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IN THE COURT OF APPEALS OF IOWA

No. 8-018 / 97-0272
Filed February 25, 1998

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CLERK SUPREME COURT

SHERRY PUMPHREY,
Appellant,

vs.

UTA, Employer, and PACIFIC EMPLOYERS
INSURANCE COMPANY, Insurance Carrier,
Appellees.

Appeal from the Iowa District Court for Linn County, August F. Honsell,
Judge.

The petitioner appeals from the district court's ruling on judicial review
affirming the industrial commissioner's ruling on her workers' compensation claim.

AFFIRMED.

Thomas M. Wertz of Wertz Law Firm, P.C., Cedar Rapids, for appellant.

Harry W. Dahl, Jr., Des Moines, for appellees.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

HUITINK, P.J.

Sherry Pumphrey appeals the district court's decision affirming the industrial commissioner's award of workers' compensation benefits. Pumphrey's employer, United Technologies Automotive (UTA), and UTA's insurance company, Pacific Employers Insurance (Pacific), cross-appeal from the district court's judgment. We affirm the district court.

I. Background Facts and Proceedings.

Sherry Pumphrey fell and injured her back on September 10, 1991, while working at UTA in Iowa City. Pumphrey worked off and on following the injury due to severe pain and depression. She sought treatment from and was evaluated by several medical professionals. Pumphrey stopped working at UTA on June 10, 1993, on the advice of Dr. Michael Brooks, a rheumatologist specializing in chronic pain conditions.

Pumphrey sought workers' compensation disability benefits from UTA. The deputy industrial commissioner found Pumphrey was permanently, totally disabled under Iowa Code section 85.34(3) due to fibromyalgia¹ and depression proximately caused by her fall.

On appeal conflicting evidence was offered to the industrial commissioner concerning Pumphrey's condition and her permanent impairment rating. The

¹ Fibromyalgia is a diffuse pain syndrome lasting more than three to six months. Symptoms of fibromyalgia include chronic pain, fatigue, tenderness in several muscle areas, sleep difficulty, tingling in the arms and legs, and, in some cases, depression.

industrial commissioner found Dr. Brooks' assessment of Pumphrey's condition most credible. Dr. Brooks testified Pumphrey's September 10, 1991 injury triggered her fibromyalgia. He gave Pumphrey a permanent impairment rating of nine percent based on this condition. Dr. Brooks did not specifically testify Pumphrey's depression was caused by her fall, but he stated depression occurs in twenty to thirty percent of fibromyalgia cases.

Dr. Alan Whitters, Pumphrey's psychologist, testified fibromyalgia is one of a variety of stressors causing Pumphrey's depression, and he expects Pumphrey's psychiatric condition to improve. The record also contains evidence Pumphrey suffered from depression prior to her fall.

The industrial commissioner overturned the deputy's decision and awarded Pumphrey fifteen percent industrial disability based on her fibromyalgia resulting from her work-related injury. The commissioner denied Pumphrey benefits based on her depression. On judicial review, the district court affirmed the decision of the industrial commissioner.

In this appeal Pumphrey argues the industrial commissioner improperly determined fibromyalgia did not cause her depression, and the district court erred in affirming the commissioner's decision. She also maintains the district court erred in affirming the commissioner's award of fifteen percent industrial disability benefits.

On cross-appeal UTA and Pacific contend the district court erred in affirming the industrial commissioner's award of permanent disability benefits to Pumphrey.

II. Standard of Review.

Our review of the district court's decision is limited to correction of errors at law. *Squealer Feeds v. Pickering*, 530 N.W.2d 678, 681 (Iowa 1995). We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence. Iowa Code § 17A.19(8)(f) (1991). Evidence is substantial if a reasonable person would find it adequate for reaching a decision. *Peoples Memorial Hosp. v. Iowa Civil Rights Comm'n*, 322 N.W.2d 87, 91 (Iowa 1982). 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. *Vosberg v. A.Y. McDonald Mfg. Co.*, 519 N.W.2d 405, 408 (Iowa App. 1994).

III. The Merits.

A. Depression. Pumphrey bears the burden of proving, by a preponderance of evidence, her injury is a proximate cause of her depression, the impairment on which she bases her claim. *Sondag v. Ferris Hardware*, 220 N.W.2d 903 (Iowa 1974). A proximate cause means a substantial factor in bringing about the result. *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 354 (Iowa 1980). A preponderance of the evidence exists when the causal connection is probable rather than possible. *Id.* at 348. The issue of causal connection is essentially within the

domain of the expert medical opinion. *Bradshaw v. Iowa Methodist Hospital*, 251 Iowa 375, 101 N.W.2d 167 (Iowa 1960). However, the fact finder may accept or reject expert testimony in whole or part. *Sondag v. Ferris Hardware*, 220 N.W.2d at 905.

The industrial commissioner found Pumphrey failed to carry her burden of proof her fall was a substantial factor causing her depression. The commissioner stated:

There is insufficient medical evidence to causally connect her current depression with her physical condition. Claimant has a long history of depression pre-dating her work injury. The medical evidence does indicate that fibromyalgia may lead to depression in some cases. Dr. Whitters stated claimant's depression 'may be' caused by her fibromyalgia. Dr. Brooks opined that claimant's fibromyalgia was caused by her work injury, but did not specifically state claimant's depression was caused by her work injury. . . . [T]aking the record as a whole, the greater weight of the evidence is that claimant's depression is caused by stress factors in her life not related to her work injury. . . . [C]laimant has not carried her burden to show that it is a substantial factor causing her depression. It is more likely that claimant's current depression is part of her on-going bout with that mental condition.

We find there is substantial evidence in the record to support this finding. We affirm on this issue.

B. *Permanent Impairment Rating.* The industrial commissioner found Pumphrey was entitled to an award of industrial disability of fifteen percent for her fibromyalgia.²

² The industrial commissioner found Pumphrey sustained an unscheduled injury. The parties do not contest this fact on appeal. An unscheduled injury is compensated as an injury to the body as a whole, as in industrial disability, and accounts for loss of earning

In calculating the percentage of a claimant's injury in relation to her body as a whole, the commissioner must determine the extent the injury has reduced the claimant's earning capacity. *Thilges v. Snap-On Tools Corp.*, 528 N.W.2d 614, 616 (Iowa 1995)(citation omitted). Factors to consider include the claimant's age, education, qualification, experience, and the injury's affect on the claimant's ability to engage in the employment for which she is fitted. *Id.*

In her ruling, the industrial commissioner briefly stated "[s]he [Pumphrey] has ratings of permanent impairment of 9 percent of the body as a whole and 2 ½ percent. Claimant is 36-years-old and has a tenth-grade education. It is found that claimant has an industrial disability of 15 percent." Moreover, expert testimony regarding Pumphrey's work restrictions as well as evidence of her personal history appear in the record.

We are satisfied the commissioner considered the proper factors in determining the percentage of Pumphrey's permanent disability. Accordingly, we find substantial evidence exists to support the commissioner's conclusion. We affirm on this issue.

IV. Cross-Appeal.

On cross-appeal, UTA and Pacific assert the district court erred in affirming the commissioner's award of permanent disability benefits based upon fibromyalgia.

capacity. *Prewitt v. Firestone Tire & Rubber Co.*, 564 N.W.2d 852, 854 (Iowa App. 1997).

Pumphrey bears the burden of proving, by a preponderance of evidence, a work-related injury is the proximate cause of her fibromyalgia, the impairment on which she bases her claim. *Sondag v. Ferris Hardware*, 220 N.W.2d at 905. A proximate cause means a substantial factor in bringing about the result. *Blacksmith v. All-American, Inc.*, 290 N.W.2d at 354. A preponderance of the evidence exists when the causal connection is probable rather than possible. *Id.* At 348. The issue of causal connection is essentially within the domain of the expert medical opinion. *Bradshaw v. Iowa Methodist Hospital*, 251 Iowa 375, 101 N.W.2d 167.

The industrial commissioner found Pumphrey's fall was the proximate cause of her fibromyalgia. In resolving the conflicting expert testimony, the commissioner found:

the assessment of this case made by Dr. Brooks is correct. The precise cause or etiology of fibromyalgia is not known but there is a pattern which shows that it can be triggered by trauma in individuals with a preexisting makeup such as claimant's. It is found that the injury of September 10, 1991 was a substantial factor in causing Sherry Pumphrey to develop fibromyalgia or chronic pain. The precise title that is attached is academic for purposes of this case. . . . Dr. Neiman's statement that to diagnose claimant with fibromyalgia is a misrepresentation is principally a matter of terminology. He defined her condition as chronic strains of the neck and back. Dr. Koch did not adopt the diagnosis of fibromyalgia but he found claimant to have chronic pain Dr. Cullen adopted the diagnosis of fibromyalgia .

. . .

See Sondag v. Ferris Hardware, 220 N.W.2d at 905 (the fact finder may accept or reject expert testimony in whole or part in determining whether a causal connection exists).

We conclude there is substantial evidence in the record to support the commissioner's finding on this issue and we affirm.

We have considered all of the issues raised in this appeal and affirm the district court's judgment in its entirety.

AFFIRMED.