**IN THE COURT OF APPEALS OF IOWA**

No. 6-1070 / 06-0603
Filed June 13, 2007

**SIDNEY L. SPEARS,**
Petitioner-Appellant,

**vs.**

**IOWA WORKERS' COMPENSATION COMMISSIONER and SMITHWAY MOTOR XPRESS, INC., Employer, and LIBERTY MUTUAL INSURANCE COMPANY, Insurance Company,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

Sidney Spears appeals from the district court ruling on judicial review affirming the decision of the Iowa Workers' Compensation Commissioner. **AFFIRMED.**

William Horneber of Horneber Law Firm, Sioux City, for appellant.

Patrick J. McNulty of Grefe & Sidney, P.L.C., Des Moines, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

**MILLER, J.**

Sidney Spears appeals from the district court ruling on judicial review affirming the decision of the Iowa Workers' Compensation Commissioner. He contends the court erred in concluding substantial evidence supports the commissioner's findings that (1) his current symptoms are not causally connected to his work injury, (2) he reached maximum medical improvement on May 1, 2000, and (3) he sustained a twenty percent industrial disability, entitling him to one hundred weeks of permanent partial disability benefits. We affirm.

Spears was employed by Smithway Motor Xpress, Inc. (Smithway) on October 27, 1999, when he was injured by a fall from his truck. He suffered one or two fractured ribs as a result of the fall. In the month following his injury, Spears was treated for left shoulder pain as well. For the first time on November 20, 1999, Spears complained of lower back pain. By December 22, 1999, Spears was reporting that his left shoulder was "feeling fine," full range of motion had returned to his shoulder, and his shoulder was not tender. On September 22, 2000, Spears's treating physician, Dr. Simonson, released Spears to return to full duties as a truck driver, with a forty-pound lifting limit and no repetitive bending or twisting. Dr. Simonson stated that he considered Spears to be at maximum medical improvement at that time. In an April 26, 2001 report setting forth his opinion of a permanent impairment rating for Spears, Dr. Simonson repeated that as of September 22, 2000, he considered Spears to be at maximum medical improvement.

In November 2000, Spears began complaining of increased back pain. In April 2001, Spears began working as independent contractor for West Central.

By July 2001, Spears was complaining of severe back pain. Spears underwent a one-level fusion in March 2003, but had the "hardware" that had been installed as part of the procedure removed in February 2004 due to soreness.

Spears's workers' compensation claim was heard in June 2004. In an arbitration decision, the deputy workers' compensation commissioner stated at one point in his conclusions of law that Spears had reached maximum medical improvement on May 1, 2000, and that he had sustained a twenty percent industrial disability and was entitled to one hundred weeks of permanent partial disability benefits. The commissioner adopted the proposed decision, and the district court, in its judicial review capacity, affirmed.

Iowa Code chapter 17A governs judicial review of decisions made by the workers' compensation commissioner. Iowa Code § 86.26 (2005). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhauser Co.,* 649 N.W.2d 744, 748 (Iowa 2002). On appeal we apply the standards of Iowa Code section 17A.19(10) to determine whether our conclusions are the same as those of the district court. *P.D.S.I. v. Peterson,* 685 N.W.2d 627, 632 (Iowa 2004). If they are the same, we affirm; if not, we reverse. *Id.*

A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id.* § 17A.19(10).

We are bound by the agency's findings of fact if they are "supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f); *P.D.S.I.*, 685 N.W.2d at 633. This requires that the entirety of the record-detracting as well as supporting relevant evidence-be sufficient to allow a neutral, detached, and reasonable person to make the same finding as the agency. *See id.* We will broadly and liberally apply the agency's findings to uphold rather than to defeat its decision. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000).

Spears contends the district court erred in concluding his current symptoms are not causally connected to his October 27, 1999 injury. He points to the opinion of his treating physician, Dr. Simonson:

> In the absence of any specific injury or new event, it is my opinion to a reasonable degree of medical probability, that Mr. Spears' increased symptoms represent a progression of his underlying problem for which I treated him from November 13, 2000 through June 26, 2002. There is a direct causal relationship between Mr. Spears' symptoms reported on June 26, 2002, and his injury of October 27, 1999.

However, the commissioner noted Dr. Simonson's opinions were inconsistent. In June 2002 Dr. Simonson found that Spears's increased symptoms were "secondary to further degeneration" of his discs. In January 2003 he referred to "a progression of [Spears's] underlying problem" but found a direct causal relationship between the 1999 work injury and Spears's June 2002 symptoms. The commissioner concluded, "This ambiguous set of opinions does not satisfy Spears's burden of proof." It is well settled that the agency is free to accept or reject, in whole or in part, an expert's medical opinion. *Lithcote Co. v. Ballenger,* 471 N.W.2d 64, 66 (Iowa Ct. App. 1991). Such judgment calls are clearly within

the province of the agency and should be left for the agency to make. *IBP, Inc. v. Harpole,* 621 N.W.2d 410, 420 (Iowa 2001). The commissioner's finding that Spears did not prove by a preponderance of the evidence that his current symptoms are causally connected to his work injury is supported by substantial evidence.

Spears next contends the district court erred in concluding substantial evidence supports an agency finding that Spears reached maximum medical improvement on May 1, 2000. Maximum medical improvement is determined by when care providers indicate no further improvement is expected. *Armstrong Tire & Rubber Co. v. Kubli*, 312 N.W.2d 60, 65 (Iowa Ct. App. 1981).

In his findings of fact, as adopted by the commissioner on intra-agency appeal, the deputy industrial commissioner found, in part:

> On May 1, 2000, Dr. Simonson administered intradiscal electrothermal therapy ("IDET"). He subsequently ordered temporary activity and work restrictions, but *declared Spears at maximum medical improvement* and released him to duty as a truck driver with a 40-pound lifting restriction and bending/lifting restrictions *on September 22, 2000*.
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> . . . .
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> Dr. Simonson's report of April 26, 2001 does not set forth permanent activity restrictions other than noting the most recent restrictions recommended *when he declared maximum medical improvement on September 22, 2000*: a lifting limit of 40 pounds occasionally.

(Emphasis added.)

In his conclusions of law, also adopted by the commissioner, the deputy concluded, in part:

> Spears was at maximum medical improvement in April 2001 . . . .
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> . . . .
>
> Spears is . . . entitled to healing period benefits from the date of injury until *the date he reached maximum medical improvement, May 1, 2000* . . . .

(Emphasis added.)

The agency's *findings* thus twice refer to September 22, 2000, as the date of maximum medical improvement. The date of May 1, 2000, referred to in the agency's *conclusions of law* as a date of maximum medical improvement is not supported by substantial evidence in the record. It appears to be derived from the first finding of fact quoted above, and is the date of the intradiscal electrothermal therapy, and not the date of maximum medical improvement stated by Dr. Simonson, expressly stated as "September 22, 2000" later in the same finding. The only date of maximum medical improvement supported by substantial evidence in the record is September 22, 2000.[1]

A twenty percent permanent industrial disability entitles a claimant to one hundred weeks of benefits. *See* Iowa Code § 85.34(2)(u). As Spears acknowledges and as the appellees note, Spears has been paid almost two hundred weeks of benefits after September 2000, as benefits were paid through the time of the June 2004 hearing. Therefore, if the commissioner's finding that Spears suffered a twenty percent industrial disability is supported by substantial evidence, then any error in fixing the date of maximum medical improvement at May 1, 2000 (or as of April 2001 for that matter) does not require reversal or other relief as Spears has been paid more than one hundred weeks of benefits

[1] The agency did state in its *conclusions of law* that Spears was at "maximum medical improvement in April 2001," apparently referring to Dr. Simonson's report of April 26, 2001. That conclusion is made in the context of discussing whether a causal link existed between Spears's original injury and his symptoms at the time of hearing. It is thus not a *finding* that Spears reached maximum medical improvement in April 2001, but instead merely acknowledges that he had already reached maximum medical improvement by April 2001. Further, for the reason stated hereafter, even if Spears did not reach maximum medical improvement until April 2001 reversal or other relief is not required.

after September 2000 and has also been paid more than one hundred weeks of benefits after April 2001. *See* Iowa Code § 17A.19(10) (requiring reversal or other appropriate relief if "substantial rights of the person seeking judicial relief have been prejudiced" by agency error); *Hill v. Fleetguard, Inc.*, 705 N.W.2d 665, 671-72 (concluding person seeking judicial relief was not prejudiced by agency finding that was not supported by substantial evidence).

Finally, we address Spears's contention that the commissioner erred in finding he suffered a twenty percent industrial disability and therefore is entitled to only one hundred weeks of permanent partial disability benefits. Factors to be considered in determining industrial disability include the employee's functional disability, age, education, qualifications, experience, and the ability of the employee to engage in similar employment. *Myers v. F.C.A. Services, Inc.*, 592 N.W.2d 354, 356 (Iowa 1999). The focus is not solely on what the worker can or cannot do; industrial disability rests on the ability of the worker to be gainfully employed. *Id.* Based upon Dr. Simonson's assignment of a ten percent of the whole person impairment rating, with one-half apportioned to pre-existing degenerative disc disease and one-half to the work injury, Spears's forty-pound lifting restriction, and Spears's employment and educational background, we conclude substantial evidence supports the commissioner's finding.

Because our conclusions are the same as the district court's, we affirm.

**AFFIRMED.**