

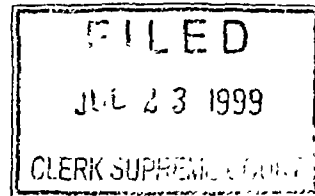
IN THE COURT OF APPEALS OF IOWA

No. 8-738 / 98-828
Filed July 23, 1999

SUSAN CRUDO,
Appellant,

vs.

SECOND INJURY FUND OF IOWA,
Appellee.



Appeal from the Iowa District Court for Black Hawk County, James C. Bauch,
Judge.

Petitioner appeals the district court's ruling on judicial review affirming the
industrial commissioner's decision she was not entitled to benefits from the second
injury fund. **AFFIRMED.**

Robert D. Fulton, Waterloo, for appellant.

Thomas J. Miller, Attorney General, and Charles S. Lavorato, Assistant
Attorney General, for appellee-State.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

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VOGEL, J.

Petitioner-appellant, Susan Crudo, appeals the district court's ruling on judicial review affirming the industrial commissioner's decision Crudo was not entitled to benefits from the second injury fund. She claims the court erred in finding substantial evidence supports the conclusion she suffered a twenty-five percent industrial disability. We affirm the district court.

Background. Susan Crudo sewed and assembled luggage bags. In 1991, she was diagnosed with and had surgery to correct carpal tunnel syndrome. In 1992, she was diagnosed with tendinitis and overuse syndrome in her upper extremities. Treatment did not help, and Crudo left her employment in 1994.

Agency proceedings. Crudo applied for workers' compensation benefits from her employer and the second injury fund. A deputy industrial commissioner denied her second injury fund benefits, finding the 1992 injury resulted from the 1991 injury. On appeal, the commissioner reversed in part, finding Crudo suffered separate injuries in 1991 and 1992. The commissioner concluded, however, Crudo's cumulative industrial disability did not exceed the combined value of her scheduled injuries, thus she was not entitled to second injury fund benefits. Crudo sought judicial review.

District court review. The district court, when exercising the power of judicial review conferred by section 17A.19, is itself functioning in an appellate capacity to correct errors of law, as specified in section 17A.19(8). *Jackson County Public Hospital v. Public Employment Relations Board*, 280 N.W.2d 426, 429 (Iowa 1979);

Iowa Public Service Co. v. Iowa State Commerce Commission, 263 N.W.2d 766, 768 (Iowa 1978). The district court affirmed, concluding the commissioner considered the factors necessary to determine Crudo's industrial disability and deferring to the commissioner's expertise regarding the weight to be placed on the various factors. The court noted Crudo is employed as a taxi driver, is a good candidate for retraining, and is pursuing further education.

Appellate claims. On appeal, Crudo claims the industrial commissioner failed to apply the legal standards correctly to the undisputed facts. She asserts she currently is unable to perform any of the jobs she held prior to her injury, and she is completely disqualified from the type of work for which she was suited. She argues her ability to earn wages in the future will be limited even if she obtains further education and retraining.

Scope of review: When we review a decision of the district court rendered in its appellate capacity under section 17A.19, the sole question is whether the district court correctly applied the law. In order to make that determination, we 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. *Foods, Inc. v. Iowa Civil Rights Com'n*, 318 N.W.2d 162, 164-65 (Iowa 1982); *Jackson County Public Hospital*, 280 N.W.2d at 429-30. The commissioner—not the court—weighs the evidence, and we are obliged to broadly and liberally apply those findings to uphold rather than defeat the commissioner's decision. *Ward v. Iowa Dep't of Transp.*, 304

N.W.2d 236, 237 (Iowa 1981). On review, the question is not whether the evidence supports a finding different from the commissioner's but whether the evidence supports the findings the commissioner actually made. *Id.* at 238. In other words, the commissioner's findings are binding on appeal unless a contrary result is compelled as a matter of law. *Id.*

Iowa Code section 85.64 sets forth the three requirements for receiving benefits from the Second Injury Fund:

If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no pre-existing disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the "Second Injury Fund" created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.

Id. The Second Injury Fund pays benefits only for disability in excess of the sum of the permanent disability caused by the first and second injuries. *Second Injury Fund v. Neelans*, 436 N.W.2d 355, 357-58 (Iowa 1989). Industrial disability¹ is determined by considering a number of factors, including functional impairment. *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 192 (Iowa 1980). Where the evidence is in conflict or where reasonable minds might disagree about the conclusions to be drawn

¹ Industrial disability has been defined as a reduction in earning capacity. *Olson v. Goodyear Service Stores*, 125 N.W.2d 251, 256 (Iowa 1963).

from the evidence, we are bound to accept the board's findings. *Aluminum Co. of America v. Employment Appeal Bd.*, 449 N.W.2d 391, 394 (Iowa 1989).

The commissioner considered Crudo's age, job experience, education, prospects for retraining, and functional impairment in finding she suffered an industrial disability of 25 percent. The sum of the percentages of permanent disability from the two injuries was 30 percent. Because the sum of the percentages of permanent disability from the two injuries exceeds the industrial disability rating, the Second Injury Fund is not liable by statute.

Crudo challenges the weight given by the agency to the various factors in determining she suffered an industrial disability of 25 percent. There are no guidelines for determining the weight to be given any factor. The agency must draw upon prior experience, general knowledge, and specialized knowledge to make findings concerning the degree of industrial disability. While we take all record evidence into account, we must grant appropriate deference to the agency's expertise. *Cerro Gordo County Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192, 195-96 (Iowa 1987). Our scope of review is circumscribed and does not permit us to weigh the evidence because the weight of the evidence remains within the agency's exclusive domain. *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 234 (Iowa 1996). As substantial evidence supports the industrial commissioner's findings, we affirm the district court.

AFFIRMED.

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