

IN THE COURT OF APPEALS OF IOWA

No. 4-456 / 94-0150

**FILED**

NOV 28 1994

CLERK SUPREME COURT

**STEVEN ALAN HEIDT,**

Plaintiff-Appellee,

**vs.**

**MISTY HARBOR, LTD., Employer,  
and UNITED STATES FIDELITY  
AND GUARANTY COMPANY,  
Insurance Carrier,**

Defendants-Appellants.

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Appeal from the Iowa District Court for Webster County,  
Kurt L. Wilke, Judge.

Defendants appeal from the district court's ruling on  
judicial review reversing the industrial commissioner's  
determination that plaintiff had a forty-five percent  
industrial disability. **REVERSED.**

Iris J. Post and David C. Duncan of Grefe & Sidney,  
Des Moines, for appellants.

Fredd J. Haas and Michael T. Jalovec of Humphrey &  
Haas, Des Moines, for appellee.

Heard by Sackett, P.J., Habhab, J., and Schlegel,  
S.J.\* Cady, J., takes no part.

\*Senior judge from the Iowa Court of Appeals serving on  
this court by order of the Iowa Supreme Court.

**SACKETT, J.**

Appellee-claimant, employee, Steven Alan Heidt was injured while employed by appellant-defendant Misty Harbor, L.T.D. Misty Harbor workers' compensation insurance is written by appellant-defendant United States Fidelity and Guaranty Company. The Industrial Commissioner awarded Heidt a forty-five percent industrial disability to the body as a whole. On appeal to the district court, the district court modified the Industrial Commissioner's decision and awarded Heidt a one hundred percent disability. The question in this appeal is whether the trial court correctly found, contrary to the Industrial Commissioner, Heidt was one hundred percent disabled. We reverse the trial court and affirm the Industrial Commissioner.

When Heidt filed his petition for arbitration with the commission, he alleged, in lifting a pontoon boat to a trailer while working for Misty Harbor, he injured his back, neck, left shoulder, and left arm. Heidt claimed, as a result of these injuries, he was permanently and totally disabled. Misty Harbor disputed whether the neck, shoulder, and arm injuries were received while he was employed and also disputed the extent of Heidt's disability. The matter was heard by a Deputy Industrial Commissioner and ultimately appealed to the Industrial Commissioner. The Industrial Commission's decision affirmed the Deputy Industrial Commissioner's decision with

one modification. As a result, among other things, Heidt was found to have a work-related injury to his back but not to his neck, shoulder, and arm. Heidt was also found not to be permanently and totally disabled and the extent of his industrial disability was found to be forty-five percent of the body as a whole. Heidt filed a petition for judicial review challenging the finding he had not suffered a work-related injury to his neck, arm, and shoulder and claimed he was one hundred percent disabled. The trial court reversed the Industrial Commissioner's finding Heidt was not permanently totally disabled and modified to find as a matter of law Heidt was one hundred percent permanently totally disabled. The trial court affirmed the Industrial Commissioner's finding the neck, shoulder, and arm injuries were not work related.

Misty Harbor and their carrier appeal contending the Industrial Commissioner's finding Heidt was entitled to a forty-five percent industrial disability was supported by substantial evidence and the trial court erred in finding as a matter of law Heidt suffered a one hundred percent disability.

The focal question is whether Heidt proved as a matter of law he is one hundred percent disabled.

The Commissioner's findings are liberally construed to uphold, rather than defeat, his or her decision. See Second Injury Fund v. Hodgins, 461 N.W.2d 454, 455 (Iowa 1990). The Commissioner's findings have the effect of a

jury verdict. Ward v. Iowa Dep't of Transp., 304 N.W.2d 236, 237 (Iowa 1981). The district court may reverse or modify an agency decision if the decision is not supported by substantial evidence. See Moore v. Iowa Dep't of Transp., Motor Vehicle Div., 473 N.W.2d 230, 232 (Iowa App. 1991). The fact two different and inconsistent conclusions can be drawn from evidence does not mean either of these conclusions is not supported by substantial evidence. Weishaar v. Snap-On Tools Corp., 506 N.W.2d 786, 789 (Iowa App. 1993). Where there may be disagreements about the inferences that can be drawn from evidence, a reviewing court cannot interfere with an agency's findings. Ward, 304 N.W.2d at 239. The Iowa Workers' Compensation law is liberally construed in favor of the employee. Snook v. Herrmann, 161 N.W.2d 185, 188 (Iowa 1968).

The primary treating physician gave an opinion Heidt's back injury constituted a thirteen percent impairment rating to the body as a whole. The doctor indicated Heidt could return to work except he could not return to a job that required repetition, bending, twisting and lifting, and any lifting restriction imposed by a functional capacity examination. A second doctor gave the opinion Heidt could only perform sedentary work. A back injury is considered an injury to the body as a whole. Iowa Code § 85.34(2)(u). Injuries to the body as a whole are measured by a claimant's industrial disability. See Bearce v. FMC Corp., 465 N.W.2d 531, 535 (Iowa 1991). Industrial

disability is determined by considering a claimant's reduced earning capacity. Klein v. Furnas Elec. Co., 384 N.W.2d 370, 374 (Iowa 1986); Guyton v. Irving Jensen Co., 373 N.W.2d 101, 104 (Iowa 1985). To evaluate industrial disability, the Industrial Commissioner looks at a number of items, including: (1) the extent of the functional disability, (2) the claimant's age, (3) the claimant's education, job qualification, and experiences, (4) the extent to which the injury prevents the claimant from doing work for which he or she is otherwise fitted, and (5) the claimant's chances to be retrained and relocated in the job market. See Bearce, 465 N.W.2d at 535; Klein, 384 N.W.2d at 374; Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983).

The extent of industrial disability is a question of fact for the Industrial Commissioner. Bearce, 465 N.W.2d at 537. Heidt, thirty-three years old at the time of the hearing, has a ninth grade education, limited clerical and reading skills, a low I.Q., and a learning disability. Heidt had limited employment before coming to work for Misty Harbor, mostly janitorial type work and other odd jobs. Since the injury, Heidt has made no effort to find another job. To support his claim, Heidt relies on his background and injury. The employer has not introduced evidence of specific jobs that are available in its work place or others for which Heidt is qualified.

The Industrial Commissioner gave Heidt an industrial disability rating greater than his functional rating. The question is not whether the evidence would support a different finding, but whether it supports the finding made. Ward, 304 N.W.2d at 237-38.

We reverse the district court and affirm the Industrial Commissioner.

**REVERSED.**