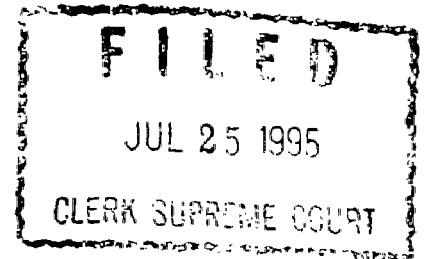


IN THE COURT OF APPEALS OF IOWA

No 5-299 / 94-1807



LYNETTE A. HENRY,

Appellant.

vs.

3M CORPORATION,

Appellee.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge.

Henry appeals the district court ruling on judicial review affirming the industrial commissioner's denial of workers' compensation benefits. **AFFIRMED.**

Steven P. Brick and Bruce H. Stoltze of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, for appellant.

Joseph A. Quinn and Roger L. Ferris of Nyemaster, Goode, McLaughlin, Voights, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Heard by Hayden, P.J., and Habhab and Cady, JJ.

HAYDEN, P.J.

Lynette Henry was a material handler for the 3M Corporation for about eight years. She operated a forklift truck which required her to stand up during her work shift and use both of her feet at various times to operate a "dead man" peddle. She also frequently climbed on and off her truck.

On July 1, 1989, Henry noticed a small nodule in the area of her Achilles tendon above the heel of her left foot. The nodule grew to the size of a walnut, which was surgically removed in August 1989. Henry last performed her forklift duties on July 19, 1989. Her last day of light duty work was July 28, 1989. On July 24, 1989, Henry was seen by Dr. Gerbracht, a rheumatologist. Gerbracht noted Henry "has no symptoms referable to a systemic connective tissue disease." It was his impression, "[d]ue to the fact that she is a forklift operator and stands on her feet to perform her duties, I would wonder if she may have had a mechanical tendinitis."

Henry filed for workers' compensation benefits alleging her injury was caused by or aggravated by the work she performed as a forklift operator. Henry's principal treating physician, Dr. Shingledecker, opined her injury was probably work-related. Dr. Den Hartog, however, opined the ankle tendon lump was more likely related to a connective tissue disease disorder, yet undiagnosed.

The deputy industrial commissioner concluded Henry had failed to establish her injury was proximately caused by her work and denied benefits. The industrial commissioner adopted the deputy's findings of fact and conclusions of law. On judicial review, the district court affirmed. The court found Dr. Hartog's opinion was substantial evidence to support the findings of the commissioner.

Henry appeals. She argues the evidence presented two possible causes of her injury -- a connective tissue disorder and her work process. She contends the deputy erred as a matter of law in finding it likely her injury was caused by an undiagnosed medical condition. She contends the connective tissue disorder has been rejected or undiagnosed, leaving only the work process as the most likely cause of her injury. She argues she has thus shown causation as a matter of law. She also argues the action of the commissioner in determining lack of proximate cause was unreasonable, arbitrary, and capricious.

I. Scope of Review.

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) (citations omitted). 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) (1993) 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).

II. Substantial Evidence.

Henry contends the commissioner's decision her injury was not casually related to her job is not supported by substantial evidence. 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 (citation omitted). 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) (citation omitted). The fact two inconsistent conclusions can be drawn from the evidence does not mean one of those conclusions is unsupported by substantial evidence. *Id.* (citation omitted).

In this case, the medical evidence from both parties on the issue of causation is highly speculative. Several doctors who treated Henry wondered if her problem might possibly have been caused by the nature of the work she was performing. Dr. Shingledecker, Henry's primary treating podiatrist, testified by deposition Henry's work activity is "one of the higher possibilities" of the cause of her condition. However, Dr. Shingledecker also stated, "I'm not saying it was the cause of it, but I'm certainly not saying it wasn't the cause of it."

Dr. Den Hartog, an orthopedic surgeon specializing in feet and ankles, examined Henry on behalf of 3M. Dr. Den Hartog concluded a connective tissue disorder is a far more likely cause of Henry's condition than her work activity. Further, he stated even leaving aside the possibility of a connective tissue disorder, it is unlikely Henry's work caused her condition.

Henry had the burden of proving by a preponderance of evidence she received an injury arising out of and in the course of employment. *Briar Cliff College v. Campolo*, 360 N.W.2d 91, 95 (Iowa 1984) (citing *Holmes v. Bruce Motor Freight, Inc.*, 215 N.W.2d 296, 297 (Iowa 1974) (citations omitted)). Simply put, Henry did not meet her burden of proof. Determining whether injury or disease has direct casual connection with employment, or arose independently thereof, is essentially within the domain of expert testimony. *Lithcote v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App.

1991) (internal quotation omitted). The weight to be given such an opinion is for the finder of fact. *Id.* (citations omitted). Expert opinion, even uncontroverted, may be accepted or rejected in whole or in part by the trier of fact. *Id.* (citations omitted). In this case, the commissioner gave more credibility to Dr. Den Hartog's assessment of Henry's condition than Dr. Shingledecker's. This determination was within the commissioner's discretion. Under this record, Dr. Den Hartog's testimony substantially supports the commissioner's decision Henry did not prove her injury was causally related to her work activities. Further, the commissioner's decision cannot be said to be arbitrary or capricious. Again, the commissioner properly weighed the evidence and concluded 3M was not the most likely cause of her condition.

We hold the agency's decision was supported by substantial evidence and was not arbitrary or capricious. Costs on appeal are taxed to Henry.

AFFIRMED.