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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-321 / 94-0062

DALE FUGIT,

Petitioner-Appellant,

vs.

JIMMY DEAN MEAT COMPANY, FIREMAN'S FUND INSURANCE COMPANIES, and SECOND INJURY FUND OF IOWA,

Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Richard D. Morr, Chief Judge.

Fugit appeals from the district court ruling affirming the decision of the industrial commissioner. **AFFIRMED.**

Coreen K. Bezdicek and Charles E. Cutler of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker and Ordway, Des Moines, for appellant.

Patrick D. Smith and Dorothy L. Kelley of Huber, Kelley, Book, Cortese & Happe, Des Moines, for appellees.

Bonnie J. Campbell, Attorney General, and Greg Knoploh, Assistant Attorney General, for Second Injury Fund of Iowa.

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

HABHAB, J.

Dale Fugit was employed by Jimmy Dean Meat Company as a blade puller. On April 4, 1984, he was injured in the course of his employment. Jimmy Dean authorized Fugit to seek treatment with Dr. Douglas Reagan. Dr. Reagan described the injury to Fugit as a chipped bone in his right wrist which severed a tendon in his little finger.

In addition to the work-related injury of the severed tendon, Dr. Reagan diagnosed several other conditions affecting Fugit's right hand. When he repaired Fugit's tendon, he also performed a carpal tunnel release, an ulnar tunnel release, a synovectomy of the wrist and a ring trigger finger release. Although Dr. Reagan feels these additional problems with Fugit's hand may be work related, he did not state these problems occurred due to the work-related injury to the little finger on April 4, 1984. Dr. Reagan rated the permanent impairment of the work-related injury to the little finger as an equivalent of a ten percent impairment of the upper right extremity.

Fugit filed a petition with the industrial commissioner seeking worker's compensation benefits based on the April 4, 1984, injury to his little finger. Fugit was evaluated for functional impairment by Dr. G. E. Anderson, a chiropractor, and Thomas Bower, a physical therapist. Each of these evaluators gave individual impairment ratings for each finger. Anderson rated Fugit's finger impairments as a thirty-nine percent impairment to the upper extremity.

Anderson included a rating to the thumb in making his calculations. If this rating is excluded, his calculated impairment rating would drop to thirty-four percent. Bower rated Fugit's impairment to the hand at thirty-four percent. Bower did not give a rating to the thumb. According to the Guides to the Evaluation of Permanent Impairment published by the American Medical Association, 2nd Edition, a thirty-four percent impairment to the hand is equivalent to a thirty-one percent impairment to the upper extremity.

After a hearing, the deputy industrial commissioner found Fugit has sustained a thirty-one percent impairment to the upper right extremity and, accordingly, ordered Jimmy Dean and its insurer, Fireman's Fund Insurance Companies, to pay Fugit 77.5 weeks of permanent partial disability benefits at the rate of $270.23 per week. The deputy found no entitlement to benefits from the Second Injury Fund.

Jimmy Dean and Fireman's appealed. The industrial commissioner found Anderson and Bower's calculations to be flawed. The commissioner found a ten percent impairment rating was appropriate based upon Dr. Reagan's ratings. As a result, the commissioner found Fugit should take nothing further on appeal. Fugit sought judicial review. After a hearing, the district court found the agency opinion was supported by substantial evidence and affirmed. Fugit appeals.

Fugit makes two arguments on appeal. First, he argues the industrial commissioner's decision is not supported by substantial evidence. Second, he contends the industrial commissioner misapplied the American Medical Association's guidelines.

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). 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.

We find there is substantial evidence to support the industrial commissioner's decision. The commissioner was given the ratings made by three experts: Dr. Reagan, Dr. Anderson, and Mr Bower. The commissioner chose to rely on the ratings made by Dr. Reagan. The weight to be given to an expert's opinion is for the commissioner as the fact finder. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985); Lithcote Co. v. Ballenger, 471 N.W.2d 64, 66 (Iowa App. 1991).

The commissioner considered, but rejected, the ratings given by Dr. Anderson and Mr. Bower.[1] Simply because the evidence may support two different conclusions does not mean the commissioner's conclusion is not supported by substantial evidence. See Kostelac v. Feldman's Inc., 497 N.W.2d 853, 856 (Iowa 1993); John Deere Dubuque Works of Deere & Co. v. Weyant, 442 N.W.2d 101, 105 (Iowa 1989);

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1. Fugit argues that because the ratings of Dr. Anderson and Mr. Bower are similar, they should be given greater weight than the rating of Dr. Reagan. However, the weight to be given expert testimony is for the finder of fact. Rockwell Graphic v. Prince, 366 N.W.2d at 192.

Henry, 391 N.W.2d at 734. When there is a conflict in the evidence, we are not free to interfere with the commissioner's findings. Kostelac, 497 N.W.2d at 856; John Deere Dubuque Works, 442 N.W.2d at 105.

We have decided the decision by the commissioner is supported by substantial evidence. Jimmy Dean and Fireman's contend the commissioner misapplied the guidelines when he recalculated the rating of Dr. Anderson and Mr. Bower. We find otherwise. We affirm the ruling of the district court.

AFFIRMED.