

**IN THE COURT OF APPEALS OF IOWA**

No. 7-329 / 06-1276

Filed July 12, 2007

**MELISSA SCIACCA,**  
Petitioner-Appellant,

**vs.**

**IOWA DEPARTMENT OF HUMAN SERVICES and/or  
IOWA DEPARTMENT OF INSPECTIONS AND APPEALS,**  
Respondent-Appellees.

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Appeal from the Iowa District Court for Woodbury County, James D. Scott,  
Judge.

Petitioner appeals from a district court judicial review ruling affirming the  
finding that she committed dependent adult abuse. **AFFIRMED.**

H. Allan Sturgeon of Al Sturgeon Law Firm, Sioux City, for appellant.

Thomas J. Miller, Attorney General, John R. Lundquist, Assistant Attorney  
General, and Ann Marie Brick, Assistant Attorney General, for appellees.

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

**MILLER, J.**

Melissa Sciacca appeals from a district court judicial review ruling affirming the finding of the Iowa Department of Inspections and Appeals (DIA) that she committed dependent adult abuse. We affirm.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

On October 20, 2004, Sciacca was working as a registered nurse at Sunrise Retirement Community, a nursing facility, in Sioux City, Iowa. She was assigned to the Sunlight Unit of the facility. The Sunlight Unit is dedicated to the care of residents suffering from dementia. H.B., a ninety-one-year-old female, is a resident of the Sunlight Unit. On the afternoon of October 20, 2004, Teanne Watson, a certified nursing assistant, requested Sciacca's aid in persuading H.B. to go to the restroom. H.B. had rejected Watson's earlier attempts to take her to the restroom. Watson and Sciacca put their arms under H.B.'s arms to assist her in standing. H.B. resisted and punched Sciacca in her stomach. Sciacca responded by grabbing H.B.'s wrists in an attempt to restrain her arms. Bruises were discovered on H.B.'s wrists approximately five hours after the incident.

Carol Starch, an activity assistant at the facility, witnessed the incident and reported it to the unit's manager. The facility subsequently forwarded a report of suspected dependent adult abuse to DIA. After conducting an investigation, the Health Facilities Division of DIA issued a comprehensive abuse memo on January 28, 2005, which found Sciacca committed dependent adult abuse. Sciacca appealed the finding. Following an evidentiary hearing, an administrative law judge (ALJ) issued a proposed decision on September 30, 2005, reversing the finding of dependent adult abuse. DIA sought further agency

review of the proposed decision. On December 15, 2005, the deputy director of DIA entered a final order reversing the ALJ's proposed decision and affirming the initial finding of dependent adult abuse. Sciacca sought judicial review of the agency's decision. On July 11, 2006, the district court entered a ruling affirming the agency's finding that Sciacca committed dependent adult abuse.

Sciacca appeals. She contends the district court erred in affirming the agency's finding that she committed dependent adult abuse by assaulting H.B.

## **II. SCOPE AND STANDARDS OF REVIEW.**

The Iowa Administrative Procedure Act, chapter 17A of the 2005 Iowa Code, governs judicial review of administrative agency decisions. *Mosher v. Dep't of Inspections & Appeals*, 671 N.W.2d 501, 508 (Iowa 2003). The district court 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). In reviewing the district court's decision, we must determine whether our conclusions are the same as those reached by the district court. *Locate.Plus.Com, Inc. v. Iowa Dep't of Transp.*, 650 N.W.2d 609, 612 (Iowa 2002). The agency decision itself is reviewed under the standards set forth in section 17A.19(10). *Mosher*, 671 N.W.2d at 508.

Pursuant to section 17A.19(10), we may only grant relief from the agency's action if the party challenging the agency action establishes "it is erroneous under one of the grounds enumerated in the statute and a party's substantial rights have been prejudiced." *Meyer v. IBP, Inc.*, 710 N.W.2d 213,

218 (Iowa 2006). Sciacca claims the agency's decision is erroneous under Iowa Code section 17A.19(10) (f), (i), (k),<sup>1</sup> (m) and (n).<sup>2</sup>

Factual findings regarding whether dependent adult abuse has occurred in a health care facility are within the discretion of DIA. *Mosher*, 671 N.W.2d at 510. We are accordingly bound by DIA's findings of fact if they are supported by substantial evidence in the record when the record is viewed as a whole. Iowa Code § 17A.19(10)(f); *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004). On the other hand, the agency's application of the law to the facts can be affected by other grounds of error such as irrational reasoning or irrational, illogical or wholly unjustifiable application of law to facts. Iowa Code § 17A.19(10)(i), (m); *Meyer*, 710 N.W.2d at 218. We allocate some degree of discretion in our review of the agency's application of the law to the facts, but not the breadth of discretion given to the findings of fact. *Meyer*, 710 N.W.2d at 219.

### III. MERITS.

Dependent adult abuse occurs when "willful or negligent acts or omissions of a caretaker" cause "assault of a dependent adult." Iowa Code § 235B.2(5)(a)(1)(a) (2003). The definition of "adult abuse" in the administrative rules implementing Iowa Code chapter 235B mirrors the statutory definition. See Iowa Admin. Code r. 441-176.1(235B) (2003). The parties stipulated H.B. was a

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<sup>1</sup> This ground was not presented to or decided by the district court. "Issues must ordinarily be presented to and passed upon by the trial court before they may be raised and adjudicated on appeal." *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995). We accordingly find error was not preserved as to section 17A.19(10)(f). Furthermore, Sciacca does not argue or cite any authority in support of this ground. We therefore consider this ground waived. Iowa R. App. P. 6.14(1)(c).

<sup>2</sup> The "arbitrary, capricious, or an abuse of discretion" standard of review set forth in Iowa Code section 17A.19(10)(n) does not apply to a final decision in a contested case. *Keystone Nursing Care Center v. Craddock*, 705 N.W.2d 299, 304, n.2 (Iowa 2005).

dependent adult and Sciacca was her caretaker. Thus, the question before us is whether the district court erred in affirming the DIA's determination that Sciacca assaulted H.B.

Iowa Code section 235B.2 does not define "assault." However, the rules promulgated pursuant to chapter 235B provide, "'Assault' means 'assault' as defined in Iowa Code section 708.1." Iowa Admin. Code r. 441-176.1(235B).

Section 708.1 states in pertinent part:

A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.
2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

Sciacca argues there is not substantial evidence supporting the agency's conclusion that an assault occurred. Substantial evidence "means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached and reasonable person . . . ." Iowa Code § 17A.19(10)(f)(1). An agency's decision does not lack substantial evidential support merely because inconsistent conclusions may be drawn from the same evidence. *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 418 (Iowa 2001). 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) (quoting *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995)). Courts should broadly and liberally apply the agency's findings to

uphold rather than defeat the agency's decision. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000).

The record before the agency, when viewed as a whole, contains substantial evidence from which the finder of fact could reasonably determine Sciacca assaulted H.B. There was evidence Sciacca grabbed H.B.'s wrists three or more times in an "overly rough" manner and engaged in a three to five second "arm struggle" with her, which "scared" H.B. and caused her to sustain bruising on her wrists. The ALJ discounted testimony provided by Starch, a witness to the incident, while the deputy director chose to give her testimony greater weight. We give deference to credibility determinations made by the agency. *Clark v. Iowa Dep't of Revenue & Fin.*, 644 N.W.2d 310, 315 (Iowa 2002). Because our review is not de novo, we must not reassess the weight to be accorded to various items of evidence. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005) (quoting *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993)). We therefore conclude substantial evidence supports the agency's findings and decision on this issue.

Sciacca argues the agency's application of the law to the facts was "irrational, illogical, or wholly unjustifiable" and "the product of reasoning that is so illogical as to render it wholly irrational." Iowa Code § 17A.19(10)(i), (m).<sup>3</sup> She asserts "[h]er actions do not fit the definition of assault of 'intending to cause

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<sup>3</sup> Although it is not at all clear that these issues were preserved by being presented to and passed upon by the district court, we have nevertheless chosen to briefly address them.

pain or injury . . . .”<sup>4</sup> While this may be true, the agency relied on the alternative definition of assault as “[a]ny act which is . . . intended to result in physical contact which will be insulting or offensive to another” in concluding Sciacca committed dependent adult abuse. Iowa Code § 708.1(1). The district court affirmed the agency’s decision that Sciacca’s actions “fit this definition of assault,” stating, “[T]he Final Order provides a reasonable analysis to find that assault . . . occurred . . . .” Under our standard of review, we must likewise conclude the agency’s reasoning and application of the law to the facts was not irrational, illogical, or wholly unjustifiable.

#### **IV. CONCLUSION.**

We conclude substantial evidence supports the agency’s findings that Sciacca committed dependent adult abuse by assaulting H.B. We further conclude the agency’s determination that Sciacca’s actions constituted assault was not “irrational, illogical, or wholly unjustifiable,” nor was it the “product of reasoning that is so illogical as to render it wholly irrational.” Iowa Code § 17A.19(10)(i), (m).

We have carefully considered all of the issues. Those we have not addressed were not preserved, were waived, or lack merit. Because we reach the same conclusions the district court reached, we affirm its decision.

#### **AFFIRMED.**

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<sup>4</sup> Sciacca also asserts the district court erred in affirming the finding of dependent adult abuse because “DIA’s reversal was based on the Department’s contrived assertion that the ALJ utilized a ‘justification’ defense for the assault in making a finding of no found[ed] abuse, which, in fact, he did not.” The mention of this issue, without elaboration or supportive authority, is insufficient to raise the issue for our consideration. Iowa R. App. P. 6.14(1)(c); *Soo Line R.R. Co. v. Iowa Dep’t of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994). Furthermore, we note the ALJ did find “it is not possible to prove” Sciacca “acted without justification” in concluding she did not assault H.B.