

**IN THE COURT OF APPEALS OF IOWA**

No. 7-761 / 07-0325  
Filed December 28, 2007

**KELLY O. SMITH,**  
Petitioner-Appellant,

**vs.**

**BOARD OF TRUSTEES OF PEACE  
OFFICERS' RETIREMENT, ACCIDENT  
AND DISABILITY SYSTEM,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,  
Judge.

Appeal from the district court ruling on judicial review that affirmed the  
denial of disability retirement benefits. **AFFIRMED.**

James L. Sayre of James L. Sayre, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, and John Lundquist, Assistant  
Attorney General, Administrative Law Division, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Baker, JJ.

**SACKETT, C.J.**

Petitioner-appellant, Kelly Smith, appeals from the district court's ruling on judicial review that affirmed the denial of disability retirement benefits. He contends the court erred in failing to find him entitled to accidental disability retirement benefits or ordinary disability retirement benefits. We affirm.

**I. Background**

Appellant began as a capitol police officer in 1988. In 1990, he transferred to the Iowa State Patrol. In September of 2000, appellant reported he sustained an injury to his back while removing a piece of truck tire from the roadway. He saw a doctor in October of 2000. Eventually he had two L5-S1 discectomies and was released by Dr. Giordano to active duty with no restrictions in May of 2001. Dr. Giordano rated his disability at ten percent.<sup>1</sup>

In July of 2003 appellant contacted his workers' compensation case manager complaining of chronic back pain and seeking a medical evaluation. The evaluation resulted in a finding he had a displaced L4-5 disc that was causing his symptoms. Over the Labor Day weekend of 2003 appellant suffered severe back pain and was transported to a local hospital emergency room. On September 12, 2003, appellant applied for accidental disability retirement benefits.

On September 19, appellant's employment as a state trooper was terminated on non-medical grounds. In December of 2003 appellant began working full-time as a security investigator at a casino.

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<sup>1</sup> The doctor calculated the disability as eight percent from the first surgery and two percent from the second.

In January of 2004 the trustees of the retirement system denied appellant's request on procedural grounds and did not address the medical merits of his application. An administrative law judge reversed the denial and remanded the case to the board of trustees to consider the merits of the application.

On April 19, 2005, the board of trustees of the retirement system again denied appellant's application for accidental disability retirement benefits. On appeal, an administrative law judge affirmed the decision of the board. It concluded appellant had failed to demonstrate causation and disability because the current back problems were not related to the injury in 2000 and his employment as a security investigator showed he was not disabled.

On judicial review, the district court affirmed the decision. The court noted that, "while there is other evidence which contradicts this conclusion, this court is not able to reverse the lower decision so long as it is supported by credible evidence." The district court, like the administrative law judge, concluded appellant failed to prove causation or disability because the current back injury was at a different location than the injury in 2000 and his full-time employment as a security investigator "disputes the facts that he has a permanent incapacity."

## **II. Scope of Review**

On judicial review we are bound by the agency's fact-finding if it is supported by substantial evidence. See Iowa Code § 17A.19(10) (2005); *Excel Corp. v. Smithart*, 654 N.W.2d 891, 896 (Iowa 2002). Evidence is substantial for purposes of reviewing an administrative decision when a reasonable person could accept it as adequate to reach the same finding. *Asmus v. Waterloo Cmty.*

*Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006). The fact that two inconsistent conclusions may be drawn from the same evidence does not prevent the agency's findings from being supported by substantial evidence. *Id.* In situations in which the agency has found that the appellant's evidence is insufficient to support the claim under applicable law, that negative finding may only be overturned if the contrary appears as a matter of law. *See id.* Although we may not merely "rubber stamp" the agency decision, we may not disturb a decision merely because the record would support a contrary decision. *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003). This court "broadly and liberally" construes the agency's findings to uphold, rather than defeat the decision. *Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995).

### **III. Analysis**

*Accidental Disability Retirement Benefits.* Appellant first contends the court erred in failing to find him entitled to accidental disability retirement benefits. His primary argument is that the decision of the board and the decision of the administrative law judge are "tainted" by what the administrative law judge called "an undercurrent running through this case that is not medically based," so that their decisions either misread or misrepresent the medical evidence in order to deny him benefits.

To qualify for accidental disability retirement benefits, appellant must prove (1) permanent incapacity, (2) causation by a work duty, and (3) an injury. *See Chiafos v. Mun. Fire & Police Ret. Sys.*, 591 N.W.2d 199, 201 (Iowa 1999) (citing Iowa Code section 411.6, whose requirements are the same as section 97A.6, which applies to appellant).

Appellant contends his back pain is related to the injury in 2000 that resulted in surgery at the L5-S1 level. The administrative law judge considered the medical evidence concerning causation and concluded:

From the conflicting medical opinions it is impossible to pinpoint [where] the problem is originating. However, all the medical opinions, but for Dr. Found, indicate that the present symptoms are most likely from the L4-5 area. This was not the area injured back in 2000. Thus, the pain the appellant is currently experiencing is not the result of an injury that is a result of his employment.

The district court affirmed, concluding, “while there is other evidence which contradicts this conclusion, this court is not able to reverse the lower decision so long as it is supported by credible evidence.”

Concerning permanent incapacity, the administrative law judge considered the evidence that appellant is working full-time as an investigator for the security department of a casino as substantial evidence appellant is not “permanently incapacitated from working as a law enforcement officer.” The district court determined appellant’s “full-time employment as a security investigator where he was working full-time on his feet disputes the fact that he has a permanent incapacity.”

From our review of the record we, like the administrative law judge and district court, conclude substantial evidence supports the decision of the board of trustees to deny accidental disability retirement benefits. Accordingly, we affirm.

*Disability Retirement Benefits.* Appellant alternatively contends he is entitled to ordinary disability retirement benefits even if he does not qualify for accidental disability benefits. Appellant did not seek ordinary disability retirement benefits. He notes, however, that the board changed its rules after his

application, so that filing for accidental disability benefits automatically results in a cross-filing for regular disability benefits. See Iowa Admin. Code r. 661-401.1(2). He asserts the rule change should apply in his case.

The board's decision in April of 2005 was to deny "accidental disability" benefits. The administrative law judge determined appellant "failed to establish that he meets the requirements of Iowa Code section 97A.6(5)" and affirmed the board's decision. Section 97A.6(5) addresses accidental disability benefits, not ordinary disability retirement benefits. The district court noted appellant's alternative claim he "should be entitled to ordinary disability retirement benefits." However, the court affirmed "the prior decision of the board." It did not address appellant's alternative claim. The record does not reveal any motion to amend or enlarge under Iowa Rule of Civil Procedure 1.904(2).

"When a trial court fails to rule on an issue properly raised, the party raising the issue must file a motion asking the court for a ruling in order to preserve the issue for appeal." *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 356 (Iowa 1995); see also Iowa R. Civ. P. 1.904(2). "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). "When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal." *Id.*

We conclude this error was not preserved for our review and do not address it.

**AFFIRMED.**