

**IN THE COURT OF APPEALS OF IOWA**

No. 1-217 / 10-1467  
Filed June 15, 2011

**BETHANY LUTHERAN HOME and  
IOWA LONG TERM CARE RISK  
MANAGEMENT ASSOCIATION,**  
Petitioners-Appellants,

**vs.**

**LORRAINE BONER,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,  
Judge.

An employer appeals from the district court's ruling on judicial review  
affirming the award of workers' compensation benefits to its former employee.

**AFFIRMED.**

Michael L. Mock and Lori Ann Brandau of Bradshaw, Fowler, Proctor &  
Fairgrave, P.C., Des Moines, for appellants.

Richard D. Crotty of Crotty Law Offices, Council Bluffs, for appellee.

Considered by Vogel, P.J., and Doyle and Tabor, JJ.

**VOGEL, P.J.**

Lorraine Boner filed a workers' compensation claim asserting that while working for Bethany Lutheran Home, on June 6, 2006, she sustained a lower back injury while moving or positioning a resident. Huy Trinh, M.D., performed a decompressive bilateral laminectomy and partial facetectomy surgery on March 16, 2007. Lorraine returned to Bethany on April 30, 2007, with restrictions to do only light work. Lorraine's functional capacity evaluation (FCE) in August 2007 found she had the "ability to lift 30 pounds occasionally and 10 to 15 pounds frequently" and functioned within the light-medium physical demand category. Dr. Trinh reviewed the FCE and gave Lorraine a permanent restriction of "occasional lifting up to 30 lbs. Frequent lifting up to 15 lbs. Occasional flexion through full range of motion. No prolonged forward bending. Occasional lifting from the floor." Because of her permanent restrictions and having no other suitable work available, Bethany terminated her employment. While Lorraine applied for between twenty-five to fifty jobs, due to her limited educational background, age, and physical and vocational limitations, she was unable to secure another job.

In the arbitration decision, the deputy commissioner determined Lorraine's testimony to be credible, and found she made a prima facie showing that she was both an odd-lot employee and suffered a 100 percent industrial disability. Upon Bethany's intra-agency appeal, the acting commissioner affirmed the arbitration decision. On judicial review, the district court affirmed the 100 percent industrial disability, and agreed she qualified as an odd-lot employee.

Bethany appeals, claiming the district court erred in rejecting expert testimony and concluding there was substantial evidence to support the agency's finding of permanent disability. We accept the factual findings of the agency and will reverse only if those findings are not supported by substantial evidence. Iowa Code § 17A.19(10)(f) (2005); *Midwest Ambulance Service v. Ruud*, 754 N.W.2d 860, 864 (Iowa 2008).

The commissioner considered Lorraine's age, educational experience, work experience, and testimony in making this decision. The district court found "the commissioner sufficiently supported his reasons for rejecting the uncontroverted expert evidence and as such it was not improper or outside his authority to do so." See *Guyton v. Irving Jensen Co.*, 373 N.W.2d 101, 106 (Iowa 1985) ("Even under the odd-lot doctrine that we adopt today the trier of fact is free to determine the weight and credibility of the evidence in determining whether the worker's burden of persuasion has been carried."). As the district court properly found in its recitation of the facts, the industrial disability finding and odd-lot employee determination are supported by substantial evidence. With our limited scope of appellate review, we affirm. See Iowa R. App. P. 21.29(1)(b), (d), and (e).

**AFFIRMED.**