

THE IOWA DISTRICT COURT IN AND FOR BLACK HAWK COUNTY

UNION COMMUNITY SCHOOL DISTRICT and EMC INSURANCE, Petitioners, vs. DANDEENA SCHADLE, Respondent.	Case No. CVCV140244 ORDER
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This matter came before the Court on August 19, 2020 for consideration of the Petition for Judicial Review of the Iowa Workers' Compensation Commissioner. After arguments of counsel and review of the pleadings, the Court took the matter under advisement.

On appeal, Petitioners assert there is not substantial evidence to support the Commissioner's finding of a sixty percent industrial disability. Petitioners also argue the Commissioner did not consider the necessary factors.

FACTS AND PROCEDURAL HISTORY

Respondent was 53 years old at the time of the worker's compensation hearing. She graduated from college in 1998 with a Bachelor of Arts degree in education. After college, she has been an art teacher. Since 1994, she has been teaching art for grades Kindergarten through 8th grade at Union Community School District (Union).

On May 4, 2015, Respondent fell at work, and suffered a work injury. As a result of the work injury, the Commissioner concluded, which is unchallenged by Petitioners on appeal, that Respondent sustained permanent impairments to her left knee, right hip, right shoulder, and right foot/ankle. *Arbitration Decision*, pg. 24–25. Respondent also suffered a temporary mental health condition. *Id.* at 25.

While Respondent's only formal restriction is no kneeling for her left knee, the undisputed evidence in the record shows Respondent is significantly functionally limited in multiple joints even after multiple surgeries. Joseph Chen, M.D., a physiatrist employed by UIHC, assessed a whole person permanent impairment rating of 23%, due to range of motion limitations of her left knee, right hip, right shoulder, and right foot/ankle. *Arbitration Decision*, pg. 15–16. Arnold Delbridge, M.D., an orthopedic surgeon, assessed a whole person permanent impairment rating of 31%. *Id.* at 17. Dr. Noiseux, an orthopedic surgeon who performed surgery on Respondent, assigned a 37% permanent impairment of her left lower extremity. *Id.* at 26.

Respondent testified about the impairments. She testified she has pain in her left knee most of the time, and that it swells when she is on her feet a lot. *Arbitration Decision*, pg. 19. She reported she cannot kneel on her left knee, and reported difficulty squatting. She also testified she has trouble going up and down stairs. *Id.* She also testified she has pain in her right hip and right shoulder most of the time, which increase with activity. She reported poor balance and weakness in her right leg and right shoulder. *Id.* at 19–20. She also testified to pain in her right ankle/foot when walking and that she wears a brace to stabilize her ankle. *Id.*

Respondent also explained how her limitations were affecting her ability to perform her duties as an art teacher. *Transcript*, p. 56–63; *Arbitration Decision*, pg. 27. Respondent cannot walk around the classroom as often as she used to, and instead her students must come to her desk. *Arbitration Decision*, pg. 21. Respondent cannot kneel and take things out of cupboards anymore, and instead her students must reach into the cupboards to obtain the art materials. *Id.* at 19. Respondent cannot lift the heavy clay boxes and bags, and instead her students lift and carry the clay. *Id.* at 20. Respondent cannot carry heavy objects in general, and instead her students must help. *Id.* Respondent cannot use the potter's wheel, and cannot teach her students with it anymore. *Id.* She cannot walk as much and as fast as she used to, and so the following have all been significantly impacted: walking around in class, walking between classes, walking to the office, walking up stairs, and walking to the auditorium. *Transcript*, p. 58–62. When she has hall duty or cafeteria duty, she must sit down on a chair, even though teachers are expected to stand. *Id.* at 59.

At the time of the hearing, Respondent continued to work as an art teacher for Union. She received regular raises since her work injury.

After considering Respondent's testimony and the opinions of Drs. Chen, Noiseux, and Delbridge, the Commissioner concluded Respondent sustained a sixty percent industrial disability, which is now being challenged by Petitioners on appeal. *Arbitration Decision*, pg. 27.

STANDARD OF REVIEW

The finding of a sixty percent industrial disability is a mixed question of law and fact. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 525 (Iowa 2012).

The Court reviews the record as a whole to determine if the finding of fact is supported by substantial evidence. *Id.* Evidence is substantial if a reasonable mind would accept it as adequate to reach the given finding. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000). Substantial evidence is not absent just because it is possible to draw different conclusions from the same evidence. *University of Iowa Hospitals v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). Instead, the focus is on whether the evidence is

sufficient to support the decision made, not whether it is sufficient to support the decision not made. *Meyers v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006).

Because the challenge to the agency's industrial disability determination challenges the agency's application of law to facts, the Court cannot disrupt the agency's decision unless it is irrational, illogical, or wholly unjustifiable. *Neal*, 814 N.W.2d at 526.

Furthermore, the Commissioner has a duty to state the evidence it relies on and to detail the reasons for its conclusions. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 633 (Iowa 2000). The decision is sufficient if it is possible to determine the path taken through conflicting evidence. *Id.* at 633–34. If it is possible to work backward from the decision and to deduce what must have been the Commissioner's findings and legal conclusions, then the decision is sufficient. *Id.* The Commissioner is not required to set out verbatim all the testimony or evidence in its ruling, and a losing party cannot successfully urge the commissioner did not consider all the evidence just because the commissioner specifically refers to only some of the evidence. *Myers v. F.C.A. Servs., Inc.*, 592 N.W.2d 354, 356 (Iowa 1999).

GOVERNING LAW

An employee who suffers a “permanent disability” is entitled to compensation. Iowa Code § 85.34. The compensation for an unscheduled injury resulting in permanent partial disability is based on the employee's lost earning capacity, i.e. industrial disability. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 653 (Iowa 2000). Lost earning capacity requires inquiry of limitations on the employee's ability to perform the physical requirements of the employment, but also consideration of all the factors that bear on the employee's actual employability. *Id.* These factors include: the employee's functional disability, age, education, qualifications, experience, and ability to engage in similar employment. *Id.*

The focus is not only on what the employee can and cannot do, but also on the employee's ability to be gainfully employed. *St. Luke's Hosp.*, 604 N.W.2d at 653. Actual reduction in earnings is not necessary. *Id.* In determining industrial disability, the Commissioner is not required to fix disability with precise accuracy. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 526 (Iowa 2012).

ANALYSIS

There is substantial evidence to support the Commissioner's finding of a sixty percent industrial disability. The Commissioner clearly found the testimony of Respondent credible, and relied on the expert opinions of Dr. Chen and Dr. Noiseux. While there was no vocational analysis in the record, the Commissioner was able to determine the impact of Respondent's permanent impairment on her ability to perform her duties as an art teacher based upon the testimony and the evidence.

While Petitioners correctly point out that Respondent's sole formal restriction is no kneeling on her left knee, there is substantial evidence showing Respondent's degree of actual impairment was much greater. In addition to her left knee, Respondent had permanent impairment in her right hip, right shoulder, and right foot/ankle.

The Commissioner must have concluded Respondent's ability to engage in similar employment, i.e. her actual employability, was significantly reduced based upon her decreased ability to perform the duties of an art teacher. The record demonstrates Respondent relied on upon her students to perform basic tasks associated with her employments; tasks she would ordinarily be expected to perform on her own. Lifting clay, using the potter's wheel, walking around the classroom, and reaching into cupboards for class material are only some examples in the record where Respondent's impairments impacted her ability to perform her duties and required informal accommodations from her students.

Petitioners argue the Commissioner engaged in insufficient analysis of the relevant factors. However, the Court disagrees and finds the Commissioner made findings on all the factors throughout its 33 page decision, and considered the most important and relevant factors in its analysis on pages 23–27. To the extent the Commissioner did not explicit state its analysis, the Court can infer its conclusions from its decision.

Though Respondent continues to be employed by Union and her income has increased with raises, the key inquiry is whether she lost earning capacity based upon her inability to perform her work duties and her decrease in employability. There is sufficient evidence in the record to support the Commissioner's finding that she has lost earning capacity in amount of sixty percent.

The Commissioner's finding is hereby AFFIRMED.



State of Iowa Courts

Type: OTHER ORDER

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CVCV140244	UNION COMM SCHOOL DIST ET AL VS D SCHADLE

So Ordered

A handwritten signature in purple ink, reading "Joel Dalrymple", is written over a horizontal line.

**Joel Dalrymple, District Court Judge,
First Judicial District of Iowa**