and completely complied with claimant's work restrictions; and claimant's bi-weekly hours of employment have steadily increased to the point where they are now near full-time. In the unforeseen event that claimant's employment with defendant employer would cease, claimant's age and intelligence suggest she is suited for retraining.
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> After considering all of the factors used in determining industrial disability, it is the decision of the industrial commissioner that Jane Rogers has sustained a 15 percent industrial disability.

Substantial evidence is not absent simply because it is possible to draw different conclusions from the same evidence. *Riley v. Oscar Mayer Foods Corp.*, 532 N.W.2d 489, 491 (Iowa App. 1995). Our focus is whether the evidence is sufficient to support the decision made, not whether it is sufficient to support the decision not made. *Id.* A reviewing court may interfere with the agency's findings only if the evidence is uncontradicted and reasonable minds could not draw different inferences. *Id.* After reviewing the record, we find there is substantial evidence supporting the findings of the industrial commissioner. We affirm the decision of the district court.

AFFIRMED.