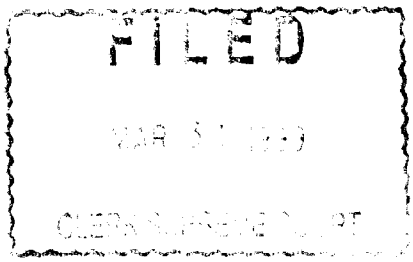
IN THE COURT OF APPEALS OF IOWA

No. 9-025 / 98-0413
Filed March 31, 1999

THOMAS ROBERTS,
Appellant,

vs.

SECOND INJURY FUND OF IOWA,
Appellee.



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

Thomas Roberts appeals a district court order denying his claim for a review-reopening of his workers' compensation benefits. **AFFIRMED.**

Paul W. Deck of Deck & Deck Law Offices, Sioux City, for appellant.

Thomas J. Miller, Attorney General, and Julie Burger, Assistant Attorney General, for appellee.

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

HUITINK, J.

Thomas Roberts appeals a district court order denying his claim for a review-reopening of his workers' compensation benefits. Because we find the Workers' Compensation Commissioner's administrative findings supported by substantial evidence, we affirm.

I. Background Facts and Procedures.

A. Original Work-Related Injury.

Thomas Roberts brought a claim for benefits against the Second Injury Fund in 1991, alleging an injury to his left arm, suffered on August 16, 1985, and a second injury to his right arm suffered June 20, 1990. At the time of the injuries, Roberts was an employee at the Sioux City John Morrell plant and earned $8.85 per hour. Following a contested case hearing, a deputy industrial commissioner determined Roberts had a ten percent impairment rating to both his left and right arms as a result of bilateral carpal tunnel syndrome.

On administrative appeal, the industrial commissioner concluded that because Roberts was still employed without loss of earnings, his disability was minimal and his loss of earning capacity did not exceed the disability for the injury to his right hand. The commissioner stated Roberts would be entitled to seek a review-reopening of his disability claim if his condition changed.

B. Review-Reopening.

Roberts voluntarily quit his employment with John Morrell in August 1993, after Morrell announced it may close the Sioux City plant at the end of the year. He immediately found employment doing general maintenance and construction work. Morrell subsequently decided to keep its Sioux City plant open.

In the time between his voluntary termination from Morrell and now, Roberts has held and lost at least three maintenance and construction jobs, earning between $5.25 and $9.05 per hour. He currently is employed at Ready Mix as a concrete truck driver, earning $8.00 per hour. Throughout this period, Roberts has continued to work without any physicians' restrictions and has not sought any medical treatment for his wrists.

On July 12, 1994, Roberts filed a petition for review-reopening against the Second Injury Fund. Following a contested case hearing, a deputy industrial commissioner ruled a substantial change in circumstances had occurred and awarded him twenty-five percent permanent partial disability benefits. The Fund appealed. The industrial commissioner reversed the deputy's findings, concluding Roberts failed to introduce any reliable medical evidence that his impairment rating had increased. The commissioner concluded Roberts terminated his employment with Morrell not because of physical impairment but out of concerns over job security. The commissioner awarded Roberts nothing on his claims.

On Roberts' petition for judicial review, the district court affirmed the commissioner's decision. Roberts has appealed, contending the district court erred in affirming the agency determination that he failed to show a substantial change in circumstances.

II. Standard of Review.

Our review of an industrial commissioner's decision is governed by Iowa Code chapter 17A. *See* Iowa Code § 86.26 (1997). In such cases, we review for correction of errors at law. *Simonson v. Snap-On Tools Corp.*, 588 N.W.2d 430, 434 (Iowa 1999).

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); *Second Injury Fund v. Nelson*, 544 N.W.2d 258, 264 (Iowa 1995). Evidence is substantial if a reasonable mind would find it adequate to reach a conclusion. *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994).

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 v. Feldman's Inc.*, 497 N.W.2d 853, 856 (Iowa 1993).

III. Roberts' Review-Reopening Petition.

Review-reopening proceedings are governed by Iowa Code section 86.14(2), which "establishes a procedure for determining whether a change in the employee's employment condition warrants an increase in compensation benefits previously awarded." *Simonson*, 588 N.W.2d at 434 (citing *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 250 (Iowa 1980)).

Our supreme court recently addressed this exact issue in *Simonson*, where it stated:

> To justify an increase in compensation benefits, the claimant carries the burden of establishing by a preponderance of the evidence that, subsequent to the date of the award under review, he or she has suffered an impairment or lessening of earning capacity proximately caused by the original injury.
>
> We have stated on several occasions that industrial disability is the product of many factors, not just physical impairment. Thus, we have recognized that a necessary showing in a review-reopening proceeding, i.e., lessening of earning capacity, may be made without proof of change in physical condition. Other factors which bear on the determination of industrial disability include age, education, experience, and inability, because of an injury, to engage in employment for which the employee is fitted.

Simonson, 588 N.W.2d at 434-35. (citations omitted.)

Roberts contends he provided substantial evidence of both a change in his physical impairment, as well as an economic change in circumstances causally related to his original injury. We will address each claim individually.

With regard to a change in Roberts' physical condition, the commissioner was presented with conflicting evidence from Dr. R.I. Sprague, a chiropractor, and Dr. David Greco, M.D. Dr. Sprague's August 28, 1995 report opined that Roberts had suffered an additional five percent impairment to both wrists. The report also indicates Dr. Sprague had not completed an exact computation of Roberts' impairment rating using the applicable A.M.A. guidelines. The record contains no other report from Dr. Sprague outlining a more detailed and complete diagnosis. Conversely, Dr. Greco's report contained a detailed evaluation of Roberts' impairment rating. Applying the appropriate medical guidelines, Dr. Greco indicated Roberts' impairment rating *improved* to a nine percent industrial disability since the original injury.

Based upon the conflicting medical evidence presented to the commissioner, we find the administrative finding of no physical change in circumstances is supported by substantial evidence. *See Coghlan v. Quinn Wire & Iron Works*, 164 N.W.2d 848, 852 (Iowa 1969)(finding 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).

With regard to an economic change in circumstances, we also find the commissioner's findings supported by substantial evidence. Roberts testified the main reason he voluntarily quit his employment with Morrell was because he feared the plant would close and he wanted to find alternative employment. He stated he

also left Morrell due to the "hurt" he felt in his arms, hands, and wrists. He sought no medical advice on whether he should continue to work at Morrell prior to ending his employment.

A self-imposed reduction in earnings is not evidence that Roberts sustained a reduction in earning capacity proximately caused by his original injury. *Simonson*, 588 N.W.2d at 435. The analysis of the *Simonson* court is equally applicable here. While it is true Roberts has sustained a reduction in earnings since his separation from Morrell, that reduction in earnings is substantially the result of personal decisions (job security) and not proximately caused by his original work-related injury.

The fact Roberts held several positions since leaving Morrell which required manual labor and the repetitive use of his arms, hands, and wrists indicates he is physically capable of such activity. The record indicates he was not terminated from any of these positions based on physical limitations. The record also reflects Morrell indicated it would rehire Roberts into the same position he left.

We find substantial evidence in the record supporting the finding that Roberts has suffered no change in earning capacity due to his work-related injury since the original benefit award. We accordingly affirm the district court.

AFFIRMED.