

IN THE COURT OF APPEALS OF IOWA

No. 7-018, 96-0072

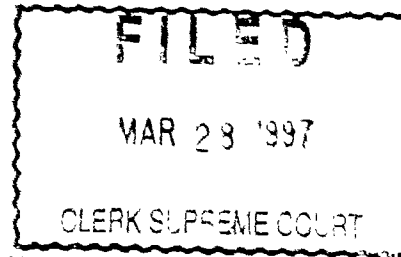
HERMAN A. ANDERSON,

Appellee,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,
Employer; STATE OF IOWA, Insurance Carrier,

Appellants.



Appeal from the Iowa District Court for Kossuth County, Joseph J. Straub,
Judge.

Respondents appeal from the district court's decision on judicial review reversing the industrial commissioner's review-reopening decision denying petitioner additional workers' compensation benefits for a deterioration in his condition caused by a work-related injury. **REVERSED.**

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant
Attorney General, and Kerry Anderson, Assistant Attorney General, for appellants.

David C. Skilling, Algona, for appellee.

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

HABHAB, C.J.

Petitioner Herman Anderson worked for respondent Iowa Department of Transportation. In February 1985, he injured his back, causing him to be off work for six weeks. He underwent surgery in May 1986 and returned to work. In 1987, Anderson again injured his back, causing him to be off work for approximately one year. He subsequently returned to work; however, in March 1990 he suffered injury to his back a third time. He then unsuccessfully attempted to return to work in August 1990. He has not worked since that time. His physical injuries also apparently caused him to suffer psychological injury.

Anderson filed a workers' compensation claim with the industrial commissioner. In October 1991, the Department and Anderson entered into a settlement agreement which stated Anderson suffered an eighty-five percent functional impairment of the body as a whole due to his injury.

In April 1993, Anderson filed a petition requesting a review-reopening hearing with the industrial commissioner. At the hearing, Anderson claimed his condition deteriorated since the time of the settlement. In support of his claim, he submitted a deposition from Dr. Fisher indicating his condition had deteriorated.

The deputy commissioner denied Anderson's request for a review-reopening, holding in part:

It is concluded that Herman A. Anderson has failed to prove that the deterioration of his condition was *not discoverable through the* exercise of reasonable diligence at the time when he entered into the

agreement for settlement in 1991. To the contrary, it appears that the deterioration was expected and that claimant could have readily known that it was expected if he had merely asked his principle treating physician for a prognosis.

When viewed as a whole, the record of this case fails to show that this claimant is substantially less employable now than he was when he entered into the agreement for settlement in 1991.

The industrial commissioner affirmed the review-reopening decision on appeal. Anderson filed a timely petition for judicial review challenging the industrial commissioner's decision.

On December 14, 1995, the district court entered a decision reversing the industrial commissioner's decision. The court concluded the commissioner's decision was not supported by substantial evidence. The court reasoned the deputy commissioner's decision overemphasized Dr. Fisher's opinion at the time of a settlement that there would be some continued deterioration of Anderson's condition. The court concluded Anderson proved his present condition was not known or discoverable at the time the settlement agreement was reached. The district court remanded the case to the industrial commissioner for a determination of Anderson's present disability and ordered all costs taxed to the respondent, including the cost of the appeal and the cost of the appeal from the review-reopening decision.

On January 8, 1996, the Department filed a notice of appeal. The Department argues the district court erred in finding the industrial commissioner's decision was not supported by substantial evidence. We agree. We reverse the district court's

decision and find substantial evidence exists to support the decision of the industrial commissioner.

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).

Iowa Code section 86.14(2) authorizes the industrial commissioner to reopen an award or settlement of workers' compensation benefits to determine if the employee's condition warrants a decrease or increase of compensation. *See E.N.T. Assocs. v. Collentine*, 525 N.W.2d 827, 829 (Iowa 1994). "The claimant bears the burden of establishing by a preponderance of the evidence that, subsequent to the date of the award under review, he or she has suffered an impairment or lessening of earning capacity proximately caused by the original injury. *Id.* (citing *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 350 (Iowa 1980)). In addition, claimant bears the burden by a preponderance of the evidence that the change in impairment or

earning capacity was not anticipated or discoverable in the exercise of reasonable diligence at the time of the prior settlement:

[C]ause for allowance of additional compensation exists on proper showing that facts relative to an employment-connected injury existed but were unknown and would not have been discovered in the exercise of reasonable diligence, sometimes referred to as a substantive omission due to mistake, at the time of any prior settlement or award.

Gosek v. Garmer & Stiles Co., 158 N.W.2d 731, 735 (Iowa 1968).

The record reveals in 1991 it was Dr. Fisher's opinion that Anderson was unable to perform any of the work he had been trained for or was experienced in. Furthermore, Dr. Fisher twice opined Anderson's condition would continue to deteriorate. He testified in part:

Q. Did you anticipate his condition to continue to deteriorate?

A. Not only did I anticipate it up till now, I anticipate it will deteriorate further from now, right.

In addition, in Anderson's original testimony he indicated he did not expect to ever be employed again.

In reversing the industrial commissioner's decisions, the district court found:

The deputy commissioner attached too much significance to the fact that Dr. Fisher believed there would be some deterioration both before and after the settlement. Deterioration is part of the aging process, especially when one has suffered an injury which may result in degenerative changes. We do not have that type of deterioration in that case. What we have here is accelerated depreciation and accelerated psychological problems which make the claimant unemployable. . . . Dr. Fisher certified that the claimant is totally disabled for his own job and for any other job. That was not his condition when the settlement was reached. This is also evidence which the deputy commissioner totally ignored.

We disagree with the reasoning of the district court and reverse its decision. 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.* We find substantial evidence within the record supporting the industrial commissioner's findings. 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.*

Although Anderson's condition has deteriorated since settlement, we find the record, when viewed as a whole, reveals continued deterioration was expected at the time of settlement. Anderson has not met his burden of showing the deterioration he has experienced was not contemplated at the time of settlement in 1991.

We find the agency's decision to be supported by substantial evidence. We reverse the district court's decision.

REVERSED.