

IN THE COURT OF APPEALS OF IOWA

No. 5-240 / 94-1622

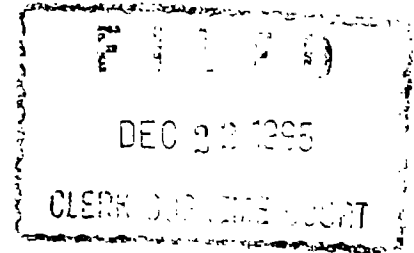
JAMES R. AIKEN,

Appellant,

vs.

**PHILLIPS KILN SERVICES CO., INC.,
and ITT HARTFORD INSURANCE GROUP,**

Appellees.



Appeal from the Iowa District Court for Polk County, Ross A. Walters, Judge.

The Petitioner appeals the district court's decision on judicial review affirming the Industrial Commissioner's denial of plaintiff's claim for workers' compensation benefits based on an alleged work-related hearing loss. **AFFIRMED.**

Leslie E. Stokke and Richard A. Pundt, Cedar Rapids, for appellant.

Mark A. Woollums and Jean Dickson Feeney of Betty, Neuman & McMahon,
Davenport, for appellees.

Considered by Hayden, P.J., and Cady, and Huitink, JJ.

CADY, J.

The Industrial Commissioner denied the request of James Aiken for workers' compensation benefits for his claim of hearing loss arising from his employment. On judicial review, the district court affirmed the commissioner. Aiken appeals. We affirm.

James Aiken began employment with Phillips Kiln Services Company, Inc., in 1985. As part of his job he was required to travel to various industrial plants in the United States and Canada. On November 10, 1990, Aiken was required to travel from Evansville, Indiana, to St. Louis, Missouri, for his employment. In Evansville, Aiken entered the airplane, which was a turbo prop Metro. He was seated in the rear of the airplane. The airplane was delayed in taking off, and during this time the engines were making a great deal of noise. Aiken testified that when the airplane landed, he felt his ears were plugged and he noticed he could not hear very well.

Dr. E.L. Grandon tested Aiken's hearing on December 26, 1990. Dr. Grandon found he had a severe sensori-neural hearing loss in his right ear. Dr. Grandon's tests showed a fifty-five percent binaural hearing loss. Aiken was fitted with hearing aides. Dr. Grandon was unable to conclude whether the flight was or was not responsible for Aiken's hearing loss. Dr. Grandon had seen Aiken in 1972 for sensori-neural hearing loss in his left ear. He had also treated Aiken for vertigo, caused by his ears, in 1976.

Aiken was examined by Dr. James Spoden on May 6, 1991. Dr. Spoden's tests showed a forty-eight percent binaural hearing loss. Dr. Spoden found the etiology of Aiken's hearing loss was difficult to ascertain. He stated there was a possibility that the hearing loss could have been partially caused by the noise exposure, especially in an ear which was already weak prior to the exposure.

Aiken filed a claim for workers' compensation benefits, claiming that his hearing loss arose out of his employment. After a hearing, a deputy Industrial Commissioner found Aiken had a permanent partial disability due to his hearing loss, and was entitled to benefits.

The employer appealed the decision to the Industrial Commissioner. The commissioner reversed the deputy's decision. The commissioner considered the lack of medical evidence causally connecting Aiken's present hearing loss to his incident of exposure to airplane noise, the short period of exposure, and claimant's age, and concluded Aiken had not carried his burden to show a causal connection between his hearing loss and the alleged work injury. On judicial review, the district court affirmed the commissioner. Aiken appealed.

Our scope of review on appeal is limited. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1991). We review to determine whether the agency decision is supported by substantial evidence when viewing the record as a whole. *Honeywell v. Allen Drilling Co.*, 506 N.W.2d 434, 435 (Iowa 1993). Evidence is substantial if a reasonable mind would accept it as adequate to reach the same

findings. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230, 232 (Iowa App. 1990).

Substantial evidence is not absent simply because it is possible to draw different conclusions from the same evidence. *Lithcote*, 471 N.W.2d at 66.

Aiken contends substantial evidence did not support the commissioner's decision. He argues the commissioner improperly considered his age as a factor in his hearing loss because there was no evidence the hearing loss was caused by age. He claims the only conclusion which can be drawn from the evidence was his hearing loss was caused by the excessive noise he was exposed to during his work-related travel. He points out that he and his wife testified his hearing was fine before the trip, and the deputy found they were credible witnesses.

We acknowledge the evidence supports the finding urged by Aiken. However, our reviewing standard requires us to consider if the evidence supports the decision made by the Commissioner, not the decision urged. *Coghlan v. Quinn Wire & Iron Works*, 164 N.W.2d 848, 852 (Iowa 1969). In applying this standard, we must broadly and liberally construe the findings of the Commissioner to uphold, not defeat, the decision. *Holmes v. Bruce Motor Freight Inc.*, 215 N.W.2d 296, 298 (Iowa 1974).

Neither doctor who examined Aiken was able to determine the cause of his hearing loss. Both doctors noted there were other possible causes for the hearing loss. Aiken had a previous noise induced hearing loss and problems with his ears which had caused vertigo. He also had a history of occupational and personal noise

exposure. He had been exposed to industrial noises through his employment. Also, Aiken's hobbies included flying an airplane and riding a motorcycle, both of which exposed him to noise.

Furthermore, Aiken had coronary artery and peripheral vascular disease, which could have impacted on the blood flow to his inner ear. Additionally, Aiken took medication for high blood pressure, and it was unknown what effect this might have on his hearing. Dr. Grandon also raised the possibility Aiken suffered a peritympanic fistula during the flight. Finally, Aiken's was 59 years of age. Although there was no medical evidence to indicate Aiken's hearing had been deteriorating over the years, we do not believe the Industrial Commissioner erred in considering Aiken's age in light of the evidence of his experiences over the years and medical condition which could have contributed to the hearing loss.

We conclude there is substantial evidence to support the commissioner's conclusion Aiken failed to show he suffered a work-related injury. We affirm the decision of the district court and the Industrial Commissioner.

AFFIRMED.