

IN THE COURT OF APPEALS OF IOWA

No. 9-124 / 08-1541

Filed May 29, 2009

**KEYSTONE GROUP and
ACCIDENT FUND INSURANCE COMPANY,**
Petitioners-Appellants,

vs.

TERRY DAVIS,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

The employer and its insurer appeal from the district court's ruling on judicial review affirming the workers' compensation commissioner's award of permanent total disability benefits. **AFFIRMED.**

Charles A. Blades of Scheldrup, Blades, Schrock, Sand, & Aranza, P.C.,
Cedar Rapids, for appellants.

Harry W. Dahl, Des Moines, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

The employer, Keystone Group, and its insurer, Accident Fund Insurance Company (collectively “Keystone”), appeal from the district court’s ruling on judicial review affirming the workers’ compensation commissioner’s award of permanent disability benefits. Keystone contends the commissioner’s causation and disability findings are not supported by substantial evidence. We affirm.

Terry Davis is a 55-year-old man with a seventh grade education who performs intellectually at a grade school level. His work experience consists of heavy manual labor in various construction activities. In 2001, Davis was hired by Keystone. In June 2004, Davis was working as a “hands on” supervisor for Keystone—that is, he supervised the work of four other people. His job did require him to read blueprints, and order supplies and materials on occasion, but he still performed heavy manual labor along with those he supervised.

On June 2, 2004, Davis suffered a work-related injury after lifting a heavy, metal stair stringer weighing in excess of 100 pounds. The record also supports the following findings: that Davis received initial treatment for back pain from his family doctor, Ronnie Hawkins, M.D.; Dr. Hawkins prescribed medication, released Davis from work and referred him for orthopedic evaluation; that Davis agreed to return to work following the June 2 injury only after being asked by his superior and promised additional personnel to help with the physical work; that Davis did return to work and continued to work despite not receiving the assistance promised; that on June 17, 2004, Davis suffered a second work-related injury to his back after lifting a heavy door frame; that Davis was thereafter unable to return to Keystone due to his restrictions and ongoing

symptoms; and Davis has not been employed in any capacity since June 17, 2004.

In 2005, Davis filed a petition with the workers' compensation commissioner seeking industrial disability benefits. Keystone denied that Davis had suffered a second work-related injury or that work-related injuries caused his disability. Following a hearing, the deputy commissioner specifically found Davis "very credible" and accepted his version of the events and consequences of the June 17 injury. The deputy commissioner concluded that the June 2 and June 17 work injuries were a "significant factor, albeit not the only factor, in precipitating the functional impairment and the permanent work restrictions imposed by physicians in this case." The deputy accepted the opinion of Dr. John Kuhnlien that the work injuries at Keystone in 2004 were significant aggravations of Davis's prior condition resulting in disability. The deputy rejected the opinions of Dr. Cassim Igram and Dr. Donna Bahls, who "agreed to the defense proposition that the injuries were a manifestation of the underlying pre-existing condition of the spine and that [Davis's] inability to continue in his trade is due to the natural progression of this degenerative condition." The deputy concluded that the June 2004 injuries were the cause of Davis's permanent and total disability.

On intra-agency appeal, the workers' compensation commissioner adopted the deputy commissioner's findings and decision as final agency action.

Keystone filed a petition for judicial review in the district court. The district court issued a detailed and well-reasoned decision upholding the commissioner's award. The district court reviewed the record evidence and found substantial

evidence supported: (1) the commissioner's finding that Davis's June 2004 work-related injuries were the proximate cause of permanent impairment and permanent disability; and (2) the commissioner's finding that Davis's injuries caused a one hundred percent loss of earning capacity. Keystone appeals.

Basically, Keystone's complaints go to the weight and credibility of the experts' testimony. In reviewing the commissioner's decision, we note the question of whether Davis's disability is causally connected to his workplace injuries is essentially within the domain of expert testimony. See *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). The commissioner must consider the expert testimony together with all other evidence introduced that bears on the causal connection between the injury and the disability. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). The weight to be given to any expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts relied upon by the expert as well as other surrounding circumstances. *Dunlavey*, 526 N.W.2d at 853. The expert opinion may be accepted or rejected, in whole or in part. *Id.*

We are bound by the commissioner's fact findings so long as those findings are supported by substantial evidence in the record when the record is viewed as a whole. Iowa Code § 17A.19(10)(f) (2007); *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004). Weighing evidence and assessing the credibility of witnesses is a matter for the agency, and the commissioner's findings have the effect of a jury verdict. *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 418, 420 (Iowa 2001). Thus, "[t]he possibility of drawing inconsistent conclusions from the same evidence does not mean an agency's decision lacks substantial

support. In the case of conflict in the evidence we are not free to interfere with the commissioner's findings." *Id.* at 418 (citation omitted).

Keystone contends that "Davis's work at Keystone merely provided a setting in which his pre-existing degenerative condition became manifest" and, under *Musselman v. Central Telephone Co.*, 261 Iowa 352, 154 N.W.2d 128 (1967), Davis has suffered no compensable injury. We disagree. *Musselman*, stands for the unremarkable proposition that an employee must establish there is a "direct causal connection between exertion of the employment and the injury" for which compensation is sought. *Musselman*, 261 Iowa at 359, 154 N.W.2d at 132. Thus, "[t]he question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause." *Id.* at 360, 154 N.W.2d at 132.

Upon review of the totality of the record, we conclude substantial evidence supports the commissioner's determination that Davis's disability is causally related to his June 2 and June 17, 2004 work injuries. The record also contains evidence that, if accepted, could lead a reasonable fact finder to determine the work injuries were not the cause of Davis's disability. However, as we have already noted, the question is not whether the evidence might support a finding different from the commissioner's, but whether it supports the finding the commissioner actually made. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000).

We also conclude that the record contains substantial evidence from which the commissioner could determine Davis suffered permanent total disability. Permanent total disability occurs where the injury wholly disables the

employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform. *Acuity Ins. v. Foreman*, 684 N.W.2d 212, 219 (Iowa 2004). Total disability does not mean a state of absolute helplessness. *Id.* "The pertinent question is whether there are jobs in the community that the employee can do for which the employee can realistically compete." *Id.* (citation omitted).

Davis's current work restrictions preclude him from returning to the work he has performed all his life, and the combination of his restrictions with his education and intellectual capacity leave Davis without transferable skills that would allow him to be gainfully employed. Substantial evidence supports the commissioner's finding of total permanent disability. We therefore affirm the district court's ruling on judicial review upholding the commissioner's award.

AFFIRMED.