

IN THE COURT OF APPEALS OF IOWA

No. 8-740 / 98-0945

Filed June 23, 1999

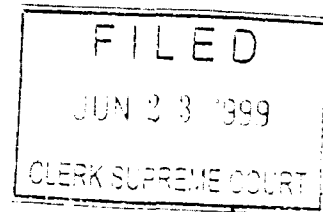
DENNIS CAPPS,

Petitioner-Appellant,

vs.

**BRIDGESTONE/FIRESTONE
TIRE & RUBBER CO.,**

Respondent-Appellee.



Appeal from the Iowa District Court for Polk County, Robert D. Wilson,
Judge.

Petitioner appeals a district court order affirming the industrial commissioner's final agency action concluding he is entitled to five percent industrial disability benefits. **AFFIRMED.**

Harry W. Dahl, Des Moines, for appellant.

Jane V. Lorentzen of Hopkins & Huebner, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

MAHAN, J.

Petitioner-appellant Dennis Capps appeals a district court order affirming the industrial commissioner's final agency action determining he is entitled to five percent industrial disability benefits. Capps claims the district court erred in failing to find he suffered a permanent total disability. We affirm the district court.

Capps worked at Bridgestone/Firestone as a tire builder. In 1984, Capps underwent cervical fusion for a work-related injury to his neck. He was awarded a twenty-five percent industrial disability because of his injury. He sustained another work-related neck injury in 1988 while working as an equipment inspector. In 1991, Capps was awarded an additional five percent industrial disability for his neck injuries. Capps underwent a second cervical fusion in 1993 because of continued deterioration from his earlier injuries. The surgeon rated him as having an additional one percent functional impairment. Capps continued to work as an equipment inspector until he went on strike in 1994. In 1995, his job was eliminated by automation and Capps was fired.

In 1996, a deputy industrial commissioner awarded Capps a permanent total disability on a claim arising out of his 1988 injury. The industrial commissioner reversed this decision and awarded Capps a five percent increase over his total previous industrial disability awards of thirty percent. Capps sought judicial review.

The district court found credible evidence Capps was physically able to perform the duties of his equipment inspector position or the duties of various other positions at Firestone and in the local job market, but chose not to cross the picket

line. Furthermore, Capps obtained unemployment benefits after his job was terminated by certifying every two weeks he was able to work and available for work and by making the minimum required two job applications per week. The district court found substantial evidence supported the agency's determination Capps did not suffer a permanent total disability.

The Iowa Administrative Procedure Act, Iowa Code section 17A.19, governs our review of agency action. *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 257 (Iowa 1996). Our review is for the correction of errors at law, not de novo. *Henkel Corp. v. Iowa Civil Rights Comm'n*, 471 N.W.2d 806, 809 (Iowa 1991). With respect to factual questions, our review is limited to whether the decision appealed from is "without substantial supporting evidence." *Dickinson County v. City Dev. Comm'n*, 521 N.W.2d 466, 468 (Iowa 1994).

Capps asserts the finding he was prevented from working by his refusal to cross the picket line is not supported by substantial evidence. He argues the weight of the evidence shows he was physically incapable of returning to his former job and there are no other jobs available which he is physically capable of performing. The commissioner, not the court, weighs the evidence and we are obliged to apply those findings broadly and liberally to uphold rather than defeat the commissioner's decision. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981). The court must not reassess the weight of the evidence because the weight of the evidence remains within the agency's exclusive domain. *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). On review, the question is not whether the evidence

supports a finding different from the commissioner's but whether the evidence supports the findings the commissioner actually made. *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997). In other words, the commissioner's findings are binding on appeal unless a contrary result is compelled as a matter of law. *Id.*

The record reveals Capps did not seek employment outside of Firestone until he became eligible for unemployment benefits. He only made the minimum required job applications necessary to remain eligible for unemployment benefits and only did so during the periods of time he was eligible for benefits. Capps' surgeon, Dr. Jones, rated his increased functional impairment at only one percent after the second cervical fusion. Capps testified he would have continued performing his duties at Firestone had the strike not occurred. The record contains evidence Capps was qualified, even with his light-duty restrictions, to be a warehouse checker and to perform other positions since Dr. Boarini opined Capps could work the new, longer shifts at Firestone. Jack Reynolds, a vocational expert, based on Capps' work experience, education, age, and post-injury functional capacity, opined "he has suffered very little, if any, reduction in his access to the labor market. . . ." We conclude, as did the district court, substantial evidence supports the commissioner's determination Capps' increased functional impairment and additional restrictions entitle him to a five percent increase in his industrial disability rating.

AFFIRMED.

No. 98-0945. [8-740] CAPPS v. BRIDGESTONE/FIRESTONE TIRE & RUBBER CO.

Appeal from the Iowa District Court for Polk County, Robert D. Wilson, Judge.
AFFIRMED. Considered by Sackett, C.J., and Vogel and Mahan, JJ. Opinion by Mahan, J. (4 pages \$1.60)

Capps worked at Bridgestone/Firestone as a tire builder. In 1984, Capps underwent cervical fusion for a work-related injury to his neck. He sustained another work-related neck injury in 1988 while working as an equipment inspector. Capps underwent a second cervical fusion in 1993 because of continued deterioration from his earlier injuries. Capps continued to work as an equipment inspector until he went on strike in 1994. In 1996, a deputy industrial commissioner awarded Capps a permanent total disability on a claim arising out of his 1988 injury. The industrial commissioner reversed this decision and awarded Capps a five percent increase over his total previous industrial disability awards of thirty percent. The district court found substantial evidence supported the agency's determination Capps did not suffer a permanent total disability. **OPINION HOLDS:** We conclude, as did the district court, substantial evidence supports the commissioner's determination Capps' increased functional impairment and additional restrictions entitle him to a five percent increase in his industrial disability rating.