

IN THE COURT OF APPEALS OF IOWA

No. 6-194 / 95-1061

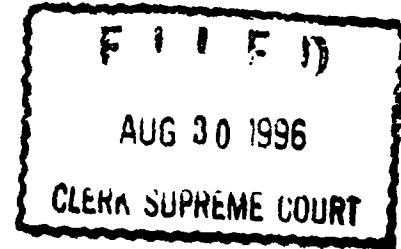
KIMBERLY ANN SELKEN,

Appellant,

vs.

**STONEHILL CARE CENTER and
LIBERTY MUTUAL INSURANCE COMPANY,**

Appellees.



Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan,
Judge.

The petitioner appeals from the district court's ruling on judicial review
affirming the Industrial Commissioner's denial of her workers' compensation claim.

AFFIRMED.

Joseph J. Bitter, Dubuque, for appellant.

Greg A. Egbers and Vicki L. Seeck of Betty, Neuman & McMahon,
Davenport, L.L. P., for appellees.

Considered by Cady, P.J., and Streit and Vogel, JJ.

PER CURIAM

This is an appeal by an employee claiming the district court should not have affirmed the decision of the Industrial Commissioner which denied her request for workers' compensation benefits. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Kimberly Selken was employed by Stonehill Care Center in Dubuque as a certified nursing assistant. She claims that on July 6, 1989, she injured her back while lifting a patient. Selken did not inform her supervisor or fill out an incident report. The notes of Dr. A. McDermott, who examined Selken on July 7, 1989, show she stated she had been in pain for three or four days and that she denied an injury. Dr. Eugene Herzberger diagnosed Selken as having a herniated disc, and she eventually had surgery on her back.

Selken filed a claim for workers' compensation benefits. Selken's husband, Roger Selken, who also worked at Stonehill, supported her testimony of an injury on July 6, 1989. She also presented a written report of Dr. Herzberger, which was based on a medical history provided by Selken's attorney, which stated it was probable her injury was caused by her employment.

The Industrial Commissioner denied the claim, finding Selken had not shown it was probable her condition was caused by a work-related injury. The commissioner noted that none of the medical records contemporaneous to the alleged

injury contain a history of an injury at work. On judicial review, the district court affirmed the commissioner.

Selken has appealed. She contends the commissioner's decision is not supported by substantial evidence and was arbitrary and capricious. Selken believes she presented sufficient evidence to show the herniated disc was caused by her employment. She states the written report by Dr. Herzberger supports her claim.

We will reverse the Industrial Commissioner's findings only if, after reviewing the record as a whole, we determine that substantial evidence does not support them. *Gallardo v. Firestone Tire & Rubber Co.*, 482 N.W.2d 393, 395 (Iowa 1992). It is the commissioner's role as finder of fact to determine the weight to be afforded expert testimony. *Terwilliger v. Snap-on Tools Corp.*, 529 N.W.2d 267, 272 (Iowa 1995).

We find there was substantial evidence in the record to support the commissioner's decision. The opinion of Dr. Herzberger was based on the assumption Selken was injured on July 6, 1989. The medical records created near the time of the alleged injury, however, show Selken denied an injury. Also, Selken failed to report an injury to her employer.

We affirm the decision of the district court and the Industrial Commissioner.

AFFIRMED.