

IN THE COURT OF APPEALS OF IOWA

No. 2-065 / 11-1165
Filed March 28, 2012

**MIRON CONSTRUCTION and
ZURICH NORTH AMERICA,**
Petitioners-Appellees,

vs.

CHRISTOPHER POULA,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

A workers' compensation claimant appeals a district court ruling reversing
a decision of the workers' compensation commissioner. **REVERSED AND
REMANDED.**

Thomas M. Wertz and Daniel J. Anderson of Wertz & Dake, Cedar
Rapids, for appellant.

Andrew D. Hall and Jessica L. Cleereman of Grefe & Sidney, P.L.C., Des
Moines, for appellees.

Heard by Vogel, P.J., and Doyle and Tabor, JJ.

DOYLE, J.

Christopher Poula appeals a district court ruling reversing the decision of the workers' compensation commissioner. Because the commissioner's findings are supported by substantial evidence, we reverse and remand.

I. Background Facts and Proceedings.

In late October 2007, Poula began working for Miron Construction performing concrete work that required him to spend time on his knees. On October 30, 2007, Poula sustained an on-the-job injury to his left knee. On April 10, 2008, Poula filed a petition in arbitration for workers' compensation benefits from Miron for his knee injury.

In a hearing before a deputy workers' compensation commissioner, the parties stipulated Poula sustained a left medial meniscus tear to his knee arising out of and in the course of his employment on October 30, 2007, which required medical treatment including surgery. The parties disputed whether (1) Poula sustained a cumulative trauma injury to his bilateral knees on October 30, 2007, by way of aggravation of his pre-existing bilateral knee osteoarthritis; (2) alterations in his gait as a result of his knee arthritis aggravated his pre-existing lower back problems; and (3) his knee pain and lack of mobility produced a debilitating depressive disorder.

The deputy workers' compensation commissioner specifically found Poula's testimony was not credible in several respects. The deputy determined Poula was only entitled to 4.4 weeks of permanent partial disability benefits for his knee injury, which had already been paid by Miron. The deputy awarded no disability benefits or medical expenses for the alleged aggravation of his previous

knee injury, his lower back problems, and his alleged mental health issues. The deputy awarded no penalty benefits.

On intra-agency appeal, a different deputy workers' compensation commissioner, acting on behalf of the Iowa workers' compensation commissioner (hereinafter "commissioner"), reversed the deputy and determined Poula was entitled to permanent total disability benefits and prior and future medical expenses necessitated by his work injury. The commissioner determined penalty benefits were not appropriate.

Miron and its insurer sought judicial review of the final agency decision.

The district court reversed the agency's decision, concluding:

Without Poulin's [sic] questionable testimony, both to the deputy and to each doctor involved in this case, there is very little evidence to support the conclusion that the arthritic knee and mental injury arose in the course of his employment or out of his employment with Miron.

Poula now appeals. He contends the district court improperly reweighed the evidence. He further contends substantial evidence supports the commissioner's award of benefits.

II. Scope and Standards of Review.

Our scope and standard of review have been thoroughly discussed and recited by our supreme court:

Our decision is controlled in large part by the deference we afford to decisions of administrative agencies. Medical causation presents a question of fact that is vested in the discretion of the workers' compensation commission. *See Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). We will therefore only disturb the commissioner's finding of medical causation if it is not supported by substantial evidence. *See Iowa Code* § 17A.19(10)(f).

The Iowa Administrative Procedure Act defines “substantial evidence” as follows:

[T]he quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

Id. § 17A.19(10)(f)(1). 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.” *Id.* § 17A.19(10)(f)(3). Our review of the record is “fairly intensive,” and we do not simply rubber stamp the agency finding of fact. *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003).

Evidence is not insubstantial merely because different conclusions may be drawn from the evidence. *John Deere Dubuque Works of Deere & Co. v. Weyant*, 442 N.W.2d 101, 105 (Iowa 1989). To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007); *Missman v. Iowa Dep’t of Transp.*, 653 N.W.2d 363, 367 (Iowa 2002). Our task, therefore, is not to determine whether the evidence supports a different finding; rather, our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made. See Iowa Code § 17A.19(10)(f); *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 557-58 (Iowa 2010).

Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011).

III. Discussion.

A. Credibility.

Central to the district court’s ruling is its statement: “The entirety of Poulin’s [sic] claim rests upon his credibility.” Further, the court opined “the commissioner summarily ignored all issues of credibility despite the fact that these credibility problems significantly undermined the entirety of Poulin’s [sic] case.” Finally, the court concluded, “Without Poulin’s [sic] questionable testimony, both to the deputy and to each doctor involved in this case, there is

very little evidence to support the conclusion that the arthritic knee and mental injury arose in the course of his employment or out of his employment with Miron.”

As the supreme court has explained:

When the agency decision is attacked on the substantial evidence ground in section [17A.19(10)(f)], the district court must examine the entire record. This includes the hearing officer’s decision. The hearing officer’s decision is not evidence, but his findings may affect its weight when credibility issues are involved.

Iowa State Fairgrounds Sec. v. Iowa Civil Rights Comm’n, 322 N.W.2d 293, 295 (Iowa 1982) (citations omitted); see also Iowa Code § 17A.12(6)(e), (f) (stating the record in a contested case “shall include . . . [a]ll proposed findings” and “[a]ny decision, opinion or report by the officer presiding at the hearing”). So, a court reviewing the record as a whole must consider “any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses.” Iowa Code § 17A.19(10)(f)(3). But the reviewing court must also take into consideration “the agency’s explanation of why the relevant evidence in the record supports its material findings of fact.” *Id.* After all, “[e]ven when credibility is involved, the agency, not the hearing officer, is charged with the authoritative responsibility to decide what the evidence means under the governing statute.” *Iowa State Fairgrounds Sec.*, 322 N.W.2d at 295.

While it was proper for the district court to have considered the deputy’s veracity determination as a factor in the total calculus of whether the commissioner’s fact findings were supported by substantial evidence, it appears the court used this one factor to effectively trump the commissioner’s decision. In reaching his decision, the commissioner did take the deputy’s veracity

determination into account, and further, the commissioner explained why he gave greater weight to some medical opinions over others. In concluding substantial evidence did not support the commissioner's decision because Poula's questionable testimony undermined the entirety of his case, the court effectively reweighed the evidence.

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's decision. . . . 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 394-95 (internal citations omitted).

The deputy found the discrepancy between Poula's claimed work hours and employment history versus the income he reported on his tax returns from 2003 to 2007 suggested Poula's

self-employment income from 2004 to 2007 was so limited or nonexistent that he felt it need not be reported because it would not significantly increase his tax liability, or [Poula] consistently lied to federal and state revenue authorities about his income.

Based upon the discrepancy, the deputy found either possibility raised "serious questions about [Poula's] commitment to honesty and truth telling." The deputy further noted that

the discrepancy between [Poula's] testimony and his tax returns is consistent with the undersigned's concerns from [Poula's] demeanor as gleaned from posture, eye contact and lack thereof, evasiveness of responses to certain questions, and overall interaction with counsel on both direct and cross-examination that overall [Poula] did not testify in a credible and straightforward manner.

The deputy found Poula's claims of "having no knee symptoms prior to October 31, 2007" and "having worked up to [ninety] hours per week routinely in construction over [twenty-four] years" were not "accurate." She rejected the opinions of doctors who relied on Poula's inaccurate statements.

Conversely, the commissioner did not find the discrepancy between Poula's tax returns and his testimony to weigh heavily upon his credibility. The commissioner explained:

The deputy hearing this case was less than impressed with [Poula's] credibility. Although a deputy's observations as to demeanor are important to a determination of credibility, the record made at the hearing, although showing some discrepancies in [Poula's] testimony, was not such that his testimony was required to be rejected in total. Some of those discrepancies are explained by [Poula's] explanation that his tax records reflect only part of his work over the past [twenty-four] years.

The fact that [Poula] has been less than cooperative in his treatment is also troubling. He failed to appear for an independent medical examination. He refused testing required by [one expert]. He terminated vocational rehabilitation services. This conduct on his part does not speak well for his motivation, but nevertheless does not justify a total rejection of his testimony.

While we might have been less inclined to reject the deputy's credibility determination in light of her unique ability to assess Poula's demeanor, we cannot conclude the commissioner erred in not totally rejecting Poula's testimony he had no disabling knee symptoms prior to October 31, 2007, and he had worked up to ninety hours per week routinely in construction over twenty-four years.

Nothing in [the Iowa Administrative Procedure Act] supports giving the hearing officer's proposed decision elevated status when, as in the present case, the officer and the agency disagree. The statute gives the agency an unfettered right to find the facts in the first instance. It makes the hearing officer an adjunct of the agency rather than an independent decision maker.

Iowa State Fairgrounds Sec., 322 N.W.2d at 294. Consequently, we find the district court erred in not accepting the commissioner's explicit credibility finding.

B. Work Injury.

As noted, the commissioner determined Poula suffered a permanent total disability.

Industrial disability is determined by an evaluation of the employee's earning capacity. The commissioner may consider a number of factors in determining industrial disability, including functional disability, age, education, qualifications, experience, and [the claimant's] inability, because of the injury, to engage in employment for which he is fitted.

Cedar Rapids Cmty. Sch. Dist., 807 N.W.2d at 852 (internal citations and quotation marks omitted).

Here, the commissioner found Poula was forty-three years old at the time of the arbitration hearing and his education consisted of college work in engineering. The commissioner found Poula had worked as a paralegal, but most of his working life had been in manual labor in the construction and carpentry fields. Although Poula had low back injuries in 1985 and work restrictions therefrom, as well as pre-existing bilateral knee osteoarthritis, Poula was able to work in the construction field for many years.

The commissioner further determined:

Whether [Poula's pre-existing bilateral knee osteoarthritis] was due to a sports injury in high school, which [Poula] denies but which medical records note, or due to [twenty-four] years of working in the construction trade, which is far more likely, he clearly told his supervisor [at Miron] he had ongoing knee problems and he at first attributed his knee pain on the date of injury to that. Later medical opinions suggest his pre-existing knee condition was aggravated by his work, manifesting on the date of injury when he experienced severe pain and swelling. The fact [Poula] originally attributed his

knee pain to his prior condition without attributing it to his work injury with Miron is not binding on him. [Poula] is not expected to be familiar with the workers' compensation concept of an aggravation injury. . . .

. . . .
[Poula] worked in the construction and carpentry fields for over [twenty-four] years. He developed bilateral knee osteoarthritis, which is somewhat symptomatic, but [Poula] was nevertheless able to work in that field for many years. However, his work for this employer resulted in an incident on October 30, 2007, that resulted in a tear of his left meniscus. That injury in turn aggravated and lighted up [Poula's] bilateral osteoarthritis and made it symptomatic. The opinions of [two doctors] suggest that the type of work which [Poula] engaged in while at work for Miron would have constituted a substantial factor to aggravating [Poula's] degenerative condition.

Even Miron's expert . . . confirms that [Poula's] many years of work in the construction trade has caused his underlying bilateral knee arthritis, although [that doctor] decline[d] to attribute the aggravation of that condition to [Poula's] work for Miron, apparently because of the short time he worked there. As a medical doctor, [Miron's expert] is understandably not well versed in the concept of a traumatic incident aggravating a pre-existing cumulative condition.

Based on the testimony and the medical evidence, it is found that [Poula's] work for [Miron] on October 30, 2007, aggravated a pre-existing bilateral knee arthritic condition. The work [Poula] did that day resulted in an aggravation of his pre-existing, and for the most part previously asymptomatic and non-disabling, condition in a sudden and disabling manner, causing him to undergo surgery for the condition. His injury on October 30, 2007, set into motion a series of symptoms that necessitated a surgical procedure, lost time from work, and permanent impairment, involving not only the mensical tear but also an aggravation of the underlying bilateral arthritis in both knees.

Additionally, the commissioner found Poula established his work injury had "resulted in a psychological condition as well as a torn meniscus, and an aggravation of his bilateral osteoarthritis of his knees, and back pain and an altered gait. Therefore his injury is to the body as a whole." The commissioner concluded the "greater weight of the medical evidence indicates [Poula] is not able to work."

In this case, the medical record, especially the opinion of the psychiatrist, Dr. Whitters, clearly establishes he is not able to perform any job. He is permanently and totally disabled under traditional criteria. It is found [Poula], as a result of his work injury, is permanently and totally disabled.

No useful purpose would be served by detailing the medical evidence and expert opinions supporting and detracting from this determination. Suffice it to say the commissioner's determination concerning Poula's functional impairment is supported by substantial evidence. As the commissioner's determination of a total permanent injury is supported by substantial evidence, we reverse the district court.

IV. Conclusion.

Because we find the district court erred in not accepting the commissioner's explicit credibility finding, and because the commissioner's determination of a total permanent injury is supported by substantial evidence, we reverse and remand for entry of judgment affirming the commissioner's decision.

REVERSED AND REMANDED.

Tabor, J., concurs; Vogel, P.J., dissents.

VOGEL, P.J. (dissenting)

As I agree with the district court there is not substantial evidence to support the agency's decision in this case, I must dissent. When an agency's decision is appealed based on a lack of substantial evidence, we must consider all of the evidence in the record "including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses." Iowa Code § 17A.19(10)(f)(3).

In this case, the presiding officer made extensive and detailed assessments of the credibility of the witnesses. With respect to Poula, the presiding officer said she had concerns about the "claimant's demeanor as gleaned from posture, eye contact and lack thereof, evasiveness of responses to certain questions, and overall interaction with counsel on both direct and cross-examination that overall claimant did not testify in a credible and straightforward manner." The presiding officer found Poula's testimony, regarding the amount of work he performed before the injury, not credible based on the income and tax records entered into evidence. Poula asserted he worked ninety hours per week. However, the presiding officer concluded the tax records revealed a significant portion of Poula's income from the preceding four years came from unemployment benefits, and the work that was documented in 2007 amounted to only forty percent of what Poula claimed to have worked. The presiding officer concluded the objective evidence of Poula's earnings "raised serious concerns about the claimant's commitment to honesty and truth telling."

The presiding officer was also able to observe the demeanor and assess the credibility of Scott Seligman, Poula's supervisor. Seligman testified based on

the daily project logs he prepared during the construction project that Poula complained about pain in his knee on October 31, 2007. However, Poula reported to him the condition was an existing problem that had nothing to do with his work for Miron. Seligman also testified Poula complained about his knees months earlier on another project and also discussed having prior depression issues. The presiding officer found Seligman credible and also found the daily logs were business records kept in the ordinary course of business, and thus, were the type of evidence reasonably prudent people rely on in conducting serious affairs.

After reviewing the medical records in which it was reported Poula acknowledged having problems with his knees since high school, the presiding officer concluded:

The above objective business logs and medical notations are more trustworthy evidence and are given substantially greater weight than is claimant's testimony that he had no manifest knee problems, either left or right, prior to October 31, 200[7]. Indeed, claimant's testimony in that regard expressly is found not credible. It expressly is found that claimant had had chronic bilateral knee problems from high school onward.

Because the presiding officer found Poula's testimony regarding the amount of carpentry work performed, and the lack of prior knee symptoms not credible, she discounted Poula's medical reports as they were premised on his giving inaccurate history to the very doctors he now asserts support his claim. She concluded there was no medical evidence to support a finding that intermittent work in the construction trades would likely be a substantial factor in the development of knee osteoarthritis. Because there was no competent medical evidence to support Poula's claim, and his credibility was sorely lacking, the

presiding officer denied compensation for the osteoarthritis of the knee along with the claimed mental injury.

On intra-agency appeal, the presiding officer's credibility findings were completely discounted. The agency summarily rejected the credibility findings of the presiding officer saying,

Although a deputy's observations as to demeanor are important to a determination of credibility, the record made at the hearing, although showing some discrepancies in claimant's testimony, was not such that his testimony was required to be rejected in total.

I find it absurd for the agency to determine the presiding officer's "serious concerns about the claimant's commitment to honesty and truth telling" were not really all that serious based only on its reading of a cold record. Credibility cannot be determined solely from reading words on a page, but must be accompanied by personal observations. While I understand the agency, on appeal, has all the power to affirm, modify, or reverse any finding or legal conclusion made by the presiding officer, Iowa Code § 17A.15(3), it is standard appellate procedure—even under a *de novo* standard of review—to give deference to the credibility findings of the fact-finder. See Iowa R. App. P. 6.904(3)(g) (stating the proposition, "in equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them," is so well-established that authority need not be cited to support it); *In re Estate of Johnson*, 739 N.W.2d 493, 496 (Iowa 2007) (stating in an appeal from an equitable proceeding, the appellate court gives deference to the factual findings of the district court but is not bound by them); *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004) (holding in conducting

a de novo review of a constitutional claim, the appellate court gives considerable deference to the trial court's findings regarding the credibility of the witnesses but is not bound by them).

The Iowa Administrative Procedures Act, Iowa Code chapter 17A, also acknowledges the great importance of the presiding officer's unique position to make demeanor assessments in section 17A.15(2). There it states when the original presiding officer is unable to make a proposed decision, another person qualified to be a presiding officer may make the decision after reading the record, "unless demeanor of witnesses is a substantial factor." Iowa Code § 17A.15(2)(emphasis added). If the demeanor of a witness is a substantial factor, a new hearing must be held on those portions of the record involving demeanor, or the case must be dismissed. *Id.* Under no circumstances where the demeanor of a witness is important, may a proposed decision be rendered based only on the reading of a cold record.

If appropriate deference is given to the presiding officer's assessment of Poula's and Seligman's credibility, there is not substantial evidence in the record to support the agency's findings. The medical reports submitted in support of Poula's claim that his osteoarthritis was caused by his October 2007 work injury rested entirely on Poula's statements his knee was asymptomatic before the October injury, and he worked up to ninety hours per week in construction. Both of these statements were found by the presiding officer to not be credible. Therefore, the doctors that used this information as the basis for their assessment of the cause of Poula's osteoarthritis cannot provide the substantial evidence to support the agency's decision. *Deaver v. Armstrong Rubber Co.*,

170 N.W.2d 455, 464 (Iowa 1969) (“When an expert’s opinion is based on an incomplete history, the opinion is not necessarily binding upon the commissioner or the court.”). Because Poula’s credibility was so vastly important to the causation issues, the presiding officer’s decision has great significance in this case, and it was improper for the agency to completely discount the credibility findings based only on reading the record. See *Iowa State Fairgrounds Sec. v. Iowa Civil Rights Comm’n*, 322 N.W.2d 293, 295 (Iowa 1982) (quoting the United States Supreme Court’s decision in *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 496–97, 71 S. Ct. 456, 469, 95 L. Ed. 456, 472 (1951), where it held the significance of a agency’s proposed decision “depends largely on the importance of credibility in the particular case”).

I would therefore affirm the district court.