

IN THE COURT OF APPEALS OF IOWA

No. 7-275 / 06-1352

Filed June 13, 2007

EMMA MOSHER,
Petitioner-Appellant,

vs.

**DIVISION OF HEALTH FACILITIES,
DEPARTMENT OF INSPECTIONS
AND APPEALS,**
Respondent-Appellee.

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

Petitioner appeals the district court's affirmance of a finding that she
committed dependent adult abuse. **AFFIRMED.**

Nathaniel R. Boulton and Mark T. Hedberg of Hedberg, Owens, Hedberg
& Walsh, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, and John R. Lundquist, Assistant
Attorney General, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, J.J.

SACKETT, C.J.

The director of the Iowa Department of Inspections and Appeals (DIA) found Emma Mosher committed dependent adult abuse while working as a residential treatment worker at the Woodward Resource Center in Woodward, Iowa, and the district court affirmed the director's decision. Mosher appeals contending (1) the director failed to comply with an earlier remand order from the district court, and (2) the determination Mosher committed dependent adult abuse is not supported by substantial evidence. We affirm.

Background and Proceedings. On November 29, 2003, Mosher and Melissa Cox were both working at the Woodward facility. On November 30, 2003, Cox reported that Mosher struck a male resident, shoving him with both of her arms, which caused him to fall to the floor and slide across a hallway nearly hitting his head. Mosher contended she did no more than put her left arm out and the resident ran into it and fell to the floor.

On the basis of Cox's report an investigation was launched, and the DIA found Mosher committed dependent adult abuse. The finding was appealed, a hearing was held before an administrative law judge, and a proposed decision reversing the finding of dependent adult abuse was filed. Appeal was taken from the proposed decision to the director of the DIA. The director reversed the administrative law judge and affirmed the initial finding of dependent abuse. The case was then appealed to the district court. The district court found the record inadequate to determine what standard the director used in reaching his decision. The district court then remanded the case back to the director, advising

of the proper standard of review to be used. The director filed a second decision again reversing the administrative law judge, which the district court affirmed.

Scope of Review. We review district court decisions on judicial review of agency action under the standards of the Administrative Procedure Act. Iowa Code Chapter 17A.19 (2003); *Locate.Plus.Com, Inc. v. Iowa Dep't of Transp.*, 650 N.W.2d 609, 612 (Iowa 2002). Applying these standards, we determine whether our conclusions are the same as those reached by the district court. *Id.*

The agency decision itself is reviewed under the standards set forth in section 17A.19(10). See *Stone Container Corp. v. Castle*, 657 N.W.2d 485, 488 (Iowa 2003). We are bound by the agency's findings if they are supported by substantial evidence in the record. *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 414 (Iowa 2001).

Substantial evidence means the quantity and quality of evidence that would be deemed sufficient, by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance. Iowa Code § 17A.19(10)(f)(1); *Mosher v. Department of Inspections and Appeals*, 671 N.W.2d 501, 508 (Iowa 2003). "An agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence." *Harpole*, 621 N.W.2d at 418 (quoting *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994)). Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. *Shank*, 516 N.W.2d at 812. Conversely, evidence is not insubstantial merely

because it would have supported contrary inferences. *Id.* Nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. *Harpole*, 621 N.W.2d at 418. The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made. *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996); *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995).

Order of Remand. Mosher contends that all the director did on remand was insert language of the appropriate legal standard without applying that standard to the facts of the case. She specifically contends that while the director in his second decision provided a thorough discussion of the Administrative Procedure Act and cited the appropriate standard of review under Iowa Code chapter 17A, he erred in applying it. She contends the case should again be remanded. We find below that the finding of dependent adult abuse is supported by the record. Consequently we find no reason to remand the case a second time to the director.

Finding of Dependent Adult Abuse. It is agreed that the resident was a dependent adult and that Mosher was his caretaker as contemplated by Iowa Code chapter 235B.

Section 235B.2(5) provides in relevant part:

5. a. "Dependent adult abuse" means:

(1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

(a) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.

There was evidence that Mosher was seen pushing the resident, causing him to fall to the floor, slide backwards and nearly hit his head. This evidence, if believed, is substantial evidence to support a finding that Mosher committed dependent adult abuse.

The administrative law judge discounted this evidence because he did not believe that the witness could see Mosher's hands hit the resident. The director gave the witness's testimony more weight, finding that the witness had been consistent in her report of the events and that corroborating evidence supported a finding that Mosher had physical contact with the resident. In reviewing we are required to give deference to the credibility determinations of the presiding officer. See Iowa Code § 17A.19(10)(f)(3). Finding substantial evidence to support the determination of the director, we affirm.

AFFIRMED.