IN THE COURT OF APPEALS OF IOWA

No. 0-053 / 99-854
Filed August 16, 2000

QUAKER OATS COMPANY,
Petitioner-Appellant,

vs.

HARRY HITTIE,
Respondent-Appellee.

FILED
AUG 16 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

The petitioner appeals from the district court ruling on judicial review affirming the industrial commissioner's award of permanent partial disability benefits to the respondent on his workers' compensation claim. **AFFIRMED.**

James M. Peters of Simmons, Perrine, Albright & Ellwood, P.L.C. Cedar Rapids, for appellant.

Leslie E. Stokke, Cedar Rapids, for appellee.

Considered by Mahan, P.J., Zimmer, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

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HAYDEN, S.J.

Petitioner Quaker Oats Company claims substantial evidence did not support the commissioner's finding respondent had a work related injury to his left shoulder because there was no expert testimony of an injury or impairment. Petitioner-appellant (Quaker Oats) also claims the industrial commissioner erred in determining the respondent appellee (Hittie) had a twenty-five percent industrial disability.

Hittie has worked for Quaker Oats since 1980. He does not have a high school diploma and has limited communication skills. At the time of injury he was forty-nine years old.

On April 19, 1993, Hittie was injured at work while he was lifting a heavy roll of film into a machine. He asserts he suffered a pop in the back of his neck and felt pain down his neck and left side of his body. He received medical treatment and therapy for his arm, neck and shoulder. Quaker Oats disputes Hittie suffered neck and shoulder injuries which were related to the April 19, 1993 work injury. Since that time Hittie has worked full-time for Quaker Oats.

On September 6, 1996, Dr. Winthrop Risk, a neurologist, evaluated Hittie for an opinion on permanent partial impairment rating. His diagnosis is left carpal tunnel syndrome and left ulnar nerve entrapment syndrome. These two conditions were operated on August 4, 1993. Also Hittie suffered first dorsal compartment left wrist. This was operated on August 26, 1993. Also he suffered left radial tunnel syndrome and that was operated on the spring of 1994.

It was Dr. Risk's opinion Hittie's condition is related to the event of April 19, 1993. Dr. Risk agreed with the evaluation of Dr. Grado and Dr. Miller

and concurred with their calculation. This is fourteen percent permanent partial impairment of the left upper limb due to the carpal tunnel, ulner nerve and dorsal compartment. There is also a one percent rating due to the radial nerve, per Dr. Lowe. These calculations were combined to give a fifteen percent impairment of the left upper limb. This translates into a nine percent impairment of the body as a whole.

Dr. Lowe, Dr. Ray Miller, and Dr. Chad Abernathey treated Hittie for these conditions. Dr. Abernathey performed the surgeries. Dr. Grado was also one of Hittie's doctors. These doctors furnished Dr. Risk their medical reports and history on appellee Hittie.

The deputy insurance commissioner concluded Hittie incurred an injury to his upper extremity and to his neck resulting in several surgeries that arose out of and in the course of his employment on April 19, 1993. The deputy commissioner awarded Hittie 35% industrial disability.

Quaker Oats appealed this decision to the industrial commissioner. The commissioner reviewed the record including the transcript of the hearing before the deputy and all the exhibits admitted. This review was de novo.

The industrial commissioner determined Hittie failed to carry his burden to show his neck condition was caused by his work injury of April 19, 1993. Hittie did show his arm injury was caused by his work injury of April 19, 1993. The industrial commissioner also determined Hittie's arm injury also involved his left shoulder. The commissioner determined Hittie was unable to work as he formerly did for Quaker Oats and has suffered severe restrictions.

The workers compensation commissioner considered Hittie's medical and work history before and after his April 19, 1993 injury. She also considered Hittie's education; his intellectual abilities; his wages prior to and after his injury; the location and severity of his injury; his age; functional impairments; restrictions and all appropriate factors of industrial disability. The workers compensation commissioner awarded Hittie twenty-five percent industrial disability for the injury to his left arm which also involves his shoulder.

Quaker Oats appealed the commissioner's decision to the district court. The district court considered the appeal on the record and the briefs of counsel without oral argument. The commissioner's award of industrial disability of twenty-five percent to Hittie was affirmed by the district court.

On judicial review of agency action, the court's review is not de novo. The court must not re-assess the weight of the evidence because the weight of the evidence remains within the agency's exclusive domain. *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 234 (Iowa 1996); *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993).

Quaker Oats has now appealed to the Iowa Supreme Court and this case has been transferred to the Iowa Court of Appeals for additional review and decision. We affirm.

On appeal Quaker Oats claims there was no substantial evidence to support the commissioner's findings Hittie had an injury to his left shoulder because there was no expert testimony of an injury or permanent impairment.

Our review is governed by the administrative procedures set forth in chapter 17A of the Iowa Code. *Cobb v. Employment Appeal Bd.*, 506 N.W.2d

445, 447 (Iowa 1993). We accord an agency only limited deference on matters of law, but an agency's findings of fact are binding on this court if supported by substantial evidence in the record when the record is viewed as a whole. Evidence is substantial if a reasonable mind would accept it as adequate to reach the findings. *Id.*

Under the administrative law scheme nearly all disputes are won or lost at the agency level. Our review of agency action under Iowa Code section 17A.20 is carefully confined to corrections of errors of law. *Polk County Drainage Dist. Four v. Iowa Natural Resources Council,* 377 N.W.2d 236, 239 (Iowa 1985). We reapply the standards outlined in Iowa Code section 17A.19(8). *LeFebure Corp. v. Iowa Dep't of Job Serv.,* 341 N.W.2d 768, 770 (Iowa 1983).

When this court reviews a decision of a district court rendered pursuant to section 17A.19, this court applies the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. *Jackson County Public Hospital v. Public Employment Relations Bd.,* 280 N.W.2d 426, 429-30 (Iowa 1979).

The commissioner found there are numerous references in the medical records, especially the records of the Iowa Medical Clinic indicating claimant's arm injury extended beyond the shoulder joint and into the body as a whole. Both before and after his surgeries Hittie experienced shoulder pain and impairment, as noted on numerous occasions. The commissioner further found medical records clearly establisi ed the left arm injury extends to the shoulder and therefore is a body as a whole injury.

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity. Consideration must also be given to the injured employee's age, education, qualifications, experience and inability to engage in employment for which the employee is fitted. See *Olson v. Goodyear Service Stores,* 255 Iowa 1112, 1120, 125 N.W.2d 251, 256 (1963).

At the hearing before the deputy insurance commissioner Hittie and his wife testified to the pain and restrictions he suffered in his shoulder and also the symptoms and impairment to his shoulder.

The question of causal connection is essentially within the domain of expert testimony. *Lithcote Co. v. Ballenger,* 471 N.W.2d 64, 66 (Iowa App. 1991). The commissioner must consider the expert testimony together with all other evidence introduced bearing on causal connection between the injury and the disability. *Sherman v. Pella Corp.,* 576 N.W.2d 312, 321 (Iowa 1998). The issue of whether a given condition is causally connected to a work injury is a question for medical experts. *Id.*

The commissioner concluded the medical records clearly established Hittie's left arm injury extends to the shoulder and is a body as a whole injury. We agree with district court in its conclusion the commissioner's finding is supported by substantial evidence in the medical records and evidence.

Industrial disability means reduced earning capacity. Body impairment is one factor in determining industrial disability. Other factors to be considered include the claimant's age, education, qualifications, experience and inability, due to injury, to engage in the employment for which the claimant is fitted. There is

no set formula for weighing these factors. It is necessary for the commissioner to draw upon prior experience and specialized knowledge to make a finding as to industrial disability.

We determine the commissioner considered the above criteria in awarding a twenty-five percent industrial disability to Hittie for injuries incurred in the April 19, 1993 work injury. The commissioner found Hittie had severe restrictions and could not do the work he did previously for Quaker Oats for the past seventeen years. The decision is supported by substantial evidence in the record.

We affirm the district court and the worker's compensation commissioner.

AFFIRMED.