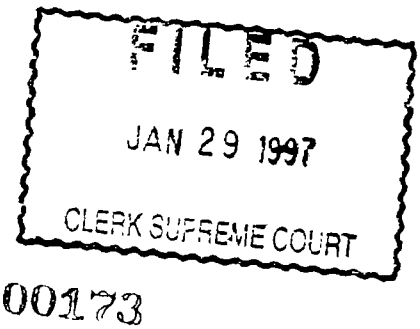
IN THE COURT OF APPEALS OF IOWA

No. 6-710 / 95-2063



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HUNTTING ELEVATOR and THE MILL MUTUALS,

Petitioners-Appellants,

vs.

DAVID A. OWEN,

Respondent-Appellee.

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

Petitioners appeal the district court's affirmance of the industrial commissioner's award of sixteen percent industrial disability for respondent's cumulative injury. **AFFIRMED.**

Harry W. Dahl, Jr., Des Moines, for appellants.

Michael L. Zenor of Zenor & Houchins Law Office, Spencer, for appellee.

Heard by Habhab, C.J., and Streit and Vogel, JJ. Sackett, J., takes no part.

VOGEL, J.

David Owen was employed by Huntting Elevator from 1977 to 1978, and from 1987 until April 1992. His job duties included contacting farmers, obtaining soil samples, spraying fertilizer, loading and unloading grain, and operating both a weigh wagon and occasionally a pickup sprayer.

On March 24, 1992, Owen was operating a pickup truck in a farm field. While driving over rough terrain, Owen was so jarred that he hit his head on the top of the cab. Owen brought two workers' compensation claims alleging a specific injury arising from the incident on March 24, 1992, and cumulative trauma injury caused by repetitive jarring and bouncing, with an injury date of April 15, 1992. Owen underwent spinal fusion surgery in April of 1992. The Deputy Industrial Commissioner awarded no benefits for the March 24 incident as the Deputy found it to be not a separate injury, but merely another minor incident of cumulative trauma. The Deputy awarded sixteen percent industrial disability for the cumulative trauma. The Industrial Commissioner summarily affirmed and the district court affirmed.

Huntting and Mill Mutuals appeal.

Scope of review. The grounds for reversal of an agency decision are set forth in Iowa Code section 17A.19 (8) (1995). Our scope is for correction of errors at law. Iowa R. App. P. 4. The agency's decision is final if it is supported by substantial evidence and is correct in its conclusions of law. *Heatherly v. Iowa Dep't of Job Serv.*, 397 N.W.2d 670, 670 (Iowa 1987).

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Defendant's credibility. Huntting argues Owen's prior pattern of deceit in other areas of his life should have been specifically addressed in the Commissioner's findings as weighing on Owen's credibility. The deputy's findings included among other things, Owen's account of his injuries, and Dr. Durward, the neurosurgeon's, testimony. No other medical testimony was offered at the hearing which would dispute the medical findings and causal connection made and testified to by Dr. Durward. No other account of Owen's injuries was offered. The evidence also included, the testimony of Mr. Pierson, claimant's supervisor, and Mr. Schuett, a farmer, both of whom were witnesses to the March 24th incident. They both specifically remember rolls of snow fence falling off the back of the truck driven by Owen because of the jarring of the vehicle.

Huntting's claim that the Commissioner should have made a credibility finding as to Owen assumes that such a finding would weigh against Owen to defeat his claim. This position underestimates the role of the Deputy Commissioner in taking the original testimony. Owen was present to testify in person as to his injuries. More significantly, Owen was subjected to cross-examination by Huntting, attacking Owen's credibility. The information Huntting considered to diminish Owen's claim was part of the record. The Deputy Commissioner's task was to weigh all the evidence. While remand is required if the Commissioner has rejected or disregarded material evidence without any stated reasons, the law does not require the Commissioner to discuss each and every fact in the record and explain why or why

not he has rejected it. *McSpadden v. Big Ben Coal Company*, 288 N.W.2d 181, 186 (Iowa 1980); *Terwilliger v. Snap-On Tools Corp.*, 529 N.W. 2d 267, 274, (Iowa 1995). The failure of the Commissioner to make specific findings as to claimant's credibility is not reversible error because the credibility determination inheres in the Commissioner's ruling. *See Second Injury Fund v. Braden*, 459 N.W.2d 467, 471 (Iowa 1990). We find no error.

Injury and industrial disability rating. Dr. Durward concluded that the jarring in the truck necessitated by Owen's job aggravated his formerly-latent symptoms. The deputy found the doctor's uncontroverted medical testimony supported the causal connection and the cumulative injury claim. In determining whether an injury or disease has a direct causal connection with the employment, or arose independently thereof, it is essentially within the domain of expert testimony, and the weight to be given such an opinion is for the finder of the facts. *Department of Transp. v. Van Cannon*, 459 N.W.2d 900, 904 (Iowa App.1990). We find both the injury and the causal connection were supported by substantial evidence.

Hunting next argues the Industrial Commissioner erred in finding Owen was entitled to a sixteen percent industrial disability as that is the same percentage Dr. Durward used to rate Owen's permanent impairment. The decision of the Commissioner is binding on review if it is within the range justified by the testimony. *Elliot v. Wilkinson*, 248 Iowa 667, 671, 81 N.W.2d 925, 927 (1957). The Commissioner was to consider several factors in arriving at the industrial disability

such as the employee's medical condition prior to the injury, immediately after the injury and presently, the situs of the injury, its severity and the length of the healing period, functional impairment as a result of the injury, the inability to engage in certain employment activities because of the injury, the age, education, and motivation of the claimant. *See McSpadden*, 288 N.W.2d at 181. Because there is no formulae from which a disability rating can be derived, the Deputy or the Commissioner must draw upon prior experience, as well as general and specified knowledge to make this finding. *See Christensen v. Hagen, Inc.*, vol.1 no.3 State of Iowa Industrial Commissioner Decisions 529 (App. March 26, 1985).

Although Owen was working at a job following his surgery, which actually paid more that his employment with Huntting, that was only one factor considered by the Commissioner. Other factors included Dr. Durward's restricting Owen from lifting over twenty-five pounds, and from working in occupations requiring him to grip with his hands or to lift his arms over his head.

We find the Commissioner's decision of a sixteen percent industrial disability was supported by substantial evidence and affirm.

AFFIRMED.