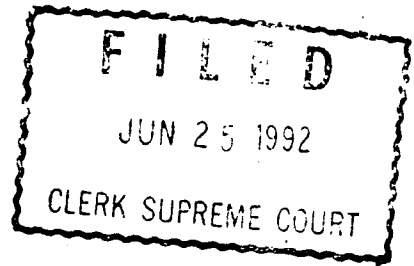


IN THE COURT OF APPEALS OF IOWA

No. 1-642 / 91-938



DWIGHT L. NICHOLS,

Appellant,

vs.

698

MAHARISHI INTERNATIONAL UNIVERSITY, and BITUMINOUS CASUALTY
CORP.,

Appellees.

Appeal from the Iowa District Court for Washington
County, James P. Rielly, Judge.

Nichols appeals a district court order affirming the
Industrial Commissioner's decision awarding him permanent
partial disability benefits for a 40% disability of his
right thumb. **AFFIRMED.**

J.W. McGrath and Steven J. Swan of McGrath & McGrath,
P.C., Keosauqua, for appellant.

William D. Scherle of Hansen, McClintock & Riley,
Des Moines, for appellees.

Considered by Schlegel, P.J., and Sackett and Habhab,
JJ.

HABHAB, J.

699

FACTS

On February 15, 1988, Nichols was injured in the course of his employment with Maharishi University. The injury occurred while Nichols was helping to remove a transmission at the motor pool. The transmission dropped on the distal phalanx of his right thumb, crushing it. Nichols is right-handed.

Following his injury, Nichols was seen by Dr. James Dunlevy. On May 27, 1988, after seeing Nichols several times, Dr. Dunlevy determined Nichols had lost 40 degrees of flexion extension from the terminal phalanx of the thumb, equating to 23% impairment of the thumb. Dr. Dunlevy converted that loss to a 9% impairment of the hand, converted that to an 8% impairment of the upper extremity, and converted that to a 5% impairment of the whole person. The percentages corresponded to those in the AMA Guides to the Evaluation of Permanent Impairment (Guides).

In October 1988, Nichols was evaluated by Dr. Marc Hines, a board certified neurologist. Dr. Hines also used the AMA Guides in establishing impairment percentages. On October 1, 1988, Dr. Hines wrote that Nichols had a 50% loss of flexion on the terminal phalanx of the thumb, equating to an 11% impairment of the hand. Dr. Hines determined there existed an additional 12% loss of use of the thumb which created an additional 5% impairment of the hand. On December 16, 1989, Dr. Hines wrote Nichols'

attorney stating Nichol's thumb was basically functionless for him in work and everyday living and that Nichols would be better off had he lost the thumb entirely.

In December 1988, Nichols sought benefits under the Iowa Workers' Compensation Act for his injury. Eventually, the case was submitted to an arbitrator. Following a hearing, the Deputy Industrial Commissioner awarded Nichols benefits for 40% disability of his right thumb. The 40% disability finding was based on testimony by doctors using the AMA Guides. The Industrial Commissioner affirmed the 40% disability finding. The district court agreed with the Industrial Commissioner and dismissed Nichols' petition for judicial review. Nichols appeals. We affirm.

SCOPE OF REVIEW

The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. To make that determination this court applies the standards of section 17A.19(8) to the agency action to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record

and is not limited to the agency's findings. Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

ANALYSIS

The Iowa Rules of the Industrial Commissioner specifically adopt the AMA Guides in Iowa Administrative Rule 343-2.4(85) which states as follows:

The Guides to the Evaluation of Permanent Impairment published by the American Medical Association are adopted as a guide for determining permanent partial disabilities under Iowa Code section 85.34(2)"a"-"r." **The extent of loss or percentage of permanent impairment may be determined by use of this guide and payment of weekly compensation for permanent partial scheduled injuries made accordingly. Payment so made shall be recognized by the industrial commissioner as a prima facie showing of compliance by the employer or insurance carrier**

with the foregoing sections of the Iowa Workers' Compensation Act. **Nothing in this rule shall be construed to prevent the presentations of other medical opinion or guides for the purpose of establishing that the degree of permanent impairment to which the claimant would be entitled would be more or less than the entitlement indicated in the AMA guide.**

Iowa Administrative Code r.343--2.4(85) (1987) (emphasis added).

It is clear from Iowa Administrative Rule 343--2.4(85) the Industrial Commissioner may use the AMA Guides in determining the percentage of permanent impairment. This rule also clearly states other medical opinions or guides may be considered in addition to the AMA Guides in determining the impairment. The Industrial Commissioner is given discretion to decide which evidence should be used in determining the level of impairment. We are unable to conclude the Industrial Commissioner abused its discretion by relying on the widely used and objective AMA standards rather than the subjective opinion of a doctor, especially when that doctor's opinion was contradicted by another expert. After hearing all the facts, testimony and medical opinions, the Deputy Industrial Commissioner determined it prudent to base his decision on the AMA Guides. The Industrial Commissioner agreed.

We determine the Industrial Commissioner's decision is supported by substantial evidence. Further, we determine the Industrial Commissioner utilized the correct legal standard in reaching its decision. After considering all

issues presented, we affirm the district court's ruling upholding the Industrial Commissioner's decision awarding Nichols permanent partial disability benefits for a 40% disability of his right thumb.

Costs of this appeal are taxed to the appellant.

AFFIRMED.