IN THE COURT OF APPEALS OF IOWA

No. 1999-388 (9-641) / 98-2199
Filed March 15, 2000

ARCHER DANIELS MIDLAND COMPANY,
Plaintiff-Appellant,

vs.

RANDY A. SMITH,
Defendant-Appellee.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, August F. Honsell, Judge.

Employer appeals from the district court ruling on judicial review affirming the industrial commissioner's award of workers' compensation benefits. **AFFIRMED.**

James M. Peters and Allison M. Heffern of Simmons, Perrine, Albright & Ellwood, P.L.C., Cedar Rapids, for appellant.

John Riccolo and David L. Baker of Riccolo & Baker, P.C., Cedar Rapids, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

PER CURIAM

Claimant, Randy Smith, was employed by Archer Daniels Midland Company (ADM) from 1974 to 1992. Smith claimed he sustained an injury to his back while at work "busting locks" from the bottom of railcars to unload them. The deputy industrial commissioner found Smith sustained the claimed injury, it was causally connected to his disability, and Smith had a seventy-percent industrial disability. The industrial commissioner affirmed. ADM sought judicial review. The district court affirmed.

ADM first claims Smith failed to prove his disability was caused by his work activities on the injury date. ADM argues Smith continued to work his shift after the alleged incident and delayed in seeking medical attention. ADM asserts the evidence shows Smith's disability is merely attributable to a long-standing medical condition in Smith's back called spondylolisthesis. ADM claims the agency's decision is not supported by substantial evidence and the district court erred in affirming it.

ADM also claims the evidence does not support a finding that Smith has a seventy-percent industrial disability. ADM characterizes his functional disability as low, pointing to evidence that Smith is still physically active. ADM suggests there are many types of work Smith is capable of performing, particularly sales jobs, and that he has made little effort to obtain better employment.

Our review is for correction of errors at law. *Henkel Corp. v. Iowa Civil Rights Comm'n*, 471 N.W.2d 806, 809 (Iowa 1991). The agency -- not the court -- weighs the evidence, and we are obliged to apply those findings broadly and

liberally to uphold rather than defeat the agency's decision. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981). On review, the question is not whether the evidence supports a finding different from the agency's but whether the evidence supports the findings the agency actually made. *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997). In other words, the agency's findings are binding on appeal unless a contrary result is compelled as a matter of law. *Id.*

ADM's primary argument concerns the onset of "radicular pain" in his legs. ADM asserts the uncontroverted evidence is that it was weeks if not a month before such pain occurred – contrary to the agency's findings it began a few days after the incident. We find substantial evidence to support the agency's finding in the medical records referring to the radiating pain as occurring shortly after the incident. We conclude, as did the agency and the district court, substantial evidence supports the findings the work-related incident caused the injury that led to Smith's disability.

Concerning the industrial disability rating, ADM argues, based on what Smith is able to do physically, and in comparison to some disability ratings others have received, a seventy-percent rating is too high. Bodily impairment is only one factor in gauging industrial disability. Other factors include a worker's age, intelligence, education, qualifications, experience, and the effect of the injury on the worker's ability to obtain suitable work. *Guyton v. Irving Jensen Co.*, 373 N.W.2d 101, 103 (Iowa 1985). We are satisfied the agency was correct in viewing loss of earning capacity in terms of Smith's present ability to earn in the

competitive job market without regard to any accommodation offered by ADM. *See Thilges v. Snap-On Tools Corp.*, 528 N.W.2d 614, 617 (Iowa 1995). The focus is not solely on what Smith can and cannot do; the focus is on his ability to be gainfully employed. *See Second Injury Fund of Iowa v. Nelson*, 544 N.W.2d 258, 266 (Iowa 1995). Given Smith's education, work history, attempts at further education, and age, we find substantial evidence in the record supports the agency's industrial disability determination.

AFFIRMED.