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

| | |
|---|---|
| **CITY OF DES MOINES, IOWA**,<br><br>Petitioner,<br><br>vs.<br><br>**DAVID SCOTT MILES**,<br><br>Respondent. | **Case No. CVCV061535**<br><br>**RULING ON PETITION FOR JUDICIAL REVIEW** |

## INTRODUCTION

Before the Court is a Petition for Judicial Review filed by Petitioner City of Des Moines on March 19, 2021, and the brief in support filed on June 11, 2021. Respondent David Scott Miles filed his brief on July 16, 2021. The Court held a hearing on September 2, 2021. After reviewing the court file, including the briefs filed by both parties and the administrative record, the Court now enters the following ruling on the Petition for Judicial Review.

## FACTUAL & PROCEDURAL BACKGROUND

Claimant/Respondent David Scott Miles ("Miles") sustained a series of injuries in 2012 and 2013, and filed four petitions against the City of Des Moines ("the City"), a self-insured employer. Admin. R. 4, p. 129 (Hr'g Tr. 4:8–10); Admin. R. 2, pp. 95–96 (Feb. 5, 2016 Arbitration Decision). The matters were consolidated and came on for hearing in front of the Deputy Workers' Compensation Commissioner on August 13, 2015. Admin. R. 4, p. 129 (Hr'g Tr. 4:5–7). The Deputy issued its decision on February 5, 2016, which the parties appealed to the Commissioner. On June 14, 2017, the Commissioner modified the Deputy's ruling and made the following relevant findings:

> (1) File No. 5048896: "Based upon the findings herein of a combined 12 percent impairment of the body as a whole as a result of the November 29, 2012 injury, claimant is entitled as a matter of law to 60 weeks of permanent partial disability benefits . . . ."
>
> (2) File No. 5048899: "I find claimant sustained industrial disability of 35 percent as a result of the December 20, 2013, work injury. Such a finding entitles claimant to 175 weeks of permanent partial disability benefits . . . ."

Admin. R. 2, pp. 35–37 (June 14, 2017 Appeal Decision).

In 2019, Miles filed two petitions[1] for review-reopening against the City, seeking an increase in his permanent disability awards from the June 2017 appeal decision. Admin. R. 1, p. 28 (Review-Reopening Decision). The cases were consolidated and came on for hearing before the Deputy Commissioner on July 8, 2020. *Id.* The Deputy issued its decision on September 30, 2020. Admin. R. 1, p. 28. With respect to File No. 5048896, the Deputy "found a substantial change in the condition of Mr. Miles' left knee" and that "his permanent functional impairment has increased equivalent to 8 percent of the body as a whole," which entitles Miles to an additional 40 weeks of disability benefits. Admin. R. 1, p. 34 (Review-Reopening Decision). With respect to File No. 5048899, the Deputy concluded that Miles proved he sustained a substantial change in condition since the 2015 arbitration hearing and that he is now permanently and totally disabled (since April 20, 2019). *Id.* at pp. 35–36.

The City appealed to the Commissioner, who issued an appeal decision on March 1, 2021 affirming the Deputy Commissioner's review-reopening decision in its entirety. Admin. R. 1, pp. 7–8. On March 19, 2021, the City filed a Petition for Judicial Review of the Workers' Compensation Commissioner on March 1, 2021 on File Nos. 5048896 and 5048899. Pet. ¶ 1. The City asserts that the prior findings of the Commission in 2017 remain correct and are supported by the medical evidence. Pet'r's Br. p. 3. The City alleges that the agency's decision to

[1] These petitions involved File No. 5048896 (the November 29, 2012 injury) and File No. 5048899 (the December 20, 2013 injury).

increase Miles' disability benefits was not supported by the evidence presented at the review-reopening hearing and therefore, the Deputy's decision and the Commissioner's affirmance should be vacated and the matter remanded to the Commissioner for reassessment of the extent of Miles' impairment. *Id.*

## LEGAL STANDARD

The Iowa Administrative Procedure Act codifies a court's judicial review of agency action in Iowa Code section 17A.19. Pursuant to this section, a district court has the power to "affirm the agency action or remand to the agency for further proceedings." Iowa Code § 17A.19(10). Additionally, "[t]he 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 because the agency action" falls within any of the categories enumerated in subsection ten, paragraphs "a" through "n." *Id.*

"District courts exercise appellate jurisdiction over agency actions on petitions for judicial review." *Christiansen v. Iowa Bd. of Educ. Exam'rs*, 831 N.W.2d 179, 186 (Iowa 2013) (citation omitted). Furthermore, the Court's "decision is controlled in large part by the deference we afford to decisions of administrative agencies." *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 844 (Iowa 2011). For instance, when an agency's findings of fact are supported by substantial evidence, "the courts should broadly and liberally apply those findings to uphold rather than to defeat the agency's decision." *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000) (citation omitted).

"Because of the widely varying standards of review, it is essential for counsel to search for and pinpoint the precise claim of error on appeal." *Jacobsen Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010) (citation and internal quotations omitted). For example, if the

agency's alleged "error is one of fact, [the Court] must determine if the [agency's] findings are supported by substantial evidence." *Id.* (citing Iowa Code § 17A.19(10)(f)). "If the error is one of interpretation of law, [the Court] will determine whether the [agency's] interpretation is erroneous and substitute [its] judgment for that of the" agency. *Id.* (citing Iowa Code § 17A.19(10)(c)). "If, however, the claimed error lies in the [agency's] application of the law to the facts, we will disturb the [agency's] decision if it is '[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact.'" *Id.* (quoting Iowa Code § 17A.19(10)(m)).

Furthermore, the substantial rights of a person have been prejudiced when the agency action is "[b]ased upon a determination of fact . . . that is not supported by substantial evidence in the record . . . ." Iowa Code § 17A.19(10)(f). "Evidence is not insubstantial merely because different conclusions may be drawn from the evidence." *Pease*, 807 N.W.2d at 845. *See also Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007) ("Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the [agency's] decision is not supported by substantial evidence."). "Under chapter 17A, a court's task on judicial review is not to determine whether the evidence might support a particular factual finding; rather, it is to determine whether the evidence supports the finding made." *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 263–64 (Iowa 2012). Furthermore, the Iowa Supreme Court has found that a "district court exceed[s] the scope of permissible judicial review of agency decisions by making findings" the agency never made. *Id.* at 264 (citation and internal quotations omitted).

Finally, subsection (h) provides that a person's substantial rights have been prejudiced when the agency action "is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency." Iowa Code § 17A.19(10)(h). The Iowa Supreme Court has

concluded that subsection (h) does not change the law, but rather it "was intended to amplify review under the unreasonable, arbitrary, capricious, and abuse-of-discretion standards." *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 332 (Iowa 2005) (citing Arthur Earl Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions* 69 (1998)).

## ANALYSIS

The City requests that this Court vacate the Deputy Commissioner's decision and the Commissioner's affirmation (as final agency action), and remand the matter to the Commissioner to reassess the extent of Miles' impairment. Pet'r's Br. p. 3. The language of the Petition suggests the City seeks reversal of the agency's action pursuant to Iowa Code sections 17A.19(10)(f), (h), (j), (l), (m), and (n). Pet. ¶ 3(a)–(f) (providing a list of six reasons that the Commissioner's decision should be reversed and remanded, but neglecting to cite specific grounds of section 17A.19(10)). However, in its brief, the City focuses only on the evidence presented at the review/reopening hearing and asserts that it did not support the agency's finding. Pet'r's Br. p. 3. This is furthered by the City's statement in its reply brief that this dispute "primarily centers around the extent of disability found by the Deputy and affirmed by the Industrial Commissioner," and that the "Petition asserts the evidence did not support a finding of permanent total disability." Pet'r's Reply Br. p. 1.

Based on the City's arguments and a thorough review of the record, the Court concludes that the City primarily asserts the agency's decision was not supported by substantial evidence, was based upon an irrational, illogical, or wholly unjustifiable application of law to fact, and was otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code § 17A.19(10)(f), (m), and (n). The Court has considered the remaining alleged subsections of

section 17A.19(10) and concludes they are inapplicable and without merit: (h), (j), and (l). As such, the Court will not address them further in this ruling.

**A. Whether Miles Proved a Substantial Change in Condition Between the 2015 Arbitration Hearing and the July 2020 Review-Reopening Hearing**

The first question before the Deputy was whether Miles proved a substantial change in condition between the August 2015 arbitration hearing and the July 2020 review-reopening hearing that justifies an increase in Miles' permanent disability compensation. Admin. R. 1, pp. 33–34. In a review-reopening proceeding, the claimant "bears the burden of establishing by a preponderance of the evidence that his or her current condition was proximately caused by the original injury." *Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387, 391 (Iowa 2009) (citation and internal quotations omitted). *See also Blacksmith v. All-Am., Inc.*, 290 N.W.2d 348, 352 (Iowa 1980) ("[W]hen an employer's liability for an injury has previously been established the employee may obtain increased compensation in a review-reopening proceeding by proving an increased disability which was proximately caused by that injury."). "A cause is proximate if it is a substantial factor in bringing about the result" and "[i]t only needs to be one cause; it does not have to be the only cause." *Blacksmith*, 290 N.W.2d at 354 (citations omitted).

It is the Deputy/Commissioner's role to "evaluate the condition of the employee" based on "the facts as they stand at the time of the hearing . . . ." *Kohlhaas*, 777 N.W.2d at 391–92 (citations omitted). "The commissioner is not supposed to re-determine the condition of the employee which was adjudicated by the former award." *Id.* at 391 (citation and internal quotations omitted). Furthermore, as the Deputy pointed out, "[a]n increase in industrial disability may occur without a change in physical condition." *Blacksmith*, 290 N.W.2d at 350. "A change in earning capacity subsequent to the original award which is proximately caused by the original injury also constitutes a change in condition . . . ." *Id.*

With respect to File No. 5048896 (November 2012 injury), the Deputy found that Miles proved a substantial change in the condition of his left knee such that he was entitled to an increase of his permanent disability award. Admin. R. 1, p. 34 (Review-Reopening Decision). The evidence before the Deputy was an examination conducted by Dr. Jacqueline Stoken, who had also evaluated Miles prior to the 2015 arbitration hearing. *Id.* at pp. 29–30. Dr. Stoken's April 15, 2020 report opined that Miles "currently has a 35 percent permanent functional impairment of the left lower extremity due to a left knee flexion contracture." *Id.* at p. 30. The Deputy specifically stated that he "accepted Dr. Stoken's unrebutted permanent impairment rating in this review-reopening proceeding" and noted that "defendants introduce[d] no competing medical opinion, measurements, or impairment rating" on Miles' left knee condition: "Given that Dr. Stoken evaluated claimant prior to the 2015 hearing and again prior to this review-reopening hearing, I find her opinion and impairment rating related to the left knee to be credible and convincing." *Id.* at pp. 30, 34. Therefore, combined with the right leg impairment found in the June 2017 appeal decision, the Deputy concluded that "Miles now has 20 percent permanent functional impairment of the body as a whole as a result of the November 29, 2012 work injury." *Id.* at p. 31.

The City focuses more on disputing the Deputy's findings regarding his back injury (File No. 5048899 – December 20, 2013 injury), conceding that "there is some evidence that Mr. Miles' knees and ankles worsened per Dr. Stoken . . . ." Pet'r's Br. p. 7. The City asserts that "the primary complaint from Mr. Miles at present are the same issues related to his back he had in 2015 at the prior hearing." *Id.* With respect to Miles' back injury, the Deputy noted that "Dr. Stoken again offers an unrebutted opinion on this issue and continues to opine that claimant has a five percent functional impairment of the whole person as a result of his back injury." Admin. R.

1, p. 31. The Deputy then engaged in an analysis of Miles' functional limitations and restrictions at the time of the 2015 arbitration hearing and as the result of a March 23, 2020 functional capacity evaluation ("FCE"). *Id.* at pp. 31–32.

The Deputy acknowledged that, "[r]ealistically, any of the restrictions documented in March 2020 were also present in 2015," such as recommendations from both FCEs of rare squatting, stairs, or ladder climbing and occasional bending, rotation, kneeling, standing, and walking. *Id.* at p. 32. However, the Deputy noted that "there were some important changes between the 2015 and 2020 FCEs," such as a new limitation on sitting only on an occasional basis and significantly reducing lifting capacities to rare lifting up to 10 pounds. *Id.* Based on these differences, the Deputy concluded "[t]his represents a significant change in claimant's physical abilities since the 2015 hearing" and specifically pointed out that "[t]he 2020 FCE is not rebutted in this record." *Id.* Additionally, the Deputy noted that "Dr. Stoken adopted the 2020 FCE as claimant's permanent restrictions" before stating he accepted Dr. Stoken's opinion and Miles' own testimony regarding his limitations and restrictions:

> Accordingly, Dr. Stoken's opinion is supported by objective testing via the FCE. I find the FCE restrictions from the March 2020 FCE to be realistic, reasonable, and appropriate for claimant's current physical condition. I also find that those restrictions further erode claimant's earning capacity beyond the 2015 hearing level. Claimant testified that even the accommodated job offered by the City of Des Moines exceeds the sedentary limits of the current FCE. (Tr., p. 39) I accept that testimony as accurate.

*Id.* Overall, the Deputy found that based on the evidence, Miles' "physical abilities have deteriorated and that he has more onerous physical restrictions now than he carried at the time of the 2015 hearings . . . ." *Id.* at p. 35. Accordingly, the Deputy concluded that Miles "proved he sustained a substantial change in condition since the 2015 arbitration hearing." *Id.* (citing Iowa Code § 86.14(2)).

The City centers its argument on portions of Miles' testimony from the 2015 hearing and the 2020 review-reopening hearing, arguing that "Miles' descriptions of his current conditions in July 2020 were remarkably similar to his condition and limitations in August 13, 2015." *See* Pet'r's Br. pp. 7–8; Pet'r's Reply Br. pp. 2–3. The City asserts that this record therefore demonstrates that the "evidence does not establish permanent total disability, but rather that the finding of a 47% industrial rate as found in 2015–16 remained accurate and Mr. Miles' condition had deteriorated little, if at all." Pet'r's Reply Br. p. 3.

"It is not the role of the court to reassess the evidence or make its own determination of the weight to be given the various pieces of evidence." *Cargill Meat Sols. Corp. v. DeLeon*, 847 N.W.2d 612 (Table), 2014 WL 1496091, at *4 (Iowa Ct. App. Apr. 16, 2014) (citing *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993)). Rather, as the fact finder, it is the agency's role to "determine[] the weight to be given to any expert testimony" and "the credibility of witnesses . . . ." *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998); *Arndt*, 728 N.W.2d at 394–95 (citation omitted). "The reviewing court only determines whether substantial evidence supports a finding '*according to those witnesses whom the [commissioner] believed*.'" Arndt, 728 N.W.2d at 395 (alteration and emphasis in original) (quoting *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996)). Iowa courts "will not interfere with an agency's decision when reasonable minds might disagree or there is a conflict in the evidence." *Tony's Tap, Inc. v. Dep't of Com., Alcoholic Beverages Div.*, 705 N.W.2d 105 (Table), 2005 WL 1397515, at *3 (Iowa Ct. App. June 15, 2005) (citing *Organic Techs. Corp. v. Iowa Dep't of Nat. Res.*, 609 N.W.2d 809, 815 (Iowa 2000)).

Based on the preceding discussion and the evidence in the record, the Court concludes the Deputy/Commissioner's decision was supported by substantial evidence in the record, was

not based upon an irrational, illogical, or wholly unjustifiable application of law to fact, and was not otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code §§ 17A.19(10)(f), (m), (n).

**B. Whether Miles Established He is Now Permanently and Totally Disabled**

The City asserts that although "a finding of additional industrial impairment of a modest amount *may have been justified* by the record," the evidence "fell well-short of that necessary to support a finding of permanent total impairment" and the Deputy's decision was therefore erroneous. Pet'r's Br. p. 9 (emphasis in original). *See also* Pet'r's Reply Br. p. 3 ("The evidence simply did not show that Mr. Miles' impairment had increased in any substantial measure from the prior finding in 2015, certainly not to a degree to support a finding of permanent total disability.").

The relevant question in determining a claimant's industrial disability is "the extent to which the injury reduced [the claimant's] earning capacity." *Thilges v. Snap-On Tools Corp.*, 528 N.W.2d 614, 616 (Iowa 1995) (alteration in original) (quotation omitted). *See also Second Injury Fund v. Shank*, 516 N.W.2d 808, 813 (Iowa 1994) ("Industrial disability goes beyond body impairment and measures the extent to which the injury impairs the employee's earning capacity."); *Guyton v. Irving Jensen Co.*, 373 N.W.2d 101, 103 (1985) ("Industrial disability means reduced earning capacity."). As observed by the Iowa Supreme Court, "[b]odily impairment is merely one factor in gauging industrial disability." *Guyton*, 373 N.W.2d at 103. "Other factors include the worker's age, intelligence, education, qualifications, experience, and the effect of the injury on the worker's ability to obtain suitable work." *Id.*[2]

[2] *See also Al-Gharib*, 604 N.W.2d at 632–33 (providing a more extensive list of the factors an agency considers in determining industrial disability); *Shank*, 516 N.W.2d at 813 (stating the factors an agency should consider include "age, education, qualifications, experience, and the ability of the employee to engage in employment for which the employee is fitted"); *Doerfer Div. of CCA v. Nicol*, 359 N.W.2d 428, 438 (Iowa 1984).

Furthermore, "[a] total disability is not a state of absolute helplessness." *Am. Nat'l Can Co. v. Gilleland*, 674 N.W.2d 684 (Table), 2003 WL 2282763, at *2 (Iowa Ct. App. Nov. 26, 2003) (citing *Al-Gharib*, 604 N.W.2d at 633). Rather, permanent and total disability "occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform." *Al-Gharib*, 604 N.W.2d at 633 (citing *Diederich v. Tri–City R.R Co.*, 258 N.W. 899, 902 (1935)). "When the combination of factors [previously noted] precludes the worker from obtaining regular employment to earn a living, the worker with only a partial functional disability has a total industrial disability." *Guyton*, 373 N.W.2d at 103.

"The issue of industrial disability is a mixed question of law and fact." *Jack Cooper Transp. Co., Inc. v. Jones*, 883 N.W.2d 538 (Table), 2016 WL 1358659, at *3 (Iowa Ct. App. Apr. 6, 2016) (citing *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 525 (Iowa 2012)). "In reviewing an agency's finding of fact for substantial evidence, courts must engage in a 'fairly intensive review of the record to ensure that the fact finding is itself reasonable.'" *Neal*, 814 N.W.2d at 525 (quoting *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)). *See* Iowa Code § 17A.19(10)(f). However, "[e]vidence is not insubstantial merely because different conclusions may be drawn from the evidence." *Pease*, 807 N.W.2d at 845. "Under chapter 17A, a court's task on judicial review is not to determine whether the evidence might support a particular factual finding; rather, it is to determine whether the evidence supports the finding made." *Burton*, 813 N.W.2d at 263–64.

Additionally, "[b]ecause the challenge to the agency's industrial disability determination challenges the agency's application of law to facts, [courts] will not disrupt the agency's decision unless it is 'irrational, illogical, or wholly unjustifiable.'" *Neal*, 814 N.W.2d at 526 (citing

*Larson Mfg. Co., Inc. v. Thorson*, 763 N.W.2d 842, 856 (Iowa 2009)). *See* Iowa Code § 17A.19(10)(m). In clarifying the standard under section 17A.19(10)(m), the Iowa Supreme Court has adopted the following definitions: "A decision is 'irrational' when it is 'not governed by or according to reason' . . . A decision is 'illogical' when it is 'contrary to or devoid of logic' . . . A decision is 'unjustifiable' when it has no foundation in fact or reason." *Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 432 (Iowa 2010) (citations omitted).

The Deputy found that since the 2015 arbitration hearing, Miles has not obtained any additional education or new skills. Admin. R. 1, p. 32. However, the Deputy noted that Miles had since "quit his position with the employer due to ongoing and worsening symptoms" and provided a summary of Miles' testimony on this matter:

> Mr. Miles also testified that he missed 727 hours of work in 2018 as a result of his increasing symptoms and missed 358 hours of work in the first four months of 2019 due to ongoing symptoms and difficulties in reporting to work due to his work injury and increasing symptoms. (Tr., p. 23)

*Id.* The Deputy specifically acknowledged that with respect to this testimony, "[n]o contrary evidence was generated or introduced." *Id.* The Deputy also mentioned Miles' testimony "that it is now difficult for him to get going in the morning and that it takes significant time for his body to respond in the morning." *Id.* at p. 33. Therefore, the Deputy found that Miles "missed significant time from work due to his work injury in 2018 and the beginning of 2019 and . . . that it would be difficult for [Miles] to hold a full-time job with an employer missing such quantities of time from work." *Id.* at pp. 32–33. The Deputy stated that he found "Miles' testimony and explanation of his need to terminate his employment due to absences and ongoing symptoms to be credible." *Id.* at p. 33.

The Deputy's decision then engaged in a comprehensive summary of Miles' age, intelligence, education, qualifications, and experience, as well as the effect of his injuries on his

ability to obtain suitable work. *See Guyton*, 373 N.W.2d at 103. In doing so, the Deputy cited testimony of Miles and his friends:

> Mr. Miles was 55-years-old at the time of the arbitration hearing. (Appeal Decision, p. 3) He retired at the age of 59, though testified he intended to continue working to the age of 67 prior to the worsening of his symptoms. (Tr., pp. 18-19) He is now 60 years old. Claimant obtained only a 9th grade education and never obtained a GED after leaving high school. (Appeal Decision, p. 10; Transcript, p. 9) Most of claimant's working career was with the City of Des Moines. Claimant testified, and I accept the testimony as accurate, that he is a hunt and peck typist and not good at typing. He has no sales experience and cannot return to any of the former jobs he has held. (Tr., p. 30)
>
> Claimant credibly testified that he has difficulties riding in a car for more than 30-45 minutes. (Tr., pp. 16) His companions, Dennis Wagner and Dennis Smith, testified that they continue to sporadically fish with claimant but that he has significant difficulties walking on uneven ground, sitting still for any period of time, carrying the tackle box, and does not fish for extended periods of time now. (Tr., pp. 43-53) I accept the testimony offered by Dennis Wagner and Dennis Smith as accurate.

Admin. R. 1, p. 33. On the other hand, the Deputy also noted that after Miles retired from the City on April 19, 2019, he "made no attempts to find alternate employment" and "sought no vocational retraining or vocational placement assistance." *Id.* Taking this into consideration, the Deputy opined that he certainly "would like to have seen [Miles] attempt a job search or seek professional assistance and analysis of the likelihood of returning to gainful employment, rather than simply retiring with no intention of returning to work." *Id.*

Taking all of this information into account, determining the credibility of all who testified, and weighing the competing evidence, the Deputy made the following conclusions:

> [W]hen I consider claimant's injury, his educational and employment background, his permanent restrictions, his ongoing and worsening symptoms, the significant amounts of lost time form work that claimant experienced in 2018 and 2019 due to his symptoms, along with his age, permanent impairment, motivation, and all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Mr. Miles is not capable of performing work that is within his experience, training, education, intelligence and physical capabilities at this time. Therefore, I find that claimant has proven he is permanently and totally disabled. I

> further find that Mr. Miles proved he has been permanently and totally disabled since April 20, 2019.

Admin. R. 1, p. 33. The City argues that the Deputy particularly erred in concluding that Miles is effectively excluded from other employment "given the uncontroverted record that after his retirement from the employer Miles made no attempt to find other employment and sought no vocational retraining or placement." Pet'r's Reply Br. p. 4. The City asserts that this evidence, therefore, "demonstrated that Mr. Miles's exclusion from the work force, from any other work, was solely upon Mr. Miles's decision." *Id.* at p. 5.

The Court reiterates that "[i]t is not the role of the court to reassess the evidence or make its own determination of the weight to be given the various pieces of evidence." *Cargill Meat Sols. Corp.*, 2014 WL 1496091, at *4 (citing *Burns*, 495 N.W.2d at 699). It is the agency's responsibility to "determine[] the weight to be given to any expert testimony" and "the credibility of witnesses . . . ." *Sherman*, 576 N.W.2d at 321; *Arndt*, 728 N.W.2d at 394–95 (citation omitted). The Court "will not interfere with an agency's decision when reasonable minds might disagree or there is a conflict in the evidence." *Tony's Tap, Inc.*, 2005 WL 1397515, at *3 (citing *Organic Techs. Corp.*, 609 N.W.2d at 815). Furthermore, the Court concludes the agency's finding that Miles is now permanently and totally disabled is supported by substantial evidence. Iowa Code § 17A.19(10)(f). Recall that "[e]vidence is not insubstantial merely because different conclusions may be drawn from the evidence." *Pease*, 807 N.W.2d at 845. "Under chapter 17A, a court's task on judicial review is not to determine whether the evidence might support a particular factual finding; rather, it is to determine whether the evidence supports the finding made." *Burton*, 813 N.W.2d at 263–64. Here, the Court concludes that the evidence in the record does support the finding made by the agency and it cannot be said that the Deputy's decision was based upon an irrational, illogical, or unjustifiable application of law to fact.

Based on the preceding discussion and the evidence in the record, the Court concludes the Deputy/Commissioner's decision was supported by substantial evidence in the record, was not based upon an irrational, illogical, or wholly unjustifiable application of law to fact, and was not otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code §§ 17A.19(10)(f), (m), (n).

## ORDER

Based on the foregoing, Petitioner's Petition for Judicial Review is **DENIED** and the agency's action is affirmed in its entirety.

State of Iowa Courts

| **Case Number** | **Case Title** |
|---|---|
| CVCV061535 | CITY OF DES MOINES VS DAVID SCOTT MILES |
| **Type:** | OTHER ORDER |

So Ordered

Paul D. Scott, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2021-12-20 11:23:42