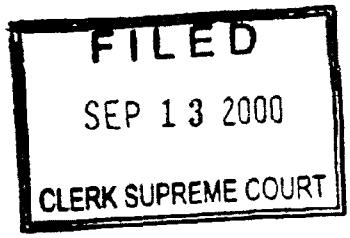
IN THE COURT OF APPEALS OF IOWA

No. 0-250 / 99-1006
Filed September 13, 2000

FLEXSTEEL INDUSTRIES, INC.,
Petitioner-Appellant,

vs.

THOMAS F. SCHOLL,
Respondent-Appellee.



Appeal from the Iowa District Court for Dubuque County, Alan Pearson, Judge.

Flexsteel appeals from the district court's ruling on judicial review upholding the Industrial Commissioner's decision that Scholl sustained a work-related injury resulting in a fifteen-percent industrial disability. **AFFIRMED.**

Les V. Reddick of Kane, Norby & Reddick, P.C., Dubuque, for appellant.

Nick J. Avgerinos and Stephen J. Smalling of Capron & Avgerinos, P.C., Chicago, Illinois, for appellee.

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

HUITINK, J.

I. Background Facts and Proceedings.

This case originated with Scholl's claim seeking workers' compensation benefits for a left shoulder injury he sustained on June 18, 1993, while employed as a truck driver at Flexsteel, Inc. Flexsteel denied liability for Scholl's benefits citing medical reports indicating Scholl's injuries were not work related.

The industrial commissioner resolved the resulting factual disputes against Flexsteel. The commissioner determined Scholl's shoulder injury arose out of and in the course of his employment in June 1993. As a result, Scholl was awarded industrial disability benefits based on a fifteen-percent industrial disability rating.

On judicial review, Flexsteel challenged the sufficiency of the evidence supporting the commissioner's determination Scholl's injury was work related. Flexsteel also challenged the commissioner's finding Scholl sustained an industrial disability as a result of his injury and the actual percentage of Scholl's industrial disability.

The district court, citing the commissioner's resolution of conflicting medical evidence, affirmed the commissioner's finding that Scholl's injury was work related. The court also rejected Flexsteel's challenge to the commissioner's finding of an industrial disability and resulting industrial disability rating.

On appeal Flexsteel first contends Scholl failed to prove his 1993 injury was work related. Flexsteel also argues there is no evidence indicating Scholl

suffered an industrial disability resulting from his 1993 injury, and even if he did, the record does not justify a fifteen-percent industrial disability.

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 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 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 v. Ciha*, 552 N.W.2d 143, 149-50 (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. Did Scholl's Injury Arise out of and in the Course of Employment?

Scholl, as the claimant, bore the burden to prove his injuries arose out of and in the course of employment. *Quaker Oats*, 552 N.W.2d at 150. An injury

arises "out of" the employment when there is a causal relationship between the employment and the injury. *See 2800 Corp. v. Fernandez,* 528 N.W.2d 124, 128 (Iowa 1995). The cumulative injury rule permits an employee to receive benefits for an accidental disability that gradually develops over a period of time. *McKeever Custom Cabinets v. Smith,* 379 N.W.2d 368, 373-74 (Iowa 1985). For purposes of this rule, the compensible injury occurs when pain prevents the employee from continuing to work. *Id.* at 74. The commissioner resolved this issue in favor of Scholl stating:

> It is determined that claimant F. Scholl has proven by a preponderance of the evidence that he sustained an injury that arose out of and in the course of his employment on June 18, 1993. That injury was a tear of his left rotator cuff that was caused by the cumulative trauma of driving the semi without power steering. Although the medical records show that there was difficulty in diagnosing claimant's condition, that difficulty was resolved when Dr. Caimes did surgery and made a post-operative diagnosis of a torn rotator cuff. Dr. Viner related the rotator cuff tear to claimant's work. Dr. Green thought that although claimant's condition was not caused by his work activities, those activities did aggravate his condition. Merely because there was some delay in making a final diagnosis and claimant did not initially make a workers' compensation claim does not mean that claimant did not suffer a work injury.

We, like the district court, find the referenced medical testimony provides sufficient factual support for the commissioner's decision. We affirm on this issue.

IV. Did Scholl's Injury Result in a Fifteen-Percent Industrial Disability?

Industrial disability measures an injured worker's lost earning capacity. *Shank,* 516 N.W.2d at 808. Factors that should be considered include the employee's functional impairment, age, intelligence, education, qualifications,

experience, and the ability of the employee to engage in employment for which he is suited. *Nelson*, 544 N.W.2d at 265-66. 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. *Id.*

The gist of Flexsteel's second argument is Scholl's unrestricted return to work following the 1993 injury and subsequent retirement for unrelated reasons preclude a finding of industrial disability. The district court correctly rejected this argument stating:

> Flexsteel's argument incorrectly focuses on the worker's actual earnings. The correct measure for industrial disability relates to the injured employee's ability to earn as well as the impact of the injury on their competitive position for employment. It is easily possible that an injury could reduce a worker's ability to earn without resulting in an immediate actual reduction in earnings. It is also possible that the injury could reduce the worker's competitive position for employment without necessarily affecting the worker's pre-injury job.
>
> In the present action, the agency has concluded that Mr. Scholl's competitive position in the job market and overall ability to earn was diminished as a result of the 1993 work related injury. This conclusion is consistent with and supported by the functional loss rating assigned by Dr. Cairns. The commissioner's conclusion that Mr. Scholl has sustained an industrial disability is supported by the record and reasonable under the circumstances.

We agree and affirm on this issue.

Flexsteel also argues these factors should at least reduce the percentage of industrial disability if they do not preclude it altogether. We decline to reduce Scholl's industrial disability rating for either reason. Scholl's return to work, and postinjury retirement for unrelated reasons, were just two of many relevant factors the commissioner considered in determining the degree of Scholl's industrial disability. We also note our preference to defer to the commissioner's

expertise on this issue. *See Second Injury Fund of Iowa v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995).

The judgment of the district court on judicial review of the industrial commissioner's decision is affirmed.

AFFIRMED.