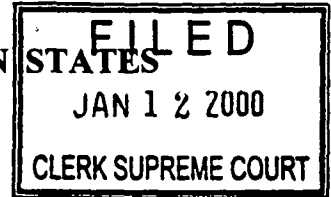


IN THE COURT OF APPEALS OF IOWA

No. 1999-481 (9-738) / 98-2237

Filed January 12, 2000

BIL MAR FOODS OF IOWA, Employer, and **CONSTITUTION**
SERVICES COMPANY, Insurance Carrier,
Appellants,



vs.

ELEANOR J. TOWNSEND,
Appellee.

Appeal from the Iowa District Court for Buena Vista County, Frank B. Nelson,
Judge.

Bil Mar Foods appeals a district court ruling on judicial review which affirmed
an award of workers' compensation benefits to Eleanor Townsend. **AFFIRMED.**

Thomas M. Plaza and Judith Ann Higgs of Heidman, Redmond, Fredregill,
Patterson, Plaza & Dykstra, L.L.P., Sioux City, for appellants.

Mark S. Brownlee of Kersten Brownlee Hendricks L.L.P., Fort Dodge, for
appellee.

Heard by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

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VOGEL, J.

Bil Mar Foods appeals a district court ruling on judicial review which affirmed an award of workers' compensation benefits to Eleanor Townsend. We affirm.

Background facts. Eleanor Townsend began working at Bil Mar Foods' turkey processing plant in 1972. She worked briefly as a transferor and then moved to trimming work. As a trimmer, the five-foot, three-inch tall, 115-pound Townsend was required to lift, carry, and throw birds which ranged from thirteen to thirty-five pounds. In 1977 Townsend was treated for neck and upper back pain after, as she described, "something slipped" when she was shackling a bird. X-rays revealed that Townsend had severe disc degeneration in her neck. Townsend had occasional neck-pain symptoms following the incident, but continued to work regularly for the next ten years and sought no further medical care for her neck.

On July 19, 1988, Townsend experienced a sharp pain in her neck while lifting a bird above shoulder level. She reported to the company's nurse, rested for awhile, and then returned to work. Over the next six years of her employment with Bil Mar, Townsend sought general medical and chiropractic care for her neck, but continued to experience and report neck pain to the company nurse. While Bil Mar attempted to accommodate Townsend's continuing physical limitations with alternative work assignments, the assignments still involved standing all day or other activities which caused pain in her neck. On June 30, 1994, Townsend resigned because she could no longer tolerate the pain and discomfort.

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In June of 1995, Townsend filed petitions seeking compensation for injuries sustained in 1988 and 1994. Following a hearing, a deputy industrial commissioner found that Townsend had sustained an injury on July 19, 1988, and that she continued to suffer cumulative trauma injuries. The deputy concluded Townsend was permanently and totally disabled as of June 30, 1994. The industrial commissioner affirmed the deputy's award of permanent total disability benefits, and the commissioner's decision was upheld on judicial review. Bil Mar now appeals.

Scope of review. We review district court decisions regarding the validity of agency actions for correction of errors at law. *U.S. West Communications, Inc. v. Overholser*, 566 N.W.2d 873, 875 (Iowa 1997) (citations omitted). In determining whether the law has been correctly applied, we give weight to the commissioner's interpretation of the relevant statutory provisions, but are not bound by it. *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 180 (Iowa 1995). We are bound by the commissioner's factual findings if they are supported by substantial evidence in the record. *Id.* The possibility of drawing different conclusions from the same evidence does not mean that an agency's decision lacks substantial support. See *Schreckengast v. Hammermills, Inc.*, 369 N.W.2d 809, 811 (Iowa 1985). Evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. *Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d 845, 849 (Iowa 1995).

I. Sufficiency of the evidence. Bil Mar first claims there is insufficient evidence to support the commissioner's finding that Townsend is permanently and

totally disabled as of June 30, 1994, due to cumulative trauma. Bil Mar further claims there is insufficient evidence to support that Townsend's June 30, 1994, injury was causally connected to her current disability.

Our workers' compensation case law recognizes cumulative injuries which develop over time from performing work-related activities and ultimately result in industrial disability. *See, e.g., Ellingson v. Fleetguard, Inc.*, 599 N.W.2d 440, 444 (Iowa 1999); *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 372-74 (Iowa 1985). In such cases, the date of injury is appropriately fixed at "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Oscar Meyer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1997). This formula for determining the time of injury does not require a significant causal occurrence on the established date of injury. *See Ellingson*, 599 N.W.2d at 444 (citation omitted). Compensation is provided for the time during which the employee is unable to work because of pain or physical inability. *See McKeever*, 379 N.W.2d at 274.

Bil Mar does not dispute that Townsend is disabled, but asserts that her disability cannot be reasonably attributed to any cumulative injury. Bil Mar contends that Townsend's current disability can only be attributed to her pre-existing degenerative condition¹ or, at best, to the traumatic injury she suffered on July 19,

¹ The pre-existing condition Bil Mar refers to is with regard to the diagnosis Townsend received in 1977 after experiencing neck strain.

1988.² However, after reviewing the record, we find sufficient evidence to support that Townsend suffered a compensable injury on June 30, 1994, when she was no longer able to work and that the injury was causally connected to her work. Townsend worked more than twenty years performing difficult and constant physical labor. There was sufficient medical evidence before the deputy industrial commissioner to support that Townsend's neck problems over the years were either caused by or aggravated by work-related activity. The industrial commissioner concluded that all of the disability in this case was attributable to Townsend's employment and that the repeated minor traumas she suffered occurred throughout the duration of her employment. The fact that Townsend's condition continuously worsened to the point that she could not even tolerate lighter-duty assignments only further supports that her injury was, in fact, cumulative.

In evaluating the extent of Townsend's industrial disability, the commissioner considered factors which affect her earning capacity. Among the factors to consider are the employee's functional disability, age, education, qualifications, experience, and the ability of the employee to engage in employment for which the employee is fitted. *See Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 813 (Iowa 1994); *see also McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 192 (Iowa 1980). There are no guidelines establishing the weight to be given to each of the factors. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 68 (Iowa App. 1991). Rather, it is necessary for the

²Any claim Townsend might have for the 1988 injury would now be barred by the statute of limitations.

commissioner to draw upon prior experience and general and specialized knowledge to make a finding in regard to the degree of industrial disability. *Id.*

Townsend was age fifty-nine when she resigned from Bil Mar. She never graduated from high school nor sought vocational training, and is not qualified to do much more than physical labor. A vocational rehabilitation counselor who testified before the agency concluded that Townsend had “lost access to 100% of the jobs she had access to” prior to her injury. Given her age, education, experience and current physical limitations, we conclude there is sufficient evidence to support the award of permanent total disability benefits.

II. Statute of limitations. In accordance with its theory that Townsend’s disability actually stemmed from a traumatic injury on July 19, 1988, rather than a cumulative injury, Bil Mar also claims the district court erred in failing to find that Townsend’s claims were barred by the two-year statute of limitations. As we have previously determined there is sufficient evidence to support that commissioner’s finding of a cumulative injury, we find it unnecessary to address this issue.

III. Social security benefits. Bil Mar next contends the district court erred in determining that the commissioner did not rely on Townsend’s receipt of social security disability benefits in concluding that she was totally and permanently disabled. The district court found “no indication that the commissioner relied on this fact in reaching her conclusion regarding [Townsend’s] disability.” After reviewing the record, we concur with the district court’s conclusion.

IV. Credit for previous payments. Finally, Bil Mar claims the commissioner erred in failing to credit thirty-five weeks of permanent disability paid in 1992 against the award. Bil Mar asserts that the parties had previously stipulated that it was entitled to this credit; Townsend maintains that the parties' stipulation only confirmed the amount of the payments made. We find no such stipulation in the record and therefore find no evidence to support this claim.

Having considered all issues properly before us on appeal, we hereby affirm the district court's ruling on judicial review.

AFFIRMED.

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