IN THE COURT OF APPEALS OF IOWA

No. 5-183 / 94-1327

CHERYL R. HOOTMAN, Claimant,

Petitioner-Appellant,

vs.

MERCY HOSPITAL, Employer, **and**
IOWA SMALL BUSINESS EMPLOYERS,
Insurance Carrier,

Respondents-Appellees.

FILED
SEP 22 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

Hootman challenges the district court order upholding the Industrial Commissioner's denial of permanent partial disability benefits. **AFFIRMED.**

Thomas M. Wertz of Mollman & Wertz, Cedar Rapids, for appellant.

Diane M. Stahle, until her withdrawal, and Gene R. LaSuer of Davis, Hockenberg, Wine, Brown, Koehn & Shors, P.C., Des Moines, for appellees.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

SACKETT, P.J.

Claimant, petitioner-appellant Cheryl R. Hootman, appeals the district court's affirmance of an Industrial Commissioner's decision denying her permanent partial disability benefits. She contends the Commissioner incorrectly applied the law and the decision was not supported by substantial evidence. We affirm.

Hootman began employment as a housekeeper at respondent-appellee Mercy Hospital in Cedar Rapids in 1987. She had two minor injuries to her back during this employment, but was able to return to work. On November 14, 1988, Hootman injured her back a third time while working at Mercy. She has not returned to work because of claimed back pain.

Hootman filed a claim for workers' compensation benefits. At the administrative hearing, Hootman testified she had a history of back problems since 1973, but she had been able to work prior to the injury she received on November 14, 1988. Deposition testimony of Dr. John Koch, Dr. Richard Neiman, and Dr. William Roberts was submitted to the Deputy Industrial Commissioner.

The deputy found Hootman's complaints were from a combination of a degenerative joint disease and a psychological condition. The deputy determined neither was caused or significantly aggravated by Hootman's injury at Mercy. The deputy relied on the opinion of Koch, the physician who treated Hootman following her injury. Hootman was awarded healing period benefits, terminating on May 4,

1989. The deputy determined Hootman was not entitled to permanent partial disability benefits. The Industrial Commissioner adopted the deputy's decision.

Hootman filed a petition for judicial review. The district court found the Commissioner's decision was supported by substantial evidence and contained no errors of law. The court affirmed the decision of the Commissioner. Hootman appeals.

We review to determine whether the agency decision is supported by substantial evidence when viewing the record as a whole. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1991). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. *Id.* The question is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230, 232 (Iowa App. 1990).

The Industrial Commissioner, not the court, weighs the evidence, and the court broadly and liberally construes the Industrial Commissioner's findings to uphold rather than defeat his decision. *Department of Transp. v. Van Cannon*, 459 N.W.2d 900, 903 (Iowa App. 1990). The possibility of drawing two inconsistent conclusions from the same body of evidence does not prevent an administrative agency's findings from being supported by substantial evidence. *Id.*

Hootman first claims the Industrial Commissioner did not correctly apply the law. She relies on *Bearce v. FMC Corp.*, 465 N.W.2d 531 (Iowa 1991), and *Rose v.*

John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956), which say if a subsequent injury aggravates a preexisting condition rendering the condition disabling, the employer is liable for the disability. *Bearce*, 465 N.W.2d at 536; *Rose*, 247 Iowa at 908, 76 N.W.2d at 760-61. Hootman points out, although she had back problems prior to November 14, 1988, she had always been able to work. She claims, therefore, her preexisting injuries should have no bearing on the question of whether she has a permanent work-related disability.

Where Hootman's argument fails is there is a finding here supported by substantial evidence that Hootman's current alleged disability was produced by her earlier problems and was not the result of aggravation of the claimed work-related injury. We affirm on this issue.

Hootman next contends the Commissioner's decision was not supported by substantial evidence. Following Hootman's third injury, she was treated by Koch. Koch testified her work injury did not cause a permanent total disability and she reached maximum medical improvement by May 4, 1989 from any work-related injury. He testified there was a permanent impairment to her back, but it was not a result of injuries received in her employment at Mercy. Koch stated Hootman had a history of degenerative disk disease which was symptomatic long before her employment at Mercy. He said she did not recover because of psychological problems. Hootman had a history of depression and back problems which she failed

to disclose before employment or to doctors she saw after Koch released her from treatment.

Hootman first saw Neiman, who determined she had a herniated disk. Based upon the incomplete history Hootman provided to him, Neiman attributed her back problems to her November 14, 1988 injury. Neiman recommended Hootman to Roberts, an orthopedic surgeon. Roberts did a lumbar fusion. It did not help and Hootman continued to complain of pain. In Neiman's testimony, he first gave the opinion Hootman's back problems were the result of her injury while working at Mercy. In Roberts' testimony, on cross-examination, when told of Hootman's history of back problems, he was not able to attribute any portion of her disability to the injury she received when employed at Mercy. Hootman claims the Commissioner erroneously relied on Koch's opinion her present condition was not causally related to her injury at work on November 14, 1988. She believes Koch's opinion failed to recognize she was able to work before November 14, 1988, and was not able to work afterwards. She states the Commissioner erroneously relied on the opinion of Koch and the decision is not supported by substantial evidence. Additionally, Hootman claims the Commissioner did not give sufficient weight to the opinions of Neiman and Roberts.

Hootman has the burden of proving by a preponderance of the evidence her claimed disability is causally connected to her employment. *Lithcote*, 471 N.W.2d at 66. Determining whether an injury has a direct causal connection with the

employment or arose independently thereof is essentially within the domain of expert testimony, and the weight to be given such an opinion is for the finder of the facts. *Van Cannon*, 459 N.W.2d at 904. The general rule is expert testimony, even if uncontroverted, may be accepted or rejected, in whole or in part, by the trier of fact. *Sondag v. Ferris Hardware*, 220 N.W.2d 903, 907 (Iowa 1974).

We reject Hootman's contention Koch's opinion should be given no weight. Koch was Hootman's treating physician. He was acquainted with her medical history and her progress immediately after her injury.

We also reject her argument greater weight should have been given to the testimony of the other doctors. The Commissioner may properly find one doctor's opinions more credible than another's. *Weishaar v. Snap-On Tools Corp.*, 506 N.W.2d 786, 790 (Iowa App. 1993). Neiman and Roberts did not get a complete medical history from Hootman. This is a valid reason to give less weight to their opinions. *See Musselman v. Central Telephone Co.*, 261 Iowa 352, 360, 154 N.W.2d 128, 133 (1967).

The Commissioner's decision was supported by substantial evidence. We affirm the decision of the Industrial Commissioner and the district court.

AFFIRMED.