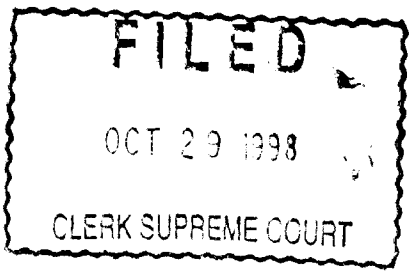
IN THE COURT OF APPEALS OF IOWA

No. 8-332 / 97-1021



HAROLD E. HINRICHS,
Appellant,

vs.

CHURCHILL TRUCK LINES, INC., and **FIDELITY & CASUALTY OF NEW YORK,**
Appellees.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Harold Hinrichs appeals a district court's ruling on judicial review which affirmed the industrial commissioner's determination that Hinrichs had a twenty-five percent industrial disability. **AFFIRMED.**

Steven C. Jayne, Des Moines, for appellant.

Dorothy L. Kelley, Des Moines, for appellees.

Heard by Cady, C.J., and Streit and Vogel, JJ., but decided by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Harold Hinrichs appeals a district court's ruling on judicial review which affirmed the industrial commissioner's determination that Hinrichs had a twenty-five percent industrial disability. We find no evidence that the commissioner gave improper consideration to Hinrichs' age, and further find that the ruling was reasonable and supported by substantial evidence. We therefore affirm.

Background facts. In 1971, Harold Hinrichs began working for Churchill Truck Lines as a truck driver. On or about March 5, 1993, Hinrichs suffered an injury to his left shoulder when he slipped off the back end of his truck. An initial examination revealed an abnormal left rotator cuff. After several medical visits, the treating physician felt that Hinrichs had reached a point of maximum medical improvement and imposed permanent activity restrictions.

Due to the permanent restrictions, Hinrichs could not continue working as a union driver and was terminated pursuant to the union contract in July of 1993. Churchill Truck Lines voluntarily engaged vocational rehabilitation services from Diane and David McGuire to assist Hinrichs in obtaining alternative employment. Prior to his first vocational rehab appointment, Hinrichs suffered a cerebral vascular accident which resulted in the loss of sight of his right eye. As a result, Hinrichs was disqualified from renewing his DOT certificate and chauffeur's license. The McGuires made extensive efforts to assist Hinrichs, and presented him with available job opportunities within his limitations. The McGuires eventually recommended that

vocational assistance be discontinued because of Hinrichs' lack of motivation and cooperation. Hinrichs, however, claimed that the McGuires referred jobs to him which exceeded his physical abilities and that his relationship with the McGuires ended when Dave became frustrated and verbally abusive with him.

Hinrichs filed a workers' compensation action before the Iowa Industrial Commissioner. On September 18, 1995, an arbitration decision was issued by a deputy industrial commissioner, awarding Hinrichs healing period benefits and industrial disability of twenty-five percent. The deputy indicated that he considered Hinrichs' age as a factor in determining the award. Hinrichs appealed to the industrial commissioner, asserting that the deputy commissioner erroneously reduced the award because of his age. The industrial commissioner affirmed the twenty-five percent disability award without specifically addressing the age issue. Hinrichs asked for a rehearing, seeking a correction of the rate of compensation and clarification as to how the commissioner factored in his age in determining the amount of industrial disability. After rehearing, the commissioner issued a ruling which corrected the rate of compensation and stated that there was no reduction of industrial disability made due to Hinrichs' age. Hinrichs petitioned for judicial review. The district court affirmed the agency decision and Hinrichs 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.*

I. Age factor. Hinrichs argues that his near-retirement age is a factor that should have increased his industrial disability award. Hinrichs asserts the deputy commissioner erroneously considered his age as a factor which reduced industrial disability, and that the industrial commissioner then failed to consider his age as an increasing factor.

Industrial disability measures an injured worker's lost earning capacity. *See Quaker Oats Co. v. Ciha*, 552 N.W.2d 143, 157 (Iowa 1996) (citations omitted). Factors that should be considered include 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). 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 commissioner to draw upon prior experience and general and specialized knowledge to make a finding in regard to the degree of industrial disability. *Id.*

The deputy found:

> The claimant's proximity to normal retirement age is a factor that is to be considered when assessing industrial disability. The workers' compensation system is not intended or designed to be a supplement for normal retirement. It is intended to replace earnings that are lost as a result of a work-related injury. . . . It is considered important by the undersigned that the injury forced claimant out of what had been his customary line of work and pushed him into a premature retirement. It is important that any return to work would have been at a very large reduction in pay.

The deputy did not make a specific finding that Hinrichs' age increased or decreased his industrial disability award.

Hinrichs relies on the case of *Second Injury Fund v. Nelson*, 544 N.W.2d 258 (Iowa 1996), to support his argument that age should be viewed as a factor which increases industrial disability. However, with respect to this narrow issue, *Nelson* does not hold that advanced age in the employment context must be a factor that increases industrial disability. Rather, the court reiterated that age is appropriately considered to the extent that it affects actual employability. *See Nelson*, 544 N.W.2d at 266. Again, age is only one of several factors to consider in determining employability. *See Shank,* 516 N.W.2d at 813.

Hinrichs further argues that the commissioner was required to make a factual finding and offer a legal analysis as to the impact of his age on the industrial disability award. The law does not require the commissioner to discuss each and every fact in the record and explain why or why not she has rejected it. Such a requirement would be unnecessary and burdensome. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 274 (Iowa 1995). Even so, the commissioner included in her ruling that Hinrichs

was fifty-seven years old at the time of the injury, that age was a factor to consider in determining industrial disability and that there are no guidelines as to the weight each factor considered should be given. In the ruling on rehearing the commissioner stated: "It should be noted that claimant's industrial disability as established by the appeal decision was not reduced by his age." We do not find legal error in the commissioner's ruling.

II. Substantial evidence. Finally, Hinrichs asserts that the commissioner's decision was unreasonable, unsupported by the evidence, and exhibited an abuse of discretion. Hinrichs particularly argues that his industrial disability award is inconsistent with previous awards to other claimants involving substantially similar fact patterns. In addressing this point on judicial review, the district court wrote:

> The determination of a claimant's industrial disability is by its nature a case-specific exercise. . . . Even if the proper authority existed for the Court to generate some all-inclusive analytical matrix which plotted all of the commissioner's decisions and all the factors influencing each decision in order to determine what the commissioner should do in this particular case, the Court does not believe that such an exercise would compel a result in favor of Hinrichs.

We concur with the district court's reasoned analysis and find substantial evidence to support the commissioner's decision. In finding that Hinrichs had suffered a twenty-five percent industrial disability, the commissioner, in her de novo review, considered Hinrichs' functional disability, age, education, qualifications, experience, and ability to engage in suitable employment. The commissioner also found that Hinrichs was poorly motivated to find new employment and had frustrated attempts

to secure him new employment. We find that the commissioner's decision was reasonable, supported by substantial evidence and did not exhibit an abuse of discretion.

Having considered all issues properly before us on appeal, we affirm the district court.

AFFIRMED.