

IN THE COURT OF APPEALS OF IOWA

No. 1-832 / 11-0783
Filed December 7, 2011

CATHERINE ESTNESS,
Petitioner-Appellant/Cross-Appellee,

vs.

**PRAIRIE MEADOWS RACETRACK AND CASINO
and EMC RISK SERVICES, LLC,**
Respondents-Appellees/Cross-Appellants.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,
Judge.

Petitioner appeals the district court decision affirming the workers' compensation commissioner's denial of benefits; respondents cross-appeal claiming a deputy commissioner became an advocate for the petitioner.

AFFIRMED.

Ryan T. Beattie of Beattie Law Firm, P.C., Des Moines, for appellant.

Jane V. Lorentzen and Bryan T. Israel of Hopkins & Huebner, P.C., Des
Moines, for appellees.

Considered by Vaitheswaran, P.J., Potterfield, J., and Miller, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.**I. Background Facts & Proceedings**

Catherine Estness is employed by Prairie Meadows Racetrack and Casino as a casino floor attendant. She stated that one of her primary jobs is to greet people. About twenty times per shift she paid out jackpots, and it took about fifteen minutes each time due to the paper work. She stated that about thirty or forty percent of her job was spent doing minor repairs of machines. Estness also testified she spent the majority of her shift pushing in chairs, and that she pushed in on average between 700 to 1000 chairs per shift. She stated that most of the time she tried to use her foot to push in the chairs.

In November 2006, Estness began to seek treatment for her left shoulder from a chiropractor. On December 14, 2007, she told a registered nurse practitioner, Brandi Booth, that she had had difficulty with her left shoulder for the past two years. Estness had a MRI on December 21, 2007, which showed a suspected rotator cuff tear. On December 26, 2007, she either fell or was jarred in a non-work-related incident when a metal plate on a sidewalk dropped down as she walked across and this also caused her left shoulder pain.

Dr. Ian Lin examined Estness on January 16, 2008, and gave a diagnosis of left shoulder adhesive capsulitis. He did not believe she had a work-related condition. Estness saw Dr. Joshua Kimelman on January 22, 2008. He gave a diagnosis of adhesive capsulitis with impingement syndrome of the left shoulder. He treated her with a shot of cortisone to the shoulder, and she had physical

therapy. Dr. Kimelman did not give an opinion as to whether her condition was caused by her work.

On February 15, 2008, Estness filed a claim for workers' compensation benefits, claiming she had a cumulative left shoulder injury. She had an independent medical evaluation with Dr. Robert Jones on April 22, 2009, at her attorney's office. Dr. Jones gave the opinion, "I believe this problem was caused by repetitious work at Prairie Meadows casino."

An administrative hearing was held on August 12, 2009. The deputy workers' compensation commissioner asked some questions of both Estness and Gina Vitiritto-Robinson, the human resources manager for Prairie Meadows. The deputy concluded Estness suffered a cumulative injury arising out of and in the course of her employment. The deputy determined she had an industrial disability of ten percent and was entitled to workers' compensation benefits.

The employer and its insurance carrier appealed the deputy's decision. The commissioner found, "the record evidence in its entirety does not support a finding that claimant performs any work for Prairie Meadows repetitively.¹ Her duties are widely varied and do not involve sustained shoulder use." The commissioner concluded, "claimant has not demonstrated that her left shoulder condition is a rational consequence of her work activities for the employer." The commissioner determined Estness had not established a cumulative injury to her

¹ The workers' compensation commissioner appointed a different deputy workers' compensation commissioner to decide the appeal. This deputy had the authority to issue the final agency decision for the commissioner. We will refer to this deputy, who acted in the place of the commissioner, as the commissioner for purposes of this appeal.

left shoulder that arose out of the course of her employment, and she was not entitled to benefits.

Estness filed a petition for judicial review. The district court concluded the commissioner did not abuse her discretion by ignoring the opinion of Dr. Jones, or by misconstruing his opinion. The court also found there was substantial evidence in the record to support the commissioner's finding that "Estness's work was not a cause of or substantial contributor toward her shoulder pain." Finally, the court found the deputy did not violate the due process rights of the employer or its insurance carrier by questioning the witnesses. Estness appeals and Prairie Meadows cross-appeals the decision of the district court.

II. Standard of Review

Our review of decisions of the workers' compensation commissioner is governed by Iowa Code chapter 17A (2009). *Broadlawns Med. Ctr. v. Sanders*, 792 N.W.2d 302, 306 (Iowa 2010). We review the commissioner's decision for the correction of errors at law, not de novo. *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 414 (Iowa 2001). We review the district court's decision by applying the standards of section 17A.19 to the commissioner's decision to determine if our conclusions are the same as those reached by the district court. *Univ. of Iowa Hosps. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004).

III. Relevant Evidence

Estness claims the district court erred in finding that the commissioner had not abused her discretion by failing to consider relevant evidence on the issue of causation. When a claim of error lies with the ultimate conclusion of an agency,

“then the challenge is to the agency’s application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.” *Meyer v. IPB, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006) (citing Iowa Code §§ 17A.19(10)(i), (j)). Therefore, we must determine whether the commissioner abused her discretion by ignoring important and relevant evidence in this case.

Estness asserts the commissioner ignored or misconstrued the following evidence: (1) a letter from nurse Booth, (2) the history provided to Dr. Kimelman, (3) the filing date of her petition, (4) the MRI, (5) the opinion of Dr. Jones, and (6) her actual job duties. The commissioner received all of this evidence. Her decision refers to Estness’s medical treatment by Dr. Kimelman, the MRI, the opinion of Dr. Jones, and Estness’s job duties. It is clear she did not ignore this evidence. Although the letter from nurse Booth,² and the filing date of the workers’ compensation petition,³ were not specifically referenced, this does not mean the commissioner ignored them. Instead, she may have felt they were not of sufficient importance to mention in the appeal decision.

We concur in the district court’s ruling on this issue:

When viewing the record as a whole, [acting commission]
Walleser’s findings were consistent with what a reasonable person

² Estness contends nurse Booth’s letter indicated she had discussions with Estness regarding whether her condition was related to her work, despite the lack of documentation in the medical records. However, nurse Booth’s letter was dated September 3, 2008, more than six months after the workers’ compensation petition was filed. There is no indication in the “letter” that any such conversation occurred before the petition was filed.

³ Estness claims the employer knew she was claiming a cumulative work-related injury at least by February 15, 2008, when she filed her petition.

could conclude. The findings in her Appeal Decision show that she considered all evidence and simply gave greater weight to some exhibits and lesser weight to others. She did not ignore or misconstrue evidence or otherwise act unreasonably. Consequently, she did not abuse her discretion.

We conclude the district court did not err in its determination that the commissioner had not abused her discretion by ignoring important and relevant evidence.

IV. Substantial Evidence

Estness contends the district court erred by finding the decision of the commissioner was supported by substantial evidence. We reverse the factual findings of the commissioner only if those findings are not supported by substantial evidence. *Midwest Ambulance Serv. v. Ruud*, 754 N.W.2d 860, 864 (Iowa 2008). Substantial evidence is “the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue” Iowa Code § 17A.19(10)(f)(1). Evidence is substantial if a reasonable mind would accept it as adequate to reach the same conclusion. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006). The ultimate question is not whether the evidence might support a different finding, but whether it supports the findings actually made. *Grant v. Iowa Dep’t of Human Serv.*, 722 N.W.2d 169, 173 (2006).

Estness had the burden to show her disability was caused by work-related repetitive trauma. See *Ayers v. D & N Fence Co., Inc.*, 731 N.W.2d 11, 17 (Iowa 2007). The commissioner concluded Estness had not presented sufficient evidence to establish a cumulative injury to her left shoulder that arose out of and

in the course of her employment. The commissioner, as the finder of fact, must determine the credibility of the witnesses, weigh the evidence, and decide the facts at issue in a case. See *Arndt v. City of LeClair*, 728 N.W.2d 389, 394-95 (Iowa 2007).

The commissioner discounted the opinion of Dr. Jones, finding it was based on an inaccurate history. Dr. Jones gave the opinion, “I believe this problem was caused by repetitious work at Prairie Meadows Casino.” The commissioner concluded, however, “the record evidence in its entirety does not support a finding that claimant performs any work for Prairie Meadows repetitively.”

We conclude there is substantial evidence in the record to support the commissioner’s finding that Estness had not engaged in repetitive labor at Prairie Meadows. Estness testified that she paid out about twenty jackpots per shift, and each jackpot took about fifteen minutes to complete the paperwork, which would be about five hours of her eight and one-half hour shift. She stated this job did not cause any kind of aggravation physically. She also stated that at least thirty or forty percent of her time was spent doing minor repairs of machines—getting lost dollar bills, rebooting the machines, refilling them with paper tickets, or tightening buttons. Estness further testified that she spent a majority of her shift pushing in chairs; this was anywhere from 700 to 1000 chairs per shift, and usually she used her foot to push them in. As the district court found, “there is evidence in the record, including Ms. Estness’s own testimony, that her work duties were varied and did not involve repetitive strenuous use of the shoulder.”

We find the district court did not err in concluding the commissioner's decision was supported by substantial evidence.

V. Due Process Rights

In a cross-appeal, the employer contends the district court erred by finding the deputy had not violated its due process rights by becoming an advocate for Estness through questions asked at the administrative hearing. Prairie Meadows asks us to address this issue in the event we find Estness suffered a work-related injury. Because we have affirmed the commissioner's decision that Estness did not suffer a work-related injury, we conclude that we do not need to address this issue.

We affirm the decision of the district court, which affirmed the ruling of the workers' compensation commissioner that Estness had failed to prove she suffered a work-related injury.

AFFIRMED.