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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOAN ELLA FURAY,

Petitioner-Appellant,

vs.

FLAVORLAND INDUSTRIES, Employer, et al,

Respondents-Appellees.

Filed May 30, 1980

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63429

Appeal from Woodbury District Court - Donald M. Pendleton, Judge.

Petitioner-claimant appeals district court's overruling of her petition for judicial review affirming decision of respondent-agency denying her workman's compensation benefits alleging district court erred in 1) failing to vacate the agency decision, 2) determining the agency applied a correct standard of proximate cause, 3) applying an improper scope of review, and 4) finding the agency decision was supported by substantial evidence. AFFIRMED.

Joe Cosgrove of Yaneff & Cosgrove, Sioux City, Iowa, for petitioner-appellant.

Frank Harrison of Hopkins & Huebner, Des Moines, Iowa, for respondents-appellees.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner-claimant, Joan Ella Furay, appeals from district court's judgment overruling her petition for judicial review and affirming the decision of respondent-agency, Iowa Industrial Commission, denying her worker's compensation benefits. She asserts district court erred in 1) failing to vacate the agency decision, 2) determining the agency applied a correct standard of proximate cause, 3) applying an improper scope of review, and 4) finding the agency decision was supported by substantial evidence. We affirm.

I. Procedural Background. On May 5, 1976, claimant filed her petition in arbitration against respondents Flavorland Industries, Inc., and its insurance carrier, Insurance Company of North America, requesting worker's compensation benefits for an August 8, 1974 injury to her husband, William A. Furay, and his resultant death on August 19, 1974. Flavorland and Insurance Company of North American answered on May 17, 1976, and the case was heard before an Iowa Industrial Commission deputy on December 16, 1976. On August 11, 1977, the deputy issued his arbitration decision finding claimant failed to prove by a preponderance of evidence William Furay's employment activity brought about the cause of his health impairment and subsequent death. Claimant filed a request for review by the commissioner on August 23, 1977. The commissioner, on July 17, 1978, denied claimant's request, concluding the deputy's findings of fact and conclusions of law were proper. Having exhausted all administrative remedies, claimant filed a petition in Woodbury County District Court on August 4, 1978, requesting judicial review of the agency action. On April 10, 1979, district court overruled claimant's petition, affirming the agency's decision and concluding substantial evidence existed to support the commissioner's decision.

II. Scope of Review. "Judicial review of administrative proceedings is a right conferred by statute." Kerr v. Iowa Public Service Co., 274 N.W.2d 283, 287 (Iowa 1979). Consequently, our examination of district court's order overruling claimant's petition is at law. Second Injury Fund v. Mich Coal Co., 274 N.W.2d 300, 302 (Iowa 1979); City of Davenport v. Public Employment Relations Board, 264 N.W.2d 307, 311 (Iowa 1978). Our review is limited solely to the record made before the agency. Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 176 (Iowa 1979); Davenport Community School District v. Iowa Civil Rights Commission, 277 N.W.2d 907, 909 (Iowa 1979); Hoffman v. Iowa Department of Transportation, 257 N.W.2d 22, 25 (Iowa 1977). A remedy is available only upon our determination the agency's action is unsupported by

substantial evidence when that record is reviewed as a whole. Farmers Elevator, 286 N.W.2d at 176; City of Davenport, 264 N.W.2d at 311.

III. Substantial Evidence. "In order for an injury or death to be compensable, it must occur within the scope of employment. Injury or death within the scope of employment, in turn, must both arise out of and occur in the course of employment." Hawk v. Jim Hawk Chevrolet-Buick, Inc., 282 N.W.2d 84, 87 (Iowa 1979). See also Section 85.3, The Code 1979. Claimant has the burden of proving by a preponderance of the evidence some employment incident or activity was a proximate cause of the injury or death. McDowell v. Town of Clarksville, 241 N.W.2d 904, 907 (Iowa 1976). When making a determination whether the injury or death is compensable, findings of the industrial commissioner control if reasonable minds could draw different inferences from the evidence presented. Bahr v. Christianson, 282 N.W.2d 768, 769 (Iowa Ct. App. 1979). The commissioner, as fact-finder, cannot arbitrarily or totally reject testimony, but must weigh it and determine its credibility. McDowell, 241 N.W.2d at 908.

Applying these principles to the record, we conclude district court properly determined substantial evidence existed for the agency's ruling. The evidence clearly shows for thirteen years prior to August 1974, claimant's husband, William Furay, had been employed as both a terminal and country cattle buyer[1] for Flavorland Industries. It also is clear William Furay disliked country buying, was an average buyer, who, in recent months as the market got tight, was doing poor work, and had been informed by his superior he was not performing his job satisfactorily. On August 8, 1974, William Furay was conducting a country purchase of cattle for Flavorland when he got dizzy and developed a pain in his neck. He was hospitalized on August 19, 1974, and died as a result of ruptured cerebral aneurysms.

Although claimant presented competent, explicit, expert medical testimony supporting her request for benefits, Flavorland and Insurance Company of North America also propounded testimony of an internist who explained it was impossible to determine with reasonable medical certainty whether claimant's husband suffered hypertension or what caused the aneurysms to rupture where no previous medical history was available. Medical evidence established claimant's husband's aneurysms were congenital in origin. There was no evidence of what William Furay's blood

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[1] Country buying involves purchases of cattle from farms while terminal buying is conducted at a market.

pressure was prior to his attack. While this court may have decided the case differently had it been the original fact-finder, we cannot say either district court erred in determining the agency's decision is supported by substantial evidence, or the agency erred in making its decision initially in light of this evidence.

Due to our determination district court properly decided the agency's ruling was supported by substantial evidence, we find claimant's other assignments of error are without merit. Judgment of district court is affirmed. Costs of this appeal are assessed against claimant.

AFFIRMED.