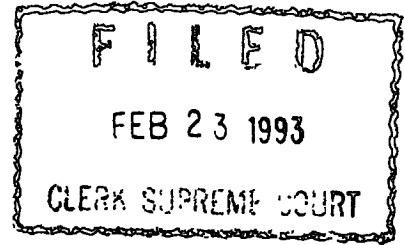


IN THE COURT OF APPEALS OF IOWA

No. 2-533 / 92-162



PATRICIA TERWILLIGER,

Appellant,

vs.

ROYAL INSURANCE COMPANY and SNAP-ON TOOLS CORPORATION,

Appellees.

Appeal from the Iowa District Court for Kossuth County,
Joseph J. Straub, Judge.

Terwilliger appeals a district court decision which affirmed and remanded the decision of the Industrial Commissioner. **AFFIRMED.**

Mark S. Soldat, Algona, for appellant.

Paul C. Thune of Peddicord, Wharton, Thune & Spencer,
P.C., Des Moines, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

Petitioner, Patricia Terwilliger, filed three claims for worker's compensation for injuries to her neck, shoulders, arms, and hands. Terwilliger also filed a fourth claim alleging a work-related leg injury on February 15, 1988, but she dismissed it before the Industrial Commissioner's ruling. The Industrial Commissioner found Terwilliger's injuries from 1984 and 1985 were barred by the statute of limitations. The Commissioner awarded benefits for injury to the hands, but denied benefits for the injury to the neck and shoulders. The district court affirmed in part and remanded in part the commissioner's ruling. Terwilliger seeks review from this court.

I. Facts.

In December 1973, Patricia Terwilliger began working for Snap-On Tools as an electrical assembler. At various times from 1978 to 1983, Terwilliger experienced pain in her fingers, back, and neck but did not miss any work because of these problems. On October 2, 1984, Terwilliger experienced pain in her right wrist and arm at work and as a result of this wrist pain, she was off work until October 15, 1984.

On March 21, 1985, Terwilliger complained of pain in her right and left elbows. She was off work due to this pain until May 13, 1985. She sought treatment from a

number of physicians who diagnosed her as suffering from either work-related carpal tunnel syndrome or tendonitis, with functional overlay and hysterical neurosis.

In the fall of 1987, Terwilliger received treatment for her bilateral carpal tunnel syndrome. She underwent carpal tunnel surgeries to her hands and was off work from August 24, 1987, to February 22, 1988. On May 31, 1988, Dr. Bergman, Terwilliger's treating physician, opined that she sustained a permanent impairment of two percent of the right hand and one percent of the left hand as a result of her bilateral carpal tunnel condition. Terwilliger was also evaluated by Dr. Crane, who opined that Terwilliger did not currently suffer from carpal tunnel syndrome, but assigned a permanent partial impairment of three percent for each hand as a result of her surgeries. In addition, Dr. Crane found no objective evidence of shoulder or neck impairment.

In June 1988, Terwilliger filed three petitions alleging work-related injuries to her upper extremities, shoulder, and neck occurring on October 2, 1984, March 21, 1985, and August 23, 1987. At the time of the final hearing in this case, Terwilliger was forty-seven years old and working in the metal box assembly department at Snap-On. She testified she was "tolerating" this work and acknowledged that Snap-On had cooperated with her in returning her to work following her surgery.

The Industrial Commissioner found Terwilliger's injuries from 1984 and 1985 were barred by the statute of limitations. It rejected Terwilliger's argument that there was no statute of limitations or date of injury in this case because she continues to work for Snap-On Tools.

The Industrial Commissioner found Terwilliger sustained a work injury on August 24, 1987, when she was compelled to leave work due to pain or disability from her bilateral carpal tunnel injury. It found Terwilliger's injury was confined to her hands and wrists and did not extend to her body as a whole. The Industrial Commissioner found Terwilliger's complaints of shoulder and neck pain were the result of functional overlay and did not result in any impairment or disability to her body as a whole. It concluded Terwilliger had a permanent impairment of three percent to her right and left hands as a result of her work-related injury which, under Iowa Code section 85.34(2)(s), entitled her to twenty weeks of benefits. In addition, the Industrial Commissioner concluded Terwilliger proved entitlement to healing period benefits. It rejected the request for sanctions under Iowa Rule of Civil Procedure 80(a) and penalty benefits under Iowa Code section 86.13. The Industrial Commissioner ordered Terwilliger to pay the costs of the appeal.

Terwilliger sought judicial review. The district court concluded the Industrial Commissioner's decision failed to indicate that it considered all of the evidence in the

record in determining the extent of functional impairment to Terwilliger's hands. Therefore, the district court remanded the case to the agency so it could evaluate all permanent impairment evidence, including possible preexisting psychological conditions in determining the extent of her impairment. In all other respects, the district court affirmed the decision. It concluded the costs of the appeal should be taxed three-fourths to Terwilliger. Terwilliger filed a rule 179(b) motion which was denied by the court.

Terwilliger appeals. We affirm the district court.

II. Scope of Review.

The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. To make that determination this court applies the standards of Iowa Code section 17A.19(8) (1991) to the agency action to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings.

Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

III. Analysis.

Terwilliger sets forth seven issues on appeal. In order to facilitate the clarity of this decision, some issues will be combined and considered in a differing order than set forth by Terwilliger in her brief. We will first look at Terwilliger's contention that the Commissioner erred in determining the cumulative injury date for rate and limitations purposes. Terwilliger asserts the injury date should be the last known date of cumulative injury period appearing in the evidentiary record. Terwilliger

therefore asserts the injury date is a "running" date. The Commissioner rejected a "running" date and determined the injury date is the first date the cumulative injury causes the worker to miss work. The Commissioner determined that date to be August 24, 1987.

Our supreme court recently addressed this issue in Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992). In Tasler, the court stated:

[W]e believe that for purposes of computing benefits it is appropriate to fix the date of injury as the time at which the "disability manifests itself." "Manifestation" is best characterized as 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. .

. . . We thus reject an interpretation of the term "manifestation" that will always require an employee suffering from a repetitive-trauma injury to fix, as the date of the accident, the time at which the employee first became aware of the physical condition, presumably through medical consultation, since by their very nature, repetitive trauma injuries often will take years to develop to the point where they will constitute a compensable workers' compensation injury. Instead, the Commissioner is entitled to consider a multitude of factors such as absence from work because of inability to perform, the point at which medical care is received, or others, none of which is necessarily dispositive.

Thus, for purposes of the cumulative injury rule, the Commissioner's determination regarding the date on which the injury manifests itself, so long as supported by substantial evidence as required by Iowa Code section 17A.19(8)(f), will not be disturbed on appeal.

Id. at 829-830 (citations omitted).

Our review of the record leads us to conclude that there is substantial support for the Commissioner's

determination that the cumulative micro traumas Terwillinger sustained during the course of her employment manifested themselves August 24, 1987, the date Terwillinger was forced to leave work for six months and have surgery to her hands.

In a related claim, Terwillinger asserts the Commissioner erred in implicitly finding that there were three separate cumulative injuries. Terwillinger claims that because of this implicit finding the Commissioner incorrectly applied the statute of limitations and erred in denying two of her claims. The statute of limitations for worker's compensation claims states:

An original proceeding for benefits will not be maintained in any contested case unless the proceeding is commenced within two years from the date of the occurrence of the injury for which benefits are claimed or, if weekly benefits are paid under section 86.13 [compensation payments], within three years from the date of the last payment of the weekly compensation benefits.

Iowa Code § 85.26(2) (1991).

In two of her claims, Terwillinger pled October 2, 1984, and March 21, 1985, as injury dates. She attempts to clarify those dates by stating they are dates on which the injury manifested itself, not injury dates. If, as Terwillinger contends, October 2, 1984, and March 21, 1985, are dates the injury manifested itself then, under Tasler, they are barred by the two year statute of limitations. Tasler, 483 N.W.2d at 829. Furthermore, the Commissioner's

ruling on October 2, 1984, and March 21, 1985, as separate injury dates operated in Terwillinger's favor. If we agreed with Terwillinger's position that the three pled dates are part of one cumulative claim which first manifested itself on October 2, 1984, the statute of limitations on all three of her claims would have begun to run on October 2, 1984, the first manifestation. We do not find merit in Terwillinger's assertion that the Commissioner misapplied the statute of limitations.

Terwillinger's next assignment of error is that there was not substantial evidence to support the Commissioner's finding that Terwillinger's work-related cumulative injury only affected her hands and wrists and did not extend to her body as a whole. The Commissioner found that Terwillinger experienced pain in her shoulder and her neck, but held Terwillinger had not carried her burden of proof to show her neck and shoulder pain were caused by a work injury. Our exhaustive review of the record indicates sufficient evidence exists to support the Commissioner's findings of a cumulative injury only to the hands and wrists. The commissioner paid careful attention to the testimony of Dr. Crane and Dr. Bergman who both confined impairment to the hands. Several of the physicians who have treated Terwillinger have noted the existence of emotional magnification or functional overlay with regard to her symptoms.

Expert opinion testimony, even if uncontroverted, may be accepted or rejected in whole or in part by the commissioner, as a finder of fact. Sondag v. Ferris Hardware, 220 N.W.2d 903, 907 (Iowa 1974). Further, the finder of fact determines what weight should be given to such an opinion, which may be affected by the expert's assumptions and other surrounding circumstances. Bodish v. Fischer, Inc., 257 Iowa 516, 521, 133 N.W.2d 867, 870 (1965). With the foregoing principles in mind, we determine substantial evidence existed to support the commissioner's conclusion that Terwilliger's August 24, 1987, cumulative injury was confined to her hand and wrist.

Terwilliger's next claim is that the Commissioner erred in failing to determine the due and payment dates for weekly disability compensation. The Commissioner directed the parties to calculate interest on any weekly benefits not paid when due based on Iowa Code section 85.30 and Farmer's Elevator Co. v. Manning, 286 N.W.2d 174 (Iowa 1979). The Commissioner correctly set forth the law to be applied by the parties for computing interest. We agree with the district court and the Commissioner's ruling that the parties should first determine whether there is a dispute about the interest amount owed, and then if an agreement cannot be reached, the aggrieved party can seek relief from the Commissioner.

Terwilliger next contends the Commissioner erred in its finding no section 86.13 penalty claim. Iowa Code section

86.13 (1991) states:

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the industrial commissioner shall award benefits in addition to those benefits payable under this chapter, ... up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

The Commissioner found there was no unreasonable delay. The Commissioner stated that he had discretion in awarding a penalty. Terwilliger asserted that the Commissioner's discretion only applies to the size of the award, not to whether he will award penalties at all. We need not address this assertion because we find the Commissioner's finding that the delay was reasonable is supported by substantial evidence.

Terwilliger next argues the district court erred in not reversing in its entirety the Commissioner's determination of impairment percentage, because the determination was made solely upon the medical impairment testimony. The district court remanded with instructions to the agency to evaluate all germane impairment evidence and not just the medical testimony. We do not believe the district court's instructions need further clarification and therefore we will not do so.

Terwilliger's final assignment of error is that the district court erred by assessing costs against her, and by affirming the Commissioner's assessment of costs against her. Iowa Code section 86.40 and Iowa Industrial Commissioner rule 343-4.33 allow the agency discretion in

taxing costs. On appeal, costs are assessed to the unsuccessful party unless otherwise ordered by the court. Iowa R. App. P. 28. Since Terwilliger was only successful on a fraction of her twenty issues at the commissioner's level and only partially successful on one issue at the district court level, we find that neither the district court nor the commissioner abused their discretion in assessing costs to Terwilliger.

Costs of this appeal assessed to the appellant.

DISTRICT COURT DECISION AFFIRMED; CASE REMANDED TO COMMISSIONER