

FILED

OCT 24 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-366 / 88-1870

210

BARBARA ELLEN HUFFMAN,

Appellant,

vs.

**KEOKUK AREA HOSPITAL and ST. PAUL FIRE
& MARINE INSURANCE COMPANY,**

Appellees.

Appeal from the Iowa District Court for Lee County, R.
David Fahey, Judge.

Petitioner appeals the decision of the district court
which affirmed the Industrial Commissioner's grant of
summary judgment to respondents in her review-reopening
action. **AFFIRMED.**

James P. Hoffman, Keokuk, for petitioner-appellant.

Mark A. Woollums and Greg A. Egbers of Betty, Neuman &
McMahon, Davenport, for respondents-appellees.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Petitioner appeals the decision of the district court which affirmed the Industrial Commissioner's grant of summary judgment to respondents in her review-reopening action. Petitioner alleged there had been a change in industrial disability due to a change in earning capacity. She claims the court erred in affirming the grant of summary judgment.

Petitioner Barbara Ellen Huffman injured her back while working for the Keokuk Area Hospital (Hospital) in 1982 and 1983. An agreement for settlement was filed before the Industrial Commissioner in 1984. Huffman filed a petition for review-reopening in February 1987, alleging there had been a change in her industrial disability due to a change in her earning capacity. The Hospital and its insurance carrier filed a motion for summary judgment.

A deputy Industrial Commissioner granted the motion for summary judgment. The deputy cited evidence that there was no change in Huffman's physical condition. Huffman was earning less because she resigned from her position at the Hospital and was employed at a family-owned restaurant. The deputy found no evidence that Huffman's injuries made it more difficult for her to perform her duties at the Hospital. The Industrial Commissioner and the district court affirmed the deputy.

Huffman now appeals. She contends that summary judgment was not proper in this case. According to Huffman, the question of whether her reduced earning capacity is caused by her previous injuries is a question of credibility. She had filed an affidavit which stated she could no longer perform her duties as a nurse at the Hospital. The affidavit further stated that she had been denied employment to different positions of advancement at the Hospital based on her inability to perform the work and her injury. Huffman argues that this affidavit was at least sufficient to raise a question of fact concerning the cause for her reduced earning capacity.

Our scope of review was well set out in Henry v. Iowa Dep't of Transp., M.V.D., 426 N.W.2d 383, 385 (Iowa 1988)

In reviewing a district court decision on the validity of an agency action, we decide only whether the district court has correctly applied the law. The district court itself acts in an appellate capacity to correct errors of law on the part of the agency. When we review such action by the district court, we merely apply the standards of section 17A.19(8) to determine whether our conclusions are the same as those of the district court. If the conclusions are the same, we affirm; otherwise we reverse. (Citations omitted.)

In considering a motion for summary judgment, the court is required to examine the record in the light most favorable to the party opposing the motion. Sandbulte v. Farm Bureau Mutual Insurance Co., 343 N.W.2d 457, 464 (Iowa 1984). To successfully resist a motion for summary judgment, a claimant must set forth specific evidentiary

facts showing the existence of a genuine issue of material fact. Liska v. First National Bank, 310 N.W.2d 531, 534 (Iowa App. 1981).

The law is well settled that in order to reopen an award the employee must establish that an increased industrial disability was proximately caused by the injury which was the subject of the agreement for settlement. Blacksmith v. All-American, Inc., 290 N.W.2d 348, 350 (Iowa 1980). It is not necessary that petitioner show her injury worsened. However, she must set forth specific evidentiary facts which show that this decrease in income was a direct result of her previous injury. In addition, petitioner must also show that this decrease in income was not contemplated by the earlier settlement. Id. Petitioner has failed to satisfy either of these requirements. There is no evidence in the record to suggest that the reason petitioner left her previous employment was other than voluntary. Petitioner has only put forth conclusions. She suggests that she was denied advancements due to her disability but fails to state when and or how those denials occurred. Petitioner states that she quit her job and is now receiving less money, but fails to tell this court why she cannot do her previous job, what services she can no longer perform, or in what specific way the injury hinders her performance.

There are no inferences to be drawn from mere conclusory statements. Even if we presume these conclusions do have substance, there is absolutely no evidence that the previous settlement did not contemplate such a decrease in income. Petitioner has failed to meet the burden necessary to resist the motion for summary judgment.

AFFIRMED.