

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ROBERT SHRUM,

Petitioner/Claimant.

vs.

BOLDT GROUP,

Respondent/Defendant.

Case No. CVCV061132

**RULING ON PETITION FOR JUDICIAL
REVIEW**

A Petition for Judicial Review came before the Court from a final decision of the Iowa Workers' Compensation Commission. The Court held a hearing on this matter on February 25, 2022. Petitioner Robert Shrum ("Shrum") was represented by attorney Laura Pattermann. Attorney Aaron Oliver appeared for Respondent Boldt Group ("Boldt"). Having heard the arguments of counsel and reviewed the court file, including the briefs provided by the parties, the certified administrative record, and being otherwise fully advised in the premises, the Court now enters the following ruling.

I. INTRODUCTION

A. Factual Background

Petitioner Robert Shrum was 47-years old at the time of the Arbitration Hearing. (Arbitration Decision at 2). He graduated high school and vocational school (*Id.*). He served in the Army National Guard from 1991 to 1997 as a combat engineer building bridges. (*Id.*). He was honorably discharged. (*Id.*). He sustained a right knee injury while serving. (*Id.*). During his time in the National Guard, Shrum simultaneously had various full-time jobs including maintenance of a golf course and work at a manufacturing plant

building brake cables for cars and trucks. (*Id.*).

During his early to mid-20s, Shrum attended welding school and received his certificate from the two-year program. (*Id.*). Shrum had a welding career with various companies. (*Id.*). His job duties were essentially the same in that they required twisting, reaching, equipping the welding equipment, and reaching overhead. (*Id.*). However, due to the condition of his right arm and shoulder, Shrum believes he would not be able to return to those welding positions. (*Id.*). Shrum began his apprenticeship with the Boilermakers Union in 2005 after several years of applying and being turned down. (*Id.*). He achieved journeyman status but he believes his plan of retiring from the boilermakers will not be achievable due to his injuries to his shoulder, arm, and upper back. (*Id.* at 2-3).

Shrum has a history of upper back, neck, and head pain. (Joint Exhibit (JE) 2 at 13). He had a motor vehicle collision with a deer in December 2007. (*Id.*). He sought treatment with Dr. Rodney Yager for this pain on December 21, 2007. (*Id.*). He was diagnosed with a cervical spine strain and a thoracic spine strain. (*Id.* at 14). He returned to Dr. Yager for neck and upper back pain in September 2008. (*Id.* at 15). He returned to Dr. Yager in August 2009, November 2011, December 2014, and June 2015. (*Id.* at 17-18, 23-30). His chief complaint in each of these visits was chronic neck, shoulder pain, and back pain. (*Id.*). In December 2014, he was diagnosed with left sacroiliac dysfunction and cervical radiculopathy. (*Id.* at 26).

On October 12, 2010, Shrum was seen by Dr. Jonathan Colen for memory loss and concentration difficulty issues. (*Id.* at 19). He reported a history of neck pain on the right side. (*Id.* at 21). Shrum also started to see a chiropractor at Accelerated Health

Solutions. (JE 1 at 1-12). He saw a chiropractor in August 2012, September 2012, October 2012, December 2012, October 2013, and May 2014. (*Id.*). His main complaints were upper right back/neck, neck left side, lower left back, shoulders, and hips. (*Id.*).

On September 16, 2015, Shrum was working for Boldt Group in Marshalltown, Iowa. (Transcript of Arbitration Hearing at 51:1-25, 52:1-5). He was working in a man basket approximately 20 feet in the air when he was almost pulled from the basket after he lost his grip on a clamp in his right hand. (*Id.* at 52-54). It pulled his right arm and shoulder (*Id.* at 54:13). He did not realize at the time he was injured but later he felt an “electrical pain and shock through the elbow and forearm.” (*Id.* at 54, 55:2-5). Shrum testified he reported the injury the day of the incident before he left. (*Id.* at 55). His primary pain was in his elbow. (*Id.*). He was given ibuprofen and an ice pack in the safety office. (*Id.* at 56). He returned to work the next day but was not able to do his job like before. (*Id.*). Boldt set up physical therapy on the job site that started a week or two after his injury. (*Id.* at 56-57). Shrum testified that he reported upper back, shoulder, right arm, and elbow pain to the physical therapist. (*Id.*).

Blankenheim Services Industrial Therapy was set up by Boldt group as the onsite physical therapist for Shrum. (JE 5). He was first seen on September 23, 2015. (*Id.* at 67). He complained of right elbow pain and a little soreness in his right shoulder and neck. (*Id.*). He was seen again on September 30, 2015, October 7, 2015, October 14, 2015, December 2, 2015, February 10, 2016, February 25, 2016, March 8, 2016, March 21, 2016, April 5, 2016, April 12, 2016, April 18, 2016, and September 14, 2016. (*Id.* at 68-81).

In his visits in September and October, Shrum reported soreness in the right

shoulder, neck, and elbow. (*Id.* at 68-70). However, there was little soreness and light discomfort in the neck and shoulder. (*Id.*). During his visit on December 2, 2015, Shrum presented with a rounded shoulder but the range of motion in the shoulder was within the normal limits. (*Id.* at 71-73). On February 10, 2016, Shrum mentioned to his physical therapist that his shoulder had been bothering him. (*Id.* at 74). Shrum reported discomfort in his shoulder again during his visit on February 25, 2016. (*Id.* at 75). On March 8, 2016, Shrum and the physical therapist worked on the wrist, elbow, and shoulder. (*Id.* at 76). He felt pain in the area of bicipital insertion and shoulder that Shrum described as “like a shock that went down arm to wrist” during his visit on March 21, 2016. (*Id.* at 77). He rated the pain at 4/10. (*Id.*). During his visit on April 12, 2016, Shrum mentioned that his shoulder had been bothering him, running up his wrist into his shoulder. (*Id.* at 79). Physical therapy did not alleviate Shrum’s pain and he was eventually referred to McFarland Clinic. (*Id.* at 80; Arbitration Decision at 4). He initially responded well but his progress plateaued with continued mild discomfort with weakness in the right upper extremity. (JE 5 at 80). He also was scheduled for surgical repair on April 25, 2016. (*Id.*). Shrum had no further appointments scheduled after his discharge. (*Id.* at 81).

On September 28, 2015, Shrum reported pain in his right arm to Dr. Yager. (JE 2 at 31). He reported that he overextended his right elbow and wrist when he picked up a heavy object while at work. (*Id.* at 32.). He reported it had been going on for two weeks. (*Id.*). An x-ray of his right elbow did not show any acute changes. (*Id.*).

On October 5, 2015, Shrum first reported to McFarland Clinic and was seen by Dr. Charles Mooney. (JE 4 at 60-66). He filled out a self-assessment occupational health form. (*Id.* at 62). He reported 40 to 70 slipped while he was holding onto it, straightening

out his right arm. (*Id.*). His symptoms were around the elbow, forearm, wrist, and hand with shooting pain and tightness of hand and loss of grip. (*Id.*). Shrum was seen by Dr. Charles Mooney on October 5, 2015. (*Id.* at 60-61). Dr. Mooney suspected Shrum had a right forearm sprain that may involve a partial tear of the brachioradialis and extensor musculature. (*Id.* at 60). He continued on light duty status with a maximum lift of five pounds with the right upper extremity (*Id.*). Dr. Mooney also ordered x-rays and an MRI. (*Id.*). The MRI revealed a partial-thickness tear involving the distal biceps tendon with tenosynovitis. (*Id.* at 65). He was referred to Orthopedics with Dr. Bryan Warne for consultation. (*Id.* at 66).

Shrum saw Dr. Bryan Warne at McFarland Clinic for the first time on December 1, 2015. (JE 6 at 82). Dr. Warne noted Shrum presented with right elbow pain radiating into the hand. (*Id.*). Dr. Warne incorrectly stated Shrum had not done physical therapy so he was hesitant to do surgery until a few months of physical therapy. (*Id.*). On February 23, 2016, Dr. Warne offered surgery with the caveat that it would not resolve Shrum's forearm pain and it would not affect the other symptoms he has in the shoulder or the arm and hand. (*Id.* at 85). At the time, Shrum wanted to try an increase in his work restrictions and see how it goes. (*Id.*). Shrum later changed his mind and decided to set up surgery for his right distal biceps. (*Id.* at 86). Shrum presented for a preoperative physical on March 21, 2016. (*Id.* at 88). However, on March 23, 2016, Shrum's employer requested a second opinion prior to the surgery being done and the surgery was canceled. (*Id.* at 90).

On April 1, 2016, a second opinion was obtained from orthopedist Dr. Benjamin Paulson. (Defendant's Exhibit (DE) I at 21). Dr. Paulson agreed that Shrum should

undergo surgical repair to his biceps tendon tear. (*Id.* at 23). Dr. Paulson did not examine Shrum's shoulder. (*Id.* at 21-23).

On April 14, 2016, Shrum presented to Dr. Warne for a preoperative physical. (JE 6 at 91-92). He was scheduled to have surgery on his right biceps tendon on April 25, 2016. (*Id.* at 91). On April 11, 2016, Shrum called Dr. Warne's office with concern over the upcoming surgery and wanted to reschedule. (*Id.* at 93). He also asked if he could have his right shoulder checked out on the same claim. (*Id.*). Dr. Warne's office told him that workers' compensation did not have any information regarding his right shoulder. (*Id.*). Shrum did end up having the surgery on April 26, 2016. (*Id.* at 96). He was seen for a follow-up visit with Dr. Warne on June 7, 2016. (*Id.* at 98). The treatment plan was for him to continue with physical therapy and for a follow-up visit in six weeks. (*Id.*). He was not able to return to work until reevaluated. (*Id.*). He also asked Dr. Warne to look at his shoulder because he has chronic right shoulder pain. (*Id.* at 99). He received clearance from workers' compensation to have it looked at by Dr. Warne. (*Id.*). The plan was for him to get four views of the right shoulder and then they will review the x-rays. (*Id.*). The three-view x-ray study of his right shoulder revealed no evidence of fractures or dislocation. (*Id.* at 100). The acromioclavicular joint is unremarkable, there was no significant subacromial space narrowing, and the glenohumeral joint is unremarkable. (*Id.*). Overall, it was an unremarkable right shoulder x-ray. (*Id.*). On July 28, 2016, Shrum returned for his three-month follow-up visit from his right distal bicep repair surgery. (*Id.* at 104). Overall, he reported great strength and no pain. (*Id.*). He was released to full activity and he was at maximum medical improvement with no residual impairment. (*Id.*).

Shrum was laid off the day of his surgery by Boldt. (Transcript of Arbitration

Hearing at 68:7-17). He returned to work for the boilermakers after four months but immediately had problems. (Arbitration Decision at 5). Shortly after he returned to work, Shrum took a four-day medical layoff. (*Id.*; Arbitration Hearing Transcript at 69-70).). He had two to three more union jobs but because of his right upper extremity problems, he was unable to continue and transitioned into driving a truck. (Arbitration Decision at 5; Transcript of Arbitration Hearing at 70).

On May 2, 2016, Shrum presented to Advance Physical Therapy & Sports Medicine due to complaints of right shoulder, elbow, and wrist. (JE 8 at 109). He presented to the physical therapist for eight visits in May. (*Id.* at 109-116). He was unable to perform home maintenance and was unable to perform lifting with his right upper extremity. (*Id.* at 109-115). He usually reported his pain at 6/10 but with its worst at 9/10. (*Id.*). During his visit on May 25, 2016, Shrum had improved and it was reported he had minimal assistive levels with home maintenance and could lift no more than five pounds. (*Id.* at 116). This condition continued until mid-July (*Id.* at 130). On July 11, 2016, it was reported dressing, driving/traveling, and home maintenance were independent without difficulty. (*Id.*). Lifting was increased to no more than 35 pounds. (*Id.*). Shrum reported having no pain or discomfort with activity. (*Id.*). His grip and pinch were symmetrical bilaterally and he exhibited only slightly reduced flexion. (*Id.*). He was discharged from physical therapy on October 3, 2016, when he returned to pre-injury levels for all but lifting which was limited to 40 pounds from floor to waist. (*Id.* at 132).

Shrum continued treatment with Dr. James Robertson on August 3, 2016, for his low back and neck pain. (JE 3 at 58). Shrum previously saw Dr. Robertson at Back2Health chiropractic clinic on April 29, 2015, for his low back pain and neck pain. (*Id.* at 56). He

attributed his pain to riding an all-terrain vehicle on rough terrain. (*Id.*). At the appointment in April 2015, Dr. Robertson diagnosed Shrum with low back pain, cervicgia, thoracic subluxation, and spasm of muscle. (*Id.* at 57). Shrum's condition improved after treatment and Dr. Robertson believed Shrum's prognosis would be excellent. (*Id.*). During his visit in August 2016, Shrum attributed the low back pain and neck pain to helping his friend turn over an all-terrain vehicle. (*Id.* at 58). Shrum rated his symptoms as mild and rated his low back pain at a two and his neck pain at a four. (*Id.*). After his assessment, his condition showed immediate improvement and his prognosis was excellent. (*Id.* at 59).

On August 31, 2016, Shrum presented to Dr. Yager with lower left back and center back pain. (JE 2 at 40). Shrum denied any injury. (*Id.*). The pain had been ongoing for four weeks and stated it started after he was working on a car and pulling out the anterior. (*Id.* at 40-41). He went to a chiropractor but stated it did not help. (*Id.* at 41). On examination, he was positive over the left tenth rib circumferentially with positive exhalation dysfunction. (*Id.*). Dr. Yager diagnosed Shrum with a left rib strain. (*Id.*). On September 21, 2016, Shrum returned to Dr. Yager with reports of back pain. (*Id.* at 42). He denied any injuries and stated he strained his back when working on a car. (*Id.* at 43). On examination, he had positive tenderness over the right lower lumbar spine but the x-ray of the lumbar spine was negative. (*Id.* at 43-44). Shrum took the rest of the day off of work. (*Id.* at 45).

On February 13, 2017, Shrum returned to Dr. Yager with complaints of lower back, neck, and shoulder pain. (*Id.* at 46). He reported the pain has been going on for years but it had been worse in the last three months. (*Id.*). During the examination, Shrum was positive for tenderness in the right trapezius muscle, right paraspinal region, and had

decreased range of motion to the left in the cervical spine. (*Id.* at 47). Dr. Yager diagnosed Shrum with right lumbar and cervical spine pain. (*Id.*). Dr. Yager also wrote out work restrictions for February 11-13, 2017. (*Id.* at 48). Shrum returned to Dr. Yager two more times on March 13 and October 13, 2017. (*Id.* at 49, 53). In March it was for right shoulder, arm, and neck pain. (*Id.* at 49). In March, he reported the pain had worsened when he welded. (*Id.* at 50). He reported to Dr. Yager he planned on switching his occupation to truck driving. (*Id.*). In October, Shrum's main complaint was right arm pain as well as arthritis/joint pain. (*Id.* at 53-54). After he was doing yard work it had "progressively gotten worse." (*Id.* at 54). His weakness is worse than the pain with flexion at the elbow. (*Id.*). He stated that if he lifted anything five pounds or over, he has increased pain. (*Id.*). Dr. Yager was concerned Shrum had a possible rupture in his biceps and ordered an MRI. (*Id.*).

On August 30, 2019, Shrum underwent an independent medical evaluation with Dr. Charles Taylon, a neurosurgeon. (Claimant's Exhibit (CE) 1). Dr. Taylon issued a report on September 1, 2019. (*Id.*). Shrum reported an improvement in strength after his surgery but stated that he still had shooting pain in his forearm and pain at the base of his neck which radiates to his right shoulder and scapula. (*Id.* at 1). He reported these problems increased with activity. (*Id.*). He reported he has a slight weakness in the arm. (*Id.*). During the examination, he exhibited a mild decrease in the range of motion of the neck and mild weakness in the right biceps muscle to confrontation testing. (*Id.*). His shoulder had a full range of motion. (*Id.*). Based on the medical records and claimant's history along with his own experience and expertise, Dr. Taylon stated Shrum sustained a partial tear of his right biceps as a result of his work injury dated September 16, 2015.

(*Id.* at 2). Shrum also aggravated a mechanical musculoligamentous injury involving his neck and shoulder. (*Id.*). These injuries resulted in a permanent partial impairment rating of 5% to the body as a whole. (*Id.*). Shrum's permanent restrictions are 50-75 pounds of lifting and he should not do repetitive bending or twisting. (*Id.*). Dr. Taylon charged \$2000 for the examination and \$500 for the report. (CE 2 at 13).

On September 25, 2019, Dr. Warne opined via a checkmark on a letter authored by Defendants' counsel, Shrum had been released to zero percent permanent partial disability rating and that the shoulder pain was not related to the work injury. (DE J at 25).

Shrum testified that he would not be able to weld like he could pre-injury because of the pain in his right shoulder and upper back. (Transcript of Arbitration Hearing at 82). He stated he prefers boilermaking due to the pay, the insurance, and the benefits. (*Id.* at 84). He is making similar pay driving a truck, but he is not getting the benefits or retirement and has more expenses for fuel and maintenance of the truck. (*Id.*). He stated he has constant aching pain in the right shoulder, upper back, and occasionally in the arm. (*Id.* at 85). He has not been back to see the doctor since 2017 because he does not have insurance for it. (*Id.*).

B. Procedural History

Shrum filed a Petition before the Iowa Workers' Compensation Commissioner on January 25, 2019. The parties filed a hearing report and it was stipulated that "claimant sustained an injury, which arose out of and in course of employment, on the following date: 09/15/2015." (Hearing Report at 1). It was also stipulated that the alleged injury was the cause of temporary disability during a period of recovery. (*Id.*). It was disputed whether the alleged injury caused permanent disability (*Id.*). The parties believed the weekly rate

of compensation to be \$869.08. (*Id.* at 2). The parties dispute the specific taxation of costs in the decision but stipulate to the costs listed in Claimant's Exhibit 2 have been paid. (*Id.* at 3).

The Arbitration Hearing was held on February 25, 2020. On May 13, 2020, Deputy Commissioner Jennifer Gerrish-Lampe issued an arbitration decision. The Deputy found: (1) Shrum's right shoulder pain which extends into his neck and down the arm is related to the work injury, (2) Shrum did not carry his burden in proving his back pain was caused by his work injury and Dr. Taylon's causation finding was confined to the neck, shoulder, and right upper extremity, (3) Shrum is entitled to an industrial disability award based on the neck, shoulder, and right upper extremity injuries rather than a functional disability award, (4) compensation for permanent partial disability shall begin at the termination of the healing period at a rate of \$869.08 per week from July 28, 2016, (5) compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole, (6) Shrum has sustained a 5 percent impairment of his whole body, (7) Shrum is entitled to ongoing medical care for his neck, shoulder, and right upper extremity, (8) employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under workers' compensation law,. (9) Shrum is entitled to alternate care and can return to Dr. Yager, (10) Defendants are entitled to a credit against the permanent partial disability that has been awarded to Shrum under this decision from July 28, 2016, to August 31, 2016, and (11) remaining costs are awarded to Shrum pursuant to 875 IAC 4.33. (Arbitration Decision at 10-14).

Boldt appealed the Deputy's Arbitration Decision. On December 7, 2020,

Commissioner Joseph Cortese reversed the Deputy's findings, conclusions, and analysis regarding the causation of Shrum's neck and shoulder pain as a work-related injury. (Appeal Decision at 3-4). The Commissioner also reversed the deputy commissioner's finding that Shrum sustained a permanent impairment as a result of the work-related injury and, therefore, reversed Shrum's entitlement to PPD benefits. (*Id.* at 4). Having found Shrum did not satisfy his burden to prove causation for his neck or shoulder conditions, the Commissioner reversed the finding that Shrum is entitled to alternate care or ongoing medical care for those conditions. (*Id.* at 5). The Commissioner affirmed Shrum's entitlement to ongoing care for his right arm and that Defendants shall reimburse Claimant for costs as set forth in the Arbitration Decision. (*Id.*).

On December 23, 2020, Shrum filed a Petition for Judicial Review. Shrum argues:

the Commissioner erred in reversing the Deputy's decision which had found the Claimant had satisfied his burden of proof that he sustained a work-related injury to his neck, shoulder, and right upper extremity and sustained a five percent whole body impairment due to his work-related injuries on September 16, 2015, while working for Boldt Group, Inc. The Commissioner further erred in reversing the Deputy's decision that the Claimant was entitled to ongoing medical care for his neck and shoulder conditions. The Commissioner additionally erred in reversing the Deputy's finding that the Claimant was entitled to alternate care with Rodney Yager, D.O. The final agency action was also erroneous in that it incorrectly sets forth the medical evidence contained within the record and then relies upon the inaccurate representation of the medical as the basis for its decision.

(Petition at 2).

II. STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2019); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, 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. A 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. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). 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); *Mycogen*, 686 N.W.2d at 464. “When reviewing a finding of fact for substantial evidence, we judge the finding ‘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.’” *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Iowa Code § 17A.19(10)(f)(3)). “Evidence is not insubstantial merely because different

conclusions may be drawn from the evidence.” *Pease*, 807 N.W.2d at 845. “To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder.” *Id.* “Judicial review of a decision of the [Commission] is not de novo, and the commissioner’s findings have the force of a jury verdict.” *Holmes v. Bruce Motor Freight*, 215 N.W.2d 296, 297-98 (Iowa 1974).

The application of the law to the facts is also an enterprise vested in the commissioner. *Mycogen*, 686 N.W.2d at 465. Accordingly, the Court will reverse only if the commissioner’s application was “irrational, illogical, or wholly unjustifiable.” *Id.*; Iowa Code § 17A.19(10)(l). “A decision is “irrational” when it is not governed by or according to reason.” *Christensen v. Iowa Dep’t. of Revenue*, 944 N.W.2d 895 at 905 (Iowa 2020). A decision is “illogical” when it is “contrary to or devoid of logic.” *Id.* “A decision is “unjustifiable” when it has no foundation in fact or reason” or is “lacking in justice.” *Id.* 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 Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). However, when the legislature has not vested the agency with such authority, the Court reviews an agency’s interpretation of a statute for correction of errors at law. *Westling v. Hormel Foods Corp.*, 810 N.W.2d 247, 251 (Iowa 2012).

III. **MERITS**

A. **Whether the Commissioner’s determination that Shrum failed to prove causation as to his right shoulder and neck is supported by substantial evidence.**

The Commissioner reversed the Deputy and found that Shrum’s neck and shoulder injuries were not caused by his work injury on September 16, 2015. Specifically, the

Commissioner found the opinion of Dr. Taylon, relied upon by the Deputy regarding causation, to be undermined by Shrum's testimony. (Appeal Decision at 2). Shrum's testimony stated that he was not pursuing a neck injury. (*Id.*). Also, Shrum never mentioned neck complaints to Dr. Mooney or Dr. Warne and admitted to that at the hearing. (*Id.*). Any neck pain he did admit to Dr. Yager was not until February 2017 – more than a year after his injury – and he did not attribute it to a work injury. (*Id.*). The Commissioner was not persuaded by Dr. Taylon's conclusion as to his neck. (*Id.*). It is unclear whether Dr. Taylon had a complete understanding of Shrum's neck complaints prior to the work injury because he failed to identify what medical history he reviewed. (*Id.* at 3). As for the shoulder, the Commissioner found many of the same problems as the neck injury. (*Id.*). There was no mention of shoulder pain in the records from Dr. Mooney and the intake form completed by Shrum made no notations of shoulder pain. (*Id.*). His shoulder pain does not appear in Dr. Warne's records until mid-2016 and does not appear in Dr. Yager's records until February 2017. (*Id.*). Again, Shrum reported chronic shoulder pain and did not attribute it to the work injury. (*Id.*). Dr. Taylon offered no specifics as to what the injury was and it was not clear if he reviewed Shrum's pre-existing medical history. (*Id.*). Overall, the Commissioner found Dr. Warne's opinion to be more consistent with the greater weight of the evidence. (*Id.* at 4).

Claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). A cause is proximate if it is a substantial factor in bringing about the result, however, it need not be the only cause. *Ayers v. D & N Fence Co.*, 731 N.W.2d 11, 17 (Iowa 2007). A preponderance of the evidence exists when the

causal connection is probable rather than merely possible. *Sherman*, 576 N.W.2d at 321. The question of causal connection is essentially within the domain of expert testimony. *Id.*

Shrum argues the dates and record cited by the Commissioner as support for the reversal of the Deputy's decision were not represented in the appeal decision. (Petitioner's (Pet.) Brief at 10). Shrum contends he did complain of shoulder complaints to Dr. Mooney. (*Id.*). Dr. Mooney performed tests to determine the etiology of shoulder pain including provocative testing and the Yergason test. (*Id.*). This indicates Shrum did bring up his shoulder pain. (*Id.*). Shrum also argues the record reflects that he consistently complained of pain in his right shoulder and neck, including regularly in his physical therapy at Blankenheim. (*Id.*). Also, Shrum did complain about his shoulder to Dr. Warne before mid-2016 when he referenced his right shoulder on February 23, 2016. (*Id.* at 10-11). Additionally, he argues his therapy records reflect that he regularly complained about it through June 2016. (*Id.* at 11).

Shrum argues the Deputy thoroughly examined the record and the evidence, while the Commissioner must not have reviewed the records when arriving at his decision. (*Id.*). Dr. Warne's medical records reflect and contemplated that the proposed surgery "would not effect the symptoms he has in the shoulder, arm, and hand." (*Id.* at 11-12). Additionally, the shoulder was first noted in the medical records a week after the injury and it was noted as chronic. (*Id.* at 12). As for Dr. Yager, he was not the treating doctor for Shrum's work injury, therefore, it would be logical there would be an absence of any notations by Dr. Yager regarding any shoulder or neck injury. (*Id.*). It was only after the carrier denied further care and Shrum obtained insurance, that he was treated with Dr.

Yager for his neck and shoulder. (*Id.*). Shrum also contends that prior to his work injury, there was no evidence in the record that he ever experienced right shoulder pain in the past, only left shoulder pain. (*Id.*).

Additionally, Shrum argues the Commissioner's reliance on Dr. Warne compared to Dr. Tylon is flawed. There was no evidence in the record Dr. Warne had access to Shrum's prior medical records. (*Id.*). Dr. Warne signed a letter drafted by defense counsel that was factually inaccurate and did not reflect Dr. Warne's records. (*Id.* 14-15). Dr. Warne's records demonstrated an awareness of the shoulder records in February 2016 when Shrum had his second visit with him. (*Id.* at 14). During Shrum's December visit with Dr. Warne, there were references that Dr. Warne was aware of his shoulder injury as reflected in his billing codes. (*Id.* at 14-15). Therefore, the signed letter by Dr. Warne but drafted by defense counsel was not credible and the conclusions are false. (*Id.* at 15). The Commissioner is incorrect in stating that Dr. Tylon's opinion is not clear on what pre-existing medical history he reviewed. (*Id.* at 16).

As for his neck, Shrum has had neck issues in the past but he contends he was not receiving treatment for it at the time of the injury. (*Id.* at 20). Any incidents involving neck pain were isolated and were single visits with no follow-up. (*Id.*). After his work injury, Shrum's medical condition changed in his neck changed and he needed regular therapy and ultimately surgery. (*Id.*). Dr. Tylon's opinion describes and evidences prior records and gives a timeframe of Shrum's neck problems. (*Id.* at 21). Dr. Warne's records are replete with errors and these errors are substantive to the case. (*Id.*). Dr. Warne mistakenly states in December 2015 that Shrum had not attended physical therapy. (*Id.*).

Also, there was a mistake in Dr. Warne's records as to when he and McFarland Clinic were first aware of Shrum's shoulder complaints. (*Id.*).

Shrum's overall argument as to causation is that the Deputy Commissioner, who is the finder of fact, was persuaded by the expert opinions of Dr. Taylon and Dr. Yager. (*Id.* at 32). These opinions were consistent with other medical records in evidence as well as Shrum's testimony. (*Id.* at 33). The Deputy was able to consider all the factors and witnesses, therefore, the Industrial Commissioner reinterpreting live testimony is inappropriate. (*Id.*).

However, the argument by Shrum is flawed because the Commissioner is not compelled to accept the opinion of any medical expert. See *Hurley v. Sheller-Globe Corp.*, 512 N.W.2d 796, 798 (Iowa Ct. App. 1993). The trier of fact may accept or reject in whole or in part, even if uncontroverted, expert opinion testimony. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa Ct. App. 1991). The weight to give evidence remains within the Commissioner's exclusive domain. *Titan Tire Corp. v. Emp't Appeal Bd.*, 641 N.W.2d 752, 755 (Iowa 2002). The Commissioner rejected Dr. Taylon's medical opinion and gave weight to the records and opinion of Dr. Warne. (Appeal Decision at 2-4). The Commissioner recognized the opinion of Dr. Taylon but found it was not persuasive because it was unclear whether Dr. Taylon had a complete understanding of Shrum's neck and shoulder complaints prior to the work injury. (*Id.* at 3). The Commissioner referenced the records of Dr. Mooney, Dr. Warne, and Dr. Yager to support his finding. (*Id.* 2-3).

Here, the Commissioner adequately explained the basis for its decision for its reversal. As the finder of fact, the Commissioner determines the weight to assign an

expert opinion, assessing the accuracy of the facts provided to the expert as well as other surrounding circumstances. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). The Commissioner may reject or accept the expert evidence entirely or in part. *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 850 (Iowa 2011). In our appellate posture, we “ ‘are not at liberty to accept contradictory opinions of other experts in order to reject the finding of the commissioner.’ ” *Id.* (citation omitted). Thus, whether a piece of evidence trumps another or is qualitatively weaker is not an assessment for either the district court or the court of appeals to make when reviewing an agency's decision on the basis of substantial evidence. *Arndt v. City of Le Claire*, 728 N.W.2d 394, 389 (Iowa 2007). The Court finds the findings by the Commissioner to constitute substantial evidence to support its decision that Shrum failed to prove his neck and shoulder complaints are causally related to the work injury.

B. Whether the Commissioner's determination that Shrum was not entitled to additional medical or indemnity benefits is supported by substantial evidence.

The Commissioner reversed the Deputy Commissioner as to Shrum being entitled to alternate care or ongoing medical care for his neck and shoulder conditions because Shrum did not satisfy his burden to prove causation. (Appeal Decision at 5). Under Iowa Code 85.27:

The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services.

When an employee sustains a compensable work-related injury, employers are obligated to provide reasonable medical services to treat the injured employee. Iowa

Code § 85.27(4). Once compensability is established, the employer has the right to choose the care the employee receives. *Id.* The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code § 85.27. An application for alternate medical care is not automatically sustained because a claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. *Long v. Roberts Dairy Co.*, 528 N.W.2d 122 (Iowa 1995).

Here, Shrum requested that he be entitled to additional and alternate medical care under Iowa Code section 85.27 for his neck, shoulder, and right upper extremity given the causation finding. (Arbitration Decision at 11). Boldt argued Shrum has not pursued or obtained any treatment under his personal health insurance which he has had since at least July 2019. (*Id.*). Additionally, Boldt contends there is no evidence that medical treatment has been recommended for either the upper back or right shoulder. (*Id.*).

However, the Deputy Commissioner found this statement by Boldt to be inaccurate because Dr. Yager recommended a follow-up MRI for Shrum's right-shoulder weakness and Dr. Taylon recommended an MRI of the neck and shoulders. (*Id.*). As a result, the Deputy Commissioner found there was no care being provided for Shrum's condition, and, in denying a claim, Boldt does not have the right to choose the provider of care. (*Id.* at 12). The Deputy states Shrum continues to have symptoms in his neck, shoulder, and right arm. (*Id.*). Boldt has offered no care and has denied the claim for benefits in regards to the shoulder and neck. (*Id.*). Boldt also has not offered any follow-

up care for the right upper extremity. (*Id.*). Therefore, the Deputy determined Shrum was entitled to alternate care. (*Id.*). The Commissioner reversed this finding by the Deputy because of Shrum's failure to prove causation as to the neck and shoulder injury.

The Commissioner was correct in its finding that if Shrum failed to prove causation as to his neck and shoulder injury, then he is not entitled to alternate care or ongoing care for the neck and shoulder under Iowa Code section 85.27. A plain reading of the statute states "the employer, for all *injuries compensable under this chapter or chapter 85A.*" In this case, the Commissioner found Shrum failed to prove his neck and shoulder injuries were compensable under chapter 85 or chapter 85A. Therefore, Boldt has no responsibility to provide alternate or ongoing care for those injuries.

Also, Shrum argues for a reinstatement of the Deputy's award of 25 weeks of permanent partial disability (PPD). Shrum argues the Deputy considered the facts of Shrum's age, educational level, medical condition prior to the injury, medical condition immediately after the injury, medical condition presently, situs of the injury, severity of the injury, length of healing period, work experience, potential rehabilitation, functional impairment, and his inability because of the injury to engage in employment for which the employee is suited. (Pet. Brief at 35). The Deputy found Boldt is to pay Shrum 25 weeks of permanent partial disability benefits at a rate of \$869.08 per week from July 28, 2016. (Arbitration Decision at 13). The Commissioner reversed this finding because the Commissioner was not persuaded by Dr. Taylon's opinion regarding permanent impairment of Shrum's right arm. (Appeal Decision at 5). The Commissioner found Dr. Warne's opinion that Shrum sustained no permanent impairment to be more consistent

with the evidence. (*Id.*). Therefore, Shrum failed to satisfy his burden of proof to establish entitlement to PPD benefits. (*Id.*).

An industrial disability has been sustained due to Shrum having an impairment to the body as a whole. Industrial disability is a "loss of earning capacity and not a mere 'functional disability to be computed in terms of percentages of the total physical and mental ability of a normal man.'" *Diederich v. Tri-City R. Co.*, 219 Iowa 587, 258 N.W. 899 (1935). Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 192 (Iowa 1980).

The Commissioner gave no weight to Dr. Taylon's ratings of impairment because he found Dr. Warne's opinion that Shrum sustained no permanent impairment to his right arm to be more consistent with the evidence. (Appeal Decision at 5). There is substantial evidence on the record supporting the Commissioner's conclusion. Dr. Warne performed the surgery repair on Shrum's right distal bicep. (JE 8 at 96). During his three-month follow-up visit, Shrum reported he had "great strength and no pain." (*Id.* at 104). He was released to full activity and was at maximum medical improvement with no residual impairment. (*Id.*). Shrum also sought no additional treatment and continued on his job assignments with the union without restrictions until he voluntarily took another job. (Arbitration Transcript at 90, 103-104). Whereas, Dr. Taylon states his permanent partial impairment rating is 5% to the body as a whole but it is unclear what this assessment is

based on by Dr. Taylon. (CE 1 at 2). It seems Dr. Taylon bases this on Shrum's neck and shoulder injury. (*Id.*). Dr. Taylon states right above his neck and shoulder injuries are residual and the "analysis of the partial tear of his right biceps is in the orthopedic sphere and [he will] defer to that specialty." (*Id.*). It is the Commissioner's duty as the trier of fact "to determine the credibility of the witnesses, weigh the evidence, and decide the facts in issue." *Arndt*, 728 N.W.2d at 394–95. The job of the reviewing court is simply to determine whether substantial evidence supports a finding "according to those witnesses whom the [commissioner] believed." *Id.* at 395. Thus, this Court rejects Shrum's attempt to reverse the Commissioner's finding that Shrum sustained no permanent impairment as to his right arm.

III. CONCLUSIONS AND DISPOSITIONS

For all the reasons set forth above, the Court concludes there is substantial evidence to support the Agency's findings as to the determination that Shrum: (1) failed to prove causation as to the injuries to his neck and shoulder, (2) not entitled to alternate care or ongoing medical care for his neck and shoulder injuries, and (3) is not entitled to permanent partial disability (indemnity) benefits for his right arm.

IT IS THE ORDER OF THE COURT that the Iowa Workers' Compensation Commission's decision is **AFFIRMED**.

Costs are assessed to Petitioners.



State of Iowa Courts

Case Number
CVCV061132
Type:

Case Title
ROBERT SHRUM V BOLDT GROUP
OTHER ORDER

So Ordered

Celene Gogerty, District Judge
Fifth Judicial District of Iowa

Electronically signed on 2022-04-03 11:35:47