FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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WILLIAM E. SHELTON, Deceased, **BARBARA SHELTON,** Surviving Spouse, Claimant,	)	
Petitioner-Appellant,	)	
vs.	)	
RUAN TRANSPORT CORPORATION, CARRIERS INSURANCE COMPANY, and **IOWA INDUSTRIAL COMMISSIONER,**	)	8-541 87-1446
Respondents-Appellees.	)	

Appeal from the Iowa District Court for Scott County (No. 73155), Max R. Werling, Judge.

Appellant, as surviving spouse, appeals from the trial court's decision that her husband had been correctly denied compensation by the industrial commissioner since his intoxication was found to be a substantial factor in causing his work-related death. **AFFIRMED.**

John C. Heinicke and J. W. McGrath of McGrath & McGrath, P.C., Keosauqua, and Arthur L. Buzzell of Buzzell & Semel, Davenport, for petitioner-appellant.

Paul C. Thune of Peddicord, Wharton, Thune, Foxhoven & Spencer, Des Moines, for respondents-appellees.

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

PER CURIAM

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The surviving spouse of William Shelton appeals the ruling of the district court affirming the industrial commissioner's order denying her compensation benefits. Mrs. Shelton argues that there is not substantial evidence to support the fact that Mr. Shelton was intoxicated at the time of his death and that such intoxication was a substantial factor in his death. We affirm.

William E. Shelton, while employed by the appellee, Ruan Transport Corporation, died after falling from the top of a tanker trailer on July 12, 1983. His wife filed for workers' compensation benefits. The deputy industrial commissioner denied her benefits because it was determined that her husband was intoxicated at the time he fell off the trailer and that his intoxication was a substantial factor in causing his fall which resulted in his death. Upon judicial review pursuant to Iowa Code Chapter 17A, the district court affirmed this decision.

Judicial review of agency action is limited to a determination of errors at law. McClure v. Iowa Real Estate Commission, 356 N.W.2d 594, 596 (Iowa App. 1984). We apply those standards as outlined in Iowa Code sections 17A.19(8)(a) to (g) (1987) to the agency decision, considering the record as a whole. Id. In addition, we are bound by the agency's findings of fact if those findings are supported by substantial evidence. Woodbury

County v. Iowa Civil Rights Commission, 335 N.W.2d 161, 164 (Iowa 1983).

Mrs. Shelton contends there is not substantial evidence to support a finding that her husband was intoxicated at the time of his injury. She states that blood alcohol tests are not conclusive as to a determination of intoxication; that the eyewitness testimony of that day refutes or diminishes the impact of those tests.

The deputy industrial commissioner considered all the evidence when determining that Mr. Shelton was intoxicated at the time of his death. Most eyewitnesses of Mr. Shelton's actions that day testified that he did not exhibit any signs of intoxication. However, several witnesses did notice some visual signs of impairment as well as loss of motor control.

Expert witnesses discussed at length the effects chronic alcohol abuse has on a person's mental and physical capabilities when the alcohol content in blood reaches the high levels which were found in Mr. Shelton's blood immediately after the accident and post mortem. Specifically, two experts stated that some persons will not exhibit much loss of control because they have learned to overcompensate as a result of chronic usage in order to hide the alcohol abuse. Mrs. Shelton appears to corroborate this by stating that it was sometimes difficult to tell if her husband had been drinking unless he was in

the latter stages of a "drinking session," which sometimes lasted ten days to two weeks. We conclude that when the record is viewed as a whole, there is substantial evidence that Mr. Shelton was intoxicated at the time of his death.

Finally, Mrs. Shelton contends the record does not reflect substantial evidence that her husband's intoxication was a substantial factor in his fall from the top of the tanker trailer. We disagree. The autopsy performed on her husband, as well as expert testimony, all support a finding that intoxication was a substantial factor. The appellant did not offer any testimony refuting this. In addition, testimony was received that the surface of the tanker trailer was not slippery and that the cement dust covering the surface provided better traction than a clean surface. We find substantial evidence that intoxication was a substantial factor in Mr. Shelton's death.

Accordingly, we affirm the district court's ruling upon judicial review affirming the industrial commissioner's order of March 18, 1987.

AFFIRMED.