

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

**XPO LOGISTICS and INDEMNITY  
INSURANCE COMPANY OF NORTH  
AMERICA,**

Petitioner,

**CRAIG IVESTER,**

Respondent.

Case No. **CVCV063303****ORDER ON JUDICIAL REVIEW**

This is a petition for judicial review from a final decision of the Iowa Workers' Compensation Commission. At hearing, Petitioners XPO Logistics and Indemnity Insurance Company of North America (collectively "XPO") appeared through attorney Allison Stewart. Respondent Craig Ivester ("Ivester") appeared through attorney Darin Luneckas. After hearing the arguments of counsel, reviewing the court file, the administrative record, and being otherwise advised in the premises, the court enters the following ruling:

**I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND.**

In 2005, Ivester began his employment at Conroy, later XPO as a truck driver. (Tr. 17-18). At the time relevant to this action, Ivester either drove a 150-mile radius from the terminal or performed line haul work. (Tr. 19 – 20). He spent half of his work hours on the dock and half in his truck. (Tr. 21 – 22). On June 8, 2016, Ivester was removing a load at a weigh station. While removing the load, his back "popped," and he believed he had pulled a muscle. He was able to finished his shift but did report his injury to his supervisor. (Tr. 22-23). He was told to "take it easy" and see if the pain would resolve. (Tr. 22-23).

His back pain worsened, and Ivester later presented to a company doctor who prescribed medication and put him on light duty.

On June 22, 2016, Ivester was seen at Mercy Occupational Health. (Jt. Ex. 2, p. 34). He was diagnosed with a low back strain, prescribed medications, and released with no restrictions. (Jt. Ex. 2, pp. 34-36). Ivester did not have any additional treatment for his low back until he saw Dr. Mouw on September 15, 2016. (Jt. Ex. 4, p. 38). On September 12, 2016, Ivester presented for an MRI of his lumbar spine. (Jt. Ex. 3, p. 37). The MRI showed a “moderate to large broad-based disc protrusion epicenter posterolaterally on the left L5-S1 level. This abuts and mildly displaces the left descending S1 nerve root. Disc also extends across midline and abuts the right S1 nerve root.” (Jt. Ex. 3, p. 37). At his September 15, 2016, appointment, Ivester reported low back, buttock and groin pain. (Jt. Ex. 4, p. 38). After reviewing the MRI, Dr. Mouw recommended surgery. (Jt. Ex. 4, p. 38). In October 2016, Ivester underwent back surgery. (Tr. 24-25). Prior to surgery, Ivester’s symptoms were noticeable on his left leg; however, following surgery, he noticed symptoms radiating down his right leg. (Tr. 27). He underwent physical therapy, reporting that he was having intermittent radiating symptoms and numbness in his legs. (Jt. Ex. 6, pp. 57-58). Ivester presented for a repeat MRI in November 2016 for his ongoing complaints of right-sided leg pain and numbness. (Jt. Ex. 4, p. 42). Dr. Mouw told him there were no further surgical interventions. Ivester was advised to continue physical therapy, and he was released to return to full duty in January 2017. (Tr. 26-27).

After he returned to work, Ivester spent more time on the dock because it was easier. He also got some help from co-workers and self-regulated. (Tr. 28 – 30). In

addition to his dock work, he did store pick-ups, painted and worked on countertops. Ivester also trained new hires. (Tr. 31 – 32). After his return to work, Ivester's right-sided back issues continue to worsen. He experienced electric shock sensations, sharp, stinging pains and numbness. (Tr. pp. 30; 32).

From January 2017 until he injured his shoulder in April 2018, Ivester underwent no medical treatment for his back issue, but not for his lack of trying. (Tr. 34-36). On April 12, 2018, Ivester fell at work, injuring his left shoulder. XPO offered him no treatment for his injury. (Tr. p. 43). Following his shoulder injury, Ivester continued to suffer from right-sided back pain and radiculopathy. (Jt. Ex. 1, p. 9). Although Ivester's treating physician recommended an MRI to evaluate his symptoms, one was not approved until January 23, 2019. (Jt. Ex. 8, pp. 66-67).

Ivester returned to work at full duty on May 6, 2019, following his release from shoulder surgery, but he was only able to make it for one day. (Tr., p. 45). He testified that his leg and back pain prevented him from working. (Tr., p. 45).

On May 13, 2019, Ivester presented to Dr. Mathew. (Jt. Ex. 10, p. 78) He again reported that his low back pain with associated numbness and tingling in the right leg had progressed since his 2016 surgery. (Jt. Ex. 10, p. 78) Dr. Mathew's impression was lumbar spine radiculopathy; enthesopathy lumbar spine sacroiliitis/trochanteric bursitis; postlaminectomy syndrome; and chronic low back pain. (Jt. Ex. 10, p. 80). On July 24, 2019, Dr. Mathew confirmed his diagnoses of post laminectomy syndrome; chronic low back pain; right S1 radiculopathy; enthesopathy of the lumbar spine; sacroiliitis; and trochanteric bursitis. (Cl. Ex. 1, p. 2) He opined that these diagnoses are sequelae of the back injury that occurred on June 8, 2016. (Cl. Ex. 1, p.2).

He further indicated that Ivester was at maximum medical improvement for this injury, although he would continue to benefit from further pain management treatments. (Cl. Ex. 1, p.2).

On September 2, 2020, Ivester presented for a functional capacity evaluation (FCE). (Cl. Ex. 2). He demonstrated a full and consistent effort, and the FCE was considered to be valid. (Cl. Ex. 2, p. 5). The results placed Ivester in the sedentary work category. (Cl. Ex. 2, p. 5-11).

On August 8, 2020, Ivester had an independent medical evaluation, with David Segal, M.D., J.D. (Cl. Ex. 3). Dr. Segal opined that the initial disc herniation affected both the left and right nerve roots, compressing them both. (Cl. Ex. 3, p. 28). Initially, the left was worse than the right. After surgery, the right-side radiculopathy continued to progress. (Cl. Ex. 3, p. 28). Dr. Segal concluded there was no other likely cause for Ivester's symptoms than the June 2016 work injury. (Cl. Ex. 3, p.28).

On September 12, 2019, Ivester filed two arbitration petitions, one for a low back injury and one for a left shoulder injury, his cases were consolidated and came before the Deputy Workers' Compensation Commissioner on December 9, 2020, for Arbitration Hearing. The issues before the Deputy Commissioner were (1) whether Ivester's back injury had reached maximum medical improvement; (2) if so, the extent of Ivester's permanent disability, including permanent disability; (3) payment of certain medical expenses relating to Ivester's back injury; (4) alternate medical care relating to Ivester's back injury; (5) the nature and extent of Ivester's permanent shoulder disability; and (6) costs. (Arb. Dec. p.2).

The Deputy Commissioner ruled that Ivester's low back injury had reached maximum medical improvement as of May 7, 2019, and ordered permanent total disability benefits as of that date. (Arb. Dec.). With respect to his shoulder injury, the Deputy Commissioner awarded Ivester 56 weeks of permanent partial disability payments, commencing on November 5, 2019. (Arb. Dec.). The Deputy Commissioner also assessed the costs of Ivester's vocational report against XPO. (Arb. Dec.).

Respondents appealed the Arbitration Decision to the Commissioner. Respondent's appeal solely related to Ivester's low back injury. The Commissioner issued the final agency order on February 23, 2022. The Commissioner affirmed the Arbitration Decision in its entirety. (App. Dec.).

XPO appeals the final agency decision in its entirety.

## **II. ANALYSIS AND CONCLUSIONS OF LAW.**

### **A. Standard.**

This Court's review of a workers' compensation action is governed by Iowa Code chapter 17A. Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 748 (Iowa 2002); see Iowa Code § 86.26. The commissioner's factual determinations are "clearly vested by a provision of the law in the discretion of the agency" and this Court will defer to those factual determinations if they are based on "substantial evidence in the record before the court when that record is viewed as a whole." Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 557 (Iowa 2010) (quoting Iowa Code § 17A.19(10)(f)). This Court may grant relief from an agency action if it determines the substantial rights of the claimant have been prejudiced because the agency action is unsupported by substantial evidence. Iowa

Code § 17A.19(10)(f). “Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion.” Grundmeyer, 649 N.W.2d at 748. “[The] question is not whether there is sufficient evidence to warrant a decision the commissioner did not make, but rather whether there is sufficient evidence to warrant the decision he did make.” Musselman v. Cent. Tel. Co., 154 N.W.2d 128, 130 (Iowa 1967).

If the commissioner’s interpretation of law is the claimed error, the question on review is whether the commissioner’s interpretation was erroneous. See Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604 (Iowa 2005). If the commissioner’s ultimate conclusion reached is the claimed error, “then the challenge is to the agency’s application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.” Meyer, 710 N.W.2d at 219; Iowa Code § 17A.19(10)(i), (j).

## **B. Analysis**

XPO argues that the Deputy Commissioner erred in ruling that Ivester had proven by a preponderance of the evidence that his low back injury was causally related to his June 8, 2016, work injury. Specifically, XPO asserts the finding that Ivester’s right-sided symptoms are causally related to his work injury is not supported by substantial evidence.

At the commission level, “[a] claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability.” Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)). An injury “arises out of” the employment when a causal relationship exists between an injury and the employment.

Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996). An injury occurs “in the course of” employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Quaker Oats v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996)

“Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed.” *Id.* With regard to the commission’s consideration of expert testimony,

[t]he commissioner must consider [such] testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. The commissioner, as the fact finder, determines the weight to be given to any expert testimony. Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. The commissioner may accept or reject the expert opinion in whole or in part.

*Id.* (quotations omitted). However, the “commissioner may not arbitrarily or totally reject the testimony, but must weigh the evidence... [Courts] are reluctant to allow the commissioner totally to reject expert testimony which is the only medical evidence presented.” Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910, 911–12 (Iowa Ct. App. 1994).

Here, the Court finds the Deputy Commissioner decision is supported by substantial evidence. The Deputy Commissioner walked through the medical reports in detail. As the Deputy explained, Ivester’s doctors affirmatively stated that his right-sided low back injury was causally connected to his work injury. (Arb. Dec. p. 17). Further, she noted that this medical testimony was unrefuted (Arb. Dec. p 17). After having the opportunity to hear testimony and view the credibility of Ivester, in addition to all other

evidence, the Deputy Commissioner's decision aligned with Ivester's doctors and listed factual findings they had relied upon. In addition, the Deputy Commissioner rejected XPO's assertion that Ivester's lack of treatment leading up to his shoulder injury was determinative on the issue of causation. Specifically, the Deputy Commissioner noted that Ivester went to great lengths to obtain treatment during this time but was unsuccessful. Once again, she found Ivester's testimony credible and pointed out it was also not contradicted by any evidence XPO produced. (Arb. Dec. p.17). Finally, the Deputy Commissioner noted that there was no evidence in the record to support a finding Ivester had any intervening accident or injury to explain his ongoing symptoms. (Arb. Dec. p.17).

The Commissioner is allowed to weigh all of the evidence in determining whether to accept or reject expert opinions. The weight given to expert testimony depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011). Weighing the expert opinions and the surrounding circumstances was within the province of the commissioner. Id. The basis of the Deputy Commissioner's determination is set forth above. She considered the entirety of Ivester's un rebutted medical testimony. The Court finds there was substantial evidence and the agency decision that Ivester's right-sided back problems were causally related to his work injury.

The Court further finds the Deputy Commissioner did not err in finding Ivester had reached maximum medical improvement with respect to his lower back injury. An employee is entitled to permanent partial disability benefits upon proof that "it is medically indicated that significant improvement from the injury is not anticipated." Iowa



Code §85.34(1) (2022). Whether an employee has permanent disability cannot be determined until the employee has reached maximum medical improvement. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). “[S]tabilization is the event that allows a physician to make the determination that a particular medical condition [and hence, the resulting functional impairment] is permanent.” Broadlawns Med. Ctr. v. Sanders, 792 N.W.2d 302, 307 (Iowa 2010) (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d 193, 200 (Iowa 2010)).

As with causation, the Commissioner is allowed to weigh all of the evidence in determining whether to accept or reject expert opinions as they relate to whether a claimant has attained maximum medical improvement. The same legal principles cited above apply here.

### **Order**

IT IS HEREBY ORDERED that the decision of the Worker’s Compensation Commission is AFFIRMED. Costs are assessed to the Petitioners.



State of Iowa Courts

**Case Number**  
CVCV063303  
**Type:**

**Case Title**  
XPO LOGISTICS ET AL VS CRAIG IVESTER  
ORDER FOR JUDGMENT

So Ordered

Heather Lauber, District Judge,  
Fifth Judicial District of Iowa

Electronically signed on 2023-08-03 12:57:48