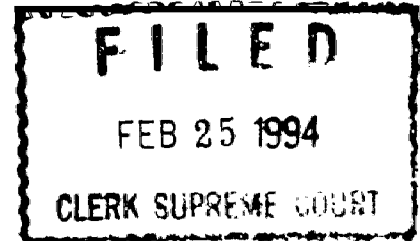


IN THE COURT OF APPEALS OF IOWA

No.3-656 / 93-546



JOYCE MILLER,
Appellant,
vs.

LAURIDSEN FOODS, INC.,
EMPLOYERS MUTUAL COMPANIES,
and HARTFORD INSURANCE COMPANY,
Appellees.

000205

Appeal from the Iowa District Court for Kossuth County,
Joseph Straub, Judge.

The petitioner appeals from the district court's ruling
on judicial review affirming the industrial commissioner's
award of workers compensation benefits to the petitioner.

AFFIRMED.

Mark S. Soldat, Algona, for appellant.

Robert C. Landess and Anne Clark of Hopkins & Huebner,
P.C., Des Moines, and George H. Capps and Kent A. Gummert
of Comito, Capps & Critelli, Des Moines, for appellees.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

In 1981, the petitioner, Joyce Miller, began to work for Lauridsen Foods, Inc. performing meat trimming and other various duties. In 1985, Miller's left and right forearms began to bother her. On September 26, 1986 a medical examination indicated Miller had tendonitis in both forearms requiring her to be off work several days. In 1987, three surgeries were performed on Miller for carpal tunnel syndrome. Miller was released to return to work in February 1988. Miller subsequently left Lauridsen Foods in June 1988. Various medical exams found no neurological basis for her complaints after the surgeries. Apparently Miller's condition was exacerbated by a psychological condition resulting from a history of family abuse. There were difficulties in determining whether her injuries were work related and their dates.

In June 1988, Miller commenced three workers' compensation claims against Lauridsen Foods and its insurance carrier for her carpal tunnel injuries and allegedly related shoulder, neck, and psychological injuries. She claimed her carpal tunnel injuries caused injuries to her shoulder and neck. The separate claim for emotional injuries was dismissed.

The claims proceeded to a hearing before a deputy commissioner. The deputy commissioner granted the employer's and its insurance carrier's motion to exclude testimony of Miller's lay witnesses because Miller did not

list the witnesses in a supplement to an interrogatory filed by the insurance carrier in the dismissed case which had been consolidated with the other cases prior to its dismissal. The deputy also refused to admit Miller's correspondence with Lauridsen and limited the presentation of Miller's case because of preset time restraints. Miller did present medical evidence indicating she suffered over twenty-five percent impairment to both of her upper extremities and a three percent impairment to her whole body. Defendants presented other evidence indicating there was no neurological basis for her complained impairment and that she suffered only a three percent impairment to each upper extremity. There was also evidence that her psychological condition was not work related.

On April 26, 1991, the deputy commissioner entered an arbitration decision on Miller's workers' compensation claims. After reviewing the evidence, the deputy commissioner determined Miller suffered from no whole body injury, determining that she did not incur a psychological condition as a result of any cumulative work injury. The deputy did conclude that Miller suffered a cumulative bilateral upper extremities injury on September 26, 1986 that was work related and caused her a three percent permanent impairment to each upper extremity. The deputy awarded Miller temporary partial disability, healing period and permanent partial disability benefits for that injury. The deputy also determined Miller's shoulder, neck and

other complaints were not work related but related to her nonoccupational mental problems. The deputy also concluded Miller did not incur a work-related cumulative injury on August 15, 1985. The deputy also determined any delay in the payment of benefits was because of uncertainty over whether Miller suffered a work-related injury and when the injury occurred. The deputy concluded Miller was not entitled to section 86.13 penalty benefits because there was no unreasonable delay. The deputy also directed the employer and its insurance carrier to pay interest on the benefits awarded pursuant to Iowa Code section 85.30. The deputy assessed the employer and the insurance carrier the costs of the actions.

Both Miller and her employer appeal. On June 8, 1992, the industrial commissioner entered a final agency decision essentially adopting the deputy's decision except providing for a reduction of Miller's gross earnings and the rate for the computation of benefits. On June 15, 1992, the commissioner filed a nunc pro tunc order asserting that Miller was required to pay appeal costs equally with the employer.

On June 10, 1992, Miller filed a petition for judicial review asserting the issues raised on appeal. On April 1, 1993, the district court filed a ruling affirming the commissioner's decision determining the commissioner's findings and conclusions were supported by substantial evidence. The court determined the costs of both the

appeal to the industrial commissioner and the district court's review of the agency action should be taxed to Miller. On April 5, 1993, Miller filed a notice of appeal.

The scope of review in cases arising out of the Iowa Administrative Procedure 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 Iowa Code section 17A.19(8) (1991) 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.

I. Exclusion of evidence.

Appellant first argues the district court erred in affirming the commissioner's exclusion of evidence. The commissioner excluded evidence on several bases. First, the commissioner granted Employers' motion for discovery sanctions based on appellant's failure to supplement answers to interrogatories in a related claim which was consolidated with the two claims before the agency, but later dismissed. The dismissed claim initially listed Employers as the insurance carrier, but later was amended to substitute Hartford. Because of the close interrelationship of the claims, issues, and parties, we conclude it was reasonable and not arbitrary for the commissioner to grant the discovery sanctions, excluding testimony of certain witnesses. Accordingly, the district court was correct in affirming the agency decision on review.

Appellant also argues the commissioner erroneously excluded evidence as hearsay or otherwise. We disagree. The response of the deputy commissioner quoted by appellant shows the deputy exercising the authority to exclude evidence as a waste of time or needless presentation of

cumulative evidence pursuant to Iowa R. Evid. 403. We find appellant's argument about the strict application of rules of evidence unpersuasive and affirm the district court's review.

Appellant also argues the commissioner wrongly excluded evidence because of time limits on the hearing. We disagree. The hearing assignment order explicitly states "[a]dditional time may be scheduled at the convenience of the hearing deputy only upon good cause shown." There was, therefore, advance notice of strict time limits, contrary to appellant's assertions. The district court properly affirmed the commissioner's decision.

II. The Commissioner's Work Injury Analysis.

Appellant first argues the commissioner erred in selecting the date for the cumulative work injury. We disagree. So long as the commissioner's fact finding is supported by substantial evidence, the district court is correct in affirming the agency. Iowa Code §§ 17A.19, 20 (1991); Dillinger v. City of Sioux City, 368 N.W.2d 176, 182 (Iowa 1985). The question is not whether a different date is supported by the evidence, but whether substantial evidence supports the finding of the commissioner. Henry, 391 N.W.2d at 734. We agree with the finding of the agency and affirm the review of the district court.

Appellant next asserts the commissioner erred in not finding any whole body injury in addition to scheduled member injuries. We disagree. Substantial medical

evidence supports the finding of the commissioner as to the extent of appellant's injury. We therefore affirm the review of the district court.

Appellant finally argues the commissioner erred in not considering psychological evidence of whole body injury. Substantial evidence supports a finding appellant's psychological problems were not caused by her employment. The district court affirmed the agency and we agree.

III. The Commissioner's Permanent Impairment Analysis.

The commissioner found appellant had a three percent impairment to both upper extremities. Medical evidence was presented which would support a higher rating or a lower rating. The commissioner could have awarded industrial disability benefits based on the evidence, but did not. The district court review is not a substitute for the findings of the commissioner, but a determination whether the decision of the commissioner is supported by substantial evidence. Iowa Code § 17A.19(8). We conclude there is substantial evidence to support the findings of the agency. We therefore affirm the review by the district court.

IV. Determination of Interest.

Appellant asserts the commissioner failed to make the necessary findings to allow computation of interest on payments pursuant to Iowa Code section 85.30. We find no error. Section 85.30 provides sufficient information to allow interest calculations. Iowa Code section 85.30 (1993) states:

Compensation payments shall be made each week beginning on the eleventh day after the injury, and each week thereafter during the period for which compensation is payable, and if not paid when due, there shall be added to such weekly compensation payments, interest at the rate provided in section 535.3 for court judgments and decrees.

Id. "Section 85.30 expresses legislative intent that interest on unpaid compensation be computed from the date each payment comes due, starting with the eleventh day after the injury." Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 180 (Iowa 1979); Weishaar v. Snap-On Tools Corp., 506 N.W.2d 786, 791 (Iowa App. 1993); see also Dickenson v. John Deere Prod. Eng'g., 395 N.W.2d 644 (Iowa App. 1986) (tracing Iowa case law concerning when payments are due for purposes of computing interest). We conclude, after examining the deputy commissioner's decision, the applicable sections of the Iowa Code, and the cases just cited, the district court correctly affirmed the decision on review. We determine the conflicts and distinctions appellant argues are without merit. We decline to extend Iowa law as appellant suggests, determining such an extension would be unworkable and contrary to the intent of the legislature. See Iowa Code § 4.4. The district court correctly affirmed the agency decision.

V. Penalties pursuant to Section 86.13.

The deputy commissioner determined there was lack of agreement concerning which injuries were work related and

which injury date was appropriate. Because of this the commissioner found "there was not a delay in the commencement or termination of benefits without reasonable or probable cause or excuse." Therefore, section 86.13 penalties would not apply. See Curtis v. Swift Indep. Packing, IV Iowa Industrial Commissioner Report 88, 93 (1984). The district court correctly affirmed the agency decision.

VI. Taxation of costs.

Finally appellant asserts the taxation of costs by the district court and by the commissioner in the nunc pro tunc order were erroneous. The deputy commissioner taxed costs of the initial claims to the defendants. The commissioner in reviewing the deputy's proposed decision repeated the deputy's assessment and added clarifying language about the costs of doctors' reports. The commissioner omitted the taxation of review costs from the record. One week later, the commissioner corrected that obvious error in a nunc pro tunc order equally dividing the costs of the review. The district court correctly determined the nunc pro tunc order was the proper remedy for the omission. See Federal Land Bank of Omaha v. Dunkelberger, 499 N.W.2d 305, 308-09 (Iowa App. 1993). The district court determined this division by the commissioner was incorrect because the defendants "successfully defended Joyce's appeal to the industrial commissioner and they were also successful on their cross-appeal. It was arbitrary for the industrial

commissioner not to tax all of the costs of the appeal to claimant." The district court also, in affirming the commissioner, taxed the costs of judicial review to appellant. We conclude the district court was correct in determining the commissioner's division of costs was arbitrary and affirm the taxation of costs to appellant of the appeal to the commissioner and the judicial review.

We have considered all issues presented and determine any not expressly addressed are either covered by this opinion or are without merit.

AFFIRMED.