

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

JOSEPH LEWIS,

Petitioner,

vs.

WINDSOR WINDOWS AND DOORS

Employer,

and

TWIN CITY FIRE INSURANCE CO.,

**Insurance Carrier,
Respondents.**

Case No. CVCV057081

**RULING ON PETITION
FOR JUDICIAL REVIEW**

The above-captioned matter came before the court on February 22, 2019. Joseph Lewis, ("Lewis"; "Petitioner") was represented by attorney Richard Schmidt. Windsor Windows and Doors, ("Employer"), and Twin City Fire Insurance Co., collectively ("Respondents"), were represented by attorney Christopher Spencer. Upon review of the court file and applicable law, the court enters the following order.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Lewis began working for the employer on June 17, 2013. Arb. Dec. at 5. Lewis was initially assigned to work in the special parts fabrication department. Arb. Dec. at 5. Prior to working at the employer, Lewis sustained a number of injuries while working at other jobs. Arb. Dec. 3-5. In 2014, the employer switched Lewis to working on a paint assembly line, where workers needed to hang parts such as metal door jams, casements, and window sills, on hooks to be painted. Arb. Dec. at 5. After working on

the paint line for a couple of days, Lewis contacted a member of human resources and told them that working on the paint line was causing stress on his back and neck, and that he had pre-existing back and shoulder issues and should not be performing that type of work. Arb. Dec. at 6. The human resources employee told Lewis that he could refuse to work on the paint line if he was asked to do so again. Arb. Dec. at 6.

On April 22, 2014, a fellow co-worker, Clint Jubell, ("Jubell"), approached Lewis and asked for his help on the paint line. Arb. Dec. at 6. Lewis testified that as he and Jubell were loading six parts onto the hooks, his back popped and he hit the ground. Arb. Dec. at 6. Lewis testified that he "lost all feeling, all strength in [his] legs, and [he] hit the ground." Arb. Dec. at 6. Lewis further testified that when he hit the ground, the five pieces in his hand smashed his hand against the ground and his knees hit the ground. Arb. Dec. at 6. Lewis testified that he caught himself with his right hand, and as he did so, pain shot up through his arm, through his shoulder blades, down his back, and up his neck. Arb. Dec. at 7. Following the incident, Lewis saw a doctor and was given work restrictions of no lifting over twenty-five pounds and no overhead lifting. Arb. Dec. at 7. The employer sent Lewis to an occupational medical physician named Dr. Miller on May 8, 2014. Arb. Dec. at 8. At the appointment, Lewis told Dr. Miller that he was injured when he was hanging metal that was approximately 350 pounds. Arb. Dec. at 8. Dr. Miller determined that the problems that Lewis was experiencing were not work related. Arb. Dec. at 8.

Lewis's short-term disability benefits through the employer ended on September 12, 2014. Arb. Dec. at 13. On September 29, 2014, the employer informed Lewis that as of September 30, he would be terminated for failing to return to work following short-

term disability. Arb. Dec. at 13. Lewis received an independent medical examination by Dr. Bansal on July 10, 2015. Dr. Bansal determined that the injury that Lewis sustained on April 22 at the employer “was a substantial causal, contributing, or aggravating factor in bringing about his shoulder condition.” Arb. Dec. at 14. Dr. Bansal “did not find that Lewis sustained permanent impairments of his legs or left hand as the result of the work injury.” Arb. Dec. at 14.

Lewis filed a petition in arbitration on September 9, 2015, alleging he sustained injuries to his neck, back, legs, right shoulder, left hand, and body as a whole on April 22, 2014 while working for the employer. A deputy worker’s compensation commissioner (“deputy commissioner”) held an arbitration hearing on the issue and denied Lewis’s claim, finding that Lewis did not meet his burden to show that he had sustained an injury arising out of and in the course of his employment with the employer. Arb. Dec. at 21. Lewis appealed the deputy commissioner’s decision. The Iowa Worker’s Compensation Commissioner issued his appeal decision on September 7, 2018, affirming the deputy commissioner’s decision in its entirety. Lewis filed the present Petition for Judicial Review on September 26, 2018.

II. STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). Relief is appropriate where “substantial rights of a party have been prejudiced because the agency action [...] is unsupported by substantial evidence, is unreasonable, arbitrary, or

capricious, or is affected by other error of law.” *Dico, Inc. v. Iowa Emp’t Appeal Bd.*, 576 N.W.2d 352, 354 (Iowa 1998). The standard of review on appeal depends on whether the basis for the petition involves an issue of finding of fact, interpretation of law, or application of law to fact. *Meyer*, 710 N.W.2d at 218-19. The standard when the claim is that there was an error in finding of fact is whether the agency’s decision is supported by substantial evidence. *Id.* at 218. “Substantial evidence is 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.” *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). Further, the question “is not whether the evidence supports different findings than those made by the commissioner, but whether the evidence supports the findings actually made.” *Id.* (internal citations omitted). Evidence may be substantial even if the court would have drawn a different conclusion from the fact finder. *Christiansen v. Iowa Bd. of Educ. Examiners*, 831 N.W.2d 179, 192 (Iowa 2013).

III. APPLICABLE LAW & ANALYSIS

Lewis argues that the commissioner’s decision was not supported by substantial evidence. Since the commissioner affirmed the findings of fact and conclusions of law of the deputy commissioner, it is the deputy commissioner’s findings that must be examined in this case. In particular, Lewis argues that the deputy commissioner’s opinion that Lewis was not credible was not supported by substantial evidence. The employer argues that the commissioner’s decision was supported by substantial

evidence, and that the deputy commissioner was correct in her finding that Lewis was not a credible witness. The question in this case “is not whether the evidence supports different findings than those made by the commissioner, but whether the evidence supports the findings actually made.” *Larson*, 763 N.W.2d at 850.

An agency decision must include “an explanation of why the relevant evidence in the record supports each material finding of fact.” *Schutjer v. Algona Manor Care Center*, 780 N.W.2d 549, 560 (Iowa 2010). Though the commissioner’s decision “must be sufficiently detailed to show the path he has taken through the evidence, the law does not require the commissioner to discuss each and every fact in the record and explain why or why not he has rejected it.” *Id.* (internal citations omitted). “Because the commissioner is charged with weighing the evidence, we liberally and broadly construe findings to uphold his decision.” *Id.* at 558. Further, the court must “give due regard to the commissioner’s discretion to accept or reject testimony based on his assessment of witness credibility.” Nevertheless, the commissioner’s decision must be supported by “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.” *Larson*, 763 N.W.2d at 850.

Lewis first takes issue with the fact that the deputy commissioner considered his criminal history while assessing his credibility. Lewis notes that his theft conviction is over twenty years old, and therefore should not have bared any relevance to his present claim. The employer argues that the deputy commissioner can only consider evidence that came into the record, and the age of the theft conviction did not come into the

record. The transcript makes clear that the theft conviction was brought up on Lewis's direct examination, and he did not disclose the date of the conviction:

Q In the past have you had any criminal history or any criminal convictions?

A Sure.

Q What types of things?

A Criminal mischief, possession of weapons, simple assault, minor theft.

Q When was the last time you had any trouble with the legal system?

A It's been about seven or eight years. The last situation I went to jail, I got into an argument with a guy at Kum & Go over something silly. Words were exchanged. I pushed a notebook off the desk and it hit him on his side – and the notebook flew off the countertop and touched him, so I was arrested for minor assault.

Tr. at 9-10. The deputy commissioner could only work with the evidence that was before her, and Lewis's counsel was the one that initiated questioning about Lewis's criminal convictions without specifying the date that the convictions occurred.

Lewis suggests that in order for the deputy commissioner to find that he was not credible, she must have had some sort of bias against him. Lewis suggests that "[i]t is readily apparent, that for whatever reason, be it the Claimant's past criminal history, his race, his lifestyle, or his prior claim against Home Depot, the Deputy was going to find a way to have the record support what she wanted to accomplish." P. Brief at 10. There is no evidence to suggest that the deputy commissioner had any sort of untoward motive in this case. Lewis does not offer any evidence of this claim. The only potential evidence that Lewis offers is that during the hearing the deputy commissioner disclosed that she

had defended Home Depot in some personal injury matters in response to a line of questioning regarding an injury that Lewis sustained at Home Depot. The deputy commissioner was not involved in Lewis's claim regarding Home Depot, and the prior injury at Home Depot had little, if any, relevance to the resolution of this case. Lewis has not demonstrated any evidence of bias on behalf of the deputy commissioner, and seems to suggest that she must have been biased simply because she did not find Lewis's testimony credible.

The deputy commissioner, however, did provide evidence as to why she did not find Lewis's testimony credible. Prior to explaining her conclusions of law, the deputy commissioner detailed nearly sixteen pages worth of the facts and circumstances that led up to Lewis's claim. The deputy commissioner engaged in thorough analysis of Lewis's medical history, as well as of testimony from various witnesses that occurred at the hearing. Two witnesses' testimony directly contradicted Lewis's testimony. Arb. Dec. at 18. The deputy commissioner also considered the potential interests that each of the witnesses had in this case, and found the testimony of Jubell, an uninterested witness, to be particularly helpful. Arb. Dec. at 18.

One of the witnesses that testified still worked for the employer, and the deputy commissioner took into account that he may have been biased on behalf of his current employer. Arb. Dec. at 18. Jubell, however, no longer worked for the employer, and was not close with anyone who remained working at the employer. Arb. Dec. at 18. The deputy commissioner also noted that Jubell's testimony was consistent with the original statement that he gave in 2014. Arb. Dec. at 18. Some of the most notable inconsistencies that the deputy commissioner included were:

- 1) Lewis told the doctor at his initial appointment following the injury that he was lifting 350 pounds at the time of the injury. Jubell testified that Lewis was not lifting 350 pounds, but instead the two of them were sharing an approximately 72 pound weight. Arb. Dec. at 19.
- 2) Jubell testified that the line they were working on moved "at a snail's pace," whereas Lewis denied that the line moved slowly. Arb. Dec. at 19-20.
- 3) Jubell testified that two or three weeks after the incident Lewis came up to him and asked him if he would vouch for his side of the story. Lewis denied that he asked Jubell to vouch for him. Arb. Dec. at 11.
- 4) Though Lewis told his doctor that he was carrying 350 pounds at the time of the injury, at the hearing, Lewis testified that he was just making a guess, and that he had no idea how much it weighed. Arb. Dec. at 9-10.
- 5) Lewis reported that when he began working for the employer he did not disclose any of his prior physical injuries "because he was fine," but the medical records disclose that Lewis had a long history of physical problems. Arb. Dec. at 20.

The deputy commissioner also considered the opinions of various medical professionals that had examined Lewis and Lewis's medical history. The Iowa Supreme Court has explained, "[m]edical causation is essentially within the domain of expert testimony. The commissioner, as trier of fact, has a duty to weigh the evidence and measure the credibility of witnesses. The weight given to expert testimony depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances." *Cedar Rapids Community School Dist. v. Pease*, 807 N.W.2d 839, 845

(Iowa 2011)(internal citations omitted). The Court went on to say, “an expert’s opinion is not necessarily binding upon the commissioner if the opinion is based on an incomplete history. Ultimately, however, the determination of whether to accept or reject an expert opinion is within the peculiar province of the commissioner.” *Id.* The deputy commissioner considered the opinions of Dr. Miller, Dr. Bansal, and Dr. Kirkland.

Doctors Miller and Kirkland opined that, “Lewis did not sustain permanent impairments to his right shoulder, cervical spine, and lumbar spine caused by the incident on April 22, 2014.” Arb. Dec. at 20. Dr. Bansal found that Lewis had sustained permanent injuries caused by the incident. Arb. Dec. at 20. The deputy commissioner did not find Dr. Bansal’s opinion persuasive. Arb. Dec. at 20. The deputy commissioner considered the circumstances and underlying facts surrounding Dr. Bansal’s opinion. Arb. Dec. at 20. The deputy commissioner found that Dr. Bansal’s opinion was based on an inaccurate history. Arb. Dec. at 20. The deputy commissioner further found Dr. Bansal’s opinion to be unpersuasive because Dr. Bansal found that Lewis was not complaining of radicular neck pain prior to starting work at the employer. Arb. Dec. at 20. The deputy commissioner explained that Lewis’s medical records reveal complaints about neck pain both in 2001 and 2002. Arb. Dec. at 21.

Ultimately, the deputy commissioner was in the best position to consider the credibility of Lewis and the other witnesses involved. She was able to watch their demeanor as they testified, and consider whether their testimony lined up with that of other witnesses in real time. The deputy commissioner observed that while Jubell’s testimony was clear and he did not engage in any furtive or suspicious movements during the hearing, Lewis’s testimony was not clear, he made inconsistent statements,

and she observed him engage in furtive movements during the hearing. Arb. Dec. at 18. The court finds that the commissioner's decision was sufficiently detailed to show the path taken through the evidence. The court further finds that the decision was supported by 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. The commissioner's decision that Lewis failed to meet his burden that he sustained an injury arising out of the course of his employment was supported by substantial evidence.

IV. ORDER

IT IS THEREFORE ORDERED that the Petition for Judicial Review is DENIED and the decision of the Iowa Worker's Compensation Commissioner is AFFIRMED.

Costs to Petitioner.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV057081
Case Title JOSEPH LEWIS VS WINDSOR WINDOWS AND DOORS ET AL

So Ordered

A handwritten signature in blue ink, appearing to read "Celene Gogerty", is written over a horizontal line.

Celene Gogerty, District Judge
Fifth Judicial District of Iowa

IN THE COURT OF APPEALS OF IOWA

No. 19-0576
Filed January 23, 2020

JOSEPH LEWIS,
Plaintiff-Appellant,

vs.

**WINDSOR WINDOWS & DOORS and TWIN CITY FIRE INSURANCE
COMPANY,**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Celene Gogerty, Judge.

Joseph Lewis appeals the district court's ruling on judicial review affirming the decision of the workers' compensation commissioner. **AFFIRMED.**

Richard R. Schmidt of Mueller, Berg, & Schmidt, PLLC, Des Moines, for appellant.

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

Considered by Vaitheswaran, P.J., Mullins, J., and Potterfield, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2020).

VAITHESWARAN, Presiding Judge.

Joseph Lewis filed a workers' compensation petition seeking compensation for an injury he claimed to have sustained while employed by Windsor Windows & Doors. Following an evidentiary hearing, a deputy workers' compensation commissioner filed an arbitration decision denying the claim. The deputy found that Lewis lacked credibility and concluded he failed to satisfy his burden of proving "he sustained an injury arising out of and in the course of his employment with Windsor." See Iowa Code § 85.3(1) (2018).

On intra-agency appeal, the workers' compensation commissioner affirmed the arbitration decision in its entirety. The commissioner made specific reference to the deputy commissioner's credibility determinations:

While I performed a de novo review, I give considerable deference to findings of fact which are impacted by the credibility findings, expressly or impliedly made, regarding claimant by the deputy commissioner who presided at the arbitration hearing. I find the deputy commissioner correctly assessed claimant's credibility. I find nothing in the record in this matter which would cause me to reverse the deputy commissioner's finding that claimant was not credible.

Lewis sought judicial review. The district court affirmed the final agency decision.

On appeal, Lewis contends the commissioner's fact findings are not supported by substantial evidence. See *id.* § 17A.19(10)(f) (authorizing review to determine whether agency action is "[b]ased upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole"); (f)(1) (defining "substantial evidence" as "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”). In his view, “the district court on judicial review failed to analyze the . . . commissioner’s decision as a whole and overlooked inconsistenc[ies] in the arbitration decision.”

The phrase “[w]hen that record is viewed as a whole” means:

[T]he adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, *including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses* and the agency’s explanation of why the relevant evidence in the record supports its material findings of fact.

Iowa Code § 17A.19(10)(f)(3) (emphasis added). As noted, the deputy commissioner made detailed credibility findings, which were granted deference by the commissioner. We, too, defer to those credibility findings. See *id.*; *Broadlawns Med. Ctr. v. Sanders*, 792 N.W.2d 302, 306 (Iowa 2010).

We recognize the commissioner could have found Lewis credible rather than incredible based on Lewis’ testimony and independent evidence supporting a key portion of his testimony. That evidence is as follows.

Lewis described the nature of his primary job in the parts fabrication department and stated he had no problem performing that job. His injury arose when he was asked to fill in on a newly built paint line. He testified to feeling “stress in [his] back and neck” when he worked on this line. He told his manager he could not perform the job. The manager, in turn, advised him to speak to a human resources manager. According to Lewis, the human resources employee “told me

specifically, I'm going to talk to your managers and I'll make sure that you're not sent over there again because we don't want to see you hurt. We don't want to get you hurt." Lewis testified that his manager nonetheless instructed him to continue his work on the paint line. He fell while working on the line and pain "shot up [his] arm through [his] shoulder blades" and "down [his] back and up [his] neck." The human resources manager came to the site and helped pick him up. According to Lewis, she "was angry" and "hollering at [his manager], asking him why did he send me over there when she just told him that she didn't want [him] over there working that job."

The human resources manager essentially corroborated these interactions with Lewis. In a narrative placed in his personnel file, she stated:

Joseph Lewis was assisting on the Powder Coat Paint Line April 14—April 22, 2014. After working one week in the area, he came to HR stating that he has prior back and shoulder issues and should not be doing this type of work—repetitive lifting of aluminum pieces with a partner. Joseph never gave any details regarding any back/health issues nor did he advise the employer of any previous permanent restrictions for work here at Windsor. I told him the next time he was asked to assist to refuse and state why and/or come to HR and I would address it with the manager—thinking staffing would be sufficient and Joseph would not be asked to help again.

She also confirmed attending to Lewis at the time of the injury.

Although the cited evidence could be found to detract from the deputy commissioner's adverse credibility finding, our job is not to weigh the evidence but to "only determine[] whether substantial evidence supports a finding '*according to those witnesses whom the [commissioner] believed.*'" *Gits Mfg. Co. v. Frank*, 855 N.W.2d 195, 198 (Iowa 2014) (quoting *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394–95 (Iowa 2007)).

The witnesses believed by the commissioner provided a wealth of information about the incident and the injury. Past and present employees testified to the paint-line job and Lewis' fall; large numbers of medical records were admitted; and the commissioner considered a video reenactment of the incident offered by both sides. No useful purpose would be served by summarizing the evidence. Suffice it to say the commissioner's decision was "sufficiently detailed to show the path . . . taken through conflicting evidence." *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 560 (Iowa 2010) (quoting *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 274 (Iowa 1995)). The record as a whole contained substantial evidence to support the commissioner's fact findings and determination that the injury did not arise out of and in the course of Lewis' employment.

AFFIRMED.



State of Iowa Courts

Case Number
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