

**IN THE COURT OF APPEALS OF IOWA**

No. 6-1040 / 06-1008

Filed May 23, 2007

**HELEN WOODS,**  
Petitioner-Appellant,

**vs.**

**DES MOINES PUBLIC SCHOOL DISTRICT**  
**and EMC INSURANCE COMPANIES,**  
Respondents-Appellees.

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Appeal from the Iowa District Court for Polk County, Don Nickerson,  
Judge.

Helen Woods appeals the district court's ruling on judicial review affirming  
the decision of the Iowa Workers' Compensation Commissioner. **AFFIRMED.**

Gary G. Mattson of LaMarca & Landry, P.C., Des Moines, for appellant.

Matthew A. Grotnes of Hopkins & Huebner, P.C., Des Moines, for  
appellees.

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

**MILLER, J.**

Helen Woods appeals the district court's ruling on judicial review affirming the decision of the Iowa Workers' Compensation Commissioner. Because substantial evidence supports the district court's ruling, we affirm.

Woods was employed as a school bus driver with the Des Moines Public School District when she suffered a work-related injury to her right shoulder on August 18, 1999. The parties settled her workers' compensation claim on July 17, 2001, agreeing the injury caused a 17.5% industrial disability. Woods received benefits in the amount of \$24,409.62.

In September of 2004, a hearing was held before a deputy workers' compensation commissioner to determine whether review-reopening of her 1999 claim was warranted due to a substantial change in her condition not contemplated at the time of settlement. Woods also claimed she had sustained a work-related injury to her left shoulder on May 22, 2000, and an additional injury to her right shoulder on May 1, 2002, for each of which she sought temporary and permanent disability benefits.

The deputy workers' compensation commissioner declined review-reopening of the 1999 claim and found no compensable injury was sustained on May 1, 2002. The deputy commissioner did find Woods suffered a twenty-percent industrial injury to her left shoulder on May 22, 2000 and awarded her \$27,862 of permanent partial disability benefits. The workers' compensation commissioner affirmed.

Woods filed a petition for judicial review. In its June 1, 2006 order, the district court concluded:

The Court finds that all of the challenged findings of the commissioner are supported by substantial evidence. Petitioner has not established the criteria necessary to review or reopen the proceedings involving her August 18, 1999 right shoulder injury. The commissioner's finding that Petitioner's fibromyalgia and chronic myofascial pain syndrome are not causally related to her work-related shoulder injuries is supported by substantial evidence. The commissioner's finding that Petitioner's depression is not causally related to her workplace shoulder injuries is likewise supported by substantial evidence. Finally the commissioner's finding that Petitioner suffered a 20% industrial disability as a result of her May 22, 2000 left shoulder injury is supported by substantial evidence.

Iowa Code chapter 17A governs judicial review of decisions made by the workers' compensation commissioner. Iowa Code § 86.26 (2003). When the district court exercises its judicial review power it acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002). Our review of the district court's decision requires application of the standards of Iowa Code section 17A.19(10) to determine whether our conclusions are the same as those of the district court. *P.D.S.I. v. Peterson*, 685 N.W.2d 627, 632 (Iowa 2004). If they are the same, we affirm; if not, we reverse. *Id.* A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record, when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. See *id.* § 17A.19(10).

On judicial review, we are bound by the agency's findings of operative facts, so long as those findings are supported by substantial evidence in the record when the record is viewed as a whole. See *id.*; *Excel Corp. v. Smithart*,

654 N.W.2d 891, 896 (Iowa 2002). In contrast, for those issues involving the agency's interpretation of the law in cases in which the agency has not been vested with the final authority to interpret the law, we determine whether the agency's interpretation was erroneous and we may substitute our interpretation for the agency's. See *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 604 (Iowa 2005).

Turning to Woods's contentions on appeal, we must dismiss outright her claims that the district court erroneously applied the law to the facts in finding (1) she failed to establish a substantial change in her condition warranting review reopening of her 1999 claim, (2) her fibromyalgia and chronic myofascial pain syndrome are not causally related to her shoulder injuries, and (3) that her depression was not causally related to her shoulder injuries. The district court did not address whether the commissioner erroneously applied the law to the facts, focusing only on whether substantial evidence supported the commissioner's ruling. Accordingly, error was not preserved on these issues. See *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998) (stating our error preservation rule requires that issues must be presented to and passed upon by the district court before they can be raised and decided on appeal). Although the error preservation argument is not raised by the respondents, it may be raised by the court on its own motion in the interest of preserving judicial resources. *Top of Iowa Co-op v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000). We are left then with the issues of whether substantial evidence supports the district court's finding that Woods's fibromyalgia and chronic pain are not causally related to her shoulder injuries and whether substantial evidence supports the court's finding

that Woods sustained a twenty-percent industrial disability as a result of the injury to her left shoulder.

We conclude substantial evidence supports the finding that the fibromyalgia and chronic pain are not causally related to Woods's shoulder injuries. Expert testimony is ordinarily necessary to establish a causal connection between the injury and the disability for which benefits are sought. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 752 (Iowa 2002). No expert attributed the fibromyalgia and chronic pain to the shoulder injuries. Woods had the burden of proving causality by a preponderance of the evidence. *Id.* As the commissioner noted, "Claimant's subjective belief that her pain syndromes . . . must have originated in her work is entitled to little weight." Woods has failed to carry the burden of proving a work-related injury.

We also conclude substantial evidence supports the assessment of a twenty-percent industrial disability to Woods as a result of her left shoulder injury. Industrial disability measures an injured worker's lost earning capacity. *Second Injury Fund v. Shank*, 516 N.W.2d 808, 813 (Iowa 1994). Factors that should be considered include the employee's functional impairment, age, intelligence, education, qualifications, experience, and the ability of the employee to engage in employment for which he is suited. *Id.* The finding of a twenty-percent industrial disability is consistent with the impairment ratings assigned by Woods's own doctors, the physical limitations this injury has placed upon her, and her ability to work. Accordingly, we affirm.

**AFFIRMED.**