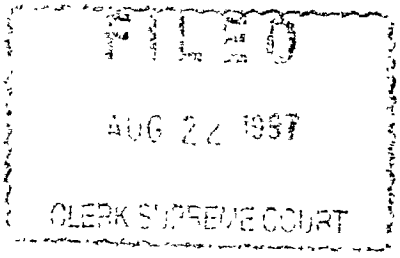
IN THE COURT OF APPEALS OF IOWA 000093

No. 7-205 / 96-0246



LORIE DEMIRJEAN,
Petitioner-Appellant,

vs.

PRINCIPAL FINANCIAL GROUP, INC., and WAUSAU INSURANCE COMPANY,
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

The petitioner appeals from the district court's ruling on judicial review affirming the industrial commissioner's ruling denying her claim for workers' compensation benefits for her mental disability purportedly caused by her employment with the respondent. **REVERSED AND REMANDED.**

Curt Krull, Des Moines, for appellant.

Jane Lorentzen and Marvin Duckworth of Hopkins & Huebner, P.C., Des Moines, for appellees.

Heard by Habhab, C.J., and Cady and Streit, JJ.

PER CURIAM

Petitioner, Lorie Demirjean, appeals from the district court's ruling on judicial review affirming the industrial commissioner's ruling denying her claim for workers' compensation benefits for her mental disability purportedly caused by her employment with the respondent. Petitioner claims the district court erred in determining the commissioner's decision was supported by substantial evidence.

Demirjean worked as a clerical worker in the billing department for the respondent, Principal Financial Group, Inc., for ten years in Des Moines. In July 1988, Principal announced its billing department would be moved to Waterloo in December 1991. Demirjean claimed after the announcement her employment with Principal became stressful, exacerbating a preexisting depressive condition.

Demirjean specifically claimed Principal caused her additional stress by placing a freeze on the billing department employees to keep them from moving to other departments; giving employees a false sense of security they would have employment after the freeze with Principal; retraining billing department employees on new telephone and computer systems; and requiring billing department employees to train persons who were taking their jobs in Waterloo.

Principal terminated Demirjean in December 1993. She has been unable to retain a new job because of her major depressive disorder which renders her unable to control her emotions and to concentrate. Demirjean filed an action against

Principal claiming she suffered a psychological or nervous injury on or about December 11, 1991, which arouse out of and in the course of her employment at Principal.

The deputy industrial commissioner granted Demirjean's claim for workers' compensation benefits for her mental condition. On appeal the industrial commissioner denied her claim. The commissioner used the "Wisconsin standard" for determining whether Demirjean's nontraumatically caused mental illness was compensable. Utilizing the Wisconsin standard, the commissioner ruled Demirjean's employment conditions at Principal did not cause her mental disability providing a basis for the award of workers' compensation benefits. Demirjean filed a petition for judicial review. On January 5, 1996, after a hearing, the district court entered a ruling affirming the commissioner's decision. The court concluded the commissioner's decision was supported by substantial evidence.

Demirjean appeals.

I. Standard of Review. Review of an agency's decision is for errors of law. *Kostelac v. Feldman's, Inc.*, 497 N.W.2d 853, 856 (Iowa 1993). The findings of the industrial commissioner carry the effect of a jury verdict. *Id.* We will reverse an agency's findings only if, after reviewing the record as a whole, we determine that substantial evidence does not support them. Iowa Code § 17A.19(8)(f) (1993); *Sierra v. Employment Appeal Bd.*, 508 N.W.2d 719, 720 (Iowa 1993). Evidence is

substantial if a reasonable mind would accept it as adequate to reach the conclusion at issue. *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 404 (Iowa 1993). The mere fact that we could draw inconsistent conclusions from the same evidence does not mean that substantial evidence does not support the commissioner's determinations. *Kostelac*, 497 N.W.2d at 856; *Reed v. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991). The ultimate question is not whether the evidence supports a different finding, but whether it supports the findings the commissioner actually made. *Reed*, 478 N.W.2d at 846.

II. Commissioner's Duty to Explain his Decision. Demirjean attacks the commissioner's opinion for completely omitting the fact a job freeze was placed on only the billing department for over one year, which the deputy commissioner found to have "a devastating effect on someone like the Claimant who had low job performances." Demirjean also requested the district court consider the fact "significant facts were left out of the commissioner's findings [that] were not disputed." She claims though the court has a duty to correct for errors at law, review of the action becomes a question of law when undisputed facts are omitted. *See Thomas v. William Knudson & Son, Inc.*, 349 N.W. 2d 124, 126 (Iowa App. 1984) (court found when the facts are not in dispute and different inferences could not be reasonably drawn therefrom, it becomes a question of law and the court is not bound by the commissioner's finding or conclusions).

It is the duty of the commissioner to state the evidence he relied on and to detail his reasons for his conclusion. *Armstrong v. State of Iowa Bldgs. & Grounds*, 382 N.W.2d 161, 166 (Iowa 1986); *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 510 (Iowa 1973). While it is true that the commissioner's decision must be "sufficiently detailed to show the path he has taken through conflicting evidence," *Catalfo*, 213 N.W.2d at 510, the law does not require the commissioner to discuss each and every fact in the record and explain why or why not he has rejected it. Such a requirement would be unnecessary and burdensome. *See Terwilliger v. Snap-On Tools Corp*, 529 N.W.2d 267, 275 (Iowa 1995).

In the case at hand, the commissioner adequately detailed the concerns claimant had about her continued employment with Principal. There is no dispute a freeze was placed on the billing department. The question of fact the commissioner had to decide was whether the freeze caused the claimant to suffer a psychological injury. We review the commissioner's findings for substantial evidence.

III. The Application of Dunlavey v. Economy Fire & Cas. Co. The commissioner found Demirjean had a history of depression. She attempted suicide numerous times since high school. She had poor performance ratings at Principal because of her slow work. She also suffered a divorce and a breakup of her church. The commissioner explained in sufficient detail the conditions Demirjean endured at

her workplace did not rise to the level of stress compensable under the workers' compensation law applying the Wisconsin standard.

The Wisconsin standard provides that a "mental injury non-traumatically caused must have resulted from a situation of greater dimensions than the day-to-day emotional strain and tension which *all employees* must experience." *See School Dist. # 1 v. Department of Indus., Labor & Human Relations*, 62 Wis.2d 370, 215 N.W.2d 373, 377 (1974) (emphasis added). In *Dunlavey,* the court rejected the "Wisconsin standard" and adopted the "Wyoming standard." *Dunlavey v. Fire & Casualty Co.*, 526 N.W.2d 845, 855 (Iowa 1995). The Wyoming court found a mental injury compensable if it was "caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by *other workers employed in the same or similar jobs*," regardless of their employer. *Id.* (citing *Graves v. Utah Power & Light Co.*, 713 P.2d 187, 193 (Wyo. 1986)) (emphasis added).

The district court in its January 5, 1996, ruling found that although the commissioner used the "Wisconsin standard" rather than the "Wyoming standard," the application of the wrong standard was harmless because the Wyoming standard was more stringent. This analysis is flawed. The district court's conclusion implies since the worker failed to prove her case under the less stringent standard, she surely would fail if a more stringent test were applied. Essentially, the district court determined, if a worker was unable to clear the lower bar in an obstacle course, she

surely could not clear the higher one. This analysis ignores the fact the hurdles are not only different in height, but also in scope.

The *Dunlavey* court examined both the Wisconsin and Wyoming standards. The court adopted the "unusual stress" standard as formulated by the Wyoming supreme court, after finding the Wyoming standard was less generic. The court stated:

> First, the Wyoming standard strikes a balance between the overall purposes embodied in our workers' compensation statutes. By comparing the stresses endured by similarly situated employees, the Wyoming standard provides the employees with compensation for legitimate work related injuries while at the same time limits the employers' liability to injuries cause by its industry. . . . Second, the Wyoming standard avoids any confusion over the meaning and application of the phrase "all employees" embodied in the Wisconsin standard.

Dunlavey, 526 N.W.2d at 857.

The Wyoming standard and the Wisconsin standard are different formulations of the "unusual stress" standard applied differently to determine if an employee has established legal causation for a nontraumatic mental injury. *Id.* at 857. The standards place different burdens on the employee in establishing legal causation. *Id.* The *Dunlavey* court did not characterize the Wisconsin standard as less stringent than the Wyoming standard. Rather, the court found the Wyoming standard to be the most definitive standard. *Id.*

The commissioner's decision was filed August 31, 1994, almost six months before the *Dunlavey* decision. We remand this case to the commissioner to determine if the claimant can establish her mental injury was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer. *See id.* at 858. The commissioner should consider evidence of workers with similar jobs employed by a different employer is relevant, however, evidence of the stresses of other workers employed by the same employer with the same or similar jobs will usually be most persuasive and determinative on the issue. *Id.*

REVERSED AND REMANDED.