

**IN THE COURT OF APPEALS OF IOWA**

No. 7-053 / 05-2117  
Filed July 25, 2007

**JOSEPH P. KRAMER,**  
Petitioner-Appellant,

**vs.**

**R.L. CRAFT ROOFING COMPANY,  
ACADEMY ROOFING COMPANY and  
CNA INSURANCE COMPANY,**  
Respondents-Appellees.

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Appeal from the Iowa District Court for Shelby County, James S. Heckerman, Judge.

Joseph Kramer appeals a workers' compensation decision. **AFFIRMED.**

Richard B. Maher, Omaha, Nebraska, for appellant.

Joseph Happe, West Des Moines, for appellee R.L. Craft Roofing and CNA Insurance.

Michael C. McEnroe and Carolyn A. Rafferty, Waterloo, for appellees Academy Roofing and CNA Insurance.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VAITHESWARAN, J.**

Joseph Kramer appeals a workers' compensation decision finding no causal relationship between his claimed disabilities and two on-the-job motor vehicle accidents.

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

Kramer worked for R.L. Craft Roofing Company as a supervisor. In 1999, he was driving on business when another vehicle struck his. A short time later, the right side of his neck swelled. The following day, Kramer saw his family physician, Dr. Bendixen. Dr. Bendixen diagnosed Kramer with neck strain and muscle contraction headaches.

The following year, Kramer began working for a new employer, Academy Roofing. In 2001, Kramer was making a delivery for Academy when he drove over a manhole cover and hit a retaining wall. At a hearing, he testified he hurt his left eye, right shoulder, lower back, left leg, and neck. He also testified that one of the medications administered after the accident caused him to experience sensitivity to sunlight.

Kramer filed petitions for workers' compensation benefits. The deputy workers' compensation commissioner denied the claims after finding no causal relationship between his claimed disabilities and the accidents. The workers' compensation commissioner affirmed, as did the district court on judicial review.

***II. Standard of Review***

On appeal, Kramer cites several judicial review standards. We believe the appeal is controlled by one: whether the agency decision is

[b]ased upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole.

Iowa Code §17A.19(10)(f) (2005).

### **III. Analysis**

Kramer first takes issue with the deputy workers' compensation commissioner's extensive credibility findings. Those findings were recognized and affirmed by the commissioner. Some were based on Kramer's demeanor at the arbitration hearing, others were based on Kramer's testimony and his reports to medical providers, and still others were based on perceived inconsistencies between a medical provider's opinion testimony and his medical records.

The pertinent judicial review standard requires us to judge the adequacy of the evidence supporting a particular fact finding in light of "any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses." *Id.* § 17A.19(10)(f)(3); *Cf. Wal-Mart v. Caselman*, 657 N.W.2d 493, 500 (Iowa 2003) (finding substantial evidence supporting deputy's credibility finding). Therefore, we will review the deputy's credibility determinations in connection with the fact findings on causation.

#### **A. 1999 Accident**

The deputy detailed Kramer's lengthy history of poor health conditions prior to the 1999 accident. The deputy found Kramer "had intermittent flare-ups of these conditions and periods when they were quiescent." She further found that Kramer showed the same pattern of flare-ups and quiescence after the 1999 accident. Based on this pattern, the deputy determined that the pain Kramer

experienced following the 1999 accident was not an aggravation of preexisting conditions. See *Ziegler v. United States Gypsum Co.*, 252 Iowa 613, 620, 106 N.W.2d 591, 595 (1960) (holding that a claimant may recover for aggravation of a preexisting injury where the aggravation occurs in the course of employment and a causal connection is established). In making this determination, the deputy discounted the contrary opinion of Dr. Bendixen, noting that the opinion did not “square with” his medical records.

These findings are supported by substantial evidence. With respect to Kramer’s conditions following the 1999 accident, Dr. Bendixen’s records indicated they were “quiescent for several months,” but recurred after he held his two-year-old granddaughter for most of the day and after he planted some trees. A reasonable fact finder could surmise that these records were inconsistent with Dr. Bendixen’s subsequent finding of a causal relationship between Kramer’s neck pain and headaches and the 1999 accident. Additionally, a reasonable fact finder could discern an inconsistency between records showing “several years of some recurring” muscle spasms and osteoarthritis and Dr. Bendixen’s subsequent opinion that preexisting conditions had “resolved.”

We recognize that Dr. Bendixen addressed these apparent inconsistencies in his deposition testimony. However, it was for the deputy as trier of fact “to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion.” *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995).

We also recognize that at least one other physician, Dr. Spencer, causally related Kramer's neck pain to the 1999 accident. However, one of Dr. Spencer's medical notes states, Kramer "denies ever experiencing any pain prior to" the 1999 accident. This statement is inconsistent with Dr. Bendixen's medical records and supports the deputy's finding that Kramer did not disclose his full medical history to some of the medical providers, including Dr. Spencer. Because the opinion was based on "an incomplete history," the opinion was "not necessarily binding upon the commissioner." *Id.* Additionally, a reasonable fact finder could have discounted Dr. Spencer's causation opinion based on his admittedly "small window of interaction" with Kramer and his consequent reluctance to opine on how much of Kramer's pain preceded the accident or was a result of the accident.

***B. 2001 Accident***

As noted, Kramer testified to several impairments following the 2001 accident. The deputy cited one, Kramer's eye problem. She acknowledged that this problem might be related to the accident but found that the condition was not "independently producing any disability." The deputy appeared to discount the opinions of medical providers who opined about Kramer's remaining post-accident complaints, stating those opinions did not account for Kramer's prior history of musculoskeletal problems.

These findings are supported by substantial evidence. With respect to the eye impairment, Dr. Clavenna diagnosed an "accommodative spasm," but advised Kramer this generally resolved spontaneously. He also diagnosed a detachment of the "posterior vitreous" and prescribed eye drops and a return visit

in six weeks. There is scant, if any, evidence that this condition created ongoing problems for Kramer.

As for Kramer's complaint of right shoulder pain, Kramer advised one physician, Dr. Hutton, that "he has never had right shoulder problems prior to the manhole accident." A reasonable fact finder could have discerned from Dr. Bendixen's medical records that he experienced pain in the right shoulder in 1994. While the fact finder could have found the pain experienced in 2001 was a compensable aggravation of a preexisting condition, there was substantial evidence supporting a contrary finding. Specifically, another physician, Dr. Pollack, found that Kramer "had normal range of motion, negative impingement signs and normal rotator cuff function" in his right shoulder immediately following the accident.

The same is true of Kramer's complaints of low back pain. Dr. Bendixen's records indicate Kramer was having problems with his left sacroiliac area as early as 1993 and he had recurring back problems in 1995 and 1996. Again, Kramer could have experienced a compensable aggravation of his pre-existing back condition following the 2001 accident. However, there was substantial evidence supporting a contrary finding.

With respect to Kramer's complaint of left leg pain, he testified he experienced "a burning" on the inside of that leg. He stated his "calf muscle back in there" ached and his toes burned. However, immediately following the 2001 accident, Kramer reported problems with his right leg rather than his left. There was substantial evidence supporting a finding that Kramer's left leg pain was not caused by the 2001 accident.

Kramer also complained of neck pain following the 2001 accident. A reasonable fact finder could have discounted this complaint based on Kramer's failure to give medical providers a complete history. For example, shortly after the accident, a physical therapist stated Kramer's prognosis for rehabilitation was good, as he had "no significant past medical history of problems with his neck."

This leaves us with Kramer's complaint of photosensitivity. On this question, there was medical evidence categorically rejecting suggestions that Kramer's sensitivity was related to a medication prescribed in connection with the 2001 accident.

#### ***IV. Disposition***

The record contains substantial evidence to support the deputy's findings on causation. Those findings were adopted in full by the commissioner. We accordingly affirm the agency's final decision.

We find additional issues raised by Kramer to be unpreserved or unnecessary to decide.

**AFFIRMED.**