

**IN THE COURT OF APPEALS OF IOWA**

No. 7-331 / 06-1433  
Filed June 27, 2007

**PHILIP WILSON,**  
Petitioner-Appellant,

**vs.**

**DES MOINES PUBLIC SCHOOLS and  
EMC RISK SERVICES, INC.,**  
Respondents-Appellees.

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Appeal from the Iowa District Court for Polk County, Richard G. Blane, II,  
Judge.

The petitioner appeals from the district court's order on judicial review  
affirming the agency's denial of benefits. **AFFIRMED.**

Scott L. Bandstra of Bandstra Law Firm, P.C., Des Moines, for appellant.

Anne L. Clark of Hopkins & Huebner, P.C., Des Moines, for appellees.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

**VOGEL, J.**

Phillip Wilson appeals from the district court's ruling on judicial review affirming the decision by the Iowa Workers' Compensation Commissioner denying benefits. Because we agree with the district court's conclusion that substantial evidence supports the agency's finding that the record does not support that an injury occurred which arose out of and in the course of Wilson's employment with the Des Moines Public Schools (DMPS), we affirm.

**I. Background Facts and Proceedings.**

Wilson filed a claim for workers' compensation in February 2004, alleging a work-related injury occurred in late January 2003. He claims that while driving a street sweeper in the course of his duties with the DMPS, he struck a pothole, lifting him off the seat and hitting his head on the roof of the cab. Wilson claims that the impact jarred him, causing injury to his back and pain shooting down his right leg. He alleges that he told his supervisor at the time that he had suffered an injury but did not follow up with creating or filing an injury report. Wilson began by seeing Dr. Evans, who referred him to Dr. James R. Skinner in late April 2003. He complained of numbness and tingling in his right leg from the knee down, reporting to Dr. Skinner that he had suffered the same symptoms for the past year while denying any specific trauma to his back or leg. Subsequent testing revealed multiple lumbar spinal problems, and Wilson was referred to orthopedic surgeon, Dr. William Boulden. At his visit with Dr. Boulden in mid-May 2003, Wilson reported he had back pain for the past one and one-half years with recently developing numbness and pain in the right leg. Dr. Boulden's diagnosis was multiple levels of congenital and acquired spinal stenosis and he

recommended epidural steroid injection as treatment, which was performed in late May. Wilson returned to Dr. Boulden on June 12 and reported that the injection temporarily alleviated his pain. Based upon Wilson's continuing symptoms, Dr. Boulden believed that spinal decompression surgery, although elective, would provide greater pain relief and possibly improve Wilson's quality of life.

On June 16, Wilson first advised DMPS that he had hurt his back four to six months prior by hitting a pothole while driving the street sweeper. DMPS sent Wilson for evaluation to Dr. Bern Boyett, an occupational medicine specialist. This was the first time Wilson mentioned the street sweeper incident to a physician as the cause of his back problems, claiming that his pain began about six months earlier and recently spread to his right leg. He also completed an injury report with DMPS's claims' administrator on June 20, stating although he was unsure of the injury date, the injury was caused by bouncing up and down on the street sweeper, and that he had received no treatment for his symptoms. Dr. Boulden performed surgery, including partial spinal fusion, on Wilson on July 14. Dr. Boulden opined that Wilson suffered a work-related aggravation of a pre-existing condition when he struck the pothole while driving the street sweeper. Wilson was subsequently placed on work restrictions.

Wilson filed a petition for workers' compensation benefits in February 2004. The contested case proceeded to arbitration hearing before the deputy commissioner in February 2005. The deputy's proposed decision denied benefits based on Wilson's failure to prove his back and right leg problems were caused by a work-related incident. Specifically, the deputy found Wilson and his

two supporting witnesses lacked credibility as to whether the street sweeper incident had even occurred in January 2003 when Wilson alleged he was injured. The deputy thus discounted the medical opinions as to causation because they were based upon Wilson's self-reporting the cause of the injury as being from the street sweeper incident. Finding a lack of credible evidence to support that an injury occurred, the deputy denied benefits.

Wilson filed an intra-agency appeal, in which the commissioner's one-page decision stated:

Pursuant to Iowa Code sections 86.24 and 17A.15, I affirm and adopt as final agency action those portions of the proposed decision in this matter that relate to issues properly raised on intra-agency appeal.

Claimant shall pay the costs of the appeal, including the preparation of the hearing transcript.

Wilson then filed a petition for judicial review, after which the district court determined the final agency decision and record were adequate for purposes of judicial review and the agency's denial of benefits was supported by substantial evidence. Wilson appeals.

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

Our review of an industrial commissioner's decision is for correction of errors at law. *Simonson v. Snap-On Tools Corp.*, 588 N.W.2d 430, 434 (Iowa 1999). In exercising its judicial review power of a final agency decision, the district court acts in an appellate capacity to correct any errors of law by the agency. *Iowa Ag Const. Co., Inc. v. Iowa State Bd. of Tax Review*, 723 N.W.2d 167, 172 (Iowa 2006). When we review the district court's decision, "we apply the standards of chapter 17A to determine whether the conclusions we reach are the same as those of the district court." *Mycogen Seeds v. Sands*, 686 N.W.2d

457, 464 (Iowa 2004). “If they are the same, we affirm; otherwise we reverse.” *Id.* The district court may reverse or modify an agency’s decision if the agency’s decision is erroneous under a ground specified in the Iowa Administrative Procedures Act, and a party’s substantial rights have been prejudiced. Iowa Code § 17A.19(10) (2003).

The reviewing court can only grant the petitioner’s relief from the commissioner’s decision if a determination of fact by the commissioner “is not supported by substantial evidence in the record before the court when that record is viewed as a whole.” *Id.* § 17A.19(10)(f). This requires that the entirety of the record, including supporting and detracting relevant evidence, as well as credibility assessments, be sufficient to allow a reasonable and neutral person to reach the same conclusion as the agency. *Id.* Evidence is substantial for purposes of reviewing the decision of an administrative agency when a reasonable person could accept it as adequate to reach the same finding. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006). Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the commissioner’s decision is not supported by substantial evidence. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007). An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record. *Fischer v. City of Sioux City*, 695 N.W.2d 31, 33-34 (Iowa 2005).

### **III. Adequacy of Record for Judicial Review.**

Wilson argues that the record of the final agency decision is inadequate to allow for proper judicial review, in light of the commissioner’s one-page

affirmance and adoption of the deputy's proposed findings and decision, and fails to comport with Iowa Code section 17A.16(1):

A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings . . . . Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

*Id.*

Wilson's argument does not comport with Iowa law, however, in which our supreme court has held that a one-paragraph, wholesale affirmance and adoption of the deputy's proposed decision complies with the mandates of section 17A.16(1):

We have refrained, however, from reading "unnecessary and burdensome" requirements into the statute. Thus we have held the commissioner need not discuss every evidentiary fact and the basis for its acceptance or rejection so long as the commissioner's analytical process can be followed on appeal. So also have we held the commissioner's duty to furnish a reasoned opinion satisfied if "it is possible to work backward . . . and to deduce what must have been [the agency's] legal conclusions and [its] findings of fact."

We believe the standards have been easily met by the agency here. No purpose would be served by requiring the commissioner to duplicate the deputy's effort. We do not read the statute to require it. When the commissioner's affirmance rests on review yielding identical factual findings, and the commissioner's legal analysis mirrors that described by the deputy, no further recitals are necessary to satisfy section 17A.16(1) for purpose of judicial review. To read into the statute the necessity of a full opinion, as required by the district court here, exalts form over substance.

*Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997) (citations omitted). The deputy's proposed findings and ruling in this case was a detailed and well-reasoned six-page decision. We conclude, therefore, the district court

correctly determined that the agency's findings of fact and record are adequate for judicial review and affirm on this issue.

#### **IV. The Injury.**

Wilson next contends that the district court erroneously upheld the agency's finding that his alleged injury was not work-related. To receive workers' compensation benefits, a claimant must show by a preponderance of the evidence that an injury arose out of and in the course of employment. Iowa Code § 85.3 (2003); *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 652 (Iowa 2000). The words "arising out of" refer to the "causal relationship between the employment and the injury." *Id.* The words "in the course of" refer to the time, place and circumstances of the injury. *McClure v. Union County*, 188 N.W.2d 283, 287 (Iowa 1971).

Wilson argues that the deputy commissioner ignored the medical evidence demonstrating a causal connection between his back and right leg pain and the street sweeper incident in January 2003. However, his first burden is to prove an injury even occurred. The deputy commissioner "expressly found that this record does not support [Wilson's] allegation that he received an injury that arose out of and in the course of his employment on or about January 28, 2003, when he hit a pothole while driving a street sweeper." Wilson claimed at the hearing that he notified his supervisor, Bill Padgett, at the time of the alleged incident. Cathy McKee, a risk manager for DMPS, testified that she inquired of Padgett in June 2003 whether Wilson reported an injury from running the street sweeper, and Padgett denied recalling such an incident. Padgett was terminated from his employment with DMPS in August 2003 after an internal audit determined his

improper use of a DMPS credit card. Padgett later signed an affidavit stating that Wilson did report an injury incident in January or February 2003 caused by operating the street sweeper: “[M]y recollection is that I told him at that time to fill out an accident form. It is my understanding that a report was never completed, I do not know why that did not occur.” Padgett did not testify on Wilson’s behalf before the agency.

Wilson also presented an affidavit and testimony from his co-worker Mike Still. The deputy discounted Still’s testimony because he was social friends with Wilson and his retelling of the details of the alleged incident, to which he was not a witness, was strikingly similar to Wilson’s account. Still also claimed that another co-worker was aware of the incident and had even retrieved Wilson from the street sweeper and brought him back to the garage. This co-worker did not testify or submit an affidavit. Finally, Wilson testified in very close detail as to the alleged injury he suffered. Wilson claimed that, although he reported the incident to Padgett just after it happened, he purposely failed to inform his doctors of the incident because he feared being taken off work and having his employment jeopardized. The deputy found this explanation questionable, due to Wilson’s favorable outcome of a work-related injury claim in 2000. He also found the detail of Wilson’s descriptions of the incident more than two years later had increased suspiciously from his “skeletal description” of reports from the summer of 2003. The fact that Wilson did not mention a work injury to his physicians for approximately six months, and then only after Dr. Boulton suggested elective surgery, also detracted from his credibility. The deputy found both Wilson and



Still's testimony overall suspect because of "their observed body language, facial expressions, and speech cadences."

Contrary to Wilson's objections, it is not our task to reevaluate the credibility of the witnesses. See *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996) (stating under a substantial evidence review it is not the task of the reviewing court "to weigh the evidence or the credibility of the witnesses"). It is the agency'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 reviewing court only determines whether substantial evidence supports a finding "according to those witnesses whom the [commissioner] believed." *Id.* (citation omitted). Based upon the portions of the record which the deputy deemed credible, there is no evidence that Wilson was injured as he claimed to be in January 2003 in the course of his employment with DMPS. All of Wilson's medical treatment was given on his belated self-reporting of an unwitnessed, alleged injury and resulting symptoms. Once Wilson's credibility was severely discounted by the deputy, it was unnecessary to consider the medical testimony because Wilson failed to prove he sustained a work-related injury. We conclude, as the district court did, that substantial evidence supports the agency's determination that an injury did not occur that arose out of and in the course of Wilson's employment with DMPS.<sup>1</sup>

**AFFIRMED.**

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<sup>1</sup> Because of this result, we need not address the remaining issues raised by Wilson on appeal.