

IN THE COURT OF APPEALS OF IOWA

No. 6-345 / 95-1679

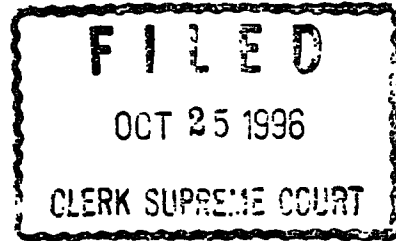
MARJORIE STEINES,

Petitioner-Appellant,

vs.

DELAVAN CORP.,

Respondent-Appellee.



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

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

AFFIRMED.

Mark T. Hedberg, Des Moines, for appellant.

W. Timothy Wegman and Joseph M. Barron of Peddicord, Wharton, Thune & Spencer, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Habhab and Vogel, JJ.

SACKETT, C.J.

Petitioner-appellant Marjorie Steines appeals from the district court's ruling on judicial review affirming the industrial commissioner's ruling after she filed a petition for judicial review challenging the industrial commissioner's decision on her claim for workers' compensation benefits. Steines claims: (1) the industrial commissioner used improper factors in determining the loss of earning capacity caused by her shoulder injury; (2) the record did not contain substantial evidence to support the industrial commissioner's decision she suffered a three percent permanent partial disability; and (3) the industrial commissioner failed to award adequate benefits based on a finding she is a highly-motivated individual. We affirm.

Marjorie Steines was employed by respondent-appellee Delavan Corporation on January 20, 1993, when she slipped and fell in Delavan's parking lot injuring her right shoulder. She continued to work for Delavan until she was laid off because of economic conditions in April 1993.

Steines filed a claim for workers' compensation benefits. A deputy industrial commissioner found Steines to have a twenty percent permanent partial disability to the body as a whole. On Delavan's appeal, the industrial commissioner reduced the disability award to three percent of the body as a whole. In reaching that result, the commissioner noted that Steines was a hard worker and continued to work after she received the injury with no loss of earnings. The commissioner found Delavan had

accommodated her injury and any loss of earnings after she was laid off was due to economic conditions rather than her injury.

Steines filed a petition for judicial review challenging the industrial commissioner's decision. The district court affirmed the industrial commissioner's decision. The court found the commissioner considered proper factors to determine the extent of Steines' industrial disability and substantial evidence supported the commissioner's determination that Steines had a three percent disability to the body as a whole. This appeal followed.

The scope of review in cases arising out of the Iowa Administrative Procedures 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). 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 Iowa Code section 17A.19(8) (1991) 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. *Id.* at 917. 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. *Id.*

After Steines was injured, she continued to work for Delavan. Delavan accommodated her injury until she was laid off. One treating physician imposed an overhead lifting restriction of fifteen pounds for her right arm. The physician was unable to fix a precise impairment rating. Another examining physician said Steines should be restricted from doing repetitive activity with her right arm and gave her a two percent permanent impairment rating to that arm.

Steines claims her medical restrictions reduced her access to the job market. She was employed at the time of the hearing at Tone Brothers at approximately \$1.50 under her hourly wage with Delavan Corporation. Steines claims she continues to experience pain while working due to her shoulder injury.

The first question is whether the commissioner considered impermissible factors in finding Steines suffered a three percent industrial disability.

The commissioner made the following findings:

The record in the instant case causes the Industrial Commissioner to conclude that the work related injury sustained by the Claimant on January 20, 1993, was not severe. The body as a whole impairment ratings seen in the record of this case, 0 and 2%, are very low. Other than for purposes of obtaining prescriptions, the Claimant has not been treated by any doctor for her injury since May 24, 1993. The Claimant sustained no healing period; the Claimant missed no work, none whatsoever, as a result of the January 20, 1993, injury.

Not only did the work injury result in no lost time from work, it did not prevent the Claimant from continuing in her same job at Delavan. From the date of her injury until the time of her layoff, Claimant performed her regular job with no loss of earnings, and Delavan accommodated any and all of Claimant's work restrictions. After being laid off due to economic reasons, the Claimant has been able to secure several jobs, including her present job at Tone Brothers. The Claimant is currently in a stable employment relationship at Tone Brothers, having worked continuously for this employer for over one year at the time of hearing. She is making less per hour than when employed by Delavan, but this reduction in pay had nothing to do with her work injury. The reduction in pay was due to the major layoff at Delavan.

There are a number of factors that are relevant to a determination of industrial disability. *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 192 (Iowa 1980). These include the claimant's age, education, qualifications, experience, and his or her inability because of the injury to engage in employment for which he or she is fitted. *Id.* Steines claims the commissioner failed to follow *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 831 (Iowa 1992), where the court indicated a decrease in earnings is not always necessary to show a reduction in earning capacity and one can suffer loss of earning capacity even though they do not suffer an actual diminution in

earnings. *Id.* We disagree with Steines that *Oscar Mayer* was not followed. While that case recognized a loss of earnings cannot always be shown and the fact it is not shown does not foreclose a finding of industrial disability, it still recognized that it is a factor that can be considered. *Id.* The commissioner did not consider impermissible factors.

Steines next claims there is not substantial evidence to support the commissioner's finding of disability. The commissioner found Steines' injury not severe based in part on a low impairment rating given by the treating physician, the fact she had no healing period, and she continued to work after the accident. The commissioner also considered the evidence she missed no work as a result of the accident. The commissioner further found she has no impairments to working and at the time of the hearing, while she was earning less than she had at Delavan, the reduction was not due to her injury. There is substantial evidence to support the commissioner's finding.

We affirm.

AFFIRMED.