IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JUSTIN LOEW, Petitioner/Claimant/Counterclaim Respondent, vs. **MENARD, INC.,** Respondent/Employer/ Counterclaim Petitioner, **XL INSURANCE AMERICA,** Respondent/Insurance Carrier/Counterclaim Petitioner.	**Case No. CVCV063592** **RULING ON PETITION FOR JUDICIAL REVIEW**

On August 26, 2022, the above-captioned matter came before this Court for hearing. Petitioner, Justin Loew, appeared through Attorney Paul Thune. Respondents, Menard, Inc., (Menards) and XL Insurance America, (XL), were represented by Attorney Rachael D. Neff. After hearing the arguments of Counsel and reviewing the court file, including the briefs filed by the parties and the Certified Administrative Record, the Court now enters the following ruling.

I. BACKGROUND FACTS AND PROCEEDINGS

Petitioner filed two petitions in arbitration with the Iowa Workers' Compensation Commissioner seeking workers' compensation benefits from Menards, his employer, and XL, Menards' insurer, as a result of an alleged work injury sustained on August 13, 2018, and a cumulative injury sustained on March 13, 2019. Certified Record, (CR), Part 1, p. 65. An Arbitration Decision was filed by a Deputy Commissioner on December 15, 2021. *Id*. at 87.

As it relates to his most recent claims, the Deputy took extensive note of Petitioner's previous workers' compensation case, File Number 5057482. *Id*. at 65. In File Number 5057482,

Petitioner was determined to have sustained a work injury on March 19, 2015, along with a reinjury during physical therapy for the March 2015 injury. *Id*. As a result of the injury and subsequent reinjury, Petitioner was determined to have sustained a 30% industrial disability. *Id*. As such, Petitioner was awarded 150 weeks of permanent partial disability benefits, in addition to other relief. *Id*. The Arbitration Decision was appealed and affirmed in its entirety on appeal by Commissioner Joseph S. Cortese II. *Id*.

Related to his most recent claims, the Deputy determined they pertain to alleged injuries that occurred after July 1, 2017. *Id*. at 79. As such, she determined that Petitioner's case would be subject to the changes made in 2017 by the Iowa Legislature to Iowa Code chapters 85, 86, and 535. *Id*. The Deputy determined that Petitioner sustained an injury arising out of and in the course of his employment with Menards on August 13, 2018, and a cumulative injury which manifested on March 13, 2019. *Id*. at 84. As such, she determined that Petitioner sustained permanent impairment caused by his work injures. *Id*. In reaching this determination, the Deputy gave the greatest weight to Dr. Bansal's opinion, as supported by Dr. Mouw's opinion. *Id*. at 81.

Specifically, she determined that Dr. Bansal's opinion, as an occupational medicine physician who performed an independent medical examination (IME) for Petitioner, supported by Dr. Mouw's opinion, as a treating neurosurgeon of Petitioner, was the most persuasive opinion. *Id*. Drs. Bansal and Mouw both opined that Petitioner's work injury in August 2018 caused his L3-L4 disc pathology. *Id*. at 83. Dr. Bansal further opined that Petitioner's continued lifting after the August 2018 injury led to the advancement and migrations of the L3-L4 disc protrusion. *Id*. The Deputy found that Dr. Bansal's opinion regarding the advancement and migration of the L3-L4 disc protrusion was supported by Petitioner's testimony and his medical records. *Id*. However,

she did note Petitioner's credibility was at issue but, ultimately, that Petitioner was a credible witness. *Id*.

There was one expert opinion regarding the functional loss rating of Petitioner. *Id*. at 85. Dr. Bansal opined that Petitioner sustained a 28% permanent partial impairment to his lumbar spine, 20% of which was from his prior work injury, and 8% of which was due to the August 2018 injury. *Id*. Dr. Bansal did not find that Petitioner sustained any additional functional loss attributable to the March 2019 work injury. *Id*. The Deputy adopted Dr. Bansal's impairment rating. *Id*. She further determined that Petitioner was only entitled to functional loss per the 2017 changes by the Iowa Legislature because he remained employed with Menards and he was earning greater wages than what he did at the time of injury in 2018. *Id*. at 86. As such, the Deputy concluded that the previous 30% industrial disability awarded for the 2015 work injury provided Menards with a credit and, thus, Petitioner was not entitled to any additional benefits for the 2018 work injury resulting in 28% functional loss. *Id*.

It was further found by the Deputy that the care Petitioner received from Drs. Kirkle, Elwood, and Mouw, along with services from Grundy County Hospital and Agape Therapy, were related to his work injuries, that they were beneficial, reasonable, and necessary. *Id*. As such, she found Menards and XL responsible for said past medical care, along with all future causally connected medical treatment. *Id.* However, she did not find that Petitioner was entitled to recover the $300.00 cost of his telephone conference with Dr. Mouw from August 2020, because there was no indication that the fee was for the doctor's report. *Id*. at 87.

Petitioner filed a Notice of Appeal with the Iowa Workers' Compensation Commissioner on December 29, 2021, appealing the Deputy's December 15, 2021 Arbitration Decision. *Id*. at 64. Respondents, Menards and XL, filed a cross-appeal. *Id*. at 12. The Commissioner filed an

Appeal Decision on April 12, 2022. *Id*. at 14. The Commissioner adopted all parts of the Arbitration Decision not on appeal as part of his Appeal Decision. *Id*. at 13. The Commissioner additionally adopted the same analysis, findings, and conclusions in full as those reached by the Deputy on the appealed issues. *Id*.

Specifically, the Commissioner affirmed that Petitioner met his burden of proof, proving that he sustained work-related injuries on August 13, 2018, and on March 13, 2019. *Id*. He also affirmed that Petitioner sustained permanent functional impairment to 8% of his body as a whole because of the August 13, 2018 work injury and that Petitioner sustained no permanent functional impairment as a result of the March 13, 2019 cumulative work injury. *Id*. The Commissioner further affirmed that Petitioner's finding of 28% functional impairment for the 2015 and 2018 injuries combined provides Respondents with a credit, based on the 30% award previously paid. *Id*. As such, he affirmed that Petitioner is not entitled to receive any additional benefits for the 8% functional impairment sustained as a result of the August 13, 2018 work injury. *Id*.

Furthermore, he affirmed that Respondents were responsible for the care and services Petitioner received from Drs. Kirkle, Elwood, and Mouw, along with services from Grundy County Hospital and Agape Therapy, in addition to all future causally related medical care. *Id*. He also affirmed that Petitioner is not entitled to reimbursement of $300.00 for the telephone conference with Dr. Mouw. *Id*. Lastly, the Commissioner ordered the parties to split the costs of the appeal, including the cost of the hearing transcript. *Id*. at 14. Petitioners subsequently filed this Petition for Judicial Review on April 20, 2022. Petition for Judicial Review (Pet.), p. 1. Respondents filed a Counterclaim Petition on May 12, 2022. Appearance, Answer, and Counterclaim of Respondents (AAC), p. 1.

II. SCOPE AND STANDARDS OF REVIEW

The Iowa Administrative Procedure Act (IAPA), Iowa Code Chapter 17A, governs the scope of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2021); *Meyer v. IBP, Inc*., 710 N.W.2d 213, 218 (Iowa 2006). The Court's review of final agency action is "severely circumscribed." *Sellers v. Emp. Appeal Bd.,* 531 N.W.2d 645, 646 (Iowa Ct. App. 1995). Nearly all disputes are won or lost at the agency level; the cardinal rule of administrative law is that judgment calls are within the province of the administrative tribunal, not the courts. *See id*.

"Under the [IAPA], we may only interfere with the Commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. The 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 ultra vires; 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). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co*., 649 N.W.2d 744, 748 (Iowa 2002).

"If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the Commissioner's discretion, so the Court is bound by the Commissioner's findings of fact if they are supported by substantial evidence. *Clark v. Vicorp Rest., Inc.,* 696 N.W.2d 596, 604 (Iowa 2005). Substantial evidence is defined as evidence of the quality and quantity "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." Iowa Code § 17A.19(10)(f)(1); *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 850 (Iowa 2011). The burden on the movant to prove there is not substantial evidence in the record is a heavy one. *See McComas-Lacina Constr. v. Drake*, 884 N.W.2d 225 (Table), 2016 WL 2744948, at *1 (Iowa Ct. App. May 11, 2016) ("A case reversing final agency action on the ground the agency's action is unsupported by substantial evidence . . . is the Bigfoot of the legal community - an urban legend, rumored to exist but never confirmed.")

The application of the law to the facts is also vested in the Commissioner. *Larson Mfg. Co. v. Thorson,* 763 N.W.2d 842, 850 (Iowa 2009). Accordingly, the Court will reverse only if the Commissioner's application was "irrational, illogical, or wholly unjustifiable." *Id.*; Iowa Code § 17A.19(10)(l). This standard requires the Court to allocate some deference to the Commissioner's application of law to the facts, but less than it gives to the agency's findings of fact. *Larson,* 763 N.W.2d at 850. "[I]f the claimed error pertains to the agency's interpretation of law, then the question on review was whether the agency's interpretation was wrong." *Tripp v. Scott Emergency Communication Center*, 977 N.W.2d 459, 464 (Iowa 2022) (citing *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006)).

III. MERITS

A. Petition for Judicial Review

1. Credit for previous benefits paid per Iowa Code section 85.34(7)

Petitioner asserts that the Commissioner's affirmance of the Arbitration Decision in full was in violation of Iowa Code sections 17A.19(10)(a)-(n). Pet., p. 2. Specifically, Petitioner asserts that he should have been entitled to payment for his 8% functional impairment rating from the

August 13, 2018 injury. Petitioner supports his assertion by arguing that the previous 30% award of permanent disability based on an industrial disability is different than his current award of 8% functional impairment. As such, Petitioner asserts that allowing Respondents a credit for a previous 30% industrial disability award paid was an error of law. It is important to note that all parties agree that, per Iowa Code section 85.34(2)(v), Petitioner is only entitled to functional impairment, as he has remained employed with Menards earning the same, or greater, wages since the injury in August 2018.

Respondents assert that the Commissioner did not err in concluding that Petitioner was not entitled to additional permanency benefits pursuant to Iowa Code section 85.34(7), based on his prior award of 30% industrial disability related to his 2015 work injury. Specifically, Respondents assert that there is no distinction between disability, functional impairment, and loss of earning capacity. Rather, disability encompasses both loss of earning capacity and functional impairment. As such, Respondents contend that Petitioner has already been paid for his disability and, thus, a credit is appropriate.

Petitioner asserts that Iowa Code section 85.34(2)(v) provides a distinction between functional impairment and loss of earning capacity. As such, Petitioner asserts that when Iowa Code section 85.34(2)(v) is read in conjunction with Iowa Code section 85.34(7), there is a distinction. Thus, Petitioner argues that he should be entitled to payment for his 8% functional impairment, as it is different than his previous 30% industrial disability award.

Petitioner's case is subject to the changes made in 2017 by the Iowa Legislature to Iowa Code chapters 85, 86, and 535. CR, Part 1, p. 79. In interpreting a statute or regulation, the courts "consider the plain meaning of the relevant language in the context of the entire statute to determine whether there is an ambiguity." *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017) (citing

State v. Nall, 894 N.W.2d 514, 518 (Iowa 2017)). If the statute or regulation is unambiguous, the Court must apply that plain meaning. *Id.* "Words are given their ordinary and common meaning by considering the context within which they are used absent a statutory definition or an established meaning in the law." *City of Des Moines v. Emp. Appeal Bd.,* 722 N.W.2d 183, 196 (Iowa 2006). However, the Court resorts to such rules of construction only when the terms of a statute are ambiguous. *State v. Haberer,* 532 N.W.2d 757, 759 (Iowa 1995).

In order to properly determine whether Respondents are due a credit, Iowa code section 85.34 and its amendments must be interpreted to ascertain the legislature's intent in making the changes. "When determining legislative intent, we look first to the language of the statute." *State v. Soboroff*, 798 N.W.2d 1, 6 (Iowa 2011). "We determine legislative intent from the words chosen by the legislature, not what it should or might have said." *Reg'l Util. Serv. Sys. v. City of Mount Union*, 874 N.W.2d 120, 124 (Iowa 2016). "Absent a statutory definition or an established meaning in the law, words in the statute are given their ordinary and common meaning by considering the context within which they are used." *Swiss Colony, Inc. v. Deutmeyer*, 789 N.W.2d 129, 136–37 (Iowa 2010). We also look to the purpose of the statute for aid in gleaning legislative intent. *State v. Hensley*, 911 N.W.2d 678, 682 (Iowa 2018).

In the context of workers' compensation cases, the Court acknowledges that while it "is correct that we interpret workers' compensation statutes in favor of the worker, we still must interpret the provisions within the workers' compensation statutory scheme 'to ensure our interpretation is harmonious with the statute as a whole.'" *Chavez v. MS Tech. LLC*, 972 N.W.2d 662, 668 (Iowa 2022) (quoting *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016)). "Our supreme court has determined the legislature has not vested the commissioner with the authority to interpret section 85.34(7)." *Polaris Indus., Inc. v. Hesby,* 881 N.W.2d 471

(Table), 2016 WL 541081, at *4. (Iowa Ct. App. Feb. 10, 2016). "Therefore, we review the commissioner's statutory interpretation 'to correct errors of law on the part of the agency.'" *Id.* (quoting *Teleconnect Co. v. Iowa State Commerce Comm'n*, 404 N.W.2d 158, 161 (Iowa 1987)).

The 2017 Legislative amendments changed subsection 7 of Iowa Code section 85.34, labeled "Successive Disabilities." Iowa Code § 85.34(7). This subsection is particularly relevant in determining whether a credit is due to Respondents under chapter 85. As such, the Court will briefly address the intent and language of the amendments to subsection 7.

Initially, subsection 7 was added in 2004 as a completely new subsection during previous amendments to Iowa Code section 85.34. 2004 Iowa Acts 1st Extraordinary Sess. ch. 1001, § 11. Importantly, this preceding and original version of subsection 7 included a formula for how apportionment or credit should be calculated for successive injuries with the same employer:

> a. An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is *not liable* for compensating an employee's preexisting disability that arose out of and in the course of employment *with a different employer* or from causes unrelated to employment.
>
> b. If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the *same* employer, and the preexisting disability was compensable under the same paragraph of section 85.34, subsection 2, as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already *partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer*.

Iowa Code § 85.34(7)(a)(b) (pre-2017 amendments) (emphasis added).

The insertion of this first subsection 7 was helpfully accompanied by a statement which unambiguously set forth the legislative intent behind the 2004 amendments. "[T]he statement explained the statutory changes would '*prevent all double recoveries* and all double reductions in workers' compensation benefits for permanent partial disability.'" *Roberts Dairy v. Billick*,

861 N.W.2d 814, 820, as amended (June 11, 2015) (quoting 2004 Iowa Acts 1st Extraordinary Sess. ch. 1001, § 20 (emphasis added)). From the plain language in the legislature's statement, it is clear subsection 7 was added with the intent to extinguish opportunities for double recovery, specifically in cases where a claimant had previously been compensated for the injury by the same employer.

In furtherance of its stated goal to prevent double recovery in such cases, the original subsection included language which allowed for partial satisfaction of compensation, "to the extent of the percentage . . . for which the employee was previously compensated by the employer." *Id.* After the 2017 amendments, the subsection now reads, in part:

> An employer is liable for compensating *only* that portion of an employee's disability that arises out of and in the course of the employee's employment with the employer and that relates to the injury that serves as the basis for the employee's claim for compensation under this chapter, or chapter 85A, 85B, or 86. *An employer is not liable* for compensating an employee's preexisting disability that arose out of and in the course of employment from a prior injury with the employer, *to the extent that the employee's preexisting disability has already been compensated under this chapter, or chapter 85A, 85B, or 86.* An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

Iowa Code § 85.34(7) (post-2017 amendments) (emphasis added).

In evaluating the language of the amended subsection, the Court notes the legislature removed the language providing a set formula for calculating a credit, yet preserved language asserting that an employer is not liable "to the extent that the employee's preexisting disability *has already been compensated* under this chapter." *Id.* (emphasis added). The Court also notes the legislature retained the language which prohibits compensation for a disability arising out of and in the course of employment with a different employer. The Court further observes the amendments contain no supplemental language frustrating, removing, or prohibiting apportionment or credit for successive injuries with the same employer.

The Court finds no language in the statute which prohibits or could be interpreted to intend to prohibit credit or apportionment. Thus, the 2017 amendments' principal change to subsection 7 is merely the removal of a set formula for calculating a credit. Although there may be multiple reasons for this removal, the Court need only discern whether the legislature intended to rescind its original objective of preventing double recovery by permitting apportionment or credit for past compensation with the same employer.

Due to the legislature's unequivocal statement of intent behind subsection 7 and keeping the provision for credit or apportionment, the Court concludes the legislature intended to permit credit and apportionment to prevent double recovery in cases of past compensation with the same employer. Furthermore, the Court notes there is no distinction based on how compensation occurs. Based on the plain language of the statute, it is clear that Iowa Code section 85.34(7) is intended to prevent an employer from compensating an employee twice for the same disability. The Court cannot read into the statute a distinction based on type of disability benefits paid. Thus, the argument that Petitioner asserts - that he should be paid for his 8% functional impairment because it is different than his previous 30% loss industrial disability award - must fail.

Accordingly, the Court concludes the Commissioner did not commit an error of law in awarding Respondents a credit for the previous 30% award paid, per Iowa Code section 85.34(7). The Commissioner did not commit an error of law, because Iowa Code section 85.34(7) does not make a distinction based on the type of disability benefits paid. Rather, the intent of Iowa Code section 85.34(7) is to prevent an employer from compensating an employee twice for the same disability. Petitioner in this case was already awarded a 30% industrial disability for his March 2015 injury and subsequent reinjury. Petitioner is presently 28% disabled from the August 2018 injury. Thus, his disability has not extended past the previous award of 30%. Furthermore, because

the Commissioner did not commit an error of law, his finding is rational, logical, and wholly justifiable. *Larson,* 763 N.W.2d at 850; Iowa Code § 17A.19(10)(l).

2. Impairment rating in relation to both injuries

Petitioner further asserts in his Petition for Judicial Review that his 8% functional impairment rating should have been related to his August 13, 2018 injury and his cumulative injury on March 13, 2019. However, neither party briefed this issue. Accordingly, the Court takes no action on this claim advanced by Petitioner.

B. Counterclaim Petition for Judicial Review

1. Finding of injuries on August 13, 2018 and March 13, 2019

Respondents assert that the Commissioner's finding that Petitioner sustained new, compensable injuries arising out of and in the course of his employment on August 13, 2018, and March 13, 2019, was in violation of Iowa Code sections 17A.19(10)(a)-(n). AAC, p. 2. Specifically, Respondents assert that the Commissioner erred in concluding that Petitioner carried his burden of proof that he sustained compensable injuries to his low back arising out of and in the course of his employment with Menards on both August 13, 2018, and March 13, 2019. As such, Respondents assert the Commissioner did not follow the substantial evidence in the case.

Furthermore, Respondents assert that the respective opinions of Drs. Bansal and Mouw were based on incomplete and inaccurate information. As such, Respondents assert the Commissioner did not afford them the proper weight and, rather, should have relied on the opinions of the other two doctors, Schmitz and Harbach. Additionally, Respondents assert the Commissioner erred in affording weight to Petitioner's testimony. Lastly, Respondents assert that if the Commissioner's causation opinions were to be affirmed, that Petitioner's increased disability must be attributed to his 2015 work injury.

Petitioner asserts in his reply brief that the MRI findings, together with the causation opinions of Drs. Bansal and Mouw, provide substantial evidence to support the Commissioner's findings of medical causation. Petitioner further asserts that he has been found credible by the Commissioner. As such, his testimony is reliable and can be afforded weight. Petitioner also asserts that the Commissioner did not err in affording Drs. Bansal's and Mouw's opinions more weight, as they made detailed findings regarding expert opinions.

The Commissioner performed a detailed review of the evidentiary record and arguments of the parties. Specifically, the Commissioner found that Petitioner met his burden of proof, proving that he sustained work-related injuries on August 13, 2018, and on March 13, 2019. In reaching this determination, the Commissioner made extensive findings regarding Petitioner's injuries and subsequent treatment. Furthermore, the Commissioner also made extensive findings regarding the expert opinions in the case. He weighed each expert's opinion in great detail, including considering what medical information each expert had considered in forming their respective opinions.

As such, the record, when viewed as a whole, has substantial evidence to support the Commissioner's finding that Petitioner sustained injuries that arose out of and in the course of his employment with Menards. Such evidence includes, but is not limited to, the testimony of experts, along with extensive medical records. Thus, there is evidence within the record that indicates to a neutral, detached, and reasonable person that the conclusion that Petitioner sustained work injuries was appropriate and was supported by substantial evidence. Iowa Code § 17A.19(10)(f)(1); *Pease.*, 807 N.W.2d at 850. Accordingly, the Court concludes that the finding that Petitioner suffered work-related injuries on August 13, 2018, and on March 13, 2019, is supported by substantial evidence. Furthermore, because Petitioner was found to have sustained new injuries separate and

different from his March 2015 injuries, Respondents' argument that Petitioner's symptoms are a mere aggravation of his 2015 injuries fails.

The agency, as the fact finder, determines the weight to be given to any expert testimony. *Sherman v. Pella Corp*., 576 N.W.2d 312, 321 (Iowa 1998); *Dodd v. Fleetguard, Inc.,* 759 N.W.2d 133, 138 (Iowa Ct. App. 2008). Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. *Id*. The Commissioner may accept or reject the expert opinion in whole or in part. *Sherman,* 576 N.W.2d at 321.

> 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.

Arndt v. City of Le Claire, 728 N.W.2d 389, 394 (Iowa 2007). Furthermore, when the Court reviews factual questions delegated by the legislature to the Commissioner such as the one here, the question before the Court is not whether the evidence might support different findings than those made by the Commissioner but whether the evidence supports the findings actually made. *St. Luke's Hosp. v. Gray,* 604 N.W.2d 646, 649 (Iowa 2000). Thus, although there may be evidence here to support a different finding, there clearly is evidence in the record to support the findings made by the Commissioner regarding whether Petitioner had sustained work-related injuries arising out of and in the course of his employment with Menards on August 13, 2018, and March 13, 2019. Evidence in support of an agency decision is not insubstantial merely because it would have supported contrary inferences, nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996). Furthermore, based on the substantial evidence supporting the Commissioner's determination, his application of law to the facts was rational, logical, and wholly justifiable. *Larson,* 763 N.W.2d at 850; Iowa Code § 17A.19(10)(l).

The agency, as the fact finder, also determines the weight to be given to lay testimony. "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 (citations omitted). "The reviewing court only determines whether substantial evidence supports a finding *according to those witnesses whom the [commissioner] believed*." *Id*. at 395 (internal quotations and citations omitted). The Supreme Court of Iowa has held:

> The law requires the commissioner to consider all evidence, both medical and nonmedical, in arriving at a disability determination. We have held that lay witness testimony is relevant and material on the issue of cause and extent of an injury. However, it is a basic tenet of law that it remains within the province of the industrial commissioner to weigh the facts present to him and it is entirely within his right to reject any evidence he considers less reliable than other contradictory testimony.

Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 273 (Iowa 1995) (internal citations omitted). As such, it is clear from the record the Commissioner found Petitioner to be a credible witness. In reaching his determination, the Commissioner found that during his testimony Petitioner engaged in direct eye contact, had an appropriate rate of speech, did not engage in furtive movements, and had clear and consistent memory. CR, Part 1, p. 83. The Commissioner's finding that Petitioner is a credible witness is within his power to do so, and he based it on reasonable facts. As such, the Commissioner did not err in finding that Petitioner and his testimony was credible.

IV. CONCLUSION AND DISPOSITION

For all the reasons set forth above, the Court concludes that Petitioner's substantial rights were not prejudiced. Specifically, the Court concludes that Respondents were entitled to a credit per Iowa Code section 85.34(7). Thus, Petitioner is not entitled to payment for his present 8% functional impairment rating.

Also, for all the reasons set forth above, the Court concludes that Respondents' substantial rights were not prejudiced. More specifically, the Court concludes that Petitioner did sustain new,

compensable injuries arising out of and in the course of his employment with Respondents on August 13, 2018, and a cumulative injury on March 13, 2019. The Court further concludes there is substantial evidence in the record, when viewed as a whole, to support the Commissioner's decision. The Commissioner's decision was not irrational, illogical, or wholly unjustifiable, or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion in any way.

Accordingly, the Court concludes both Petitioner's Petition for Judicial Review and Respondents' Counterclaim Petition must be **DENIED**. The Commissioner's decision is **AFFIRMED** in its entirety.

State of Iowa Courts

Case Number	**Case Title**
CVCV063592	JUSTIN LOEW VS MENDARD INC ET AL
Type:	OTHER ORDER

So Ordered

Samantha Gronewald, District Court Judge
Fifth Judicial District of Iowa

Electronically signed on 2022-10-27 12:18:26