

IN THE COURT OF APPEALS OF IOWA

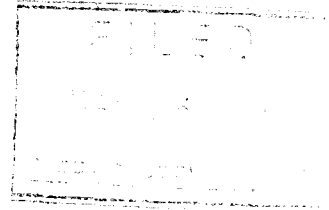
No. 8-736 / 98-0779

Filed May 26, 1999

BARI FAZIO,
Appellant,

vs.

SHERATON INN a/k/a
35TH STREET CORPORATION, and
AETNA CASUALTY & SURETY,
Appellees.



Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

Bari Fazio appeals a district court order affirming the industrial commissioner's final agency action concluding there was no causal connection between a bee sting suffered by her husband at work and his subsequent death caused by a stroke. **AFFIRMED.**

Thomas Henderson, Thomas S. Reavely and John F. Fatino of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

Glenn Goodwin, Des Moines, for appellees.

Considered by Huitink, P.J., and Streit and Zimmer, JJ. Sackett, C.J., takes no part.

PER CURIAM

Bari Fazio appeals a district court order on judicial review of the industrial commissioner's final agency action concluding there was no causal connection between a bee sting suffered by her husband at work and his subsequent death caused by a stroke. Bari alleges the district court erred in finding substantial evidence to support the industrial commissioner's decision. We affirm on appeal.

Factual setting: Ralph Fazio worked at the Sheraton Inn as its chief engineer. On September 24, 1992, a bee stung him on the left side of his neck while he was in his office. He went to a medical clinic that afternoon for treatment of an allergic reaction to the bee sting. He received epinephrine and Benadril, which alleviated the symptoms. The clinic prescribed Prednisone for symptomatic relief. During his treatment at the clinic, Ralph's blood pressure remained stable. The treatment he received dramatically reduced his urticaria,¹ swelling, and inflammation. Later in the day Ralph and a friend went shopping and Ralph experienced some difficulty holding items in his left hand. After he returned home, his wife, Bari, called the clinic about the symptoms and was told to reduce his Prednisone dosage. The next day, Ralph stayed home from work and had his wife stay home with him. Around noon, Ralph and a friend were working on one of Ralph's vehicles when he collapsed. The hospital diagnosed him as having suffered a stroke. During several days of inpatient

¹ urticaria - a form of hives, skin rash.

treatment, Ralph continued to deteriorate, suffered an acute hemorrhage at the base of his brain, and died on September 30, 1992.

Agency proceedings: Ralph's wife, Bari, sought workers' compensation benefits alleging Ralph's death was causally related to the bee sting. The evidence presented to a deputy industrial commissioner showed Ralph had strong risk factors for a stroke including a strong family history of strokes and a two-pack-a-day cigarette habit for thirty years. The neurologist who treated Ralph testified the stroke was caused by longstanding vascular disease and not the bee sting. This testimony was supported by testimony from the physician who performed the autopsy on Ralph. Bari's expert witness testified the bee sting was a precipitating cause of the stroke. He found support for this opinion in various medical articles which were not offered into evidence. The deputy industrial commissioner ruled in the respondents' favor, concluding the medical evidence showed Ralph's stroke was not caused by the bee sting. The industrial commissioner affirmed this decision, and Bari petitioned for judicial review.

District court review: Bari argued there was not substantial evidence to support the industrial commissioner's decision. The district court found Bari's appeal merely attacked the weight and credibility of the expert testimony supporting the decision. The court found the record established Ralph possessed significant risk factors for stroke and it was not unreasonable to conclude the bee sting did not cause the stroke. The court determined the testimony of Drs. Friedgood, Garrity, and

Brewer, in addition to Ralph's family history of strokes and his long-term heavy smoking habit constituted substantial evidence supporting the agency decision.

Claims on appeal: Bari claims the district court erred in finding substantial evidence supports the expert opinions adopted by the industrial commissioner. She argues her medical expert found support in fifteen medical articles that a bee sting could cause a stroke. The other two expert witnesses did not know of any medical articles supporting or disproving this conclusion. She argues there is no foundation for the expert opinions the stroke was caused by vascular disease. Rather, she asserts substantial evidence shows the stress Ralph suffered because of the bee sting caused the stroke which led to his death.

Discussion: The agency based its findings on the testimony of Dr. Friedgood, a neurologist who treated Ralph in the hospital and Dr. Garrity, who performed the autopsy on Ralph's body. Dr. Friedgood testified he found no clinical evidence of a recent bee sting. He stated, "I do not feel that the bee sting suffered by Mr. Fazio was a direct cause of his stroke. This statement is based on a reasonable degree of probability." Dr. Friedgood opined Ralph's strong family history of strokes and his atherosclerotic cerebral vascular disease led to his stroke. Dr. Garrity testified Ralph had mild cerebral atherosclerosis in the vessels at the base of his brain. He opined the bee sting did not cause Ralph's stroke. The commissioner found the testimony of Drs. Friedgood and Garrity more credible than that of Dr. Bennett, who testified he found support in journal articles that a bee sting can cause a stroke. He opined Ralph had

a vascular spasm as a reaction to the bee sting, which reduced blood flow to the brain, causing the stroke.

Bari argues Dr. Friedgood's statement Ralph had atherosclerotic cerebral vascular disease of long-standing is without support in the record. Dr. Garrity described the disease as "mild" which means the blockage is insignificant. Therefore, she asserts, the agency and the court could not find substantial evidence supports this finding.

Both parties argue over the medical journal articles cited by Dr. Bennett in support of his opinion the bee sting precipitated Ralph's stroke. Appellees assert the articles were never disclosed in discovery and never admitted as evidence. Appellant argues the articles were disclosed generically and did not need to be admitted. Appellant asserts the existence of the articles gives more weight and credibility to Dr. Bennett's testimony and decreases the weight which should be given to the other experts' testimony. Dr. Bennett testified the articles supported his opinion bee stings can cause stroke and did so in this case. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 354 (Iowa 1980). A preponderance of the evidence exists when the causal connection is probable rather than merely possible. *Holmes v. Bruce Motor Freight, Inc.*, 215 N.W.2d 296, 297 (Iowa 1974).

When we review a decision of a district court rendered pursuant to section 17A.19, 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. *Jackson County Pub. Hosp. v. Public Employment Relations Bd.*, 280 N.W.2d 426, 429-30 (Iowa 1979). The findings of an administrative agency will be upheld if supported by "substantial evidence in the record made before the agency when that record is viewed as a whole." Iowa Code § 17A.19(8)(f). We give deference to agency findings of fact. *Cerro Gordo County Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192, 196 (Iowa 1987). However, we will set aside agency findings if the record clearly shows the agency decision unjustified. *Sierra v. Employment Appeal Bd.*, 508 N.W.2d 719, 720 (Iowa 1993). 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 App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean one of those conclusions is unsupported by substantial evidence. *Id.* We conclude Ralph's family history of strokes and his long-term heavy smoking habit combined with the testimony of Drs. Friedgood, Garrity, and Brewer, constitute substantial evidence supporting the agency decision.

AFFIRMED.

No. 98-0779. [8-736] FAZIO v. SHERATON INN

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.
AFFIRMED. Considered by Huitink, P.J., and Streit and Zimmer, JJ. Per Curiam.
Sackett, C.J., takes no part. (6 pages \$2.40)

Ralph Fazio worked at the Sheraton Inn as its chief engineer. A bee stung him on the left side of his neck while he was in his office. He went to a medical clinic that afternoon for treatment of an allergic reaction to the bee sting. The treatment he received dramatically reduced his symptoms. The next day, Ralph stayed home from work and had his wife stay home with him. Around noon, Ralph and a friend were working on one of Ralph's vehicles when he collapsed. The hospital diagnosed him as having suffered a stroke. He died five days later. Ralph's wife, Bari, sought workers' compensation benefits alleging Ralph's death was causally related to the bee sting. The evidence presented to a deputy industrial commissioner showed Ralph had strong risk factors for a stroke including a strong family history of strokes and a two-pack-a-day cigarette habit for thirty years. The neurologist who treated Ralph testified the stroke was caused by longstanding vascular disease and not the bee sting. The deputy industrial commissioner ruled in the respondents' favor, concluding the medical evidence showed Ralph's stroke was not caused by the bee sting. Upon review the district court determined the testimony of Drs. Friedgood, Garrity, and Brewer, in addition to Ralph's family history of strokes and his long-term heavy smoking habit constituted substantial evidence supporting the agency decision. On appeal, Bari argues there is no foundation for the expert opinions the stroke was caused by vascular disease. She asserts substantial evidence shows the stress Ralph suffered because of the bee sting caused the stroke which led to his death. The question is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. We conclude Ralph's family history of strokes and his long-term heavy smoking habit combined with the testimony of Drs. Friedgood, Garrity, and Brewer, constitute substantial evidence supporting the agency decision.