

IN THE COURT OF APPEALS OF IOWA

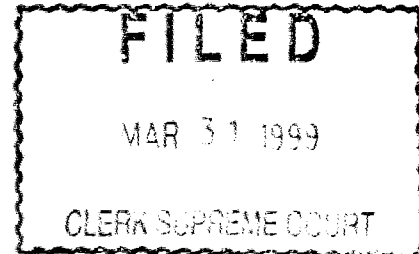
No. 9-004 / 97-1205

Filed March 31, 1999

ROBERT D. ZEISING,
Appellant,

vs.

METZ BAKING COMPANY and
SENTRY INSURANCE COMPANY,
Appellees.



Appeal from the Iowa District Court for Woodbury County, Dewie Gaul,
Judge.

Robert Zeising appeals the district court's decision affirming the workers'
compensation commissioner's award of workers' compensation benefits.

AFFIRMED.

Dennis M. McElwain of Smith & McElwain Law Office, Sioux City, for
appellant.

Brian L. Yung of Bennett, Crimmins, Ostrander & Yung, Fort Dodge, for
appellees.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Robert Zeising appeals the district court's decision affirming the workers' compensation commissioner's award of workers' compensation benefits. We find the Commissioner's decision supported by sufficient evidence and affirm the district court.

I. Background Facts and Procedure.

Robert Zeising was employed by Metz Baking Company¹ as a route sales driver for over thirty years. Zeising's job required frequent loading and unloading of bread products.

In November 1990, Zeising sustained a work-related injury when he fell. After undergoing surgery to repair the damage to his back, Zeising made an unsuccessful effort to return to his job in 1992. Following his return to full-duty work, Zeising began to experience severe pain in his lower back and right leg. In September 1993, he underwent a second surgical procedure in an effort to relieve his symptoms.

Zeising subsequently returned to work in a route pull-up position which did not require heavy lifting. The route pull-up employment was a non-union position, but the company agreed to continue to provide union benefits until October 1994. A June 1994 functional capacity evaluation (FCE) placed significant lifting restrictions on Zeising. Although the FCE restrictions did not disqualify Zeising from returning to his route sales job, it recommended he not return to that position.

¹ Sentry Insurance Company was Metz's workers' compensation carrier.

In October 1994, the company offered Zeising the pull-up job as a non-union position with lower employee benefits. The position paid seven dollars per hour. His entitlement to employer-paid health insurance and pension contributions would be greatly diminished as a non-union employee. Zeising declined to accept the non-union position, and instead opted to retire and take his thirty-year retirement benefits.

Zeising subsequently took a job as a part-time cashier with a gas station. The position paid \$5.25 per hour and provided no benefits. In May 1995, Zeising began receiving social security benefits.

Zeising's claim for workers' compensations benefits came before a deputy workers' compensation commissioner on August 10, 1995. The deputy entered an arbitration decision giving Zeising a twenty-five percent industrial disability rating. The deputy workers' compensation commissioner's decision was apparently based in part on Zeising's age and approaching retirement. After the deputy's arbitration decision, but before the appeal hearing, the Iowa Supreme Court ruled in *Second Injury Fund v. Nelson* that a claimant's age and proximity to retirement cannot be used as factors to decrease an award of workers' compensation benefits. *Second Injury Fund v. Nelson*, 544 N.W.2d 258, 266 (Iowa 1995). On Zeising's appeal, the Iowa Workers' Compensation Commissioner removed those parts of the deputy's decision which were allegedly contrary to *Nelson*, but otherwise adopted the deputy's decision and affirmed Zeising's award of a twenty-five percent industrial disability rating.

Upon judicial review of the workers' compensation commissioner's appeal decision, the district court affirmed the commissioner's award. The district court determined there was substantial evidence supporting the award.

Zeising appeals from the district court's opinion sitting in judicial review of the agency determination. He contends that while the Commissioner explicitly excised the deputy's improper reliance on Zeising's age and proximity to retirement, she nevertheless implicitly relied upon such factors in affirming the deputy's twenty-five percent industrial disability rating.

II. Scope of Review.

Our review of this case is governed by Iowa Code chapter 17A, Iowa's administrative procedure act. See Iowa Code § 86.26; *Second Injury Fund 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. The findings of the commissioner are akin to a jury verdict, and we broadly apply them to uphold the commissioner's decision." *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994) (citation omitted).

We may reverse, modify, affirm or remand the case to the commissioner for further proceedings if we conclude the agency's action is affected by an error at law or if it is not supported by substantial evidence. Iowa Code § 17A.19(8); *Nelson*, 544 N.W.2d at 264. Evidence is substantial if a reasonable mind would find it adequate to reach a conclusion. *Shank*, 516 N.W.2d at 812.

The commissioner's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence. *Kostelac v. Feldman's Inc.*, 497 N.W.2d 853, 856 (Iowa 1993). The focus of the judicial inquiry is whether the evidence is sufficient to support the decision made, not whether it is sufficient to support a different conclusion. *Coghlán v. Quinn Wire & Iron Works*, 164 N.W.2d 848, 852 (Iowa 1969).

A reviewing court may interfere with the agency's findings only if the evidence is uncontradicted and reasonable minds could not draw different inferences. *Longford v. Kellar Excavating & Grading, Inc.*, 191 N.W.2d 667, 668 (Iowa 1971). Legal error is present under the substantial evidence analysis when an agency reaches a conclusion based on uncontroverted evidence which is contrary to the conclusion reasonable minds would reach. *Riley v. Oscar Mayer Foods Corp.*, 532 N.W.2d 489, 491-92 (Iowa App. 1995). If evidence is in conflict, however, the reviewing court has no room to interfere. *Kostelac*, 497 N.W.2d at 856.

III. The Merits.

Our review of the record indicates that at least three medical evaluations were performed on Zeising to determine his industrial disability rating. These evaluations produced disability ratings of eleven percent, twenty percent, and thirty-eight percent permanent impairment of the body as a whole. All three of these evaluations were presented to the commissioner at the appeal hearing. We will not independently evaluate the credibility of the individual evaluations, as this task is more properly left

to the fact finder, in this case, the commissioner. *Holmes v. Bruce Motor Freight Inc.*, 215 N.W.2d 296, 298 (Iowa 1974)(finding it is the role of the workers' compensation commissioner, not the court, to weigh the evidence). We find the commissioner's twenty-five percent industrial disability rating is adequately supported by substantial evidence, including the conflicting medical evidence, and we will not disturb it on appeal. We find the commissioner's decision is supported by sufficient evidence, and accordingly affirm the district court.

AFFIRMED.