

IN THE COURT OF APPEALS OF IOWA

No. 8-731 / 98-0622

Filed March 31, 1999

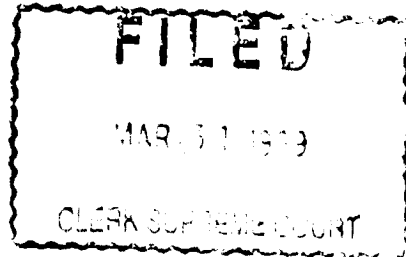
IBP, Inc.,

Petitioner-Appellant,

vs.

LOUISE SCHMELING,

Respondent-Appellee.



Appeal from the Iowa District Court for Buena Vista County, Phillip S. Dandos, Judge.

IBP appeals a district court order affirming the industrial commissioner's final agency action finding respondent suffered a twenty percent industrial disability.

AFFIRMED.

Paul Kirchner, Dakota City, Nebraska, and Matthew D. Veldey, Dakota City, Nebraska, for appellant.

Steven D. Hamilton of the Hamilton Law Firm, P.C., Storm Lake, for appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Petitioner-appellant IBP, Inc. appeals contending there is not substantial evidence to support a finding made by the industrial commissioner and affirmed by the district court that an injury respondent-appellee Louise Schmeling suffered in IBP's employment resulted in her suffering a twenty percent industrial disability. We affirm.

The scope of review on appeal of the district court's decision is limited to correction of errors at law. *Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995); *Gallardo v. Firestone Tire & Rubber Co.*, 482 N.W.2d 393, 395 (Iowa 1992). We examine whether the commissioner's conclusions are supported by substantial evidence in the record made before the agency when that record is viewed in its entirety. *Bergeson*, 526 N.W.2d at 546. Evidence is substantial if a reasonable person would find it adequate for reaching a decision. *Peoples Mem'l Hosp. v. Iowa Civil Rights Comm'n*, 322 N.W.2d 87, 91 (Iowa 1982). The mere fact the appellate court could draw inconsistent conclusions from the same evidence does not mean substantial evidence does not support the commissioner's determination. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995); *Kostelac v. Feldman's, Inc.*, 497 N.W.2d 853, 856 (Iowa 1993); *Reed v. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991). The relevant inquiry is not whether evidence supports a different finding but whether evidence supports the findings the commissioner actually made. *Reed*, 478 N.W.2d at 846.

Findings of fact made by the industrial commissioner have the effect of a jury verdict, and an appellate court must apply those findings broadly to uphold rather than defeat the commissioner's determination. *Beier Glass Co. v. Brundige*, 329 N.W.2d 280, 282 (Iowa 1983); *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981). The commissioner's findings are binding on appeal unless a contrary result is required as a matter of law. *Ward*, 304 N.W.2d at 238.

Schmeling, working as a forklift driver for IBP, fell and injured her left hip. The commissioner ultimately found the injury extended beyond Schmeling's left leg and an industrial disability analysis was necessary.

The commissioner, citing *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181 (Iowa 1980), stated:

Factors to be considered in determining industrial disability include the employee's medical condition prior to the injury, immediately after the injury, and presently; the situs of the injury, its severity and the length of the healing period; the work experience of the employee prior to the injury and after the injury and the potential for rehabilitation; the employee's qualifications intellectually, emotionally and physically; earnings prior and subsequent to the injury; age; education; motivation; functional impairment as a result of the injury; and inability because of the injury to engage in employment for which the employee is fitted.

IBP does not challenge this portion of the commissioner's findings.

IBP contends the commissioner's findings do not explain the conclusion reached nor is the disability rating consistent with the commissioner's findings.

The commissioner found Schmeling has a two percent impairment rating with no permanent restrictions. The commissioner further found:

At the time of the hearing, claimant was still working as a forklift driver for IBP. Her current salary is \$9.20 per hour. Occasionally, she is taken off of the forklift driver position and placed on the line to pack meat or assigned to train a new worker. When this happens, her hourly rate is lowered to \$8.90.

Since the injury, she has been unable to continue working two or three doubles per week, due to the increased pain she feels in her left hip after working her normal shift. She is able to work one or two doubles, but works only three to five hours for each.

Claimant has no work restrictions, and minimum permanent impairment. She has returned to her regular job duties, and has been able to satisfactorily accomplish the same.

Claimant underwent surgery, and a normal healing period. Her treating physician has suggested that a . . . hip replacement may be in her future; however, the nature of her preexisting condition probably would require surgery, even without the work injury.

Other than her position with IBP, claimant has worked jobs that have paid in the minimum-wage range. All of her past employment have required her to be on her feet constantly.

Claimant has proven herself to be a motivated worker, continuing her regular job duties, and taking overtime when she feels physically capable of handling the extra work. She has been a reliable employee, and has asked for medical treatment only when absolutely necessary.

Her injury, and its resulting after effects, are not insubstantial, given her young age and job skills.

The commissioner has an obligation to state the evidence relied on and detail the reasons for conclusions reached. *See Terwilliger*, 529 N.W.2d at 274.

IBP advances the only part of the commissioner's findings that could support the conclusion reached is, "Schmeling did not feel she could work overtime."

The district court found, in rejecting the same argument IBP makes here:

[T]he agency did consider more than simply the two percent impairment rating. The question then becomes whether the rest of the factors cited by the agency, when considered in conjunction with the two percent impairment rating, support the twenty percent industrial disability rating.

Other factors could have, and likely did, influence the agency in its finding that Ms. Schmeling's industrial disability rating exceeded her functional impairment rating. For instance, the decrease in the amount of double shifts she is able to work is substantial as is the fewer number of hours she is able to work during each overtime shift. Further, the increased amount of pain she suffers from following each shift coupled with the fact that all of her previous jobs have required her to work on her feet properly were considered in determining that she experienced a decrease in earning capacity. Finally, that she may require a hip replacement in part due to the work related accident tends to support the agency's decision. The inquiry thus goes beyond what the evidence shows the claimant can or cannot do and includes the extent to which the injury reduced the claimant's earning capacity.

. . . The court finds no error in the Industrial Commissioner's application of the law to these particular facts regarding the industrial disability issue. While IBP may contend that continuous employment or increased post-accident earnings operate to undermine the industrial disability rating the court finds no support in the law for this proposition. The operative phrase here is loss of earning capacity, not loss of actual earnings. Thus, it is conceivable that an employee may presently earn a higher wage than his or her pre-injury earnings and still have a reduced earning capacity.

Accordingly, the court holds that the Industrial Commissioner's finding of a twenty percent industrial disability is supported by substantial evidence in the record. IBP's Petition for Judicial Review is therefore denied.

We agree with the district court's conclusion and affirm.

AFFIRMED.