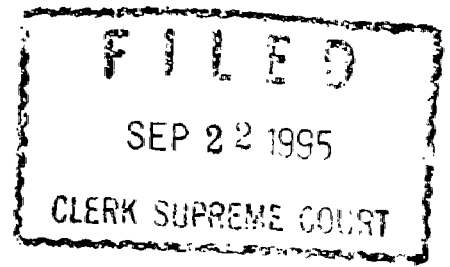


IN THE COURT OF APPEALS OF IOWA

No. 5-278 / 94-1009



JOSEPHINE GAETA,

Appellant,

vs.

**ELKS LODGE and NEW HAMPSHIRE
INSURANCE CO.,**

Appellee.

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Gaeta appeals the district court's ruling on judicial review affirming the industrial commissioner's decision rejecting her workers' compensation claim.

AFFIRMED.

William J. Bribriesco of William J. Bribriesco & Associates, Bettendorf, for appellant.

William D. Scherle of Hansen, McClintock & Riley, Des Moines, for appellees.

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

HUITINK, J.

Gaeta was employed as a cook for sixteen years by the Muscatine Elk's Club. In August 1987 she was diagnosed as suffering from cancer of the larynx requiring a complete laryngectomy. Gaeta filed a workers' compensation claim alleging her cancer was caused by her exposure to secondhand tobacco smoke and charcoal fumes while she worked at the Elk's Club.

Dr. McFarland, Gaeta's treating physician, testified Gaeta's cancer was caused by her exposure to secondhand smoke and charcoal fumes at work. He reached this conclusion in part based on his belief Gaeta's exposure was limited to her workplace.

The Elk's Club offered expert testimony from an industrial toxicologist that contradicted Dr. McFarland's causation opinion. There was also evidence indicating Gaeta was exposed to tobacco smoke and other air pollution at times and places other than those included in McFarland's opinion.

The hearing officer rejected Gaeta's claims citing the employer's expert opinions and the deficient history underlying Dr. McFarland's opinion. This decision was affirmed by an appeal to the industrial commissioner and by the district court after judicial review.

On appeal Gaeta claims the industrial commissioner's decision lacks sufficient evidentiary support. Gaeta also claims the industrial commissioner arbitrarily rejected credible medical evidence linking secondhand smoke to cancer of the larynx.

Our review of the district court's decision is limited to corrections of errors of law. *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218, 221 (Iowa 1989). We are bound by the industrial commissioner's findings of fact if those findings are supported by substantial evidence. Iowa Code § 17A.19(8) (1993). Evidence is substantial if a reasonable person would find it adequate for reaching a decision. *People's Memorial Hosp. v. Iowa Civil Rights Comm'n*, 322 N.W.2d 87, 91 (Iowa 1982). The court is not free to interfere with an agency's findings where there is a conflict in the evidence or when reasonable minds might disagree about inferences to be drawn from the evidence whether disputed or not. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 239 (Iowa 1981).

After reviewing the record we find substantial evidence supporting the findings adopted by the industrial commissioner. There is evidence indicating Gaeta's expert was unaware of her significant nonemployment exposure to secondhand smoke. He also mistakenly assumed she worked with a charcoal grill when she, in fact, used a gas grill. The industrial commissioner as the finder of fact was justified in rejecting this expert's opinion in view of these historical deficiencies. See *Musselman v. Central Tel. Co.*, 261 Iowa 352, 154 N.W. 128 (1967) (if a medical expert's opinion is based on an incomplete history, the commissioner may give it less weight or reject it).

We also disagree with Gaeta's claim that the industrial commissioner rejected credible evidence linking secondhand smoke to cancer of the larynx. The industrial

commissioner may not arbitrarily or totally reject expert medical testimony, but must weigh the testimony and assess the credibility of the witnesses. *Catafalo v. Firestone Tire and Rubber Co.*, 213 N.W.2d 506, 509 (Iowa 1973). Reference to the commissioner's decision reveals a thoughtful analysis of all the expert medical testimony and a statement of the reasoning why greater weight was assigned to the employer's experts' testimony. We, contrary to Gaeta's assertions, find the commissioner complied with the duty to weigh the evidence and assess the credibility of the witnesses.

The issue in this case was whether Gaeta's cancer was caused by conditions at her place of employment, not whether secondhand smoke causes cancer. We do not believe the industrial commissioner's determination that Gaeta failed to establish a causal connection between her cancer and her employment is necessarily a rejection of the medical evidence implicating secondhand smoke as a potential cause of cancer generally.

The decision of the district court is accordingly affirmed.

AFFIRMED.