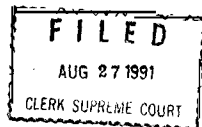


IN THE COURT OF APPEALS OF IOWA

No. 0-723 / 90-742



JERRY R. ARRICK,

Appellant,

vs.

PERKINS RESTAURANTS, INC., and WAUSAU INSURANCE COMPANIES,

Appellees.

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Appeal from the Iowa District Court for Pottawattamie
County, Glen McGee, Judge.

The industrial commissioner denied petitioner's claim
for workers' compensation benefits on the ground his
condition was not caused by a work-related injury. The
district court affirmed. **AFFIRMED.**

Thomas L. Root of Pogge, Root, Fleming & Tinley,
Council Bluffs, for appellant.

Philip Willson of Smith, Peterson, Beckman & Willson,
Council Bluffs, for appellees.

Considered by Oxberger, C.J., and Donielson and Hayden,
JJ.

HAYDEN, J.

Petitioner filed a claim for workers' compensation benefits alleging he had injured his back in a work-related accident. A deputy commissioner awarded him benefits, but the industrial commissioner found petitioner's back condition was not caused by the work injury. On judicial review, the district court affirmed. Petitioner appealed. We affirm.

Petitioner Jerry Arrick was employed as a waiter at a Perkins Restaurant in Council Bluffs, Iowa. On May 7, 1986, while Arrick was taking down a very large American flag in front of the Perkins Restaurant, the wind caught the flag and threw him into an adjacent parked car. Arrick claimed he struck his lower abdomen and right elbow. He went to the hospital and received treatment for a contusion to the right elbow. The attending physician did not report any complaint at that time of back or abdominal pain.

Arrick returned to the emergency room on May 20, 1986, with complaints of abdominal pain and nausea. He was admitted to the hospital in June 1986 for tests by Dr. Moffett. The tests showed Arrick had ulcers in his small intestine and perhaps hypoglycemia. Arrick's discharge summary shows he denied having pain in the back.

Arrick was again hospitalized in October 1986 for abdominal pain. He was treated by Dr. Margules in November 1986. Dr. Margules concluded Arrick had suffered back strain caused by the May 7 accident. Arrick now has a back

condition which limits his ability to perform some types of work.

Arrick filed a claim seeking workers' compensation benefits based on the May 7 injury. A deputy commissioner awarded him benefits for a five percent permanent partial impairment to the body as a whole. The industrial commissioner reversed, finding Arrick's present back condition was not caused by his work injury on May 7, 1986. The commissioner concluded Dr. Margules' opinion was based on an inaccurate medical history. On judicial review, the district court affirmed the commissioner. Arrick appealed.

Arrick contends the decision of the commissioner is not supported by substantial evidence. He believes Dr. Margules reviewed his medical and hospital records before making a diagnosis the symptoms of abdominal pain were caused by a back injury. Furthermore, the deputy who actually observed the witnesses found Arrick and his wife were truthful.

Arrick also contends the decision of the commissioner was arbitrary, capricious, and an abuse of discretion. He points out the commissioner did not follow the findings of credibility made by the deputy and did not make new specific findings of fact.

Our review of this workers' compensation case is for the correction of errors at law, not de novo. Second Injury Fund v. Hodgins, 461 N.W.2d 454, 455 (Iowa 1990).

The commissioner's findings have the effect of a jury verdict, and we broadly apply them to uphold his decision. Id.

We will affirm the agency's findings of fact, so long as they are supported by substantial evidence in the record and are not unreasonable, arbitrary, capricious, or characterized by an abuse of discretion. John Deere Dubuque Works v. Weyant, 442 N.W.2d 101, 105 (Iowa 1989). Evidence is substantial if a reasonable person would find it adequate to reach a given conclusion, even if a reviewing court might draw a contrary inference. Id.

"Arbitrary" and "capricious" are practically synonymous; both mean an agency decision taken without regard to law or the facts of the case. Office of Consumer Advocate v. Iowa State Commerce Commission, 432 N.W.2d 148, 154 (Iowa 1988). "Unreasonableness" means action in the face of evidence as to which there is no room for difference of opinion among reasonable minds or not based on substantial evidence. Frank v. Iowa Department of Transportation, 386 N.W.2d 86, 87 (Iowa 1986). An abuse of discretion is synonymous with unreasonableness. Id.

Under our workers' compensation act, a worker must establish three principal elements: (1) an employer-employee relationship at the time of the injury; (2) an injury arising out of and in the course of the employment; and (3) the disability was proximately caused by the injury. Freeman v. Luppess Transport Co., Inc., 227 N.W.2d 143, 148 (Iowa 1975).

In this case the industrial commissioner found Arrick did not adequately show his injury of May 7, 1986, proximately caused his later back condition. We find there is substantial evidence in the record, taken as a whole, to support this factual finding.

Arrick did not complain of any pain in his back to the examining physician on the day he was injured. When Arrick was subsequently admitted to the hospital in June 1986 the hospital's notes show he denied having any pain in his back. Arrick did not complain of back pain until October 1986. Dr. Margules did not see Arrick until November 1986, when Arrick stated he had suffered back pain since the time of the accident.

The commissioner was not bound to accept Dr. Margules' medical opinion the back condition was caused by the May 7, 1986, injury. See Sondag v. Ferris Hardware, 220 N.W.2d 903, 907 (Iowa 1974). When an expert's opinion is based upon an incomplete medical history, it is not necessarily binding on the commissioner or the court. Musselman v. Central Telephone Company, 261 Iowa 352, 360, 154 N.W.2d 128, 133 (1967).

We conclude the decision of the industrial commissioner was supported by substantial evidence. We affirm the ruling of the district court.

AFFIRMED.