
IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MARK PRESSON,

Petitioner,

v.

**FREIBURGER CONCRETE &
TOPSOIL, INC,**

Employer,

and

IOWA MUTUAL INSURANCE CO.,Insurance Carrier,
Respondents.**Case No. CVCV062543****RULING ON PETITIONER'S
PETITION FOR JUDICIAL REVIEW**

On March 4, 2022, the above-captioned matter came before this Court for hearing. Petitioner Mark Presson appeared through Attorney Jerry Soper. Respondents Freiburger Concrete & Topsoil, Inc., and Iowa Mutual Insurance Co., were represented by Attorney Edward Rose. 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

Mark Presson filed petition in arbitration with the Iowa Workers' Compensation Commission on November 26, 2014, seeking workers' compensation benefits from Respondents, as a result of a stipulated injury sustained in May 2014. An Arbitration Decision was filed by a Deputy Commissioner on March 17, 2021. The Deputy found Presson was not a credible witness, based on the record as a whole. She determined the record was replete with examples of

incomplete and unsubstantiated statements from him regarding his medical, legal, and psychiatric histories. In addition, the Deputy set forth thorough and detailed findings with regard to all of the medical testimony. She found Presson relied heavily upon the opinions of Drs. Short, Milas, Miranda, and Angelone. The Deputy found these opinions insufficient to meet Presson's burden because they were based upon inaccurate and incomplete histories. More specifically, she gave Dr. Short's and Dr. Milas's opinions little weight because they relied on Presson's report to them, which was contrary to the medical records; she found Dr. Miranda's opinion that Presson's prior mental health admissions should not be given weight because they were all based on false allegations he was under the influence at the time of admission to be in direct contradiction to the medical records; and determined she was unable to give much weight to Dr. Angelone's opinions because it was unclear the extent of his knowledge of Presson's preexisting mental health conditions and substance abuse. The Deputy noted the contradictory opinions of Drs. Kent, Narayana, Tranel, Garrels, and Jacoby. Based on her determination that Presson lacked credibility and the inconsistent expert medical opinions, she concluded Presson failed to carry his burden of proof to establish he sustained any permanent disability as a result of the stipulated May 2014 work injury. Thus, he was not entitled to receive any permanent disability benefits for the work injury.

The Deputy further concluded Presson reached maximum medical improvement (MMI) for the work injury on March 9, 2015, and, thus, was not entitled to receive additional temporary disability benefits from April 23 to August 24, 2015. In addition, she determined he should not receive penalty benefits and taxed the costs of the arbitration proceeding to Presson. The Deputy noted in a footnote that Presson's Exhibit 3, which was the deposition of his friend and former coworker, Mark Berryman, was offered but was not in the agency record before her.

Presson appealed to the Iowa Workers' Compensation Commissioner. On June 19, 2021, Presson filed a Motion to have his Exhibit 3, Berryman's deposition, made part of the agency record, as it had inadvertently been left out of the file. Respondents did not resist the Motion, and a Deputy Commissioner granted the Motion on September 2, 2021. The Commissioner issued his Appeal Decision on the same date. The Commissioner performed a de novo review of the record and affirmed the Deputy's analysis, findings, and conclusions on all issues raised on appeal. The Appeal Decision was the final agency action. *See* Iowa Code § 17A.19(1).

On October 21, 2021, Presson filed the present Petition for Judicial Review appealing the Commissioner's Appeal Decision. He alleged the Agency erred in: (1) not considering the deposition testimony of Berryman, under Iowa Code section 17A.19(10)(d); and (2) the weight it gave to the various medical expert opinions offered in this case, under sections 17A.19(10)(f), (l), and (n).

The Deputy's Decision provided approximately 32 pages of findings of fact. Having reviewed the certified agency record, the Court determines these findings are a detailed and thorough recounting of the evidence provided. Accordingly, this Court, like the Commissioner below, adopts as its own the entirety of the "Findings of Fact" section of the Arbitration Decision. For this reason, as well as purposes of judicial economy, they need not be set forth here again.

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 an enterprise 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.

III. MERITS

Presson first contends the Agency erred in not considering Berryman's deposition, in violation of Iowa Code section 17A.19(10)(d). He alleges it was relevant to his claim of industrial disability, as it was evidence that the permanent restrictions to avoid bending, heat, and excessive physical work were not identified solely by his own self-reporting. First, the record does not specifically state whether the Commissioner took the deposition into account in his Appeal Decision. However, the Deputy admitted it the same date the Commissioner issued his Decision. As such, it is plausible the Commissioner did in fact consider it in his determination. The fact he did not specifically reference it in the Appeal Decision does not mean he did not consider it. It is presumed the agency considered all admissible evidence before it. *See IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000) (“[T]he courts should broadly and liberally apply [the agency's] findings to uphold rather than to defeat the agency's decision.”).

Second, even if the Commissioner did not consider Berryman's deposition, there is sufficient other evidence to support the Agency's determinations. Presson admits Berryman's

deposition mostly went to Presson's loss of earning capacity. Cl. Br. p. 31. There was ample testimony from several other persons, including Ricardo Ramirez, Mark Grchan, Sylvia Reyes, and Presson's mother, Mary Presson, on this same issue, all of which was considered by the Agency. Accordingly, the Court concludes even if the Commissioner did not consider Berryman's deposition, Presson's substantial rights were not prejudiced in any way by such omission. *See* Iowa Code § 17A.19(10) ("The court shall reverse, modify, or grant other appropriate relief from agency action . . . if it determines that substantial rights of the person seeking judicial relief have been prejudiced . . .").

Presson next contends the Commissioner erred in the weight he gave, or failed to give, to the various expert medical opinions in this case. He alleges the Agency's determination was: (1) based 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; (2) based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency; and (3) otherwise unreasonable, arbitrary, capricious, or an abuse of discretion, in violation of Iowa Code sections 17A.19(10)(f), (l), and (n), respectively.

The Workers' Compensation Commissioner, as fact finder, is responsible for determining the weight to be given to any expert testimony. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). He is free to accept or reject an expert's opinion in whole or in part, particularly when relying on a conflicting expert opinion. *Pease*, 807 N.W.2d at 850 (citing *Huwe v. Workforce Safety & Ins.*, 746 N.W.2d 158, 161–62 (N.D. 2008) ("When confronted with a classic 'battle of the experts,' a fact-finder may rely upon either party's expert witness.")).

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.” Also, 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. at 845 (citations omitted).

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 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). 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). The Court is “obliged to broadly and liberally apply those findings to uphold rather than defeat the commissioner’s decision.” *Pirelli–Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997) (citation and internal quotation marks omitted).

In applying the above standard-of-review precepts and in giving the due deference the Court is statutorily obligated to afford the Commissioner’s findings of fact, specifically with regard to what expert testimony to give more weight and credibility determinations, the Court approves of the reasons and conclusions in the Commissioner’s Appeal Decision. Although there may be evidence here to support a different finding, there clearly is evidence in the record to support the

findings actually made by the Commissioner that Presson did not meet his burden to prove the work injury was a cause of permanent disability. *See St. Luke's Hosp.*, 604 N.W.2d at 649.

IV. CONCLUSION AND DISPOSITION

For all of the reasons set forth above, the Court concludes that Presson's substantial rights were not prejudiced, even assuming the Commissioner did not consider Berryman's deposition. It further concludes there is substantial evidence in the record before the Court, when that record is viewed as a whole, and 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, Presson's Petition for Judicial Review is **DENIED**.



State of Iowa Courts

Case Number
CVCV062543
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Case Title
MARK PRESSON VS FREIBURGER CONCRETE ET AL
ORDER FOR JUDGMENT

So Ordered

A handwritten signature in cursive script, reading "Samantha Gronewald".

Samantha Gronewald, District Court Judge
Fifth Judicial District of Iowa

Electronically signed on 2022-04-05 14:28:59