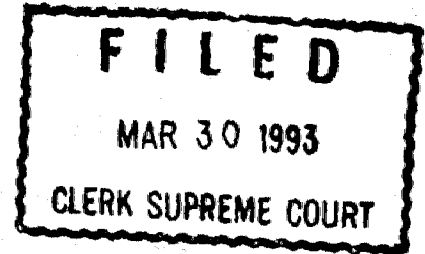


IN THE COURT OF APPEALS OF IOWA

No. 3-039 / 92-776



LARRY PITZER,

Appellant,

vs.

ROWLEY INTERSTATE, Employer, and HOME INSURANCE COMPANY,
Insurance Carrier,

Appellees.

Appeal from the Iowa District Court for Polk County,
Richard A. Strickler, Judge.

Larry Pitzer, a workers' compensation claimant, appeals
a district court ruling on a petition for judicial review
affirming the industrial commissioner. **REVERSED AND
REMANDED.**

Dennis L. Hanssen of Hopkins & Huebner, P.C.,
Des Moines, for appellant.

Dorothy L. Kelly of Jones, Hoffman & Huber, Des Moines,
for appellee.

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

DONIELSON, J.

Larry Pitzer appeals a district court ruling on a petition for judicial review which affirmed the decision of the industrial commissioner.

On May 3, 1984, Pitzer sustained an injury when he slipped while exiting his tractor-trailer. He was employed by Rowley Interstate at the time. Pitzer experienced pain in his neck, in his shoulder, and throughout his entire body. Pitzer underwent surgery for his injuries in January 1985 and October 1985.

On March 16, 1987, Pitzer filed an original notice and petition with the industrial commissioner. An arbitration hearing was held before a deputy industrial commissioner, and a proposed decision was filed on October 23, 1989. The deputy found Pitzer sustained permanent partial impairment as a result of his work-related injury. The deputy found Pitzer's medical condition had reached a plateau on November 18, 1986, ending healing period benefits. The deputy found Pitzer failed to establish a prima facie case for the odd-lot doctrine. The deputy concluded Pitzer sustained a permanent partial disability of twenty percent, entitling him to 100 weeks of benefits commencing on November 19, 1986. Benefits for the odd-lot doctrine and for an additional healing period were both denied.

Pitzer appealed to the industrial commissioner and raised the issues of his entitlement to medical benefits, the odd-lot doctrine, and the extent of his disability.

The industrial commissioner affirmed and adopted the decision of the deputy with one modification. The industrial commissioner awarded Pitzer medical benefits for the services of Dr. Galbraith and the Chronic Pain Management Program. Pitzer's authorized treating physician, Dr. Schroeder, had referred him to this pain clinic for treatment.

Pitzer then sought judicial review, arguing the industrial commissioner erred in denying his request for additional healing period benefits. The district court found substantial evidence supported the industrial commissioner's findings and affirmed the industrial commissioner's order. The district court concluded the commissioner's authorization of further treatment at the pain clinic did not mandate an extension of healing period benefits.

Pitzer now appeals. He contends the district court erred in affirming the industrial commissioner's determination concerning healing period benefits. In the alternative, Pitzer contends the district court erred in affirming the industrial commissioner in regards to the issue of permanent partial disability.

The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine

whether the district court correctly applied the law. Id. To make that determination this court applies the standards of Iowa Code section 17A.19(8) (1991) to the agency action to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

Pitzer first contends the district court erred by affirming the industrial commissioner's determination that Pitzer was not entitled to additional healing period

benefits. Specifically, Pitzer argues there was not substantial evidence that significant medical improvement could not be anticipated from Pitzer's treatment at the Chronic Pain Management Program.

The statutory provision for healing period benefits is contained in Iowa Code section 85.34(1). This section provides:

If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period as provided in section 85.37, beginning on the date of injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Iowa Code § 85.34(1) (1991) (emphasis added).

There is no dispute that Pitzer has not returned to work since November 18, 1986, and that no physician has indicated that he is capable of returning to substantially similar employment. In this case, Pitzer contends he is entitled to additional healing benefits because his healing is not complete. Rowley Interstate (Rowley) argues Pitzer's health reached a plateau on November 18, 1986, and thus his healing period was complete on that date.

In order to support the district court's finding that Pitzer was not entitled to additional healing period benefits, we must find substantial evidence that significant improvement from Pitzer's injury could no

longer be anticipated. We find the industrial commissioner's decision to deny additional healing period benefits was not supported by substantial evidence. Rather, on our review of the record we find there was evidence presented that Pitzer would indeed benefit from treatment at the Chronic Pain Management Program, and that as a result of such treatment his medical condition would be improved.

In October 1987, Dr. Schroeder (one of Pitzer's authorized treating physicians) noted Pitzer would remain "incapacitated until he [was] treated in an inpatient pain management program," and that he would "benefit" from participation in the program. Consequently, he referred Pitzer to Dr. Galbraith and the Chronic Pain Management Program. In a February 1988 letter, Dr. Galbraith stated:

[Pitzer] is a very appropriate candidate for our program and the probability of successful rehabilitation is high. It is our opinion that this treatment is necessary either directly or indirectly because of the injury he sustained on May 3, 1984 and because of the subsequent treatments and inactivity.

. . . . We fail to understand the difficulty in getting authorization for treatment for this unfortunate gentleman. He has suffered a great deal and has become depressed, discouraged and angry. These factors may have complicated his treatment in the past but are the natural consequences of what he has been through and will respond to appropriate treatment.

Whether the pain management program warrants additional healing period benefits depends upon whether participation

in the program will significantly improve or will merely stabilize Pitzer's medical condition.

The issue [of stabilization] may be a purely medical one. Thus, there may be medical evidence that the period of recuperation is not yet over, that further healing and strengthening may be anticipated, and that it is still too early to appraise claimant's permanent disability. Conversely, there may be medical testimony that the claimant has recovered as much as he ever will, and that any lingering disability is permanent. The fact that some treatment is still necessary, such as physical therapy or drugs, does not necessarily rule out a finding that the condition has become stabilized, if the underlying condition causing the disability has become stable and if nothing further in the way of treatment will improve that condition. But, if treatment was given in the hope of improving the condition, the later discovery that no improvement resulted does not bar a finding that the healing period persisted throughout the process of treatment.

1C Arthur Larson, The Law of Workmen's Compensation § 57.12(c) (1989) (emphasis added).

Rowley contends the pain management program is merely "maintenance in nature." In its brief, Rowley depends upon several decisions rendered by the industrial commissioner which deny additional healing period benefits where the claimant simply continued to receive stabilizing medical care. However, Rowley fails to demonstrate any evidence that, in this particular case, significant improvement as a result of the pain management program is not anticipated. Rather, Rowley relies upon the evidence of Dr. Hoffert who reported Pitzer's condition had reached a plateau on November 18, 1986.

292

"The persistence of pain may not itself prevent a finding that the healing period is over, . . . provided that the underlying condition is stable." Id. (emphasis added). Here, the intentions of Dr. Schroeder and Dr. Galbraith clearly were to improve Pitzer's medical condition through his participation in the program. There is no evidence in the record which establishes the pain management program was recommended with the intention of merely stabilizing Pitzer's condition.

Furthermore, the extent of Pitzer's healing period in relation to his participation in this program is a medical question. When a medical question becomes complicated, the commissioner cannot merely rely upon lay testimony and administrative expertise. 2B Arthur Larson, The Law of Workmen's Compensation § 79.54(d) (1989).

The finding that significant improvement of Pitzer's medical condition could not be anticipated from the pain management program was not supported by substantial evidence. We therefore reverse the decision of the district court and remand to the industrial commissioner for a determination of additional healing period benefits from November 18, 1986 until the requirements of section 85.34(1) have been met.

We find Pitzer has not properly preserved the issue of additional permanent partial disability benefits. This issue was never presented to the district court. The appellate court will not review issues which were not

presented to the district court. State ex. rel. Iowa Dep't of Human Servs. v. Duckert, 465 N.W.2d 971, 973 (Iowa 1991).

The costs of this appeal are taxed to Rowley Interstate and Home Insurance Company.

For the reasons stated, we reverse the decision of the district court and remand to the industrial commissioner for a determination of additional healing period benefits under section 85.34(1).

REVERSED AND REMANDED.