# IN THE COURT OF APPEALS OF IOWA

No. 5-209 / 94-534

FILED
JUN 27 1995
SUPREME COURT

**ROSE HAVEN NURSING HOME and ALLIED MUTUAL INSURANCE COMPANY,**

Appellees,

vs.

**HELEN H. DAVIS,**

Appellant.

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Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Helen Davis appeals a district court order reversing the industrial commissioner's award of workers' compensation benefits to Davis as a result of an injury she suffered at work for Rose Haven Nursing Home. **REVERSED.**

Thomas J. Currie of Tom Riley Law Firm, P.C., Cedar Rapids, for appellant.

David L. Jenkins of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellees.

Heard by Donielson, C.J., and Habhab and Huitink, JJ.

**HABHAB, J.**

Helen H. Davis filed for workers' compensation benefits based on lower back injuries she suffered during her employment as a nurse for Rose Haven Nursing Home (Rose Haven).

A hearing was held before the deputy industrial commissioner. Davis presented evidence to support her claim she suffered a disk herniation as a result of two incidents at work. She claimed the herniation caused a pre-existing lower spine tumor to become symptomatic. The tumor had to be surgically removed.

Dr. Richard Osenbach, one of the physicians who performed the operation to remove the tumor, provided two letters regarding Davis's injury. In the first letter dated September 25, 1991, Dr. Osenbach stated he could not say unequivocally whether the disk problem caused the tumor to become symptomatic. In a June 24, 1992 letter, Dr. Osenbach further defined his position in more specific terms by stating, "I would say that there is certainly a greater than 50% chance that the precipitation of Mrs. Davis's symptoms was related to the injury sustained at her job."[1] D[redacted]es Worrell, in a letter dated December 1992, concurred with Dr. Osenbach's June 24, 1992 findings.

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1. Dr. Chad Abernathey, a neurosurgeon, stated the surgeon evaluating the patient at the time of surgery would be in the best position to tell whether the symptomatology was caused by the disk problem.

Rose Haven provided medical evidence from Dr. Daniel McGuire. Dr. McGuire expressed the opinion the work incident of March 13 did not cause the tumor, nor did it cause the tumor to become symptomatic.

The deputy industrial commissioner found Davis had suffered injury arising out of and in the course of employment, the weight of evidence established the herniated disk was causally related to the work injury, and the disk caused the tumor to become symptomatic. Davis was awarded healing period benefits, medical benefits, and fifteen percent industrial disability.

Rose Haven and Allied Mutual Insurance Company (Allied) appealed. The industrial commissioner affirmed the deputy commissioner's arbitration decision and adopted it as the final agency action in the case.

Rose Haven and Allied filed a petition for judicial review. The district court concluded Davis's medical evidence did not create the "probability" necessary to carry her burden of showing the tumor became symptomatic as a result of the herniated disk. The court thus reversed the agency decision. However, the district court found Davis had shown the disk problem was causally related to the incidents of injury at work and remanded the case to the agency to determine damages for that injury only.

Davis appeals.

The scope of review in cases arising out of the Iowa Administrative Procedure 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). The review function of the district court

under Iowa Code section 17A.19 (1993) is to correct errors at law which are specified in section 17A.19(8). 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. *Civil Serv. Comm'n v. Iowa Civil Rights Comm'n*, 522 N.W.2d 82, 85 (Iowa 1994).

The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. *Munson v. Iowa Dep't of Transp.*, 513 N.W.2d 722, 723 (Iowa 1994); *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. *Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995); *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994); *Henry*, 391 N.W.2d at 734. Where the facts are disputed, we will adopt the factual determinations made by the agency as long as they are supported by substantial evidence in the whole record. *Temple v. Vermeer Mfg. Co.*, 285 N.W.2d 157, 160 (Iowa 1979); *Department of Transp. v. Van Cannon*, 459 N.W.2d 900, 902 (Iowa App. 1990). The industrial commissioner's findings are broadly and liberally applied to uphold rather than defeat the commissioner's decision. *King v. City of Mt. Pleasant*, 474 N.W.2d 564, 565 (Iowa 1991); *Dillinger v. City of Sioux City*, 368 N.W.2d 176, 182 (Iowa 1985); *Beier Glass Co. v. Brundige*, 329 N.W.2d 280, 282 (Iowa 1983).

It is the industrial commissioner's role to weigh the facts presented to him and it is entirely within his right to reject any evidence he considers less reliable than other contradictory testimony. *Terwillinger v. Snap-On Tools*, 529 N.W.2d 267, 273 (Iowa 1995); *see Rockwell Graphic Systems, Inc. v. Prince*, 366 N.W.2d 187, 192 (Iowa 1985); *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1994). The industrial commissioner is not compelled to accept medical testimony. *Musselman v. Cent. Tel. Co.*, 261 Iowa 352, 360, 154 N.W.2d 128, 132 (1967); *Hurley v. Sheller-Globe Corp.*, 512 N.W.2d 796, 798 (Iowa App. 1993).

Davis alleges only one error by the district court on appeal. Davis contends the district court erred in finding there was not substantial evidence to support the commissioner's finding the injury caused her tumor to become symptomatic.

We find the district court erred in finding there was not substantial evidence to support the commissioner's decision. While it is true Dr. McGuire provided evidence to support Rose Haven's position regarding the tumor, there was also evidence to the contrary given by Dr. Osenbach and Dr. Worrell. The commissioner was not compelled to accept Dr. McGuire's evidence over the other medical evidence. Rather, the commissioner was required to weigh the contradictory medical evidence and rely on the evidence he found more reliable.

We find the medical evidence provided by Dr. Osenbach and Dr. Worrell is such that a reasonable person would find it adequate to reach the commissioner's conclusion. As there was substantial evidence to support the commissioner's conclusions, the district court erred in reweighing the evidence.

In conclusion, we find there is substantial evidence to support the findings of the commissioner. Accordingly, we reverse the decision of the district court and affirm the decision of the industrial commissioner.

**REVERSED.**