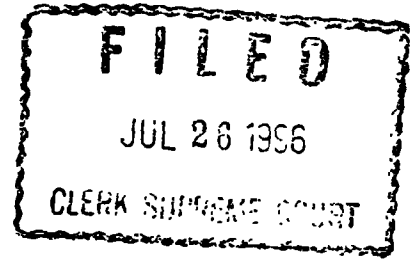


IN THE COURT OF APPEALS OF IOWA

No. 6-204 / 95-1354



VIRGINIA MORTENSON,
Appellant,

vs.

**EMPLOYMENT APPEAL BOARD and IOWA PUBLIC EMPLOYEES
RETIREMENT SYSTEM,**
Appellees.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

The petitioner, the surviving designated beneficiary of a deceased Iowa Public Employees Retirement System's member, appeals from the district court's ruling on judicial review affirming the employment appeal board's decision upholding the system's decision to pay her a lump sum benefit pursuant to Iowa Code section 97B.52(1) rather than paying her surviving annuity benefits under the option the decedent had chosen. **AFFIRMED.**

Robert M. Holliday and Dennis L. Puckett of Sullivan & Ward, P.C., Des Moines, for appellant.

William C. Whitten, Des Moines, and Jennifer Dixon, Des Moines, for appellees.

Heard by Cady, P.J., and Huitink and Vogel, JJ.

VOGEL, J.

The petitioner, Virginia Mortenson, is the surviving spouse and designated beneficiary of Lynn Mortenson, a deceased Iowa Public Employees Retirement System (IPERS) member. In the spring of 1992, Lynn quit working and began using his two years of accrued sick leave. Virginia claims that her husband was told by IPERS and the Des Moines School District that he could not retire until he used up his sick leave. By late summer of 1993, Lynn had become seriously ill with cancer.

On September 20, 1993, Virginia wrote a letter to IPERS requesting an immediate meeting regarding Lynn's IPERS retirement benefits due to his serious medical condition. The request was returned for lack of social security numbers. After Virginia returned the materials with the appropriate social security numbers, IPERS personnel did not arrange a meeting with Virginia but instead prepared an estimate of benefits. Virginia and her son, Eric, were eventually able to meet with IPERS personnel on November 2, 1993. Eric claims he was told at the meeting his father would have to use up his sick leave prior to his retirement. However, after a meeting with Lynn's employer, Eric was able to get his father's termination date retroactively set as October 29, 1993. Lynn submitted an application for IPERS retirement benefits on November 2, 1993, choosing a benefit option which provided a lifetime monthly benefit with surviving annuity benefits to Virginia.

Lynn passed away on November 5, 1993. Instead of Virginia receiving surviving annuity benefits under the option Lynn had chosen, she was awarded a

lump sum payment amounting to \$62,897.19, pursuant to Iowa Code section 97B.52(1). Under section 97B.52(1), Lynn was not entitled to the annuity benefits since he had not been issued the first monthly benefit payment prior to his death under the option he had chosen. Virginia claimed that IPERS caused a delay in processing Lynn's application, preventing the first benefits check from issuing prior to Lynn's death. The Employment Appeal Board affirmed IPERS' decision finding that any alleged delay was not outcome determinative.

Virginia filed a petition for judicial review challenging the board's decision. The Iowa Department of Personnel was permitted to intervene in the judicial review action. Virginia claimed the board's ruling was not supported by substantial evidence and the ruling was unreasonable, arbitrary and capricious.

After a hearing, the district court entered an order on July 18, 1995, affirming the board's decision. The district court determined Virginia did not establish IPERS took an unreasonable amount of time in processing Lynn's application. The court also concluded Virginia did not establish it was reasonably probable that but for IPERS' alleged error, the result in the case would have been different. The court concluded the board was correct in reaching its decision and the decision was supported by substantial evidence. The court also concluded IPERS correctly applied the applicable law to Lynn's application.

Virginia appeals.

I. *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. *Hundt v. Iowa Dep't of Human Serv.*, 545 N.W.2d 306, 309 (Iowa 1996); *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. *Houlihan v. Employment Appeal Bd.*, 545 N.W.2d 863, 865 (Iowa 1996); *Foods*, 318 N.W.2d at 165. To make that determination this court applies the standards of Iowa Code section 17A.19(8) (1995) to the agency action to determine whether our conclusions are the same as the district court's. *Houlihan*, 545 N.W.2d at 865; *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); *Presthus v. Barco, Inc.*, 531 N.W.2d 476, 479 (Iowa App. 1995).

II. *Substantial Evidence.* Virginia contends the rulings by the Employment Appeal Board and the district court were not supported by substantial evidence in the record and should be reversed pursuant to Iowa Code section 17A.19(8)(f). Section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is not supported by substantial evidence made before the agency when that record is viewed as a whole. *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995); *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. *Klebs*, 539 N.W.2d at 180; *Eaton*, 376 N.W.2d 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 not supported by substantial evidence. *Id.*

Virginia argues, and we agree, that we must reverse the Employment Appeal Board's decision if we find there was an administrative delay which was both unreasonable and prejudicial. *Downing v. Iowa Dep't of Trans.*, 415 N.W.2d 625, 629 (Iowa 1987). Prejudice will not be presumed upon a mere showing of delay. *McFee v. Iowa Dep't of Trans.*, 400 N.W.2d 579, 581 (Iowa 1987). An outcome determinative analysis may be applied in civil proceedings to determine whether there was prejudice by the alleged administrative delay. *Downing*, 415 N.W.2d at 630. Thus, prejudice is proven only by showing a reasonable probability the alleged error affected the outcome of the case. *Id.* Reasonable probability is defined as a probability sufficient to undermine confidence in the outcome. *Id.* If Virginia cannot show prejudice due to an alleged administrative delay, then Virginia's claim must fail.

An IPERS member who is younger than 55 years old must meet certain specified requirements in order to receive IPERS benefits through early retirement. The member must be a vested member who has not reached the normal retirement

date and who: (1) retires early due to disability; and (2) commences receiving disability benefits pursuant to the federal Social Security Act. Iowa Code § 97B.50(2)(a) (1995). Lynn was not eligible for benefits until he was declared disabled by the Social Security Administration. Although Lynn was retroactively declared disabled, he did not receive notice from the Social Security Administration regarding his status until the middle of October 1993. Thus, any alleged delays by IPERS up through the time notice was received from the Social Security Administration could not be outcome determinative. Lynn would have been ineligible for IPERS benefits until mid-October. Since we have found there was no prejudice suffered due to any alleged delay, we need not analyze whether there was in fact a delay and whether the alleged delay was unreasonable.

We find there was not a showing that the alleged delays by IPERS affected the outcome of the case. The rulings reached by the Employment Appeal Board and the district court were supported by substantial evidence in the record.

III. Abuse of Discretion. Virginia also contends the decision of the Employment Appeal Board is unreasonable, arbitrary, and capricious, the result of an abuse of discretion and should be reversed pursuant to Iowa Code section 17A.19(8)(g). Section 17A.19(8)(g) instructs a reviewing court to reverse an agency action which is unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. In defining what is unreasonable or an abuse of discretion, our supreme court has stated:

Unreasonableness was defined in *Churchill Truck Lines, Inc. v. Transportation Regulation Board*, 274 N.W.2d 295, 300 (Iowa 1979), to mean “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.” See 2 Am. Jur. 2d *Administrative Law* § 651, at 507-12 (1962). An abuse of discretion is synonymous with unreasonableness. See Bonfield, *The Definition of Formal Agency Adjudication Under the Iowa Administrative Procedure Act*, 63 Iowa L. Rev. 285, 317 n. 97 (1977). It is premised on lack of rationality, and focuses on whether the agency has made a decision clearly against reason and evidence. See, e.g., *Cross-Sound Ferry Services, Inc. v. United States*, 573 F.2d 725, 730 (2d Cir. 1978) (under federal administrative procedure act); see also *American Petroleum Institute v. Environmental Protection Agency*, 661 F.2d 340, 349 (5th Cir. 1981) (agency must give at least “minimal consideration to the relevant facts as contained in the record” under federal administrative procedure act); 2 Am. Jur. 2d, *supra*, § 651, at 507-12. This standard is no different than the one we employ in reviewing the exercise of a district court’s discretion: “We reverse . . . only when such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable.” *Rowen v. LeMars Mutual Insurance Co.*, 357 N.W.2d 579, 583 (Iowa 1984).

Frank v. Iowa Dep’t of Trans., 386 N.W.2d 86, 87-88 (Iowa 1986). We find the rulings by the Employment Appeal Board and the district court to be reasonable and we likewise find no abuse of discretion in this case. Accordingly, we affirm the ruling of the district court.

AFFIRMED.