

**IN THE COURT OF APPEALS OF IOWA**

No. 3-152 / 12-1514  
Filed June 12, 2013

**MARTINEZ CONSTRUCTION,**  
Petitioner-Appellant,

**vs.**

**CESAR CEBALLOS,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Johnson County, Sean W. McPartland, Judge.

An employer appeals from the decision awarding Cesar Ceballos workers' compensation benefits. **AFFIRMED IN PART AND REVERSED IN PART.**

James M. Peters and Carrie L. Thompson of Simmons, Perrine, Moyer & Bergman, P.L.C., Cedar Rapids, for appellant.

Katrina A. Nystrom of Scheldrup, Blades, Schrock, Smith & Aranza, P.C., Cedar Rapids, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**BOWER, J.**

Cesar Ceballos was awarded workers' compensation benefits after falling from a roof while at work. His former employer, Martinez Construction, appeals from the commissioner's award of benefits, arguing the commissioner improperly interpreted Iowa law to award benefits solely on lay testimony regarding causation. The employer also contends the commissioner violated a valid agency rule in taxing to it the cost of Ceballos's international phone call to participate in the hearing.

We find expert medical opinion testimony was not required to establish causation under the facts of this case. Because substantial evidence supports the commissioner's finding that Ceballos's injuries were caused by his fall, we affirm the award of workers' compensation benefits. We reverse the portion of the commissioner's decision taxing the cost of Ceballos's telephonic testimony to Martinez Construction.

***I. Background Facts and Proceedings.***

Ceballos was employed by Martinez Construction doing roofing work. On May 24, 2009, Ceballos was standing on a roof when he lost his footing as he attempted to jump into a forklift basket. As he was landing, he hit his face and right shoulder, and twisted his left knee. Ceballos was knocked unconscious and was in and out of consciousness as he was transported to the hospital. He reported being in pain and was having difficulty breathing.

Hospital records show Ceballos suffered four broken ribs and a perforated lung. He was hospitalized for these injuries for approximately one week. When

he was discharged from the hospital, Ceballos was restricted from lifting more than ten pounds. He did not return to work for Martinez Construction because of his physical condition.

On August 21, 2009, Ceballos saw Dr. Patrick Gordon, complaining of difficulty lifting his right shoulder and arm and problems with his left knee. Dr. Gordon ordered x-rays, which revealed Ceballos's shoulder was dislocated and that he had fluid on his left knee. Ceballos was to return to Dr. Gordon after the x-rays were developed, but was deported to Mexico before he could attend the follow-up appointment.

In September 2010, Ceballos sought medical treatment from a doctor in Mexico, who indicated Ceballos needed an x-ray of his shoulder and knee. Although the x-rays were taken, Ceballos had not received those results at the time of the workers' compensation hearing.

Ceballos filed a petition for workers' compensation benefits, which Martinez Construction contested. A hearing was held before a deputy workers' compensation commissioner on September 23, 2010. Ceballos requested to appear at the hearing by telephone and Martinez Construction resisted, arguing Ceballos needed to be personally present at the hearing to allow his demeanor to be assessed to determine his credibility. The deputy commissioner granted Ceballos's motion, finding no agency rule or law prohibits a witness or party from participating in the hearing telephonically.<sup>1</sup>

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<sup>1</sup> Pursuant to Iowa Administrative Code rule 876-4.49, a workers' compensation hearing "may be by voice or video technology including but not limited to Internet-based video."

At the hearing, Ceballos testified that he has ongoing problems with shoulder and knee pain, prohibiting him from participating in activities such as washing his car or buying groceries. He testified that he had no pain before the May 24, 2009 fall.

To counter Ceballos's testimony, his former employer called Jose Dominquez to testify. Dominquez knew Ceballos for eight years and shared a home with Ceballos for approximately a year. Dominquez evicted Ceballos from the home before May 24, 2009 fall. He claims that after that date, he saw Ceballos carry a heavy television set and a bed to the garbage and perform work on a car.

On January 24, 2011, the deputy workers' compensation commissioner entered an arbitration decision awarding Ceballos temporary total disability benefits, as well as past and future medical expenses. The deputy commissioner also assessed costs of the hearing—including the costs of Ceballos's phone call from Mexico to Martinez Construction.

In finding Ceballos suffered an injury that arose out of and in the course of his employment, the deputy commissioner noted that there was no expert medical opinion evidence in the record to causally connect the right shoulder and left knee injuries to the May 24, 2009 fall. The deputy commissioner found the lack of expert medical opinion was due to Ceballos being denied proper medical treatment. In finding a causal connection, the deputy commissioner cited Ceballos's testimony regarding his ongoing pain and impairment in those limbs. The deputy commissioner also noted the lack of expert medical opinion evidence

to discount Ceballos's injuries to his shoulder and knee on May 24, 2009. The only evidence to dispute Ceballos's testimony was Dominquez's testimony that he saw Ceballos working on a car and carrying a television and a bed to the garbage; however, the deputy commissioner found this evidence did not negate Ceballos's "credible" description of his ongoing symptoms. Rather, the deputy commissioner found Dominquez was not credible because his demeanor "showed he was clearly hostile to [Ceballos] and relished testifying against him." The deputy commissioner concluded: "Although a formal medical opinion is lacking, claimant's testimony as to his ongoing symptoms and the X-rays lead to the conclusion that claimant's current right shoulder and left knee conditions and any impairment or disability therefrom are causally related to his work injury."

Martinez Construction appealed the arbitration decision on February 3, 2011. On December 7, 2011, the workers' compensation commissioner affirmed the arbitration decision and adopted it as the final agency decision.

On December 28, 2011, Martinez Construction filed a petition for judicial review. Martinez Construction alleged that the commissioner's decision violated the law; is unsupported by substantial evidence; and is unreasonable, arbitrary, and capricious or characterized by an abuse of discretion because Ceballos "failed to produce any expert testimony causally connecting his claimed problem to any work-related injury." Martinez Construction also claimed the commissioner has no authority to tax the cost of Ceballos's telephone testimony to it.

The district court affirmed the commissioner's ruling on July 30, 2012. It concluded the agency properly found a causal connection between Ceballos's injuries and his fall on May 24, 2009. The court determined that expert medical opinion testimony on causation "is not an absolute requirement" where common sense can lead the fact finder to a determination on causation. The court found the present case "does not present a situation where Mr. Ceballos's right shoulder and left knee pain came out of nowhere." Rather, the evidence establishes that: (1) Ceballos fell from a height of twelve to fifteen feet and landed on his right shoulder and face; (2) thereafter Ceballos suffered pain in his shoulder and knee; and (3) the x-rays taken by Dr. Gordon show Ceballos had injuries to his right shoulder and left knee. The court found that to require expert testimony under the circumstances "would result in form (manner of proof) over substance (clear and common sense evidence of the injury)." The court also found the commissioner was within his authority to tax the cost of Ceballos's long-distance telephone call under Iowa Code section 86.40 (2011).

## ***II. Scope and Standard of Review.***

Workers' compensation decisions are reviewed under the standards set forth in Iowa Code chapter 17A. *Westling v. Hormel Foods Corp.*, 810 N.W.2d 247, 251 (Iowa 2012). We must apply those standards to determine whether our conclusions are the same as those reached by the district court. *Id.* If they are the same, we affirm; if they are different, we reverse. *Id.*

We may reverse a workers' compensation decision if it is unsupported by substantial evidence. Iowa Code § 17A.19(10)(f); *Xenia Rural Water Dist. v.*

*Vegors*, 786 N.W.2d 250, 252 (Iowa 2010). When a claim is made that the agency's decision is not based upon substantial evidence, we must determine whether the commissioner's factual determination is supported by substantial evidence in the record before the court when viewed as a whole. *Westling*, 810 N.W.2d at 251. Evidence is not insubstantial just because differing conclusions may be drawn from it. *Id.*

### ***III. Analysis.***

Martinez Construction advances two arguments on appeal. First, it contends there is not substantial evidence in the record to support the commissioner's finding that Ceballos's injuries were caused by his fall from the roof while at work. Second, the commissioner erred in taxing the cost of Ceballos's long-distance phone call for the workers' compensation hearing to Martinez Construction.

#### ***A. Causal Connection.***

The first question we address is whether Ceballos's shoulder and knee injuries arose out of and in the course of his employment with Martinez Construction. Because medical causation presents a question of fact, which is vested in the discretion of the workers' compensation commission, we will only disturb the agency's finding of medical causation if it is not supported by substantial evidence. *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 844-45 (Iowa 2011).

Martinez Construction argues there is not substantial evidence to support the agency's finding that Ceballos's injuries were caused when he fell from the

roof on May 24, 2009. The employer argues that his claim must fail because there is no expert medical opinion testimony to establish causation.

Whether an injury has a direct causal connection with a petitioner's employment or arose independently is "essentially within the domain of expert testimony." *Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). The general rule is that expert opinion testimony—even if uncontroverted—may be accepted or rejected, in whole or in part, by the trier of fact. *Sondag v. Ferris Hardware*, 220 N.W.2d 903, 907 (Iowa 1974). Lay witness testimony is also relevant and material to the causation determination, and the agency must consider all evidence—both medical and nonmedical—in arriving at a disability determination. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 273 (Iowa 1995).

While our case law emphasizes that expert opinion testimony is "ordinarily" necessary to establish causation, *e.g. Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 560 (Iowa 2010) ("*Ordinarily*, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed." (emphasis added)), there is nothing in our law that states expert opinion is the "sole" basis on which a causation finding must be made. Rather, our law allows the commissioner the option of wholly rejecting uncontroverted expert opinion testimony after considering *all* evidence that is relevant and material. In other words, the commissioner could find the nonmedical evidence sufficient to support a causation finding even in the face of uncontroverted expert medical opinion testimony to the contrary. Accordingly,

we find expert witness evidence, although typically necessary to establish causation, is not required to establish causation in every workers' compensation case.

The question then is whether there is substantial evidence to support the commissioner's finding that Ceballos's injuries were caused by his work-related fall in the absence of expert medical opinion evidence. Like the district court, we find there is. The deputy commissioner found Ceballos was credible when he testified that he did not suffer pain or difficulty in moving his shoulder or knee prior to his fall, and there is nothing in the record to dispute this claim. Ceballos testified when he fell, he landed on his face and right shoulder and twisted his knee. The hospital's medical records for Ceballos's treatment immediately following the fall show he suffered fractured ribs and a perforated lung. Treatment for these injuries required approximately one week of hospitalization. Three months later, Ceballos—who was experiencing difficulty moving his right arm and shoulder and his left knee—sought medical treatment on his own after his employer failed to provide it. X-rays showed his shoulder was dislocated and there was fluid on his knee. There is nothing in the record to suggest Ceballos suffered an intervening injury. The only evidence to contradict Ceballos's claim is that of Dominquez, who claimed he saw Ceballos moving heavy items to the garbage after the May 24, 2009 fall. The deputy commissioner found Dominquez's testimony was not credible, and we give deference to this finding.

Because the commissioner's causation finding is supported by substantial evidence, we affirm the award of workers' compensation benefits to Ceballos.

***B. Costs of Ceballos's phone call.***

Martinez Construction also contends the commissioner erred in taxing the cost of Ceballos's long-distance phone call for the hearing. The employer argues there is nothing in the commission's rules to require an employer to pay for international phone calls for telephonic testimony.

Iowa Code section 86.40 states: "All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Accordingly, we review the commissioner's act of taxing costs for an abuse of discretion. *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 262 (Iowa 1996).

Iowa Administrative Code rule 876-4.33(5) provides the commissioner may tax the following costs associated with a workers' compensation claim:

(1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

None of the foregoing applies. The rule further states, "Witness fees shall be paid in accordance with Iowa Code section 622.74." Section 622.74 provides: "Witnesses, except parties to the action, are entitled to receive in advance, if demanded when subpoenaed, their traveling fees to and from the court, with their fees for one day's attendance." Because Ceballos is a party to the action, he does not qualify for a witness fee as set forth in section 622.74.

Finding no provision allowing the deputy commissioner to tax the cost of Ceballos's telephonic testimony, we reverse the portion of the commissioner's ruling taxing this cost to Martinez Construction.

**AFFIRMED IN PART AND REVERSED IN PART.**