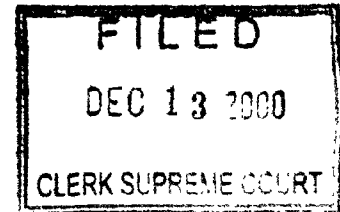


IN THE COURT OF APPEALS OF IOWA

No. 0-520 / 00-382
Filed December 13, 2000



NANCY M. KRATZER,
Petitioner-Appellant,

vs.

ROCKWELL INTERNATIONAL CORP.,
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Larry J. Conmeyer,
Judge.

Nancy Kratzer appeals from the district court's ruling on judicial review
affirming the workers' compensation commissioner's decision determining she
had a twenty percent industrial disability from a work injury. **AFFIRMED.**

Ronald W. Wendt of Nazette, Marner, Wendt, Knoll & Usher, L.L.P., Cedar
Rapids, for appellant.

Scott E. McLeod of Lynch, Dallas, Smith & Harman, P.C., Cedar Rapids,
for appellee.

Heard by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Nancy Kratzer appeals from the district court's judgment affirming the industrial commissioner's decision awarding her workers' compensation benefits. Kratzer argues the commissioner's twenty-percent industrial disability rating is erroneously premised on consideration of accommodations peculiar to her current employer that are otherwise unavailable in the marketplace. We affirm.

II. Standard of Review.

Our review of this case is governed by Iowa Code chapter 17A (1991). See Iowa Code § 88.26; *Second Injury Fund of Iowa v. Nelson*, 544 N.W.2d 258, 264 (Iowa 1995). Our review of administrative agency decisions, like that of the district court, is limited to correcting legal error. *Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994). The findings of the commissioner are akin to a jury verdict, and we broadly apply them to uphold the commissioner's decision. *Id.* The question is not whether the evidence supported a different decision, but whether it supported the decision actually made by the industrial commissioner. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995).

We may reverse, modify, or remand this case to the commissioner for further proceedings if the agency decision is affected by an error at law, or if the decision is not supported by substantial evidence. *Quaker Oats Co. v. Ciha*, 552 N.W.2d 143, 150 (Iowa 1996). Evidence is substantial if a reasonable mind would find it adequate to reach the same findings. *Murillo v. Blackhawk Foundry*,

571 N.W.2d 16, 17 (Iowa 1997). The commissioner's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence. *Id.*

III. The Merits.

Industrial disability measures an injured worker's lost earning capacity. *Ciha*, 552 N.W.2d at 157. Industrial disability is used to determine an unscheduled disability under Iowa Code section 85.34(2)(u). Factors that should be considered include the employee's functional disability, age, education, qualifications, experience, and the ability of the employee to engage in employment for which the employee is fitted. *Shank*, 516 N.W.2d at 813. "Thus, the focus is not solely on what the worker can and cannot do; the focus is on the ability of the worker to be gainfully employed." *Nelson*, 544 N.W.2d at 266. The Iowa Supreme Court has recently held:

In measuring a claimant's loss of earning capacity, which is the criteria for fixing the extent of permanent industrial disability, an employer's accommodation of an employee's inability to perform that person's usual work may only be considered if such accommodation would be available in the general labor market. Otherwise, the loss of earning capacity must be based on the injured worker's present ability to earn in the competitive job market without regard to any accommodation furnished by that person's present employer.

Ellingson v. Fleetguard, Inc., 599 N.W.2d 440, 445 (Iowa 1999) (citations omitted).

In measuring Kratzer's loss of earning capacity, the deputy commissioner made the following findings:

Claimant's current job is straightening sheet metal parts, using small hand tools such as hammer and wrench. She is able to

perform her duties with assistance. Claimant's supervisor Mark Schultz and co-workers testified they helped claimant because they believed she needed help. She uses a cane, battery-powered cart and a mechanical tong to pick up things from the floor without bending. None of these devices are medically prescribed. Drs. Place, Krain and Jewell have encouraged claimant to increase her walking and physical activities, home exercises, and to try to lose weight. Claimant testified she is attending Weight Watchers to lose weight with some success, but is decreasing her physical activities due to her pain. Her husband helps her at work at times, and has taken over the bulk of the household chores.

Claimant testified she cannot bend, stoop, kneel or lift, and can walk only with difficulty. For this reason claimant receives co-worker assistance. Medical work restrictions require claimant not use a foot pedal on any machinery, and no prolonged sitting greater than one (1) hour. Claimant's activities at work are self-imposed. Rockwell [Kratzer's current employer] has accommodated such self-imposed limitations. Claimant's job is the same job as other workers perform at Rockwell, and her job is not "make-work." Accommodation by a current employer is one factor to be considered in determining industrial disability, but is not determinative on extent of disability. *Thilges v. Snap-On Tools*, 528 N.W.2d 614, 616 (Iowa 1995).

* * *

Claimant is in a stable employment relationship. Both she and her employer expect that relationship to continue. Claimant brings forth no evidence to the contrary. Nonetheless, if claimant were thrust into the open competitive market, claimant would likely suffer a loss of earning capacity. Based on all the evidence, it is found claimant has sustained a 20 percent industrial disability. Such a finding entitles claimant to 100 weeks of permanent partial disability benefits as a matter of law under Iowa Code section 85.34(2)(u), which is 20 percent of 500 weeks and the maximum allowable number of weeks for an injury to the body as a whole in that subsection.

The district court affirmed these findings, stating:

Detailed Findings of Fact were entered by the Deputy Industrial Commissioner in the Arbitration Decision filed April 13, 1999 and modified April 23, 1998. This Court recognizes the expertise of the agency. The Industrial Commission set forth a clear rationale for its findings. The Deputy found the Petitioner sustained an injury on October 5, 1994 to her left leg and lower back as a result of work

performed for her employer; that these injuries resulted in disability; and determined the commencement date and interest owed on permanent partial disability. These findings are clearly supported by substantial evidence. The Deputy notes that many of the accommodations made by Respondent for Petitioner's benefit go well beyond those requested or required by Petitioner's own physicians. *It should not serve to increase an employee's disability rating, merely because a hypothetical competitive employer would not provide unnecessary accommodations which the present employer is willing to indulge.* The Deputy acted within her discretion in finding the industrial disability Petitioner has sustained totals 20 percent.

(Emphasis added.)

We believe the emphasized language from the court's decision is in accord rather than conflict with the rule announced in *Ellingson v. Fleetguard*. Under our interpretation of the record, it was Kratzer and not her employer who unsuccessfully sought consideration of present employer accommodations that were otherwise unavailable in the marketplace. We, like the district court, conclude the commissioner considered and properly weighed only those factors relevant to determining Kratzer's industrial disability. We also conclude that the commissioner's ultimate finding that Kratzer suffered a twenty-percent industrial disability is supported by substantial evidence.

We affirm.

AFFIRMED.