

IN THE COURT OF APPEALS OF IOWA

No. 8-450 / 07-1535
Filed July 16, 2008

SENADA ALIBEGIC,
Plaintiff-Appellant,

vs.

IBP, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Claimant appeals from a decision on judicial review upholding the workers' compensation commissioner's denial of her disability claim. **AFFIRMED.**

Jay Roberts of Roberts, Stevens, & Prendergast, P.L.C., Waterloo, for appellant.

Stephanie Glenn Techau and Mitchell R. Kunert of Nymaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

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

HUITINK, J.

Senada Alibegic appeals from a decision on judicial review upholding the workers' compensation commissioner's denial of her disability claim. We affirm.

I. Background Facts and Prior Proceedings

Alibegic is forty-one years old. She began working at the IBP meat-packing plant in Waterloo in May 1997. She performed many different jobs at the plant, some of which required her to twist and bend at the waist. On or about October 17, 2003, Alibegic went to the IBP Health Service Department and reported that she had pain in her back from working on a particular processing line. A nurse in the department put her on restricted duty and set up an appointment with Dr. Vesna Sefer. Through X-rays and an MRI, Dr. Sefer discovered that Alibegic had a herniated disc and other small herniations. Dr. Sefer referred Alibegic to a neurosurgeon, Dr. Chad Abernathy.

Dr. Abernathy examined Alibegic on January 5, 2004, and recommended surgery. Once it received notice of the surgery and the extent of the injury to her back, IBP began to question whether the injury was actually work-related. Specifically, IBP questioned whether such an injury could have occurred at work given the limited amount of body motion in her assigned work. After corresponding with Dr. Abernathy, IBP told her it was no longer treating her back injury as "work-related" and refused to go forward with the surgery.

Alibegic stopped working at IBP, went to her own doctor, and eventually had two unsuccessful surgeries to try to alleviate the pain in her back. She also filed a petition with the workers' compensation commissioner alleging a

“repetitive bending and twisting” injury to her back that occurred on October 13, 2003.

At the hearing before the deputy commissioner, Alibegic testified that she injured her back on October 13, 2003, while she was “doing a lot of bending and twisting and throwing” on the processing line at a rate faster than normal. Alibegic did not have a medical doctor testify about her injuries or render an opinion as to the probable cause of the injuries. Instead, she relied upon written medical reports from her treating doctors that described the injury and subsequent treatment. IBP countered by arguing there was no proof that her herniated discs and resulting surgeries were related to an injury she suffered at work.

The deputy commissioner issued an arbitration decision awarding Alibegic benefits. In doing so, the deputy found Alibegic had established the injury arose out of and in the course of her employment with IBP on October 13, 2003. IBP filed an appeal with the commissioner.

The commissioner reversed the deputy’s decision. The commissioner concluded Alibegic was not entitled to benefits because she had not met her burden to prove that she sustained a work injury arising out of her employment. Specifically, the commissioner pointed out that there was no medical evidence from any doctor forming a causal connection between her back condition and her employment.

On judicial review, the district court affirmed the commissioner’s decision. Alibegic now appeals, claiming the commissioner and the district court failed to consider all of the evidence in the record in ruling on her claim.

II. Standard 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)(f) (2007); *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.*

III. Merits

A claimant seeking workers' compensation benefits has the burden of proving by a preponderance of the evidence that the injury on which he or she bases the claim arose out of and in the course of the claimant's employment. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 652 (Iowa 2000). Although the standard of legal causation pertaining to this burden involves an issue of law, the application of that standard to a particular setting requires the commissioner to render an outcome determinative finding of fact. *Asmus*, 722 N.W.2d at 657. On judicial review, we are bound by that fact-finding so long as it is supported by substantial evidence. *Id.* Most importantly to this case, if the commissioner finds that the claimant's evidence is insufficient to support the claim under applicable law, we may only overturn that negative finding if the contrary appears as a matter of law. *Id.* A finding may only be made as a matter of law if the evidence is uncontroverted and reasonable minds could not draw different inferences from the evidence. *Bearce v. FMC Corp.*, 465 N.W.2d 531, 534 (Iowa 1991).

Our case law is clear that the question of “[w]hether an injury has a direct causal connection with the employment or arose independently thereof is essentially *within the domain of expert testimony.*” *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995) (emphasis added). Although the question of whether her injury was work-related was the primary issue in this case, Alibegic presented no expert testimony establishing a link between her work activities and/or a specific work-related incident which allegedly caused the herniated discs. Instead, she relied upon her own testimony describing how she injured her back while working and the fact that the nurses in the IBP Health Services Department initially put her on restricted duty work and authorized limited medical treatment.

This evidence does not compel a finding that Alibegic’s injury arose out of her employment at IBP. While one could infer Alibegic injured her back while performing a job that required repetitive bending, twisting, and throwing, reasonable minds could still draw different conclusions from the evidence in this case. Therefore, we find Alibegic did not prove, as a matter of law, that her injury arose out of her employment with IBP. Accordingly, we are unable to conclude the commissioner, while serving as fact-finder, improperly determined that Alibegic failed to prove that her injury arose out of her employment with IBP.

After considering all arguments raised on appeal, whether or not specifically addressed in this opinion, we find no basis for overturning the decision of the industrial commissioner. Therefore, we find the district court was correct in affirming the commissioner’s decision.

AFFIRMED.