

IN THE IOWA DISTRICT COURT  
IN AND FOR POLK COUNTYJASON SPENCE,  
Petitioner,

v.

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

Case No.: CVCV063227

ORDER:

*Ruling on Petition for  
Judicial Review*

On September 2, 2022, this matter came before the Court on Petitioner's Petition for Judicial Review. Nicholas Platt appeared and argued for Jason Spence (Petitioner). Christopher Spencer appeared and argued on behalf of N & L Parkinson Trucking, Inc. (Respondent) and Great West Casualty. After reviewing the administrative record and the Court file herein, which included the parties' pleadings, the Court now enters the following Order.

**I. FACTUAL & PROCEDURAL BACKGROUND**

In February 2020, Petitioner filed three petitions in arbitration, alleging he sustained injuries to his neck, upper back, left upper extremity, and body as a whole, while working for Respondent. An arbitration hearing was held on June 24, 2021. The Deputy Compensation Commissioner identified a number of issues that needed to be addressed. However, the primary issue was whether Petitioner actually sustained an injury that arose out of and in the course of his employment with Respondent on February 15, 2020, or February 18, 2020.

The Deputy's Findings of Fact were lengthy and detailed. Notably, she stated "I do not find Spence to be a credible witness."<sup>1</sup> The Deputy found Petitioner was not a credible witness "based on the inconsistencies between his medical records, testimony, witness testimony when considered in light of his past crimes of dishonesty."<sup>2</sup> Given the concerns surrounding Petitioner's credibility, the Deputy found that Petitioner had not met his

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<sup>1</sup> *Agency R. Part 1, p. 354.*

<sup>2</sup> *Id.*

burden of establishing the injury arose out of and in the course of his employment. Petitioner appealed to the Iowa Worker's Compensation Commissioner.<sup>3</sup>

On February 16, 2022, the Commissioner issued an Appeal Decision. The Commissioner concluded the Deputy "provided a well-reasoned analysis of all the issues raised in the arbitration proceeding."<sup>4</sup> In affirming the Deputy, the Commissioner gave,

considerable deference to findings of fact that are impacted by the credibility findings, expressly or impliedly made, by the deputy commissioner who presided at the arbitration hearing. The deputy commissioner found claimant in this matter was not a credible witness. I find the deputy commissioner correctly assessed claimant's credibility. I find nothing in the record which would cause me to reverse the deputy commissioner's credibility findings.<sup>5</sup>

On March 3, 2022, the Petitioner filed the present Petition for Judicial Review in the Iowa District Court in and for Polk County.

## II. STANDARD OF REVIEW

Final decisions rendered by the Iowa Workers' Compensation Commission are reviewed under Iowa Code Chapter 17A, the Iowa Administrative Procedures Act.<sup>6</sup> "Under the Act, [a court] 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."<sup>7</sup> The standard of review depends on the type of error alleged by the Petitioner.<sup>8</sup>

If the alleged error is one of fact, the standard of review is whether the findings are supported by substantial evidence.<sup>9</sup> "[A] reviewing court can only disturb those factual findings if they are 'not supported by substantial evidence in the record before the court when that record is reviewed as a whole.'"<sup>10</sup> Additionally, in workers' compensation cases,

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<sup>3</sup> *Agency R. Part 1*, p. 337.

<sup>4</sup> *Agency R. Part 1*, p. 16

<sup>5</sup> *Id.*

<sup>6</sup> *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 768 (Iowa 2016), *reh'g denied* (May 27, 2016); see Iowa Code § 86.26 (2022).

<sup>7</sup> *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006).

<sup>8</sup> *Jacobson Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010).

<sup>9</sup> *Harris*, 778 N.W.2d at 196; *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 557 (Iowa 2010).

<sup>10</sup> *Burton v. Hilltop Care Center*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting Iowa Code § 17A.19(10)(f)).

factual questions are “delegated by the legislature to the [C]ommissioner.”<sup>11</sup> Consequently, the Court does not apply a “scrutinizing analysis” to factual findings of the Commissioner, but only reverses the Commissioner’s findings if they are not supported by substantial evidence.<sup>12</sup>

“Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion.”<sup>13</sup> The Court is “not to determine whether the evidence supports a different finding; rather, our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made.”<sup>14</sup>

If the claimed error is in the ultimate conclusion reached, “then the challenge is to the agency’s application of the law to the facts.”<sup>15</sup> In workers’ compensation cases, “[t]he application of the law to the facts is also an enterprise vested in the [C]ommissioner.” As such, this Court “reverse[s] only if the [C]ommissioner’s application was irrational, illogical, or wholly unjustifiable.”<sup>16</sup>

### III. DISCUSSION

Petitioner contends the Commissioner erred in concluding that he did not suffer a work injury on February 15, 2020. He alleges the Commissioner also erred in applying the law to the facts. For all the reasons discussed below, the Petition for Judicial review is denied and dismissed.

“This case involves whether Petitioner sustained an injury arising out of and in the course of his employment, entitlement to temporary benefits, extent of disability, recovery of medical bills, entitlement to alternate care, penalty benefits and costs.”<sup>17</sup> For the

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<sup>11</sup> *Larson Mfg. Co., v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

<sup>12</sup> *Mercy Med. Ctr. v. Healy*, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011) (citing *Midwest Ambulance Serv. v. Rudd*, 754 N.W.2d 860, 864, 866 (Iowa 2008)).

<sup>13</sup> *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002) (citing *Ehteshamfar v. UTA Engineered Sys. Div.*, 555 N.W.2d 450, 452 (Iowa 1996)).

<sup>14</sup> *Cedar Rapids Community School District v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (internal citations and quotations omitted).

<sup>15</sup> *Meyer*, 710 N.W.2d at 219.

<sup>16</sup> *Healy*, 801 N.W.2d at 870 (citing *Larson Mfg.*, 763 N.W.2d at 850).

<sup>17</sup> *Agency R. Part 1*, p. 352.

Commissioner, the lack of credible evidence supporting Petitioner's claim proved to be dispositive of all other issues in the case.

The Deputy issued the Arbitration Decision on October 11, 2021. The key takeaway from that Decision was that the Deputy found that Petitioner was simply not a credible witness. The Commissioner on appeal accepted and adopted as his own the Deputy's findings, including those related to credibility. The District Court, in its appellate capacity, must consider evidence that detracts from the agency's findings, as well as evidence that supports them, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses.<sup>18</sup>

It is the Commissioner's duty as the trier of fact to determine the credibility of witnesses.<sup>19</sup> Under a substantial evidence review, it is not the task of the reviewing court to weigh the evidence or the credibility of witnesses.<sup>20</sup> The Court gives deference to the Commissioner's credibility findings and will affirm if there is substantial evidence in the record to support those findings.<sup>21</sup> The Commissioner, in adopting the Deputy's Decision, found Petitioner to not be credible on a wide range of issues. First, the Commissioner found that Petitioner has a history of engaging in crimes of dishonesty.<sup>22</sup> Second, despite claiming he had been injured while serving in the military, Counsel for Petitioner acknowledges Petitioner never served in any branch of this countries' armed services. Third, Petitioner had difficulty "recalling" whether he had ever worn a sling while at work. As the Commissioner correctly noted, one should be able to recall whether their arm was immobilized for a period of time, thereby requiring the use of a sling.<sup>23</sup> Finally, the Commissioner observed inconsistencies regarding Petitioner's education.<sup>24</sup> Taken individually these inconsistencies may appear to be insignificant. However, taken as a whole they establish the credibility prism through which all of Petitioner's claims are viewed, including those claims related to the timing and manner of his injuries.

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<sup>18</sup> See Iowa Code § 17A.19(10)(f)(3).

<sup>19</sup> See *Arndt v. City of LeClaire*, 728 N.W.2d, 389, 394-95 (Iowa 2007).

<sup>20</sup> *Id.* at 394 (citing *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996)).

<sup>21</sup> See *Clark v. Iowa Dep't of Revenue & Fin.*, 644 N.W.2d 310, 315 (Iowa 2002)

<sup>22</sup> *Agency R. Part 1*, p. 16

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Petitioner sought medical treatment on February 18, 2020. Hospital staff documented that he reported “about 2 weeks ago [ ] a tire exploded on him and it pushed backwards on his left arm that was outstretched trying to hold the tire and spun him around. He states that over the next 2 weeks he had slow but progressive worsening pain in that left shoulder.”<sup>25</sup> Later, when the attending Emergency Room physician Dr. Ash examined Petitioner, he noted Petitioner’s pain was “on the anterior aspect of his shoulder and that the initial injury took place 2 weeks prior and he was having worsening discomfort.”<sup>26</sup> The only evidence in this record concerning timing and manner of Petitioner’s injuries is born from information Petitioner, himself, provided. Petitioner’s two-week timeframe, which was given for the purpose of receiving medical diagnosis and treatment, raises obvious questions concerning Petitioner’s later claim that the injury occurred on February 15, 2020.

In briefing, Petitioner is dismissive of these inconsistencies and, more importantly, the impact they have on his credibility. Petitioner offers three defenses to the inconsistencies discussed above: 1) the lay witnesses who offer contrary testimony are simply lying; 2) the medical professionals recorded his history incorrectly; and 3) the Commissioner relied on “minor and insignificant factual discrepancies and past acts.”

Concerning the lay witnesses, in one version of events, Petitioner claims he was injured when a pry bar hit him in the shoulder. Petitioner claims Rick Parkinson was present when the injury occurred and because of the impact Parkinson told Petitioner to leave early for the day, come back the following Monday, and see how Petitioner felt. Petitioner testified when he returned to work on Monday, he reported feeling sore. Only when Petitioner was unable crawl from underneath a truck without assistance did he seek medical attention. Contrary to Petitioner’s assertion, the Commissioner did not ignore evidence potentially supportive of Petitioner’s claim. Moreover, the Commissioner assessed Parkinson’s credibility and found him to be evasive when answering questions. Ultimately, he did not find him to be credible. The problem Petitioner has is simply because the Commissioner deemed *Parkinson* not credible, does not automatically mean *Petitioner* becomes credible. Petitioner had the burden of proof. Carrying that burden is often a two-step process. Part one is

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<sup>25</sup> *Agency R. Part 1, p. 356.*

<sup>26</sup> *Id.*

demonstrating why contrary evidence or witnesses, like Parkinson, are not to be believed. Part two is establishing why and how supporting evidence is credible, independent of the evidence that opposes it. Part two is what Petitioner has failed to do.

As for the medical professionals, the Commissioner, in effect, judged their credibility against Petitioner's and assessed their statements, appearance, conduct, memory, knowledge of the facts and their respective interest in the case. The Commissioner concluded Petitioner, unlike the medical professionals, had an obvious interest in the outcome of this case. There are many factors a fact finder may consider in deciding what testimony to believe, including, but not limited to: 1) whether the testimony is reasonable and consistent with other evidence you believe; 2) whether a witness has made inconsistent statements; 3) the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and 4) the witness's interest in the trial, their motive, candor, bias and prejudice.<sup>27</sup> Therefore, it was entirely proper for the Commissioner to consider Petitioner's potential bias, given his interest in the outcome of the case.

As for Petitioner's "minor and insignificant factual discrepancies and past acts," this Court fundamentally rejects the idea that a conviction for a crime of dishonesty or falsehoods concerning military service are somehow "minor" or "insignificant." As stated previously, these acts or assertions made by the Petitioner help establish the credibility prism through which all of Petitioner's claims were viewed.

Evidence need not amount to a preponderance in order to be substantial evidence, but a mere scintilla will not suffice.<sup>28</sup> 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.<sup>29</sup> The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence.<sup>30</sup> The relevant inquiry is not whether the evidence might support a different finding, but whether the evidence supports the findings actually

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<sup>27</sup> *State v Harrington*, 284 N.W.2d 244 (Iowa 1979).

<sup>28</sup> *Elliot v. Iowa Dep't of Transp.*, 377 N.W.2d 250, 256 (Iowa Ct. App. 1985).

<sup>29</sup> Iowa Code § 17A.19(10)(f)(1).

<sup>30</sup> *Moore v. Iowa Dep't of Transp.*, 473 N.W.2d 230, 232 (Iowa Ct. App. 1991).

made.<sup>31</sup> Given the foregoing standard, this Court cannot identify any error in the Commissioner's findings of fact, as adopted in whole from the Deputy.

Ultimately, what Petitioner seeks to do in this administrative appeal is relitigate the factual and credibility issues presented at the agency level. Petitioner appears to misunderstand the role of the District Court on Judicial Review. The District Court's inquiry on judicial review is "closely and strictly circumscribed."<sup>32</sup> This Court cannot engage in a reweighing of the credibility of witnesses, and, thereafter, supplement its judgment for that of the commissioner. "[T]he court's review is not de novo. The court must not reassess the weight of the evidence because the weight of the evidence remains within the agency's exclusive domain."<sup>33</sup> In other words, the Court cannot and, indeed, will not relitigate issues that were presented at the agency level, particularly when deciding those issues is, more or less, a judgment call. "Public interest demands that judicial hands must be kept off administrative judgment calls."<sup>34</sup> The administrative process presupposes judgment calls are to be left to the agency and "nearly all disputes are won or lost there."<sup>35</sup> This case is not an exception to that rule.

### ORDER

IT IS THEREFORE ORDERED the Petition for Judicial Review should be and is hereby DENIED and DISMISSED. Costs are assessed to Petitioner.

So Ordered.

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<sup>31</sup> *Id.*

<sup>32</sup> *Morrison v. Century Eng'g*, 434 N.W.2d 874, 877 (Iowa 1989).

<sup>33</sup> *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 234 (Iowa 1996).

<sup>34</sup> *Morrison*, 434 N.W.2d at 876.

<sup>35</sup> *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa Ct. App. 1995).



State of Iowa Courts

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CVCV063227

**Case Title**  
JASON SPENCE V N AND L PARKISON TRUCKING INC ET  
AL  
**Type:** ORDER FOR JUDGMENT

So Ordered

A handwritten signature in black ink, appearing to read "David Porter", written over a horizontal line.

David Porter, District Court Judge,  
Fifth Judicial District of Iowa

Electronically signed on 2023-01-07 18:43:07