

**IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY**

**TROY HUDSON,  
Petitioner,**

**vs.**

**QUALITY MANUFACTURING CORP.,  
Employer,**

**and**

**EMCASCO INSURANCE CO.,  
Insurance Carrier,  
Respondents.**

**Case No. CVCV057431**

**RULING ON PETITION  
FOR JUDICIAL REVIEW**

The above-captioned matter came before the court on April 23, 2019. Troy Hudson (“Hudson”; “Petitioner”) was represented by Attorney Jeffrey Lipman. Quality Manufacturing Corp. (“Employer”) and Emcasco Insurance Co., collectively, (“Respondents”) were represented by Attorney David Scieszinski. Upon review of the court file and applicable law, the court enters the following order.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Hudson began working at the employer in October 2011 as a welder/fabricator. Arb. Dec. at 3. Hudson testified that after eighteen months had passed his job duties changed and that is when he started noticing pain in his shoulder. Arb. Dec. at 3-4. Hudson testified that on January 20, 2016, he told the employer that he needed to see a doctor. Arb. Dec. at 4. Hudson saw various doctors over the course of the next several months and reported to Dr. Mark Taylor on April 12, 2017 for an independent medical examination (“IME”). Arb. Dec. at 7. On February 20, 2018, Dr. Joe Hawk performed an IME on Hudson at the request of the employer. Arb. Dec. at 9.

Hudson filed a petition in arbitration on April 6, 2017, alleging he sustained injuries to his right elbow, right shoulder, and bilateral carpal tunnel syndrome while working for the employer on January 21, 2016. Arb. Dec. at 1. Respondents admitted that Hudson's bilateral carpal tunnel condition was caused by work, but denied that Hudson's shoulder condition was work related. The Deputy Commissioner filed an arbitration decision on July 10, 2018, finding that Hudson's shoulder condition was not work related and denying benefits for that injury. Arb. Dec. at 15. Hudson submitted a timely appeal and the Worker's Compensation Commissioner issued an appeal decision on November 30, 2018, affirming the findings of the Deputy Commissioner. Hudson filed the present Petition for Judicial Review on December 19, 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**

Hudson argues that the Commissioner’s decision to deny benefits was not supported by substantial evidence. Hudson claims that the Commissioner’s decision to find that Hudson’s shoulder injury did not arise out of the course of his employment was not supported by substantial evidence. Hudson argues that the Commissioner’s decision to find that Hudson was not credible was not supported by substantial evidence. Hudson asserts that the Commissioner’s decision to find the shoulder injury was not work-related was not supported by substantial evidence. Respondents argue that the court should affirm the findings of the Commissioner in regard to each of these issues.

Hudson correctly notes that the burden was on Hudson to prove that (1) he suffered a personal injury; (2) he was the Respondent’s employee; (3) the injury arose out of his employment; and (4) the injury arose in the course of his employment. *IBP*,

*Inc. v. Burress*, 779 N.W.2d 210, 214 (Iowa 2010). The inquiry is whether the decision of the Commissioner is supported by substantial evidence in the record, not whether a different fact finder might have come to a different conclusion, and as a result, the specific findings of the Commissioner are important to evaluate. On appeal, the Commissioner affirmed the analysis, findings, and conclusions as the Deputy Commissioner, and so the arbitration decision must be evaluated as well. App. Dec. at 2.

A number of times in Hudson's brief, he points out the evidence that he argues should have led to a different conclusion than that of the Commissioner. It should be noted, however, that the question before the court is whether there is substantial evidence to support the findings actually made. *Larson*, 763 N.W.2d at 850. Hudson takes issue with the agency's conclusions regarding his credibility. As the Deputy Commissioner correctly noted, in assessing witness credibility, the trier of fact "may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of the facts, and the witness's interest in the matter." *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). After considering the above factors, the Deputy Commissioner found that Hudson was not credible. Arb. Dec. at 15.

The Deputy Commissioner considered the following facts to be important in assessing Hudson's credibility:

- (1) Hudson testified that he was an average employee who did not have any production problems until his January 2016 work injury, whereas

Nate Cloe, a human resource specialist for the employer, testified that Hudson had ongoing performance problems. Arb. Dec. at 14.

(2) Despite Hudson's testimony regarding his lack of issues with production, prior to reporting his work injury Hudson had been issued "a written warning for failing to meet his quote times and for being argumentative with his supervisors when they tried to work with him to increase his production." Arb. Dec. at 14-15.

(3) At the hearing, Hudson testified, "he did not have right shoulder symptoms during his four years of employment with Quality until the end of his employment in 2016, or three to five weeks before he was terminated." Arb. Dec. at 15. The Deputy Commissioner found this to be contrary to evidence in the record, which stated that during his doctor's appointment on January 20, 2016, Hudson noted that he had pain in his right shoulder intermittently over the past two years. Arb. Dec. at 15.

(4) The Deputy Commissioner noted further inconsistencies with the timing of Hudson's injury through evidence from another doctor's appointment on February 1, 2017, wherein the doctor noted that Hudson claimed "to have developed a work-related injury approximately two years ago and describes a remote history of placing his welder in its holster and developing pain that way." Arb. Dec. at 15.

Hudson states these inconsistencies as error on the doctors' parts and a refusal of the Deputy Commissioner to consider the other evidence that supports a finding that

Hudson was a credible witness. The Deputy Commissioner was in the best position to assess Hudson's credibility during testimony. While a different finder of fact may have found Hudson's testimony to be credible, there is substantial evidence in the record to support the agency's finding that Hudson was not a credible witness. The Deputy Commissioner points to multiple inconsistencies between Hudson's testimony and other evidence in the record, and while Hudson may try to claim that the doctor made a mistake, evidence of such a mistake was not in the record, and the agency had to consider the evidence that was before it. The agency's findings in regard to the credibility of Hudson are supported by substantial evidence.

Hudson also argues that the agency's decision to find that the shoulder injury was not work-related was not supported by substantial evidence. Regarding causation, the Deputy Commissioner found the opinions of Dr. Aviles, the treating orthopedic surgeon, and Dr. Hawk, a family practice physician who performed an IME for the employer, to be the most persuasive. Arb. Dec. at 15. Dr. Aviles found that the remote history of placing a welder in a holster is not a clear mechanism of injury for right shoulder rotator cuff tear. Arb. Dec. at 15. Dr. Hawk observed individuals performing work similar to that required of Hudson at the employer and supported Dr. Aviles' opinion. Arb. Dec. at 15. The Deputy Commissioner details Hudson's medical history, various doctor visits, and the doctors' opinions in over seven pages of the decision. Arb. Dec. at 4-11.

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.* Hudson asks the court to reverse the agency’s findings in regard to the work-relatedness of his injury, claiming that the agency’s decision was not supported by substantial evidence. Hudson asks the court to rely on the expert opinion of Dr. Taylor instead of the expert opinions of Dr. Aviles or Dr. Hawk.

While another finder of fact may have found Dr. Taylor’s opinions to be more persuasive than that of Dr. Aviles or Dr. Hawk, the Deputy Commissioner’s decision to do the opposite was supported by substantial evidence. As Respondents note, Dr. Hawk was the only expert to have actually seen the job that Hudson was required to perform. Ex. B at 1. Dr. Aviles further confirmed his opinions in this matter via letter to Hudson’s counsel, which stated, “You discussed with Mr. Hudson the physical requirements of his job. Based on your examination and the information provided by the patient, Mr. Hudson’s shoulder condition is not related to any cumulative activities at Quality Manufacturing Corporation.” Ex. A at 2-3. Based on this evidence and the further evidence detailed by the Deputy Commissioner, the Commissioner, and other evidence contained in the record, the court finds that the agency’s decision is 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

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So Ordered

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

Celene Gogerty, District Judge  
Fifth Judicial District of Iowa