

IN THE COURT OF APPEALS OF IOWA

No. 2-132 / 91-1347

FILED

JUN 25 1992

CLERK SUPREME COURT

LINDA LITTLE,

Appellant,

vs.

**BONDURANT-FARRAR COMMUNITY SCHOOLS,
Employer; and EMPLOYERS MUTUAL
INSURANCE COMPANY, Insurance Carrier,**

Appellees.

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Appeal from the Iowa District Court for Polk County,
Robert A. Hutchison, Judge.

In this workers' compensation action, Little challenges the district court decision which affirmed the acting industrial commissioner's denial of permanent partial disability benefits. **REVERSED AND REMANDED.**

Donald G. Beattie of Skinner, Beattie & Wilson, P.C.,
Altoona, for appellant.

Sheila K. Tipton and Larry D. Spaulding of Bradshaw,
Fowler, Proctor & Fairgrave, Des Moines, for appellees.

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

SCHLEGEL, J.

Linda Little appeals the decisions of the acting industrial commissioner and the trial court denying her permanent partial disability benefits. The issue before us is whether the facts support a finding of industrial disability where there is medical evidence of pain due to sore muscles, coupled with testimony the employee can no longer perform her duties. We determine the acting commissioner's finding of no permanent partial disability is not supported by substantial evidence, and we reverse.

Linda Little is forty-two years old. Her employment had been manual labor, minimum-wage jobs until she began working for the Bondurant-Farrar Community School District as a custodian in August 1974. She became head custodian in 1975. Little's duties involved heavy physical activity such as lawn mowing, snow removal, and scrubbing floors. On August 1, 1987, while doing heavy summer work, Little suffered a back injury. Although her condition worsened, she continued to work until October 27, 1987.

At that time she underwent various types of medical treatment and therapy. Her treating physician diagnosed her as suffering from muscle strain. She underwent extensive testing which failed to show any physical cause for her pain. Little participated in physical therapy, biofeedback training, stress management training, vocational rehabilitation assistance, and a work-hardening program. She resumed work on April 1, 1988. After she

returned to work the school district arranged for someone to assist her with her duties and purchased special equipment to assist in tasks requiring lifting. Nonetheless, Little's work duties exacerbated the pain, and she ultimately quit her job on August 26, 1988. She was then earning \$18,500 annually. She accepted a sales position with her present employer, Pace Warehouse, and now earns approximately \$12,000 annually.

On May 31, 1988, Little filed a petition with the industrial commissioner seeking permanent partial disability benefits. The deputy industrial commissioner who initially heard the matter determined Little had a thirty-percent industrial disability and was entitled to workers' compensation benefits. The acting industrial commissioner reversed the deputy, finding Little had failed to carry her burden of proof to show she suffered a work injury that resulted in a permanent physical impairment.

Little sought judicial review to no avail. The district court affirmed the acting industrial commissioner, concluding the finding of no permanent physical impairment is one of fact, not of law, and there was substantial evidence in the record to support that finding. Little appeals.

The district court, when exercising the power of judicial review over agency action, is functioning in an appellate capacity to correct errors at law. Iowa Code § 17A.19(8) (1991); Kohorst v. Iowa State Commerce Comm'n,

348 N.W.2d 619, 621 (Iowa 1984). Our review of the district court's decision is limited to correction of errors at law. Roberts v. Iowa Dep't of Job Serv., 356 N.W.2d 218, 221 (Iowa 1984). We are bound by the agency's fact findings if those findings are supported by substantial evidence. Iowa Code § 17A.19(8)(f) (1991). Evidence is substantial if a reasonable person would find it adequate to reach the same decision. Peoples Memorial Hosp. v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 91 (Iowa 1982). This 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).

We now address the issue of whether the acting industrial commissioner's decision reversing the deputy's award of benefits is supported by substantial evidence. The district court found:

In this case, there is no dispute as to most of the underlying facts. It is unquestionable that Linda Little worked as a custodian for the Bondurant-Farrar Community Schools, that her custodial work was occasionally strenuous, and that she developed myofascial pain in her back as consequence of her work activity. It is undisputed that when Ms. Little did not work, her symptoms improved; when she returned to work, she once again experienced sore muscles.

Dr. Charles Denhart, Little's physician, testified he thought Little should consider finding a new type of employment that would be more sedentary. We find Little sustained a work-related injury, see Bodish v. Fischer,

Inc., 257 Iowa 516, 519, 133 N.W.2d 867, 868 (1965), and that this injury is causally connected to the shoulder and back injury from which she now suffers, see McDowell v. Town of Clarksville, 241 N.W.2d 904, 908 (Iowa 1976).

We further determine there is not substantial evidence to support the agency finding of no disability. In Olson v. Goodyear Serv. Stores, 255 Iowa 1112, 1121, 125 N.W.2d 251, 257 (1963), the supreme court, quoting a commissioner's decision, stated: "In determining industrial disability, consideration may be given to the injured employee's age, education, qualifications, experience and his [or her] inability, because of the injury, to engage in employment for which he [or she] is fitted." The deputy specifically noted Little was a credible witness. He further found:

Claimant is now in sales representative work. Claimant said she likes sales work, but it is obvious she will work her way out of her present job due to its nature. The undersigned believes claimant when she says she quit her school custodian job because of pain and because the job aggravates her condition. Claimant had signed a new one year contract in June 1988. The school superintendent considered claimant a valuable employee. Claimant's replacement, Mr. Dowler, who is physically larger than claimant, described the heavy duty nature of custodial work. Claimant is presently making approximately \$12,265 per year. Claimant was making \$18,600 when she quit defendant employer on October 26, 1988. Her former job is now paying \$19,500, which is 37 percent more than what claimant is currently earning. Claimant has no current transferable skills other than as a custodian. It is obvious claimant can no longer perform custodial-type work or any type of heavy work.

No physician gave Little a permanent impairment rating.

However, she was advised to find a job other than custodial. The testimony of the superintendent of schools also suggests Little, due to her injury, could not do the work required of a head custodian.

The acting commissioner's finding of no permanent partial disability is not supported by substantial evidence. Little did injure her back on the job, and this injury has caused her to have a permanent partial disability. See McKeever Custom Cabinets v. Smith, 379 N.W.2d 368, 374 (Iowa 1985) (citations omitted) ("employee is disabled and injured when, because of pain or physical inability, [s]he can no longer work"). Upon review of the entire record, we reverse the decision of the industrial commissioner and the trial court, and we remand for a determination of the percentage of permanent disability and an award of corresponding benefits.

REVERSED AND REMANDED.

Sackett, J., concurs; Habhab, J., dissents.

HABHAB, J. (dissenting)

I respectfully dissent. I would affirm. I determine there is substantial evidence to support the Industrial Commissioner's findings of no permanent partial disability. I agree with the district court's findings, specifically the portion of its ruling which states in pertinent part:

The issue here is not the legal question of whether a medical finding of pain alone, coupled with lay testimony that the employee can not longer do her job, is sufficient for a finding of industrial disability. Rather the question is whether the factual determination of the Industrial Commissioner here that there was no such combination is correct. The Court concludes that there is substantial evidence supporting the Commissioner's determination.

I would affirm.