IN THE COURT OF APPEALS OF IOWA

No. 1-092 / 10-1131
Filed April 27, 2011

LOVE'S ENTERPRISES, INC. and ACUITY,
Plaintiffs-Appellants,

vs.

DAVID LOVE and SECOND INJURY FUND OF IOWA,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge.

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

Kevin R. Rogers of Swisher & Cohrt, P.L.C., Waterloo, for appellants.

Alfredo Parrish and Tammy Westhoff Gentry of Parrish, Kruidenier, Dunn, Boles, Gribble, Parrish, Gentry & Fisher, L.L.P., Des Moines, for appellees.

Heard by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

The employer, Love's Enterprises, Inc., and its insurer, Acuity (collectively LEI), appeal from the district court's ruling on judicial review affirming the workers' compensation commissioner's award of permanent disability benefits and medical expenses to David Love. The district court found substantial evidence supported the commissioner's findings that Love suffered work-related injuries to his left ankle, right knee, and cervical spine, and bilateral carpal tunnels, all of which manifested on November 23, 2004, the last date Love performed work for LEI. The district court affirmed the commissioner's finding that LEI was responsible for medical expenses related to all those injuries and also found substantial evidence supported the commissioner's finding that Love was entitled to permanent total disability benefits as of that date. LEI contests all aspects of the district court's ruling, and asks us to reweigh the evidence to reach contrary factual and credibility findings. Because there is substantial evidence establishing the injuries Love alleged arose out of and in the course of employment and resulted in permanent total disability, and the commissioner's finding as to the date the injuries manifested is not irrational, we affirm.

I. Background Facts and Proceedings.

David Love was born in 1955. He graduated from high school in 1973 and earned a welding and blueprint/machinist certificate from a community college in 1974. He took college courses (part-time for the most part) from 1975 through 1985, earning a bachelor of sciences degree in 1985.

Love went to work as a machine operator in 1975. He also spent several summers in the 1970s performing park maintenance for the city of Waterloo. In

1979, Love was hired to work full-time as a machinist with John Deere and worked there until he was laid off in 1982.

In 1983 Love opened Love's Enterprises as owner and operator. LEI is a subcontractor on road construction projects. The company generally operated from May to October, depending on weather. Love performed all duties of the company: he drove trucks and moved equipment; he was responsible for the cleaning of and did most of the maintenance on the equipment; he set concrete forms, shoveled rock and asphalt, ran a skid loader; and he performed office work and bid jobs. "[A]s owner of the company, he did whatever he thought [he] needed to do to get the work done." The work was physically demanding and required long work hours during the construction season. Love's typical workday ran from 5:30 a.m. until 7:30 or 8:00 p.m. Love was paid $1000 per week during the construction season.

Medical records indicate Love suffered a "hyperextension injury" to his right knee in 1990. He had arthroscopic surgery on his right knee in 1996. In 2001, he complained of right knee swelling and pain in his right big toe. His treating physician at the time noted moderate degenerative joint disease "as well as an ACL deficiency." Nonsurgical treatment options were discussed, including the use of anti-inflammatory medication and avoiding kneeling and deep knee bending.

On November 23, 2004, Love jumped off of a truck and heard a pop and felt a stinging sensation in his left foot. His left ankle became swollen. By the time he finished work that day he was unable to put on his left boot. Love sought treatment at Allen Occupational Health for the left ankle injury and, on December

13, 2004, was seen by Dr. Kenneth McMains. Dr. McMains noted Love suffered a painful cyst on his left foot and referred Love to podiatrist Dr. R.G. Cervetti for "treatment of a work-related injury."

Dr. Cervetti's records indicate Love "states this mass has been present for about a year," but "definitely has been aggravated and seems to have grown considerably in size" since he jumped off a piece of construction equipment. Dr. Cervetti excised a ganglion cyst on December 23, 2004. Dr. Cervetti opined, "Although a cyst had been present prior to November 21, 2004,[1] due to the fact that he had no symptoms and the cyst started to become larger and painful after this date, it is my belief that the injury correlates directly to this incident."[2]

Love continued to have difficulties with his left ankle after the cyst was removed and, in May 2005, Dr. Cervetti referred him to Dr. William Knudson. Love then had a CT scan, which indicated "significant anterior impingement with exostosis formation." Dr. Knudson did not believe "the degree of spurring is amenable to arthroscopy and would require arthrotomy."[3] Conservative treatment was recommended. In June, Dr. Knudson noted Love was in for a recheck and reported the ankle was "doing pretty good. Then he worked on it over the weekend, carried a 200-lb air conditioner up several flights of stairs."

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[1] The difference in dates was explored at the hearing. The deputy determined the date of injury was November 23, 2004.

[2] On May 7, 2008, Dr. Cervetti agreed with the following statement: "It was probable, meaning more likely than not, that Mr. Love's jumping incident caused additional injury to this ankle by materially and significantly aggravating pre-existing osteoarthritis in his ankle joint."

[3] Arthroscopy is defined as "[e]xamination of a joint using an endoscope that is inserted through a small incision." American Heritage College Dictionary, 80 (4th ed. 2004). Arthrotomy is defined as "[s]urgical incision into a joint." *Id.*

In August 2005, Dr. Cervetti saw Love, writing "[h]e has some dorsal spurring at the ankle joint, probably from post trauma—either work related and/or years of just wear-and-tear and maybe sprains as far back as high school." Dr. Cervetti also noted Love was "having a lot of different ailments at this time including shoulder, back, foot as well as high blood pressure." Dr. Cervetti opined Love's "problem to mainly be generalized osteoarthritis." He offered Love more invasive ankle intervention, which Love declined.

Love again saw Dr. Cervetti in October 2005 with continued pain in his left ankle and received an injection "over the prominence of the dorsal spur on the neck of the talus and anterior aspect of the tibia." Dr. Cervetti indicated "we will extend his disability status for another 30 days, then will have him consult with Dr. Knudson for possible arthroscopy or open arthrotomy to clean up the spurring."

On September 28, 2005, Love saw Dr. Arnold Delbridge, whose notes from that date provide:

> We need to get an MRI of his spine as well and see if there is any problem there. He is having trouble working. His x-rays show he has arthritis but not too badly degenerated discs.
>
> . . . .
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> He had his heart checked. He has pain and numbness in his arm when he wakes up, so we may have to check into that too. We will check his back first and then see him in 2 weeks. Once we get his back evaluated, we will make a decision regarding work. He is on light duty now. We will go with that until we see what is going on.

Dr. Delbridge further described this initial visit in an April 11, 2008 letter to counsel:

> In addition, the patient complains of numbness in his foot. Dr. Knudson notes this. He complained of it in my office and

> apparently a small cutaneous nerve was somehow traumatized during the [ankle] surgery and he has discomfort and numbness in his left foot as a residual in addition to the subtaler loss of motion.
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> . . . .
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> Subsequently he began having difficulty with his right knee. He attributes this in part to the fact that he had a previously compromised knee and also to the fact that he was now limping on his left foot putting additional stress on a previously compromised knee. . . . I saw him initially on 9-28-05 because there was some thought he might have some back problems. He was complaining at the time of numbness in his fingers and pain in his forearms and wrist, pain in his right knee, pain in his left foot and pain in his neck.

An October 25, 2005 medical entry by Dr. Knudson noted he and Love "spent some time discussing arthrotomy vs. arthroscopy" and that Love had an "appointment with Dr. Delbridge in about 4 weeks to determine how they are going to proceed with his arthritic back." Love was not released by Dr. Cervetti with respect to his ankle until November 2005.

But Love continued to see Dr. Delbridge through 2005 and 2006 for problems with his back (degenerative disc disease was found in October 2005), right knee (swelling noted in December 2005 and ACL reconstruction occurred in March 2006), and eventual diagnosis of bilateral carpal tunnel. Dr. Delbridge concluded these problems were all work-related.

In August 2006, Love also saw Dr. Russell Buchanan for evaluation and treatment for cervical neck pain and bilateral numbness in his arms. Dr. Buchanan determined Love had "multilevel cervical disk degeneration with collapse of the cervical disks and some moderate stenosis narrowing for the nerve space at multiple levels starting at C4 and ending at C7." He also found Love had a "loss of normal cervical curvature" and "demonstrated bilateral carpal tunnel syndrome, moderate in electrodiagnostic studies on the right and

borderline mild to the left side." Dr. Buchanan opined "his cervical spine disk degeneration is contributed to by his work and certainly the carpal tunnel findings are significantly and materially contributed by his 20 year history of construction work."

In a detailed April 11, 2008 letter to Love's counsel, Dr. Delbridge evaluated Love's various injuries. Dr. Delbridge concluded Love's

> left foot ganglion cyst is work related because it is known that he jumped on and off equipment frequently and constantly walked on uneven surfaces and basically developed the problem in his foot while working because he was doing little else at the time.

Dr. Delbridge found a 5% impairment to Love's lower left extremity due to the cyst and subsequent necessary surgical intervention.

Dr. Delbridge wrote further:

> Based on his history of re-injuring his right knee at work, combined with having had difficulty with his left foot and putting additional stress on a compromised right knee, my conclusion is that his right knee situation is also work related in a sense that he has cumulative difficulties over the years which resulted in progressive degenerative change of the right knee and also an episode which caused a torn lateral meniscus of the right knee in the fall of 2005.

Dr. Delbridge assigned an impairment of 28% of the right lower extremity, which he later adjusted downward to 19%, attributing 9% pre-existing impairment due to the 1996 knee surgery.

Dr. Delbridge found Love's hip and lower back complaints were not work-related.

Dr. Delbridge concurred with Dr. Buchanan's opinion that Love's cervical spine showed material aggravation as a result of a work-related injury and resulted in a 6% impairment to the body as a whole.

Dr. Delbridge noted Love "has difficulties with his right shoulder," which he found had "not been materially aggravated occupationally."

With respect to Love's bilateral carpal tunnels, which Dr. Buchanan found to be "significantly and materially contributed to by his 20 year history of construction work," Dr. Delbridge designated a 3% impairment to each extremity.

Dr. Delbridge reached a conclusion "that Mr. Love, as a result of injuries and exacerbation of joint and spine problems while working at his construction [sic] and also relating his cervical spine to something that occurred as a result of his previous work infirmities" suffered a 20% impairment of the body as a whole.

On April 30, 2008, vocational specialist, Roger Marquardt, opined that Love "is eliminated from consistently working and earning money in the competitive job market overall" due to "the combination of right knee, left ankle, cervical and bilateral extremity conditions as documented from the valid findings of a December 13, 2007 Functional Capacity Evaluation," which include no lifting, carrying pushing, pulling, kneeling, squatting/crouching or climbing, and an inability to perform a full range of sedentary work. Marquardt wrote further:

> Even though an argument might be made that, due to being an owner/manager and thus able to self-accommodate his job demands, this work can still be performed, again this competitive employment requiring regular and consistent attention to and implementation of tasks which, as shown by his reported most recent return to work attempt, could not be done.

Love never returned to full-time work at LEI after November 23, 2004, though he did on occasion return to work responding to mail and answering the telephone. He did no highway work. He has not looked for work and is no longer the sole owner of LEI; he now owns the company with his two sons. He has

loaned the company approximately $160,000 and LEI uses some $170,000 worth of equipment owned by Love.

Love sought workers' compensation benefits, which were contested by LEI. At the May 12, 2008 hearing, Marquardt opined Love was unemployable due to work restrictions placed on him by Dr. Delbridge. He acknowledged he had not met with Love until just prior to the hearing, but that meeting did not change Marquardt's vocational opinion. He stated he did not consider Love's education or prior work experience.

Love testified that at the time of his injury on November 23, 2004, he also suffered from right knee pain, neck pain, and upper extremity symptoms all of which he believed were caused by his twenty-year employment in road construction. He stated he did not seek treatment for these other conditions because he was dealing with his left ankle.

In an arbitration decision filed on October 21, 2008, the deputy commissioner noted an independent medical evaluation was conducted by Dr. McMains, who opined none of Love's injuries were work-related. The deputy rejected Dr. McMains' opinions, and accepted those of Drs. Cervetti, Buchanan and Delbridge. The deputy cited the opinions of Drs. Cervetti and Delbridge that Love's left ankle injury was caused by work activity on November 23, 2004; the opinions of Drs. Buchanan and Delbridge who causally connected Love's cervical injury, an accumulative injury from Love's twenty years of employment in highway construction; Dr. Delbridge's opinion causally connecting Love's right knee injury to work; and Dr. Delbridge's opinion causally connecting Love's bilateral carpal tunnels to his employment. The deputy found "the most logical

day to assign as an injury date in this case is the date that the claimant last engaged in physical employment activity that resulted in a left ankle injury." The deputy determined Love had sustained permanent total disability, was entitled to weekly benefits in the amount of $582.23, and payment of his medical expenses as submitted in his exhibits 28 through 34. The deputy denied Love's claim for penalties. The parties cross-appealed to the commissioner, who adopted the deputy's decision with some additional analysis and affirmed.

LEI and Love sought judicial review in the district court. LEI contended the agency erred in finding injuries arising out of and in the course of employment on November 23, 2004, to Love's left ankle, cervical spine, right knee, and bilateral carpal tunnels. LEI also contended the agency erred in finding Love permanently and totally disabled and awarding disputed medical expenses. Love argued he should have been awarded penalty benefits.[4]

On July 15, 2010, the district court affirmed the commissioner's ruling in its entirety. Noting the offered opinions of Drs. Cervetti and Delbridge, the district court found "sufficient evidence from which a rational fact-finder could conclude Love's left ankle injury arose out of and in the course of his employment on November 23, 2004." The district court rejected LEI's challenge of the commissioner's date-of-injury determination with regard to the cervical spine, right knee, and bilateral carpal tunnels, concluding the commissioner had found Love's testimony credible as to his awareness of these conditions at the time of

[4] Love had also made an alternative claim for recovery against the Second Injury Fund before the workers' compensation commissioner, which he re-asserted in the district court. Neither the commissioner nor the district court found Second Injury Fund liability and the issue is not before us.

his November 23, 2004 injury, implicitly applied the "manifestation test" adopted in *Oscar Mayer Foods v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992), and "committed no legal error or error in the application of the law to the facts in determining the proper date of injury for Love's various injuries." The district court found substantial evidence supported the commissioner's conclusions that Love's right knee, neck, and bilateral upper extremity injuries were work-related.

With respect to LEI's claim that the commissioner erred in finding Love permanently and totally disabled, the court wrote, in part:

> The agency's disability determination was based on: Drs. Buchanan and Delbridge each finding a causally related permanent injury to Love's neck; Dr. Delbridge's assignment of a twenty percent whole person impairment to Love as a result of his work-related injuries to his left ankle, right knee, neck, and bilateral upper extremities; Delbridge's conclusion that it is unlikely Love will participate in any physical way in running his company in the foreseeable future and would miss a minimum of four or more days of employment per month; and Marquardt's vocational assessment that Love is eliminated from consistently working and earning money in the competitive job market overall. . . . The Court notes that the weight it is giving to Marquardt's assessment is somewhat diminished because it did not take into account Love's age, education, and work experience.
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> A "Physical Work Performance Evaluation" was performed on Love at Allen Hospital on December 13, 2007. It concluded that Love was unable to perform even sedentary employment without accommodations due to "difficulties performing the dynamic strength demands of work." . . . It is noted and taken into account that this evaluation encompassed conditions or maladies that it has been determined are not work related. Love's testimony supports the agency's disability determination. He testified: even sitting for more than a couple of hours causes his knee to swell to the point he can hardly walk on it; he is unstable in walking; he has limited ability to walk; he must walk very slowly and for only a few minutes at a time; and he must use a cane, as prescribed by Dr. Delbridge, to walk.
>
> Based on the foregoing, the Court concludes there is substantial evidence in the record to support the agency's determination that Love sustained a permanent and total disability to the body as a whole.

Finally, the district court upheld the award of medical expenses, writing:

> The Agency found that Love's exhibits 28-34 were billing statements for treatment of his left ankle, right knee, neck, and bilateral upper extremities which had not been paid by the insurance carrier. . . . Because the Court has determined Love's left ankle, right knee, neck, and bilateral upper extremity injuries are all compensable work-related injuries LEI is responsible for payment of all reasonable medical expenses related to these injuries. . . . Although the precise nature of a few of the myriad of charges listed on the billing statements in exhibits 28 through 34 are somewhat unclear and the description of some of the charges makes one wonder how the described treatment or procedure relates to the compensable injuries, the Court presumes that the Commissioner actually considered the bills and determined that all the expenses were somehow related to the diagnosis and/or care of Love's compensable conditions. Accordingly, the Court concludes there is sufficient evidence in the record to support the agency's conclusion . . . .

LEI now appeals.

II. Standard of Review.

A district court reviews agency action pursuant to the Iowa Administrative Procedure Act. *See* Iowa Code § 17A.19 (2009); *Arndt v. City of LeClaire*, 728 N.W.2d 389, 393 (Iowa 2007). "When we review a district court decision reviewing agency action, our task is to determine if we would reach the same result as the district court in our application of the Act." *Arndt*, 728 N.W.2d at 393.

> The district court may reverse or modify an agency's decision if the agency's decision is erroneous under a ground specified in the Act and a party's substantial rights have been prejudiced. The district court or an appellate court can only grant [petitioner] relief from the commissioner's decision if a determination of fact by the commissioner "is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f).

Id. (case citations omitted). Iowa Code section 17A.19(10)(f)(1) defines substantial evidence as

> 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.

"An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record." *Arndt*, 728 N.W.2d at 393.

The district court may also reverse or modify an agency's decision "[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact" vested in the agency's discretion. Iowa Code § 17A.19(10)(m); *see also Lakeside Casino v. Blue*, 743 N.W.2d 169, 177–78 (Iowa 2007).

III. Analysis.

A. Was ankle injury work-related? LEI claims the district court erred in finding substantial evidence supported the commissioner's findings as to each of Love's injuries. While LEI acknowledges the opinions of Drs. Cervetti and Delbridge, both of whom opined Love's left ankle injury was work-related, it argues we should parse those opinions more finely than did the commissioner and conclude they do not provide substantial evidence that Love's ankle injury arose out of or in the course of employment on November 23, 2004. We refuse to do so as this is essentially a request that we reweigh the evidence.

In the context of workers' compensation law, the claimant has the burden of proving by a preponderance of the evidence that some employment incident brought about the health impairment on which the claimant's claim is based. *See*

Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 297 (Iowa 1974); *Iowa Beef Processors, Inc. v. Burmeister*, 301 N.W.2d 768, 770 (Iowa Ct. App. 1980).

Whether there is a causal connection between the injury and the impairment is in the domain of expert testimony. *See Dunlavey v. Economy Fire & Casualty Co.*, 526 N.W.2d 845, 853 (Iowa 1995). For workers' compensation purposes, a cause is proximate if it is a substantial factor in bringing about the result. *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 354 (Iowa 1980). "It only needs to be one cause; it does not have to be the only cause." *Armstrong Tire & Rubber Co. v. Kubli*, 312 N.W.2d 60, 64 (Iowa Ct. App. 1981). "A preponderance of evidence exists when the causal connection is probable rather than merely possible." *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998).

"It is the commissioner's duty as the trier of fact to determine the credibility of the witnesses, weigh the evidence, and decide the facts in issue." *Arndt*, 728 N.W.2d at 394–95. Here, the commissioner accepted the opinions of Drs. Cervetti and Delbridge—even if they do not agree as to "the precise nature of the injury"—and those opinions provide substantial evidence to support the commissioner's finding that Love suffered a work-related injury to his left ankle on November 23, 2004.

B. Date cervical spine, right knee injuries, and bilateral carpal tunnels manifested? The commissioner found Love's injuries to his right knee and cervical spine, and his bilateral carpal tunnels were the result of cumulative injuries, which manifested on November 23, 2004. While LEI separately

addresses these injuries, LEI's contention boils down to a claim that the commissioner improperly determined the date of manifestation.

As stated in *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992):

> The date of injury is an important determination given that "a number of important questions cannot be answered unless a date of injury or accident is fixed, such as which employer and carrier is on the risk, whether notice of injury and claim are within the statutory period, whether statutory amendments were in effect, which wage basis applies, and many others." Consistent with a liberal construction of the workers' compensation statute, we believe that for purposes of computing benefits it is appropriate to fix the date of injury as of the time at which the "disability manifests itself." "Manifestation" is best characterized as "the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person."

(Citations omitted.)

The commissioner is entitled to "a substantial amount of latitude in making a determination regarding the date of manifestation since this is an inherently fact-based determination." *Tasler*, 483 N.W.2d at 829. Because repetitive-trauma injuries often will take years to develop to the point where they will constitute a compensable workers' compensation injury, the commissioner is entitled to consider a "multitude of factors." *Id.* Thus, for purposes of the cumulative injury rule, so long as supported by substantial evidence we will affirm the commissioner's determination regarding the date on which the injury manifests itself. *Id.* at 830.

Here, the commissioner (in adopting the decision of the deputy) found

> the claimant credibly testified that he was aware of a knee, neck and bilateral upper extremity conditions as of November 23, 2004 and this is substantiated by the medical exhibits showing that the

> claimant sought evaluation of the knee condition in 1996 and multiple contusions in 2001, as well as the questionnaire the claimant completed for Dr. Delbridge on September 28, 2005. Claimant argues that the most logical day to assign as an injury date in this case is the date that the claimant last engaged in a physical employment activity that resulted in a left ankle injury. The undersigned agrees.

We, like the district court, conclude the commissioner's credibility findings are supported by substantial evidence. The commissioner's application of the cumulative injury rule was not irrational, illogical, or wholly unjustifiable, and its determination the date the injuries manifested was November 23, 2004, is supported by substantial evidence in the record. Prior to this date, Love was aware of his various physical ailments, but had no work restrictions connected with those physical conditions. Love was not capable of returning to employment after November 23, 2004. That Love focused on his most pressing physical condition before addressing other conditions does not negate the commissioner's manifestation-date determination.

C. Industrial disability. We have already extensively quoted that portion of the district court's ruling affirming the commissioner's finding that Love was permanently and totally disabled.

LEI argues Love has a "college education and vast experience in management" and, therefore, there is not substantial evidence supporting the commissioner's finding that Love was totally and permanently disabled. While the record may provide support for a different finding, we affirm because the record provides substantial support for the finding the commissioner made. *See Arndt*, 728 N.W.2d at 394 ("Making a determination as to whether evidence 'trumps' other evidence or whether one piece of evidence is 'qualitatively weaker'

than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision.").

The commissioner arrives at industrial disability by determining the loss to the employee's earning capacity. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000). Total disability does not mean a state of absolute helplessness. *See id*. at 633. Total disability occurs when 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. *Id*. As observed by our supreme court:

> Industrial disability measures an injured worker's lost earning capacity. Factors that should be considered include the employee's functional impairment, age, intelligence, education, qualifications, experience, and the ability of the employee to engage in employment for which he is suited. Thus, the focus is not solely on what the worker can and cannot do; the focus is on the ability of the worker to be gainfully employed.
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> Even more important for purposes of our discussion here is the concept that industrial disability rests on a comparison of what the injured worker could earn before the injury as compared to what the same person could earn after the injury.

Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 265–66 (Iowa 1995) (citations omitted).

Here, the commissioner concluded Love had lost all earning capacity and that finding is supported by substantial evidence.

D. Medical expenses. LEI contends the district court erred in finding that the commissioner's award of medical expenses was supported by substantial evidence. In its appellate brief, LEI specifies fifteen charges included in exhibits 28 through 34 it contends are not compensable. These specific claims were not

made to, nor ruled upon by, the commissioner, and thus are not properly before us. *Polson v. Meredith Pub. Co.*, 213 N.W.2d 520, 523 (Iowa 1973) (stating that in workers' compensation cases "we have limited appellate review to those matters raised and litigated before the commissioner").

Rather, LEI's challenge before the commissioner with respect to medical expenses was more general:

> The hearing deputy erred in awarding medical expenses. Much of the discussion above applies to the medical benefit claims. There was no work injury on November 23, 2004, and if any injury is proven it is confined to the left lower extremity. Claimant's exhibits 28-34 involve many body parts other than the lower left extremity, and in fact involve many body parts that have been abandoned or never claimed as work related. Because it is Claimant's burden of proof, he cannot meet it, and his claim for medical benefits therefore fails. The hearing deputy erred in finding otherwise.

The commissioner found that Love proved he suffered work-related injuries to his left ankle, right knee, cervical spine, and bilateral carpal tunnels and was therefore entitled to medical benefits.

The district court properly upheld the commissioner's finding that Love had met his burden to show his injuries were compensable and was thus entitled to payment of his medical expenses. *See* Iowa Code § 85.27(1). The commissioner determined the medical expenses were factually related to Love's injuries, a finding which is supported by substantial evidence and we are thus not free to change. We affirm.

E. Did the district court abuse its discretion in denying LEI's application for stay of agency action? LEI applied for a stay of agency action upon seeking judicial review, which was denied by the district court. LEI obtained a bond on

July 1, 2010, which required the clerk to issue a written order staying proceedings. On appeal, LEI contends the denial of the motion to stay was an abuse of discretion, but concedes that having secured a bond the issue is moot. We need not address this further. *See Grinnell College v. Osborn*, 751 N.W.2d 396, 399 (Iowa 2008) (noting issue was moot as the district court ultimately affirmed the workers' compensation commissioner on judicial review and entered a stay of enforcement of the decision during the pendency of the appeal upon posting of bond).

IV. Conclusion.

The commissioner awarded permanent total disability benefits, and the district court affirmed. Because we agree with the district court that the commissioner's ruling is supported by substantial evidence and its application of law to the facts was not irrational or illogical, we affirm.

AFFIRMED.