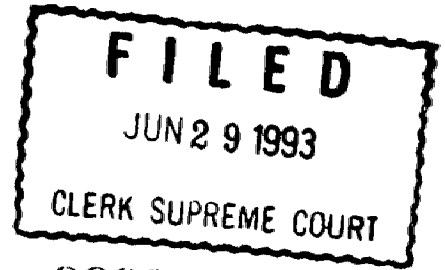


IN THE COURT OF APPEALS OF IOWA

No. 3-145 / 92-1244



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RONALD E. HOOPMAN,

Appellant,

vs.

QUAKER OATS COMPANY, Employer, and **TRANSPORTATION INSURANCE COMPANY,** Insurance Carrier,

Appellees.

Appeal from the Iowa District Court for Linn County,
Lynne E. Brady, Judge.

worker's compensation claimant appeals a district court's decision affirming the industrial commissioner's award of thirty percent industrial disability and the exclusion of an economist's testimony relating to future loss of earnings. **AFFIRMED.**

Matthew J. Nagle and Robert R. Rush of Lynch, Dallas, Smith & Harman, P.C., Cedar Rapids, for appellant.

James M. Peters and James E. Shipman of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, for appellees.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

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HABHAB, J.

Ronald E. Hoopman, a worker's compensation claimant, appeals a district court order affirming the industrial commissioner's decision awarding him an industrial disability of thirty percent. Hoopman also contends the industrial commissioner erred in excluding his economist's testimony relating to future loss of earnings.

Hoopman began working for Quaker Oats Company on August 2, 1967, as a journeyman millwright. On April 30, 1986, Hoopman was helping to remove a tank when he was injured. Hoopman sustained a severe compression fracture of his lumbosacral spine and the mid-coccygeal joint was displaced and dislocated.

On February 10, 1987, Hoopman returned to work on a part-time basis in a millwright classification but with restricted duties. Dr. Albert Coates, an orthopedic surgeon and Hoopman's treating physician, placed a thirty pound lifting limit on Hoopman which was later reduced to fifteen to twenty pounds. Dr. Coates also restricted Hoopman from bending, flexing, kneeling and climbing ladders. Quaker Oats sent Hoopman to computer training classes and created for him a full-time permanent position as a system information clerk. Hoopman earned approximately \$24,000 per year in this position. In 1988, his job was changed to property inventory clerk at a salary of approximately \$26,000 per year. Hoopman has not sought treatment for his back injury since March 1989.

Dr. Coates opined that Hoopman sustained an eighteen percent permanent partial impairment as a result of the accident. Hoopman was also evaluated by Dr. John Walker who opined that Hoopman sustained a twenty-six percent permanent partial impairment.

Hoopman filed an original notice and petition with the industrial commissioner. The issue was the extent of Hoopman's permanent disability. Prior to the hearing, the deputy sustained a motion in limine excluding from the record certain economic studies of economist Dr. Michael Sandberg on Hoopman's future loss of earnings. The deputy industrial commissioner issued a proposed decision finding that Hoopman proved entitlement to thirty percent permanent partial disability benefits. Hoopman appealed.

The industrial commissioner affirmed and adopted the deputy's proposed decision. The industrial commissioner considered Dr. Sandberg's evaluation of Hoopman's loss of actual earnings from the date of the injury to the hearing. The industrial commissioner affirmed the exclusion of Dr. Sandberg's evaluation of the future loss of earnings.

Hoopman filed a petition for judicial review. The district court affirmed the agency's decision. Hoopman appeals. We affirm.

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I. Scope of Review.

The scope of review in cases arising out of the Iowa Administrative Procedure 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

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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.

II. Exclusion of the Economists' Testimony.

Hoopman's first contention is that the industrial commissioner erred in excluding expert testimony of economist Dr. Michael Sandberg on Hoopman's loss of future earnings.

Dr. Sandberg testified under an offer of proof to the lump sum present value of Hoopman's lost earnings and lost fringe benefits over the balance of Hoopman's work-life expectancy. The industrial commissioner found that loss of earnings is a relevant factor in determining Hoopman's industrial disability, and allowed the use of Dr. Sandberg's figures for the period from the date of the injury to the date of the hearing. The commissioner refused to admit testimony from Dr. Sandberg regarding loss of future earnings. The commissioner found that to project such loss in the future would be speculative and based on factors not relevant to industrial disability. In addition, the industrial commissioner felt the evidence improperly invaded the province of the agency in determining loss of earning capacity.

Industrial disability, within the meaning of the worker's compensation statute, means reduced earning capacity. Guyton v. Irving Jenson Co., 373 N.W.2d 101, 103

(Iowa 1985); Lithcote Co. v. Ballenger, 471 N.W.2d 64, 68 (Iowa App. 1991). Among factors to be considered are the employee's bodily impairment, age, intelligence, education, qualifications, experience, and the effect of the injury on the worker's ability to obtain suitable work. Id. There are no guidelines establishing the weight to be given to each of the factors. Lithcote Co., 471 N.W.2d at 68. 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.

If scientific, technical, or other specialized knowledge will assist the commissioner to understand the evidence or to determine a fact in issue, a witness qualified as an expert may testify thereto. Iowa R. Evid. 702. Relevant evidence may be excluded, however, if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Iowa R. Evid. 403.

The commissioner found only a portion of Dr. Sandberg's lump sum valuation helpful in determining Hoopman's industrial disability. Acceptance or rejection of an expert's testimony is within the "peculiar province" of the industrial commissioner. Morrison v. Century Engineering, 434 N.W.2d 874, 877 (Iowa 1989) (citing Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 462 (Iowa 1969)). We find the

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commissioner did not abuse his discretion in refusing to admit the other portions of Dr. Sandberg's testimony.

III. Thirty Percent Industrial Disability.

Hoopman next contends the industrial commissioner improperly rejected the impairment rating from Hoopman's independent medical evaluation. Hoopman claims the industrial commissioner should have averaged the two doctors' impairment ratings. We find no merit in this argument.

The commissioner may average differing medical impairment ratings, Rockwell Graphic Systems, Inc. v Prince, 366 N.W.2d 187, 191-92 (Iowa 1985), but he is not required to. Expert opinion may be accepted or rejected, in whole or in part, by the trier of fact. Sondag v. Ferris Hardware, 220 N.W.2d 903, 907 (Iowa 1974). "[T]he weight to be given such an opinion is for the finder of fact, and that may be affected by the completeness of the premise given the expert and other surrounding circumstances." Bodish v. Fischer, Inc., 257 Iowa 516, 521, 133 N.W.2d 867, 870 (Iowa 1967).

The commissioner decided to give more weight to the impairment rating of Dr. Coates, the treating physician than to the impairment rating of Dr. Walker, the independent medical examiner. Although the commissioner is not required as a matter of law to give the treating physician's testimony more weight than that of an

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independent medical examiner, Rockwell, 366 N.W.2d at 192; see also Lithcote Co. v. Ballenger, 471 N.W.2d 64, 66 (Iowa App. 1991), we find no error in the commissioner doing so in his evaluation as fact finder. We reiterate, the weight to be given an expert's opinion is for the trier of fact. Lithcote Co., 471 N.W.2d at 66.

Hoopman also claims that even if the commissioner's finding of an eighteen percent permanent functional impairment is correct, the finding of a thirty percent industrial disability is not supported by substantial evidence. Hoopman asserts the industrial commissioner failed to properly consider loss of earnings and fringe benefits in the past and future in determining the percentage of industrial disability.

At the hearing, Hoopman testified that he was able to work overtime prior to his injury. Hoopman testified that a millwright made approximately \$39,000 per year in 1986 and approximately \$44,000 in 1987 with overtime. Hoopman also testified that he is working a second job as a security guard. A witness for Quaker Oats testified that the overtime available to millwrights would decrease in the future due to the installation of new equipment and the reduced demand for oat bran.

The industrial commissioner evaluated the impairment rating along with all other factors identified above to arrive at an industrial disability of 30%. The commissioner took into consideration Hoopman's age,

qualifications, health, motivation, current position, physical restrictions, and length of healing period to arrive at the 30% figure.

After reviewing the record, we find substantial evidence to support the commissioner's finding of 30% industrial disability. We therefore affirm the industrial commissioner and the district court in this regard.

AFFIRMED.