

IN THE COURT OF APPEALS OF IOWA

No. 8-130 / 96-2227

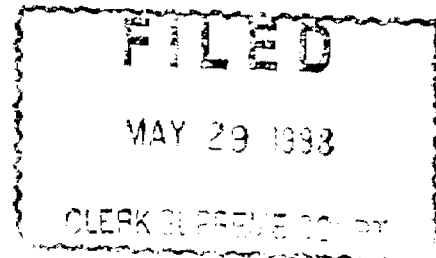
JORGE VILLAGRANA,

Petitioner-Appellant,

vs.

IBP, INC.,

Respondent-Appellee.



Appeal from the Iowa District Court for Scott County, Edward B. deSilva,
Judge.

Petitioner appeals from the district court's ruling affirming the industrial
commissioner's workers' compensation award to petitioner. **AFFIRMED.**

William J. Bribriesco and Daniel D. Bernstein of William J. Bribriesco &
Associates, Bettendorf, for appellant.

Matthew D. Veldey, Dakota City, Nebraska, for appellee.

Heard by Sackett, P.J., and Streit and Mahan, JJ.

MAHAN, J.

Jorge Villagrana appeals the district court's ruling affirming the industrial commissioner's workers' compensation award. Villagrana contends the district court erred in determining there was substantial evidence to support the award by the commissioner who reduced the award initially determined by the deputy commissioner. We affirm.

Villagrana was born in Mexico in May 1957. He moved to the United States in 1979. Villagrana has a sixth grade education and is able to read and write Spanish. He understands some English, but he is not able to read or write in English.

Villagrana first reported his injuries in December 1990. He experienced overuse syndrome in both extremities and also encountered pain in his back, neck, and shoulders. Dr. Forest Dean found Villagrana had full range of motion in his neck, shoulders, and elbows. He also determined Villagrana had diminished grip in both hands. Dean reviewed Villagrana's x-rays, lab results, and EMG and found no severe musculoskeletal damage.

Dean determined Villagrana had a two percent functional impairment rating. Dean recommended Villagrana (1) be permanently restricted from any repetitive gripping/grasping activities, (2) not do any repetitive bending, stooping, or lifting on a permanent basis, (3) be employed in a warm area of greater than sixty degrees, and (4) perform no lifting greater than nineteen pounds.

Villagrana entered IBP's "bid-walk" system. In this system, he was given one

year to bid, according to seniority, on jobs he was medically qualified to perform. He also looked for work at other businesses. However, at the time of the hearing Villagrana remained unemployed.

The deputy commissioner found Villagrana was highly motivated and had been an active participant in the "bid-walk" system as well as actively seeking other employment. The deputy determined Villagrana's education hampers his employment. The deputy also determined Villagrana was capable of performing very low-paying jobs in food service, lawn care, or as a farm hand. According to the deputy, all of these jobs would pay less than the \$8.12 hourly wage Villagrana earned at IBP. The deputy found Villagrana had a fifty percent permanent partial disability.

IBP appealed to the industrial commissioner. The industrial commissioner adopted portions of the deputy's decision, but rejected others. The commissioner noted education and intellectual abilities are factors to be considered and the inability to speak English is a component of these. The commissioner found Villagrana could not hold jobs requiring him to speak English. The commissioner pointed to Exhibit 1 showing the reason many employers rejected Villagrana was "no work" rather than because of his impairment. The commissioner also pointed out local economic factors are not properly part of the industrial disability analysis because they affect all employees equally. However, the commissioner noted, "there is no indication that exhibit 1 is misleading." The commissioner ruled Villagrana has thirty percent permanent partial disability. In making his finding, the commissioner determined,

“[c]laimant cannot speak English and this would be a detriment to him in applying for many jobs; however, his past work experience has been in jobs not requiring the use of the English language.”

I. STANDARD OF REVIEW. Judicial review of an administrative agency is governed by the standards of Iowa Code section 17A.19(8). *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 233 (Iowa 1996). The court acts in an appellate capacity by reviewing the agency’s decision solely to correct any errors of law. *Id.* The agency’s decision is final if it is supported by substantial evidence and is correct in its conclusions of law. *Id.* The agency’s findings of fact have the effect of a jury verdict. *Vosberg v. A. Y. McDonald Mfg. Co.*, 519 N.W.2d 405, 407 (Iowa App. 1994). We broadly and liberally construe the commissioner’s findings to uphold, rather than defeat the commissioner’s decision. *Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995). The possibility of drawing two inconsistent conclusions from the same evidence does not prevent the agency’s decision from being supported by substantial evidence. *Robbennolt*, 555 N.W.2d at 233. In reviewing the commissioner’s interpretation of the statutes governing the agency, we defer to the expertise of the agency, but reserve for ourselves the final interpretation of the law. *Second Injury Fund*, 526 N.W.2d at 546.

We find there is substantial evidence to support the industrial commissioner’s decision. For this reason, we affirm the decision of the commissioner.

AFFIRMED.