

IN THE COURT OF APPEALS OF IOWA

No. 7-157 / 96-0833

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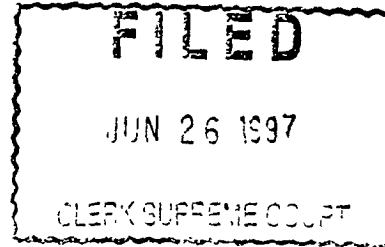
JAMES R. SMART,

Plaintiff-Appellant,

vs.

**JOHN DEERE DUBUQUE WORKS
OF DEERE & COMPANY,**

Defendant-Appellee.



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

Petitioner appeals from the district court's ruling on judicial review affirming
the industrial commissioner's decision denying his claim for workers' compensation
benefits. **AFFIRMED.**

Scott J. Nelson of Hammer, Simon & Jensen, Dubuque, for appellant.

Leo A. McCarthy and Jennifer A. Clemens of Reynolds and Kenline, L.L.P.,
Dubuque, for appellee.

Heard by Habhab, C.J., and Cady and Vogel, JJ.

HABHAB, C.J.

Claimant James Smart appeals the district court's affirmance of the industrial commissioner's decision denying his claim for worker's compensation benefits. There is substantial evidence in the record to support the commissioner's finding and we affirm.

On May 22, 1991, Smart was working for respondent John Deere Dubuque Works of Deere & Company when he injured his back while placing a heavy motor on a work bench. On May 23, 1991, the plant physician, Dr. McClenahan, diagnosed Smart's injury as muscle spasms in the lumbar spine. He prescribed treatment which included ice, therapy, muscle relaxants, and light duty work for the following week. Smart received follow-up treatment from Dr. McClenahan, and after the temporary restrictions expired, he returned to full duty without further restrictions.

In January 1992, Smart quit his employment at John Deere and secured employment as an electrician at the University of Wisconsin. Smart's back pain worsened and extended into his legs. He started seeing a chiropractor, Dr. Reinen, in February 1992. However, his condition continued to deteriorate.

Smart was then referred to a neurosurgeon, Dr. Bogdanowicz. Dr. Bogdanowicz discovered Smart had a herniated disc and performed surgery to correct the problem in May 1992.¹

¹ We note Smart has a history of back problems and underwent a prior laminectomy in 1988.

Smart filed a workers' compensation claim alleging the herniated disc was a work-related injury for which he should receive medical benefits and partial disability benefits.

Both Dr. Bogdanowicz and Dr. McClenahan testified at the hearing. Dr. Bogdanowicz gave some indication the herniated disc originated with Smart's work-related injury in May 1991. Dr. McClenahan testified the injury only involved acute muscle spasms and did not cause the herniated disc.

After a hearing before a deputy industrial commissioner, the deputy entered an arbitration decision denying benefits to Smart. The deputy commissioner concluded Smart had failed to prove his injury caused his herniated disc and the subsequent need for back surgery. After Smart's appeal, the industrial commissioner adopted the arbitration decision.

Smart filed a petition for judicial review challenging the industrial commissioner's decision. On April 3, 1996, the district court entered a ruling affirming the decision. After reviewing the record, the court determined there was sufficient evidence to support the commissioner's decision.

Smart appeals. He argues the deputy industrial commissioner's ruling is not supported by the evidence.

Judicial review of the actions of an administrative agency is governed by the standards of Iowa Code section 17A.19(8). *Robbennolt v. Snap-On Tools Corp.*, 555

N.W.2d 229, 233 (Iowa 1996). The court acts in an appellate capacity by reviewing the agency's decision solely to correct any errors of law. *Id.* We do not exercise de novo review. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995).

The findings of the industrial commissioner are akin to a jury verdict and we broadly apply them to uphold the commissioner's decision. *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1984). We will reverse an agency's findings only if, after reviewing the record as a whole, we determine substantial evidence does not support them. *Terwilliger*, 529 N.W.2d at 271.

Substantial evidence is not absent simply because it is possible to draw different conclusions from the same evidence. *Riley v. Oscar Mayer Foods Corp.*, 532 N.W.2d 489, 491 (Iowa App. 1995). Our focus is whether the evidence is sufficient to support the decision made, not whether it is sufficient to support the decision not made. *Id.* A reviewing court may interfere with the agency's findings only if the evidence is uncontradicted and reasonable minds could not draw different inferences. *Id.*

The record reveals that after Smart's release to full duty he did not seek any additional treatment for back pain for the duration of his employment at John Deere. It was after he left John Deere, at least six months after the work-related injury, when his condition worsened. At that time, Smart was employed by the University of

Wisconsin at Madison in a position which required him to perform heavy physical labor such as lifting, pulling, pushing, bending, and twisting. Further, in February 1992 he was injured as the result of being pushed backward off a bar stool. He sustained a concussion and received seven stitches to his head. There is substantial evidence in the record to support the adoption by the industrial commissioner of the deputy industrial commissioner's finding, "Nothing in the record suggests that claimant ruptured his disc in the May 1991 incident. In fact, quite the opposite is true. The medical records indicate that claimant's condition had improved, and he was sent back to work, which he performed, without incident, for the next seven months."

Smart has the burden of proving by a preponderance of the evidence the disability on which he now bases his claim is causally related to injuries arising out of and in the course of his employment. *See Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1991). A possibility of causation is not sufficient; a probability is necessary. *See Holmes v. Bruce Motor Freight, Inc.*, 215 N.W.2d 296, 297 (Iowa 1974). The question of causal connection is essentially within the domain of expert testimony. *Lithcote*, 471 N.W.2d at 66. However, the weight to be given the expert opinion is for the agency as fact finder. Expert opinion testimony, even if uncontroverted, may be accepted or rejected in whole or in part by the trier of fact. *Id.*

As we stated in *Riley*:

000456

A reviewing court may interfere with the agency's findings only if the evidence is uncontradicted and reasonable minds could not draw different inferences. 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. If evidence is in conflict, however, the reviewing court has no room to interfere.

Riley, 532 N.W.2d at 491-92.

There is substantial evidence supporting the findings of the industrial commissioner. We affirm the decision of the district court.

AFFIRMED.