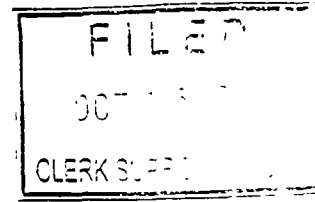


IN THE COURT OF APPEALS OF IOWA

No. 1999-151 (9-367) / 98-1939

Filed October 15, 1999



LEWIS ROSS,
Petitioner-Appellant,

vs.

RTF CORPORATION, Employer, and LIBERTY MUTUAL INSURANCE Co.,
Insurance Carrier.
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Gary G. Kimes, Judge.

Lewis Ross appeals a district court's ruling on judicial review which affirmed the industrial commissioner's determination that he had a fifteen percent industrial disability. **AFFIRMED.**

Thomas J. Reilly of Thomas J. Reilly Law Firm, P.C., Des Moines, for appellant.

Richard G. Book of Huber, Book, Cortese, Happe & Brown, P.L.C., Des Moines, for appellees.

Heard by Streit, P.J., and Vogel and Zimmer, JJ.

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VOGEL, J.

Lewis Ross appeals a district court's ruling on judicial review which affirmed the industrial commissioner's determination that he had a fifteen percent industrial disability. As we find substantial evidence in the record to support the agency decision, we affirm.

Background facts. Ross began working for RTF Corporation in 1992 as a project manager for construction projects. On October 20, 1993, Ross was driving to a business meeting in Illinois when he fell asleep at the wheel and collided with a guard rail. Ross sustained injuries to his upper chest and face, including lacerations and a broken eye socket.

On November 2, 1995, Ross filed a claim for workers' compensation benefits. A deputy industrial commissioner found that Ross had a fifty percent industrial disability and awarded 250 weeks of benefits. On appeal, the industrial commissioner reduced the disability finding to fifteen percent for 75 weeks of benefits. The district court affirmed the final agency action on judicial review. Ross now appeals.

Scope of review. We review district court decisions regarding the validity of agency actions for correction of errors at law. *U.S. West Communications, Inc. v. Overholser*, 566 N.W.2d 873, 875 (Iowa 1997) (citations omitted). In determining whether the law has been correctly applied, we give weight to the commissioner's interpretation of the relevant statutory provisions, but are not bound by it. *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995). We are bound by the

commissioner's factual findings if they are supported by substantial evidence in the record. *Id.* The possibility of drawing different conclusions from the same evidence does not mean that an agency's decision lacks substantial support. See *Schreckengast v. Hammermills, Inc.*, 369 N.W.2d 809, 811 (Iowa 1985). Evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. *Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d 845, 849 (Iowa 1995).

I. Substantial evidence. Ross claims that the district court erred in affirming the agency decision because it is not supported by substantial evidence in the record when viewed as a whole. Ross claims the commissioner failed to consider all of the evidence, and particularly ignored certain expert medical testimony without explanation.

Many factors are considered when determining a claimant's industrial disability, including their functional disability, age, education, qualifications, experience, and ability to engage in employment for which they are fitted. See *Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 813 (Iowa 1994); see also *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 192 (Iowa 1980). There are no guidelines establishing the weight to be given to each of the factors. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 68 (Iowa App. 1991). Rather, it is necessary for the commissioner to draw upon prior experience and general and specialized knowledge to make a finding in regard to the degree of industrial disability. *Id.* In determining a claimant's disability and functional impairment the commissioner is required to

consider all evidence, both medical and nonmedical. *See Miller v. Lauridsen Foods, Inc.*, 525 N.W.2d 417, 421 (Iowa 1994). However, the commissioner is not required to discuss each and every fact in the record. *See Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 274 (Iowa 1995).

All the experts who evaluated Ross agreed that he suffered to some extent from a psychological condition which manifested itself in a variety of reported symptoms, including depression, decreased concentration and decreased emotional control. The experts disagreed, however, as to the severity of Ross's psychiatric problems and whether they were caused by the October 20, 1993, accident. The industrial commissioner concluded that the "greater weight of the expert medical evidence, confirmed by neuropsychological testing is more convincing [than] Dr. Nordine's *sole opinion of substantial organic brain damage* causally related to the work injury of October 20, 1993." (Emphasis added). The commissioner concluded that Ross had failed to establish that he had suffered any permanent cognitive impairment as a result of the accident. However, based on evidence that Ross had suffered a physical impairment in the accident requiring future work restrictions,¹ the commissioner determined that Ross had a permanent partial disability of fifteen percent to the body as a whole.

¹ Dr. Ben Gaumer, Ross's treating M.D. following the accident, stated that Ross should have the following work restrictions: no lifting above 50 pounds, and no prolonged use of the arms and back in lifting, moving, twisting, shoveling and pulling.

Ross asserts that the industrial commissioner's reference to Dr. Nordine as having the *sole* opinion that he suffered brain damage in the accident indicates that she failed to consider all the expert evidence. However, the commissioner's ruling can also be interpreted to denote that Dr. Nordine provided the only opinion that Ross had suffered *substantial* organic brain damage. In fact, Dr. Nordine did provide the most severe diagnosis of Ross's psychiatric injury. He believed that Ross suffered a closed brain injury in the accident which resulted in a fifty-five percent whole body permanent partial impairment. While some of the other experts agreed that Ross had an organic mood disorder or organic brain syndrome which could have resulted from the accident, none forwarded an opinion as severe as Nordine's.

Psychiatrist Dr. Kipral Singh, who treated Ross for nearly a year, agreed that Ross's mood disorder was a result of a closed head injury suffered in the accident. Dr. Singh also reported, however, that Ross's memory, concentration, and attention span were good at the time of his evaluation. Another psychologist, Dr. Philip Ascherman, conducted neurological tests and concluded that Ross's level of cognitive functioning, and particularly memory, was likely only marginally below his pre-accident level. Neuropsychologist Dr. Arthur Schueneman also agreed that "nonneuropsychological factors cannot be ruled out in determining causality of the permanent impairment." However, Dr. Schueneman also noted many inconsistencies between his clinical observations and the results of Ross's psychometric tests. Dr. Schueneman reported that "these inconsistencies lead to the possibility that

motivational factors may be playing a significant role” in Ross’s case. Dr. Schueneman further stated that the “isolated nature of these deficits and the degree of impairment displayed by this patient are not consistent with the mechanism of injury described in the medical record, or with performance levels displayed by patients with severe head injuries” (Emphasis in the original). Dr. James Gallagher also believed Ross to have an organic mood disorder or organic brain syndrome which was causally connected to the accident, but agreed with much of Dr. Schueneman’s report and was positive as to Ross’s ability to return to gainful employment. Finally, Drs. Julie Suhr and Daniel Tranel concluded that Ross’s current attentional problems were “not reflective of brain dysfunction,” but were more likely related to his continuing depression. Drs. Suhr and Tranel found no indication of cognitive impairment which would prevent Ross from being able to work. The industrial commissioner summarized the opinions of all the aforementioned experts in her ruling and we conclude that she considered all of the evidence.

Ross next takes issue with the commissioner’s statement that: “None of the neuropsychological testing done in this case found cognitive deficits due to a closed head injury.” Ross asserts that Dr. Ascherman’s testing did find cognitive defects. However, we find Ascherman’s report was somewhat vague with regard to his findings and as to the cause for the minimal measured impairment:

In my opinion, this individual’s results suggest a level of cognitive functioning, particularly in regards to memory, which are likely marginally below his premorbid level. Both organic and

situational factors such as stress would account for this impairment, both of which are likely related to his auto accident.

Ross also claims that the industrial commissioner misstated the opinions of some experts. However, we have reviewed the reports and testimony from the various doctors and find the commissioner's ruling to have captured the essence of each opinion. After carefully reviewing the record and considering all relevant factors in determining industrial disability, we find the commissioner's ruling to be supported by substantial evidence.

Having considered all other arguments asserted, we hereby affirm the district court ruling affirming the agency on judicial review.

AFFIRMED.