

IN THE COURT OF APPEALS OF IOWA

No. 6-1038 / 06-0860
Filed February 28, 2007

**HOOVESTOL, INC. and GREAT WEST
CASUALTY COMPANY,**
Plaintiffs-Appellants,

vs.

ROBERT E. HAMMERS,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II,
Judge.

Employer and workers' compensation insurance provider appeal from a
district court ruling that affirmed in part and reversed in part the decision of the
workers' compensation commissioner. **AFFIRMED.**

Joseph M. Barron and Stephen W. Spencer of Peddicord, Wharton,
Spencer & Hook, L.L.P., Des Moines, for appellant.

James E. Thorn and Rick D. Crowl of Stuart Tinley Law Firm L.L.P.,
Council Bluffs, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

ZIMMER, P.J.

Employer Hoovestol, Inc. and workers' compensation insurance provider West Casualty Company (collectively Hoovestol) appeal from a district court ruling that affirmed in part and reversed in part a decision of the workers' compensation commissioner. Hoovestol contends the district court erred in concluding the record contained substantial evidence in support of the commissioner's determination that the disability of claimant Robert Hammers was causally related to his work injury. Upon our review for the correction of errors at law, Iowa R. App. P. 6.4; *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 414 (Iowa 2001), we affirm the district court.

We are bound by the commissioner's fact findings so long as those findings are supported by substantial evidence in the record when the record is viewed as a whole. Iowa Code § 17A.19(10)(f) (2005); *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004). Weighing evidence and assessing the credibility of witnesses is a matter for the agency, and the commissioner's findings have the effect of a jury verdict. *IBP, Inc.*, 621 N.W.2d at 418, 420. Thus, "[t]he possibility of drawing inconsistent conclusions from the same evidence does not mean an agency's decision lacks substantial support. In the case of conflict in the evidence we are not free to interfere with the commissioner's findings." *Id.* at 418 (citation omitted).

In reviewing the commissioner's decision, we note the question of whether Hammers's disability is causally connected to his workplace injury is essentially within the domain of expert testimony. *Id.* at 420. The commissioner must consider the expert testimony together with all other evidence introduced that

bears on the causal connection between the injury and the disability. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). Upon review of the record in this matter, we agree with the district court that the commissioner's causal connection determination is supported by substantial evidence.

The record reveals Hammers suffered an injury on February 3, 2002, arising out of and in the course of his employment with Hoovestol, while pushing and pulling mail carts. Following the injury Hammers experienced pain in his lower back and buttocks. The pain was bilateral, but was stronger on his left side, radiating down his left leg. Hammers was diagnosed with lumbosacral sprain. Hammers began to improve, but bilateral symptoms returned, with tenderness and pain across his back and buttocks and "pain radiating down the legs." Hammers was eventually diagnosed with a lumbar strain resulting from a work injury and chronic low back pain syndrome. Hammers again improved, and his symptoms resolved.

In January 2003, while working for a new employer, Hammers lifted a heavy lid and experienced a sharp pain in his back and lower buttocks and a tingling in his left leg. Following the January 2003 incident, Hammers reported a history of recurrent low back and hip pain and current symptoms on his right side. In April 2003 Hammers was examined by Dr. D. M. Gammel, who opined that Hammers suffered from degenerative lumbar disc disease permanently aggravated by the February 3, 2002 work injury.

Hoovestol asserts the record demonstrates that Hammers's current disability is the result of the January 2003 injury, and not the February 2002 work-related injury. It points to the fact that following Hammers's initial injury his

symptoms occurred on primarily his left side, that these symptoms resolved, and that following the January 2003 injury Hammers's symptoms occurred on his right side. It asserts the mere fact that Hammers initially experienced bilateral symptoms is simply insufficient to causally connect a disability with right-side symptoms to an injury that resulted in resolved left-side symptoms.

Certainly, the record contains evidence that, if accepted, could lead a reasonable fact finder to determine there was not a causal relationship between the work injury and Hammers's disability. However, as we have already noted, the question is not whether the evidence might support a finding different from the commissioner's, but whether it supports the finding the commissioner actually made. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000). Upon review of the totality of the record, we conclude it contains substantial support for the commissioner's determination that Hammers's disability is causally related to his February 3, 2002 work injury. We accordingly affirm the district court's judicial review decision.

AFFIRMED.