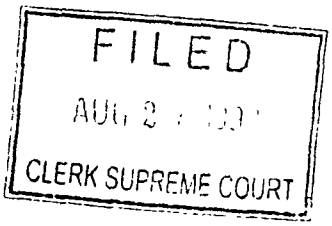
IN THE COURT OF APPEALS OF IOWA

No. 9-100 / 98-445
Filed August 27, 1999



JOHN E. AULWES,
Appellant,

vs.

IOWA DEPARTMENT OF HUMAN SERVICES and CHARLES M. PALMER, DIRECTOR, IOWA DEPARTMENT OF HUMAN SERVICES,
Appellees.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenburg, Judge.

The petitioner appeals the district court's ruling on judicial review affirming the respondent's decision refusing the petitioner's request to correct and expunge founded child abuse and sexual abuse reports against him. **AFFIRMED.**

James S. Blackburn of Williams, Blackburn, Hudson & Maharry, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Mary K. Wickman, Assistant Attorney General, for appellees.

Considered by Huitink, P.J., and Streit and Mahan, JJ. Vogel, J., takes no part.

STREIT, J

John Aulwes appeals the district court's affirmation of the Iowa Department of Human Services' refusal to correct or expunge founded child abuse and sexual abuse reports against him. Because we find both the child and sexual abuse reports supported by substantial evidence in the record, we affirm.

I. Background Facts & Proceedings.

Aulwes and his daughter's mother separated shortly after the child's birth. In February 1995 after a visitation with Aulwes, the mother discovered a red mark on the child's left buttock which lasted at least a day. The three-year-old told her mother and several other individuals Aulwes hit her. The child told a therapist Aulwes inappropriately touched her between her legs and demonstrated the behavior on anatomically correct dolls. The allegations led to referral to and investigation by the Department of Human Services. The Department named Aulwes as the perpetrator in founded child and sexual abuse reports.

Aulwes requested DHS to correct the reports to show no child or sex abuse was committed by him or, in the alternative, the findings be expunged. DHS denied the request. Aulwes appealed in contested case proceedings before an administrative law judge. The ALJ affirmed the denial to expunge or correct the findings. The ALJ's decision was affirmed on appeal. Auwles filed for judicial review of the agency's decision claiming there was not substantial evidence in the record he physically and sexually abused his daughter. The petition also named Charles M. Palmer, the

director of DHS, as a respondent. The district court affirmed the DHS's denial of his request. He appeals. DHS seeks dismissal of the claim against Palmer.

II. Standard of Review.

Our review of agency action is governed by the Iowa Administrative Procedure Act (IAPA), Iowa Code chapter 17A. *City of Davenport v. PERB*, 264 N.W.2d 307, 311 (Iowa 1978). When we review a district court decision on the validity of agency action, we ask only whether the district court has correctly applied the law. *Jackson County Pub. Hosp. v. PERB*, 280 N.W.2d 426, 429 (Iowa 1979). The district court acts "in an appellate capacity to correct errors of law on the part of the agency. In our review of such action by the district court, we merely apply the standards of section 17A.19(8) to the agency action to determine whether our conclusions are the same as those of the district court." *Teleconnect Co. v. Iowa State Commerce Comm'n*, 404 N.W.2d 158, 161-62 (Iowa 1987) (citations omitted). If our conclusions are the same, we must affirm. *Norland v. Iowa Dep't of Job Serv.*, 412 N.W.2d 904, 908 (Iowa 1987).

III. Substantial Evidence of Abuse Allegations.

Auwles contends there is not substantial evidence he perpetrated child abuse as defined by Iowa Code section 232.68(2)(a)[1] or sexual abuse as defined by Iowa

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[1]That section states:

> Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.

Iowa Code § 232.68(2)(a) (1997).

Code section 232.68(2)(c).[2] An agency's findings are binding if supported by substantial evidence. *New Homestead v. Iowa Dep't of Job Serv.*, 322 N.W.2d 269, 270 (Iowa 1982). "Evidence is not insubstantial merely because it would have supported contrary inferences. It is substantial when a reasonable mind could accept it as adequate to reach the same findings." *Id.* (citation omitted); *accord Ray v. Iowa Dep't of Job Serv.*, 398 N.W.2d 191, 193 (Iowa App.1986). We do not ask whether the evidence could support different findings, but whether the evidence supports the findings actually made. *Ward v. Iowa Dep't of Trans.*, 304 N.W.2d 236, 237-38 (Iowa 1981).

We find substantial evidence supports the finding Auwles was the perpetrator of child abuse upon his daughter. His daughter, three years old at the time of the incident, spontaneously told her mother and at least four other people Auwles hit her. She was very consistent in explaining and demonstrating the manner in which Auwles hit her. Auwles was the only caretaker of his daughter at the time of the incident and the fact that his daughter had a mark on her buttock which lasted at least a day is not disputed. Because there is substantial evidence in the record supporting each element

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[2]That section states:

> The commission of a sexual offense with or to a child pursuant to chapter 709 . . . as a result of the acts or omissions of the person responsible for the care of the child.

Iowa Code § 232.68(2)(c).

Iowa Code Section 709.12 includes as a sexual offense the following acts with a child: "Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child." To be considered an offense under section 709.12 the act must have been committed for the purpose of satisfying or arousing the sexual desires of either the perpetrator or the child.

needed to find Auwles perpetrated child abuse, we affirm DHS's finding of child abuse and its refusal to expunge or correct the finding.

We also find substantial evidence supports the finding Auwles was the perpetrator of sexual abuse upon his daughter as defined by section 232.68(2)(c) of the Code. Aulwes' daughter was in his care when the alleged sexual offense occurred. The decision of whether the sexual offense was actually committed by Auwles hinges on the believability of a small child who has described Auwles touching her genital area and demonstrated the touches using anatomically correct dolls. The believability of the child's testimony is enhanced by her description of the touches as "secret," indicating she was not supposed to talk about them. The therapist found the child's allegations credible. The change in her behavior after visitation with Aulwes was suspended is also consistent with the finding she was sexually abused by Aulwes. These facts amount to substantial evidence supporting the agency's finding of sexual abuse. We affirm the fir ling and the agency's refusal to expunge or correct the sexual abuse report.

Because the decisions of the court and the agency are supported by substantial evidence in the record as a whole, we affirm.

AFFIRMED.