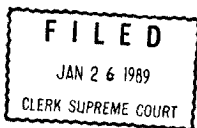


IN THE COURT OF APPEALS OF IOWA

FAY FOWLER, )  
Claimant-Appellant, )  
vs. )  
SEARS, ROEBUCK & COMPANY, )  
Defendant-Appellee. ).



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Appeal from the Iowa District Court for Woodbury County  
(90178C), Edwin L. Mitchell, Judge.

Petitioner appeals from the action of the district  
court affirming the decision of the Iowa Industrial  
Commissioner. **AFFIRMED.**

Paul W. Deck, Sioux City, for petitioner-appellant.

M. James Daley and James M. Cosgrove, Sioux City, for  
defendant-appellee.

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

**HAYDEN, J.**

Petitioner appeals from the action of the district court affirming the decision of the Iowa Industrial Commissioner that she was entitled to 500 weeks of permanent total disability. We affirm.

I.

Petitioner, Fay Fowler, first became employed by the respondent, Sears, Roebuck and Company, in 1959. She was a salesperson in the carpet and furniture department. Fowler fell down some stairs at work on July 6, 1972. She was briefly hospitalized for her injuries suffered in the fall. She returned to work but continued to suffer back pain. Fowler claims she experienced severe back spasms in July 1973 while working. Fowler had back surgery in October of 1974. She has not been able to work since, because of continuing problems associated with her back. As part of her job Fowler was required to carry sample books into the homes of customers. In addition, some bending and twisting was required in displaying the samples, measuring closets and so on.

Sears commenced this review-reopening proceeding in 1978. A deputy industrial commissioner, on November 30, 1982, found Fowler's sole injury occurred in July of 1972 after her original fall. Fowler was granted 500 weeks of permanent partial disability at a rate of \$63 per week. Fowler appealed to the industrial commissioner, claiming

her continuing work in 1973 and 1974 aggravated her condition, and pursuant to Iowa Code section 85.34(3), as amended in 1973, she was entitled to lifetime disability compensation. The industrial commissioner found that Fowler's injury was aggravated in July 1973 but it was not a material aggravation, and Fowler was awarded only 500 weeks of disability compensation. Fowler filed the petition for judicial review and the district court affirmed the commissioner.

## II.

On appeal, Fowler principally argues two points. First she contends the commissioner misapplied the cumulative injury rule and second, there was insufficient evidence to support the commissioner's decision.

Our scope of review is for correction of errors at law. Iowa R. App. P. 4. We are bound by the commissioner's fact findings if they are supported by substantial evidence in the record made before the agency. Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 63 (Iowa App. 1981); Iowa Code 17A.19(8)(f) (1987). We construe such findings broadly and liberally to support rather than defeat the commissioner's decision. Kubli, 312 N.W.2d at 63. The fact that an agency could draw two inconsistent conclusions from the evidence presented to it does not mean that one of those conclusions is unsupported by substantial evidence. Id. We regard the commissioner's

fact findings as tantamount to a jury's findings; if a jury issue is presented, were the case tried to a jury, the commissioner's findings will stand. Id.

### III.

A. Cumulative Injury Rule. The trial court argues the cumulative or gradual injury rule articulated by the Iowa Supreme Court in McKeever Custom Cabinets v. Smith, 379 N.W.2d 368, 374 (Iowa 1985), should have been applied in this situation. Fowler claims her back injury was cumulative; that it began when she fell down the stairs, but worsened with her continual lifting and carrying involved in her job. She urges under the cumulative injury rule she was injured when, because of the pain, she could no longer work. The ultimate rationale behind Fowler's argument deals with Iowa Code section 85.34(3), a section dealing with permanent disability, was amended in 1973 to allow its lifetime weekly compensation for permanent total disability after July 1, 1973, instead of the previous maximum of 500 weeks of compensation. If this court was to accept her cumulative injury argument, she was forced to stop working in October of 1974 and thus would qualify for lifetime benefits.

In McKeever the supreme court adopted the cumulative injury rule. Id. at 373. The court held the rule "may apply when the disability develops over a period of time; then the compensable injury itself is held to occur at a

later time. Id. In upholding the commissioner's earlier adoption of the cumulative injury rule, the court stated although it was not bound by the commissioner's construction of the act, it would give deference to it. Id. at 374. We thus, acknowledge no clear judicial definition has been established.

In McKeever, the court next determined whether or not substantial evidentiary support existed in the record as a whole to support the commissioner's findings that the petitioner came by his injury gradually. Likewise here, we must determine whether the commissioner's decision that the cumulative injury rule does not apply has substantial evidentiary support in the record. Of course, if such evidentiary support exists, it is binding upon us. Iowa Code § 17A.19(8)(f). Thus, the essential issue here boils down to whether the commissioner's finding has such support.

In his findings of fact the commissioner concluded:

2. Claimant was injured when she fell down a flight of steps on July 6, 1972.

\* \* \*

5. Claimant suffered an aggravation through her back injury in July of 1973.

6. Claimant's aggravation of her back injury in July 1973 was not material.

7. Claimant underwent surgery on October 14, 1974, as a result of her back injury.

8. Claimant's October 14, 1974, back surgery was precipitated by the July 6, 1972, incident.

9. Claimant is presently permanently totally disabled as a result of her July 6, 1972, back injury.

Our exhaustive review of the record here indicates sufficient evidence exists to support these findings by the commissioner. The commissioner paid careful attention to the reports of Doctors Brown and Blenderman. Both reports stated the claimant had a preexisting back defect which was materially aggravated by the incident in July of 1972. These doctors' reports indicated the later problems Fowler suffered after carrying sample books, measuring closet space, and pushing bedding, were mere aggravations which "did not precipitate surgery or further disability."

Expert opinion testimony, even if uncontroverted, may be accepted or rejected in whole or in part by the commissioner, as finder of fact. Sandag v. Ferris Hardware, 220 N.W.2d 903, 907 (Iowa 1974). Further, the finder of fact determines what weight should be given to such an opinion and that may be effected by the completeness of the premises given the expert and other surrounding circumstances. Bodish v. Fisher, Inc., 257 Iowa 516, 521, 133 N.W.2d 867, 870 (1965). Where there is a conflict in the evidence as to causation and reasonable minds may differ on the inferences, if it can be fairly drawn from the evidence, the commissioner's finding of causation should be upheld. Id.

With the foregoing principles in mind, we determine substantial evidence existed to support the commissioner's conclusion the injury causing claimant's disability resulted from her July 1972 fall and not from additional physical trauma or aggravation.

In view of our holding on this issue, we do not address Fowler's additional assignment of error.

**AFFIRMED.**