

IN THE COURT OF APPEALS OF IOWA

No. 7-508 / 07-0170
Filed December 28, 2007

MOSES MENEGBO,
Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF INSPECTIONS
AND APPEALS,**
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Petitioner appeals from the district court's ruling that affirmed the
respondent's finding the petitioner committed dependent adult abuse.

AFFIRMED.

Kerri Keyte of Marks Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jeanie Kunkle Vaudt, Assistant
Attorney General, and John Lindquist, Assistant Attorney General, Administrative
Law Division, for appellee.

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

SACKETT, C.J.

Petitioner-appellant, Moses Menegbo, appeals from the district court's decision on judicial review that affirmed the finding of the Iowa Department of Inspections and Appeals (DIA) that he committed domestic adult abuse. He contends the court erred in determining (1) the DIA's finding was supported by substantial evidence and (2) the DIA's credibility determinations and weighing of the evidence was not unreasonable, arbitrary, capricious, or an abuse of discretion. We affirm.

I. Background Proceedings

In March of 2004, the DIA issued a notice of investigative findings and comprehensive abuse memo that "founded an allegation of abuse" of a dependent adult by Menegbo in an incident in January of 2004. He was placed on the central abuse registry. His appeal was continued, pending resolution of criminal charges arising from the incident. In March of 2005, a jury acquitted Menegbo of charges of assault causing bodily injury and wanton neglect of a resident of a health care facility not resulting in serious bodily injury. In September of 2005, Menegbo's appeal of the DIA's administrative action was submitted on the transcript of the criminal trial and the briefs of the parties; no additional evidence was offered. In December of 2005, the administrative law judge (ALJ) affirmed the DIA's initial finding that Menegbo committed dependent adult abuse. Menegbo sought further review by the agency. In January of 2006, the DIA issued a final order that affirmed the finding of dependent adult abuse.

Menegbo sought judicial review. He alleged the decision of the DIA (1) was not supported by substantial evidence, (2) was affected by error of law, (3)

did not follow agency precedent, (4) was in excess of its statutory authority, and (5) was unreasonable, arbitrary and capricious, and characterized by a abuse of discretion. He also sought a determination that the DIA's actions were in bad faith.

On the substantial evidence claim, the district court concluded substantial evidence supported the DIA's finding that Menegbo committed dependent adult abuse. On the claim the DIA's "characterization of the witnesses, credibility determination, and treatment of the evidence" were unreasonable, arbitrary, capricious, and an abuse of discretion, the district court concluded they were not.

Menegbo appeals, raising the same claims addressed by the district court. He contends substantial evidence does not support the finding he committed dependent adult abuse. He further contends the DIA's "characterization of witnesses, credibility determinations, and treatment of the evidence" were unreasonable, arbitrary, capricious, and an abuse of discretion.

II. Scope of Review

A district court reviews agency action pursuant to the Iowa Administrative Procedure Act. *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 414 (Iowa 2001) (citing Iowa Code § 17A.19 (2001)). When a district court exercises its authority on judicial review, it acts in an appellate capacity to correct any errors of law by the agency. *Hill v. Fleetguard*, 705 N.W.2d 665, 671 (Iowa 2005).

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 . . . 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. Just because the interpretation of the evidence is open to a fair

difference of opinion does not mean the commissioner's decision is not supported by substantial evidence. An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record.

Arndt v. City of Le Claire, 728 N.W.2d 389, 393 (Iowa 2007) (citations and internal quotations omitted). When we review a district court decision on judicial review, our task is to determine if we would reach the same result as the district court in our application of section 17A.10. See *City of Des Moines v. Employment Appeal Bd.*, 722 N.W.2d 183, 189-90 (Iowa 2006).

III. Analysis

A. Substantial Evidence. Iowa Code section 235B.2 defines "dependent adult abuse" as including "[p]hysical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult" resulting from willful acts or negligence of a caretaker. Iowa Code § 235B.2(5)(a)(1)(a) (2003).

Menegbo first contends the district court erred in determining the DIA's finding of dependent adult abuse is supported by substantial evidence. In particular, he challenges the finding he assaulted the dependent adult by biting her. He argues there is no direct evidence supporting this finding and the circumstantial evidence does no more than "create speculation, suspicion, or conjecture" on the source of the injury to the dependent adult. See *State v. Bayles*, 551 N.W.2d 600, 608 (Iowa 1996). He further argues that a unanimous jury acquitted him of assault, so twelve "reasonable minds" did not accept the quantity and quality of the evidence "as adequate to reach the conclusion" Menegbo committed assault. See *Mount Pleasant Cmty Sch. Dist. v. Pub. Employment Relations Bd.*, 343 N.W.2d 472, 476-77 (Iowa 1984).

After reviewing the transcript of the criminal trial, the DIA summarized the evidence and excerpted portions of the testimony of several witnesses as its findings. Just after 6:00 a.m. on January 4, 2004, Menegbo was called to a resident's room by a coworker, Lora Parker, who needed help with the resident, D.M., because D.M. was faking a seizure. Menegbo helped Parker put a helmet on D.M. while she hit and screamed at them. Menegbo and Parker took D.M. to the bathroom because she had soiled herself. Parker left to get a restraint chair. She returned to find Menegbo had D.M. in a restraint hold from behind. This involved Menegbo putting his arms around D.M. to hold her wrists. Menegbo's head was against D.M.'s back. D.M. complained that Menegbo bit her. Menegbo denied biting D.M. Menegbo pulled up D.M.'s shirt to show Parker he had not bitten D.M., but Parker could not see the upper part of D.M.'s back. Within thirty to forty-five minutes, Parker and other coworkers examined D.M.'s back and found fresh bite marks. Another coworker, who had helped D.M. get ready for bed the previous evening testified he had the opportunity to see D.M.'s back and saw nothing out of the ordinary. D.M. testified Menegbo bit her. Menegbo continued to deny it at trial.

The ALJ concluded:

D.M. didn't have marks when she went to bed. She accused the appellant of biting her on the back. The bite marks were observed shortly thereafter. The only other person in the room with D.M. was ruled out. The conclusion is that the appellant bit her. D.M. testified that the bite was painful, scary, and made her cry. It is clear that a bite on the back is an assault.

The ALJ noted Menegbo was acquitted in the criminal trial. Menegbo recognizes that the State's burden of proof in the criminal trial was beyond a reasonable

doubt and that there is a lesser burden of proof, a preponderance of the evidence, in an administrative proceeding.

He argues that the ALJ, who reviewed the transcript of the criminal trial, was denied the opportunity personally to observe the witnesses testify when accessing their credibility. We consider this argument and on our review we do not give the ALJ's credibility assessment the weight they would have been given had the judge in fact heard and seen the witnesses testify. *See California Youth Auth. v. State Pers. Bd.*, 128 Cal. Rptr. 2d 514, 523-25 (Cal. Ct. App. 2002).

That said, our scope of review is otherwise unchanged. The ALJ finds the facts and we review to assure they are supported by substantial evidence.

The district court, after reviewing the evidence and considering the proper burden of proof, concluded substantial evidence supported the DIA's findings that Menegbo committed dependent adult abuse. We agree. Although there was no independent eyewitness, there is evidence D.M. had no bite mark when she went to bed, but had a bite mark after her struggle with Menegbo. Parker observed Menegbo with his head against D.M.'s back as he restrained her. Substantial evidence supports the DIA's findings.

"Evidence is not insubstantial merely because it would have supported contrary inferences." *Reed v. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991). "Nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it." *Id.* The ultimate question for us is not whether the evidence supports a finding different than the agency's but whether the evidence supports the finding the agency actually made. *See id.* On judicial review, we "may interfere with the agency's findings only if the evidence is

uncontradicted and reasonable minds could not draw different inferences.” *Riley v. Oscar Mayer Foods Corp.*, 532 N.W.2d 489, 491 (Iowa Ct. App. 1995). Our conclusion is the same as the district court’s. See *Winnebago Indus., Inc. v. Haverly*, 727 N.W.2d 567, 571 (Iowa 2006).

B. Witness Credibility and Weighing Evidence. Menegbo contends the DIA’s “characterization of the witnesses, credibility determinations, and treatment of the evidence . . . were unreasonable, arbitrary, capricious, and an abuse of discretion.” See Iowa Code § 17A.19(10)(n). He argues the agency’s reliance on Parker’s testimony was improper because her testimony at trial differed from the written statement she prepared just after the incident and was in conflict with Menegbo’s description of the events.

We conclude the agency did not abuse its discretion. Our conclusion is the same as the district court’s.

AFFIRMED.