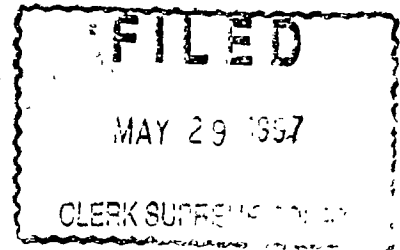


IN THE COURT OF APPEALS OF IOWA

No. 6-539 / 95-2036



000107

PAMELA R. CORWIN,
Appellant,

vs.

LENNOX INDUSTRIES, INC., and EMPLOYMENT APPEAL BOARD,
Appellees.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

The petitioner appeals the district court's ruling on judicial review affirming
the respondent board's denial of petitioner's claim for unemployment benefits.

AFFIRMED.

Theodore R. Hoglan of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy,
Marshalltown, for appellant.

John F. Veldey of Cartwright, Druker & Ryden, Marshalltown, for appellee
employer.

William C. Whitten, Des Moines, for appellee Employment Appeal Board.

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

VOGEL, J.

Pamela Corwin appeals from a district court ruling denying her unemployment insurance benefits. Corwin argues she should have been allowed to substitute calendar quarters prior to her base period when she claims she was receiving temporary total disability payments. Lennox argues the benefits received during that time period were permanent partial disability, which cannot be substituted to qualify Corwin for unemployment insurance benefits.

Scope of review. In reviewing a district court decision on the validity of an agency decision, we decide only whether the district court has correctly applied the law. *Henry v. Iowa Dep't of Transp., M.V.D.*, 426 N.W.2d 383, 385 (Iowa 1988). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Id.* We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence. *Fairfield Toyota, Inc. v. Bruegge*, 449 N.W.2d 395, 397 (Iowa App. 1989) (citing *Peoples Memorial Hosp. v. Iowa Civil Rights Comm'n*, 322 N.W.2d 87, 91 (Iowa 1982)).

EAB findings and substantial evidence. Corwin was injured March 6, 1989, while working at Lennox, and she received temporary total disability benefits beginning March 8, 1989. Lennox contends temporary total disability benefits ended on January 4, 1993.

In October, 1994, Corwin filed a claim for unemployment compensation which was denied by the Administrative Law Judge (ALJ). The ALJ determined Corwin did

not have workers' compensation healing period or temporary total disability benefits in her base period from the third quarter of 1993 through the second quarter of 1994 to permit her to substitute prior wage credits under Iowa Code section 96.23. The EAB affirmed this decision and the district court affirmed the EAB's decision as supported by substantial evidence in the record.

Corwin argues the insurance carrier, Employers Mutual, never sent her a notice that her temporary total disability payments were ceasing and that permanent partial disability payments were beginning. Such a notice, she claims, is required under *Auxier v. Woodward State Hospital*, 66 N.W.2d 139 (Iowa 1978). However, the district court distinguished this case from *Auxier*. The district court held Corwin's benefits did not terminate and she was therefore not deprived of a property right without due process. Rather, the type of benefits merely changed from temporary total disability to permanent partial disability and did not warrant notification to Corwin. The effect of such a determination, however, is the crux of Corwin's argument. Temporary total disability benefits would allow Corwin credit from January 4, 1993, to February 13, 1994, to establish eligibility for unemployment insurance benefits, while permanent partial disability benefits would not.

We are mindful, however, that this appeal is not a review of the workers' compensation claim; rather, its is a review of denial of unemployment insurance benefits. The burden of proof is on Corwin to establish her eligibility for

unemployment insurance benefits. *Norland v. Iowa Dep't of Job Serv.*, 412 N.W.2d 904, 910 (1987).

In March of 1994, Corwin and Lennox entered into a settlement agreement awarding Corwin \$42,000. Lennox claims this payment was for permanent partial disability and not temporary total disability. Corwin explains that one of the more hotly contested issues prior to the case settlement was what credit, if any, Employers Mutual (Lennox) should receive for payment of permanent partial disability. Corwin asserts that had the matter proceeded to hearing, that issue would have been litigated. However, it did not go to a hearing and, therefore, it is not now before us on appeal. Rather, a settlement was reached, which indicated Corwin's injuries were treated as permanent. This is one of the facts the ALJ had before him and could use to support his findings. The ALJ could similarly use other facts to support his findings: Counsel for Lennox and Employers Mutual designated the workers' compensation payment on their form 2A as permanent partial disability, and Corwin herself testified she was aware she had reached the maximum healing benefits in January of 1993.

Corwin has not met her burden under the unemployment insurance benefits eligibility analysis as she has failed to establish she came within the provisions of Iowa Code section 96.23 warranting a wage credit substitution. We find substantial evidence in the record to affirm the district court.

AFFIRMED.