IN THE COURT OF APPEALS OF IOWA

No. 4-217 / 93-1284

DARRELL FOREMAN,

Appellant,

vs.

FOREMAN ELECTRIC & HARDWARE, and **HERITAGE INSURANCE,**

Appellees.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

The petitioner appeals the district court's ruling on judicial review affirming the industrial commissioner's decision on the petitioner's worker's compensation claim. **AFFIRMED.**

Steven C. Jayne, Des Moines, for appellant.

Roger Ferris and Joseph A. Quinn of Nyemaster, Goode, McLaughlin, Voigts, West, Hansell & O'Brien, P.C., for appellees.

Heard by Donielson, C.J., and Cady and Huitink, JJ.

DONIELSON, C.J.

The petitioner, Darrell Foreman, and his wife are the owners of Foreman Electric and Hardware, a combination hardware business and a business providing various electrical and plumbing services. The company had Heritage Insurance provide worker's compensation insurance. While he was working, the corporation paid Foreman $150 weekly which he reported as salary for income tax and social security tax purposes.

On October 5, 1987, Foreman fell while working and suffered a broken hip and leg. He filed a claim for worker's compensation benefits. He presented evidence before a deputy industrial commissioner to support his claim his compensation rate should not be based on his weekly pay but should be based on his portion of the gross profits of his business minus his share of operating expenses. In the alternative, he claimed his compensation rate should be based on evidence the usual earnings for similar services should be at least $37,000 per year.

The petitioner also claims that he should have a two-year healing period. His treating physician indicated an average recovery period for such injuries would be two years. Foreman, however, returned to work on January 15, 1989, resuming his weekly $150 draws from the business.

The deputy commissioner in an arbitration decision awarded benefits on the basis of a weekly wage of $150 and a healing period ending on January 15, 1989, when Foreman

returned to work. The industrial commissioner affirmed the deputy's decision on appeal. Foreman filed a petition for judicial review challenging the industrial commissioner's decision.

After a hearing the district court affirmed the industrial commissioner's decision. The court determined the industrial commissioner properly applied Iowa Code section 85.36 in determining Foreman's weekly earnings and compensation rate and the commissioner's determination of plaintiff's healing period was supported by substantial evidence. Foreman appeals.

Petitioner's action was properly brought under the provisions of Iowa Code section 17A.19 (1991). Our scope of review in cases arising out of the Iowa Administrative Procedure Act is to correct errors of law made by the district court. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 164-65 (Iowa 1982). The review function of the district court under section 17A.19 is to correct errors of law which are specified in section 17A.19(8). When we review decisions of the district court which were rendered in its capacity as an appellate body under section 17A.19, the issue for our determination is whether the district court correctly applied the law. Id. at 165. In order to make that determination, we apply the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. 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 two inconsistent conclusions can be drawn from the evidence does not mean one of those conclusions is unsupported by substantial evidence. Id.

The record contains substantial evidence the weekly amount received by appellant was considered by him and by his employer as his wage or salary. We concluded from our review of the evidence the district court was correct in affirming the industrial commissioner's decision. The commissioner's decision Iowa Code section 85.36(1) is the appropriate section to use in computing appellant's

benefits is supported by substantial evidence. We affirm the district court's review of the commissioner's decision.

The record also contains substantial evidence appellant returned to work and began receiving his full weekly pay on January 15, 1989. The commissioner's decision to use this date as the ending date for the healing period pursuant to Iowa Code section 85.34(1) is supported by substantial evidence. We therefore affirm the decision of the district court on review.

AFFIRMED.