

**IN THE COURT OF APPEALS OF IOWA**

No. 23-0144  
Filed October 25, 2023

**JASON SPENCE,**  
Petitioner-Appellant,

**vs.**

**N & L PARKISON TRUCKING, INC. and GREAT WEST CASUALTY COMPANY,**  
Respondents-Appellees.

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Appeal from the Iowa District Court for Polk County, David Porter, Judge.

Jason Spence seeks judicial review of a decision of the workers' compensation commissioner. **AFFIRMED.**

Nicholas W. Platt of Platt Law Firm, P.C., Urbandale, for appellant.

Stephen W. Spencer and Christopher S. Spencer of Peddicord Wharton, LLP, West Des Moines, for appellees.

Considered by Bower, C.J., Greer, J., and Vogel, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2023).

**VOGEL, Senior Judge.**

Jason Spence appeals from a district court decision affirming the workers' compensation commissioner's finding that he has not "met his burden he sustained an injury arising out of and in the course of his employment with" N & L Parkison Trucking, Inc. (Parkison). He argues the commissioner's decision is not supported by substantial evidence.

At the arbitration hearing, Spence testified that on February 15, 2020, he was helping realign the rear axle on a Parkison truck when a bar hit his left shoulder and caused a "pop." By February 18, he realized his shoulder "wouldn't respond how it normally does" and sought medical treatment in the emergency room, followed up by an evaluation with his primary care physician. Both doctors diagnosed him with a rotator cuff injury but noted Spence related to them the pain in his shoulder was from an injury he suffered two weeks earlier. In August he underwent surgery to repair his left shoulder. In a February 2021 independent medical examination (IME), a doctor opined Spence has 12% impairment of the whole person from the shoulder injury and he should limit his lifting activities. In a May 2021 IME, another doctor opined Spence has impairment from the shoulder injury. The arbitration hearing was held in June 2021, during which Spence testified he has "constant pain" in his left upper extremity with lessened strength and range of motion. In the arbitration decision, the deputy workers' compensation commissioner found Spence generally lacked credibility "based on the inconsistencies between his medical records, testimony, [and] witness testimony when considered in light of his past crimes of dishonesty," and the deputy concluded Spence failed to prove he sustained a work-related injury. The workers'

compensation commissioner affirmed and adopted the arbitration decision, noting the deputy “provided a well-reasoned analysis of all the issues.” Spence petitioned for judicial review, after which the district court affirmed the agency decision. He now appeals.

We review the commissioner’s decision under the standards of Iowa Code section 17A.19(10) (2022). See *Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007). Spence argues the commissioner’s decision is not supported by substantial evidence. See Iowa Code § 17A.19(10)(f). “‘Substantial evidence’ means 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.” *Id.* § 17A.19(10)(f)(1).

Spence specifically argues the commissioner’s decision that he failed to prove his injury was work related is not supported by substantial evidence. As the claimant, Spence had “the burden of proof to show by a preponderance of the evidence that the injury arose out of and was in the course of the claimant’s employment.” *Arndt*, 728 N.W.2d at 393. Spence testified he sustained an injury while working on February 15, 2020, but the commissioner found he lacked credibility. “The commissioner, as trier of fact, has a duty to weigh the evidence and measure the credibility of witnesses.” *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011). “[W]e give due regard to the commissioner’s discretion to accept or reject testimony based on his assessment of witness credibility.” *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 558 (Iowa 2010).

The district court accurately identified four reasons the commissioner found Spence generally not credible: he “has a history of engaging in crimes of dishonesty”; he falsely claimed he “had been injured while serving in the military”; he “had difficulty ‘recalling’ whether he had ever worn a sling while at work”; and he was inconsistent in describing his educational background. Specific to the question of causation, the commissioner noted the medical record from Spence’s emergency room examination states Spence was injured in a tire explosion occurring two weeks prior, and the commissioner found this record accurately reflects what Spence told the doctor at the time.

Spence’s argument focuses on the medical opinions in the record, which all agree his shoulder injury was work related. Generally, the commissioner may not summarily reject unrebutted expert medical opinion. See *Poula v. Siouxland Wall & Ceiling, Inc.*, 516 N.W.2d 910, 911–12 (Iowa Ct. App. 1994). However, the commissioner need not accept expert medical opinion that was based on an incomplete history. See *Pease*, 807 N.W.2d at 845; *Poula*, 516 N.W.2d at 912. One IME noted Spence claimed his history described in multiple medical records was inaccurate, and the doctor explicitly conditioned his causation opinion on whether “the history [Spence] presents is accurate.” Because the commissioner found Spence lacked credibility in presenting his injury history to the diagnosing physicians, the commissioner was not obligated to accept the medical causation opinions. See *Pease*, 807 N.W.2d at 845.

Spence also notes the commissioner found Parkison’s witnesses lacked credibility as well. However, the burden was on Spence to prove his injury was work related; Parkison had no burden to prove some other cause of Spence’s

injury. See *Arndt*, 728 N.W.2d at 393. The commissioner was entitled to reject Spence's testimony as not credible, and the commissioner's finding that he failed to prove he sustained a work-related injury is supported by substantial evidence.

**AFFIRMED.**