

**IN THE COURT OF APPEALS OF IOWA**

No. 6-310 / 05-0955

Filed May 24, 2006

**JOSE MURILLO,**  
Petitioner-Appellant,

**vs.**

**IBP, INC.,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

A claimant appeals from the judicial review decision affirming the agency decision denying him benefits. **AFFIRMED.**

Ruth M. Carter of Carter Law Firm, P.C., Sioux City, for appellant.

James L. Drury II of IBP, Inc., Dakota Dunes, South Dakota, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

**SACKETT, C.J.**

Claimant, Jose Murillo, appeals from the district court's ruling on judicial review affirming the appeal decision of the Workers' Compensation Commissioner that denied his claim for benefits. On appeal, he contends "one or more" of the following provisions of Iowa Code section 17A.19(10) (2003) apply to the agency decision: (f) (not supported by substantial evidence); (h) (inconsistent with prior practice or precedents); (i) (so illogical as to be irrational); (j) (not considering a relevant matter that a rational decision-maker would have considered); or (n) (otherwise unreasonable, arbitrary, capricious, or an abuse of discretion). We affirm.

**BACKGROUND FACTS AND PROCEEDINGS**

The original notice and petition filed with the agency lists March 21, 2001, June 5, 2002, and July 11, 2002 as injury dates. The claimant alleged injury to his shoulders, arms, back, and neck. The employer admitted a temporary injury to the left shoulder only. The arbitration decision notes the parties stipulated the claimant "sustained injury arising out of and in the course of employment on July 11, 2002." He sought permanent partial disability benefits and medical benefits.

The deputy commissioner found the claimant sustained an injury to his right shoulder, neck, upper back, and hand on June 5, 2002, which was resolved by July 1, 2002, and he returned to full work activity. On July 11, he complained of pain in his right shoulder and upper back and was placed on restricted duty. Doctors prescribed pain medications and physical therapy. The claimant gradually worked up from two hours of full duty daily to four hours. His complaints of pain continued, and doctors advised restrictions on lifting and on working above shoulder level.

On January 16, 2003, the claimant completed a functional capacity evaluation. The reviewing doctor noted the test was invalid. The claimant significantly magnified his symptoms, did not demonstrate any pain behavior with task lifts, and failed to give a valid consistent test on multiple testing efforts. The doctor gave the claimant a zero percent impairment because there were no objective findings, but only subjective complaints of pain.

On June 2, 2003, the claimant was offered two positions at the employer that had been medically approved in advance. He refused the positions. He claimed he was fired for refusing the positions. The deputy commissioner found more credible the employer's explanation that the claimant was granted unpaid leave, but was eligible to bid on positions. In addressing the claimant's contention his back and shoulder were "very bad," the deputy commissioner found,

the lack of any objective signs (as opposed to subjective symptoms) of impairment coupled with an invalid [functional capacity evaluation] marred by symptom magnification and multiple inconsistencies in testing criteria demonstrate that his self-reported disability is unreliable.

The deputy commissioner found the claimant did not establish entitlement to permanent partial disability benefits or to payment of unauthorized medical expenses.

On appeal, the commissioner gave deference to the deputy's credibility determinations. In affirming the deputy's decision, the commissioner concluded:

Absent claimant's credibility and lack of other supportive evidence to substantiate his pain complaints, the presiding deputy correctly denied the claim for permanent disability benefits. Objective medical findings are not required as a matter of law to support a finding of disability, but as a practical matter it would require very peculiar circumstances for disability to exist in the absence of objective findings. This is not one of those peculiar cases.

On judicial review of the agency appeal decision, the district court concluded the agency's decision was supported by substantial evidence. The court noted the lack of any objective evidence to support a finding of permanent impairment. "Even [the claimant's] personal physician . . . could not find any permanency. He indicated that [the claimant] had not sustained permanent impairment [and] assigned no permanent restrictions . . . ." In addressing the claim the functional capacity evaluation should not have been considered because it was not in evidence, the court concluded the test results and interpretation were contained in the reviewing doctor's notes, which were in evidence. The court rejected the claimant's assertion that his credibility should not be a factor in determining disability. The court also concluded that "[the claimant] has failed to provide a convincing argument as to how the agency erred in the various subsections of Iowa Code section 17A.19(10) identified as issues in this case." The court affirmed the agency decision and denied the petition for judicial review.

### **SCOPE AND STANDARDS OF REVIEW**

Our review of agency action is limited, and is for correction of errors at law. Iowa R. App. P. 6.4; see *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 330 (Iowa 2005). In reviewing a district court's decision on judicial review, we apply the standards of Iowa Code section 17A.19 to determine whether our conclusions are the same as those of that court. See *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002).

The interpretation of workers' compensation statutes and related case law has not been clearly vested by a provision of law in the discretion of the agency. Accordingly, this court is free to substitute its judgment de novo for the agency's interpretation of law. However, the agency's factual determinations are clearly vested by a provision of law in the discretion of the agency. Thus, a court is bound by them if they are

supported by substantial evidence in the record before the court when that record is viewed as a whole.

*Finch*, 700 N.W.2d at 330-31 (citations and internal quotation marks omitted).

Evidence is substantial if a reasonable person would find it adequate to reach a conclusion. *Simonson v. Snap-On Tools, Corp.*, 588 N.W.2d 430, 434 (Iowa 1999).

Substantial evidence need not amount to a preponderance, but must be more than a scintilla. *Elliot v. Iowa Dep't of Transp.*, 377 N.W.2d 250, 256 (Iowa Ct. App. 1985).

We give deference to the fact-finding of the agency as we would a jury verdict. See *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 418 (Iowa 2001). This deference includes the agency's credibility determinations. *Clark v. Iowa Dep't of Revenue & Fin.*, 644 N.W.2d 310, 315 (Iowa 2002). If there is enough evidence to support the findings, we must affirm the agency's decision even if we might have found otherwise.

*Harpole*, 621 N.W.2d at 420.

The claimant contends:

A determination of industrial disability is achieved by applying relevant law to the particular facts of each case and the particular conditions of each claimant. As the commissioner has been granted no special disposition in determining or defining industrial disability, that determination can be made *de novo* by this court.

The application of workers' compensation law to the factual determinations in workers' compensation cases is "vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(f). A reviewing court can therefore only reverse the agency's application of the law to the facts if it is determined such an application was "irrational, illogical, or wholly unjustifiable." *Id.* § 17A.19(10)(m); see *P.D.S.I. v. Peterson*, 685 N.W.2d 627, 633 (Iowa 2004).

## DISCUSSION

1. *Substantial Evidence*. Citing section 17A.19(10)(f), the claimant contends that “substantial evidence in the record is overwhelmingly not in accord with [the deputy’s] decision and as such must be reversed.” Because the agency is charged with weighing the evidence, we liberally and broadly construe the findings to uphold the decision. *Caterpillar Tractor Co. v. Shook*, 313 N.W.2d 503, 505-06 (Iowa 1981). From our review of the evidence in the record, our conclusions are the same as those of the district court. See *Grundmeyer*, 649 N.W.2d at 748. Substantial evidence supports the agency finding that the claimant has not sustained any permanent impairment. One doctor found the claimant had a loss of range of motion in his shoulder and assigned a five percent permanent impairment of the upper extremity. The other doctors all found no permanent impairment, but rather ongoing pain from muscle strain or overuse. Finding no permanent injury, the doctors’ work restrictions concerning lifting, reaching, and repetitive motion were aimed at reducing the strain on the claimant. A physical impairment or restriction on work activity may or may not result in a loss of earning capacity. See *Guyton v. Irving Jensen Co.*, 373 N.W.2d 101, 103-04 (Iowa 1985). The claimant has not demonstrated such a loss in this case. Even without considering the functional capacity evaluation, we find substantial evidence supports the agency findings. See *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 675 (Iowa 2005) (noting the fact that inconsistent conclusions may be drawn from the same evidence does not mean the agency’s decision is not supported by substantial evidence). If we factor in the reviewing doctor’s evaluation of the test results, the evidence supporting the agency’s decision is even greater. The employer repeatedly offered the claimant

two positions that had been approved by a doctor as meeting his work restrictions, but the claimant did not accept them. The employer repeatedly offered the claimant the opportunity to bid on open positions, but he did not avail himself of the opportunity. Considering the industrial disability factors set forth in *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 192 (Iowa 1980), we conclude the claimant has not met his burden to demonstrate his entitlement to industrial disability benefits.

2. *Agency precedent.* The claimant contends the agency decision is not consistent with prior practice or precedent. See Iowa Code § 17A.19(10)(h). The supreme court has analyzed this code provision in the context of a contested case proceeding such as the case before us and determined:

The controlling legal standards are those set out in the workers' compensation statutes and in this court's opinions, not in prior agency decisions. Importantly, the commissioner's decision in this case is not reviewed for an abuse of discretion. We do not believe that Iowa Code section 17A.19(10)(h) establishes an independent requirement that the commissioner identify other agency rulings and explain possible inconsistencies between those rulings and the agency's decision in a case not reviewable under an abuse-of-discretion standard. Therefore, it is not necessary or appropriate to remand this case to the commissioner for an explanation of a possible inconsistency between the commissioner's ruling in this case and prior cases decided by the commissioner.

*Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 332-33 (Iowa 2005) (citations omitted). We conclude, therefore, paragraph (h) does not apply to our review of a contested case proceeding.

3. *Iowa Code section 17A.19(10) paragraphs (i), (j), and (n).* The district court summarily concluded, "Mr. Murillo has failed to provide a convincing argument as to how the agency erred in the various subsections of Iowa Code section 17A.19(10) identified as issues in this case." Our conclusion is the same as the district court's; therefore, we affirm. See *id.* at 330.

**CONCLUSION**

In reviewing the district court's decision on judicial review, we have applied the standards of Iowa Code chapter 17A to determine whether our conclusions are the same as those of that court. We, like the district court, concluded the agency's decision is supported by substantial evidence and is not affected by any of the errors set forth in section 17A.19(10) that apply to review of contested case proceedings. We affirm the decision of the district court.

**AFFIRMED.**