

**IN THE COURT OF APPEALS OF IOWA**

No. 7-876 / 07-0941  
Filed December 28, 2007

**PAXTON & VIERLING STEEL COMPANY,**  
**A Division of OWEN INDUSTRIES,**  
Plaintiff-Appellant,

**vs.**

**DONALD HOPE,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge.

Employer appeals from the district court decision that affirmed the decision of the workers' compensation commissioner finding Donald Hope suffered permanent disability. **AFFIRMED.**

Jacob J. Peters of Peters Law Firm, P.C., Council Bluffs, and W. Curtis Hewett, Council Bluffs, for appellant.

Laura L. Pattermann of Gallner & Pattermann, P.C., Council Bluffs, for appellee.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

**HUITINK, P.J.**

Paxton & Vierling Steel Company, a division of Owen Industries, (Paxton) appeals from a district court ruling affirming the workers' compensation commissioner's decision to award Donald Hope benefits. We affirm.

**I. Background Facts and Prior Proceedings**

Donald Hope began employment with Paxton in 1983 as a welder. Over the years he progressed to the position of plant manager. On December 21, 2001, Hope injured his back while lifting a steel tub at work. He immediately felt pain in his lower back and left leg. He saw the company physician on December 26, 2001. The doctor prescribed medication and a physical therapy regimen. An MRI revealed mild degenerative disc disease, small focal midline disc protrusions, and a small generalized disc bulge at L4-L5. The doctor diagnosed Hope with a lumbar strain. By late January 2002, the doctor stopped the physical therapy, but Hope's "terrible" back and leg pain continued. Despite the daily pain, Hope continued to work.

In early September, his back and leg pain increased to the point that he went to the emergency room. Two weeks later, he returned to the company physician, who referred him to a neurosurgeon. The neurosurgeon performed an MRI and discovered a herniated disc at L4-L5 with "obvious L5 nerve root compression." Hope underwent a microlumbar discectomy surgery to attempt to correct the problem. Hope was off work for approximately five weeks. The surgery resolved the pain in his leg, but the pain in his lower back persisted. The surgeon opined that Hope had a thirteen-percent permanent impairment as a result of the surgery.

Hope's chronic back pain led to severe depression. In the opinion of his treating physicians, his chronic back pain and causally related depression rendered him unemployable. Two vocational rehabilitation counselors also concluded he was not vocationally employable due to chronic pain and depression.

In January 2004 Hope filed a petition with the workers' compensation commissioner requesting an award of benefits based on the December 21, 2001 injury and a September 3, 2002 work-related "exacerbation" of that injury. By December 27, 2004, Hope could no longer deal with the chronic back pain and mental anguish, so he stopped working at Paxton.

As of the date of the contested hearing, Hope still remained under the care of his psychiatrist. He had not been physically or mentally capable of working during the seven months since he had stopped working at Paxton. He also still had difficulty performing the routine activities of daily life. Each physician causally connected Hope's back injury and subsequent chronic pain syndrome to the work injury. There were no contrary expert opinions.

The deputy commissioner issued a ruling concluding Hope's chronic pain and causally related depression rendered him permanently and totally disabled. The deputy noted the medical and psychiatric opinions established a causal connection between the work injury and the depression. The deputy also concluded Hope's medical expenses were causally related to the work injury. The deputy's decision was upheld on intra-agency appeal and upheld by the district court on judicial review. Paxton now appeals, claiming:

I. THERE IS A LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSIONER'S FINDING THAT HOPE'S WORK-RELATED LUMBAR STRAIN OF DECEMBER 21, 2001, CAUSED THE HERNIATED DISC AT L4-L5 THAT HOPE'S SURGEON OPINED IS THE CAUSE OF HOPE'S DISABILITY.

II. THERE IS A LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSIONER'S FINDING THAT HOPE'S LUMBAR STRAIN OF DECEMBER 21, 2001, WAS EXACERBATED BY A WORK-RELATED INJURY ON SEPTEMBER 3, 2002.

III. THERE IS A LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSIONER'S FINDING THAT HOPE'S DEPRESSION WAS CAUSED BY HIS WORK-RELATED STRAIN OF DECEMBER 21, 2001.

## **II. Standard of Review**

Our review of a final agency action is governed by Iowa Code chapter 17A and is confined to correction of errors of law. Iowa Code § 17A.19 (2007); *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 354 (Iowa 1998). We will uphold the agency's action if it is supported "by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f). Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006). The ultimate question is not whether the evidence might support a different finding, but whether the evidence supports the findings the commissioner actually made. *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996). "It is the commissioner's duty as the trier of fact to determine the credibility of the witnesses, weigh the evidence, and decide the facts in issue." *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-

95 (Iowa 2007). We may not improperly weigh the evidence to overrule the commissioner's findings. *Id.* at 395.

### **III. Discussion**

Paxton does not contend the December 21 work injury did not occur. Instead, it focuses on the discrepancy between the January 17, 2002 MRI that did not show the herniated disc and the September 25, 2002 MRI that showed the herniated disc. Paxton argues the herniated disc that precipitated the surgery, which allegedly led to the depression and allegedly led to the permanent disability, occurred sometime after the January 17 MRI. Because Hope presented no evidence describing the early September event that "exacerbated" the December injury or describing how this injury was in any way work related, Paxton contends he failed to prove his workers' compensation claim.

We find no merit to this argument because it relies upon the assumption that the triggering event for Hope's depression was the September 2002 injury, rather than the December 2001 injury. The issue before the deputy commissioner was whether the December 2001 injury was the cause of any permanent disability. The commissioner's ruling did not address whether there was a specific event that made Hope return to the doctor in September of 2002. While there was some variance between the doctors and psychiatrists as to the timing of the work-related injury that triggered Hope's severe depression, at least one psychiatrist tied the depression directly to the December 21, 2001 injury. Hope testified that his back pain never abated after the December injury and that it made him feel "terrible." Dr. Timothy Tse's psychiatric evaluation similarly described how Hope sought treatment for the December 21 injury, but the pain

“never went away.” Most importantly, Dr. Tse’s evaluation tied Hope’s depression directly to the December 21 injury when he stated: “It remains my opinion, on a more probable than not basis, that Mr. Hope’s 2001 industrial injury and its sequelae triggered his major depressive disorder.” We find this constitutes substantial evidence to causally connect Hope’s major depression and resulting permanent disability to the undisputed December 21 work injury. See *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995) (“Whether an injury has a direct causal connection with the employment or arose independently thereof is essentially within the domain of expert testimony. The weight to be given such an opinion is for the finder of fact, in this case the commissioner. . . .” (internal citations omitted)); see also *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995) (“The mere fact that we could draw inconsistent conclusions from the same evidence does not mean that substantial evidence does not support the commissioner’s determinations.”). Therefore, the precise work incident that may have contributed to Hope returning to the doctor in September 2002 is not pertinent to the commissioner’s ruling.

We also reject Paxton’s argument that Hope failed to prove the causal connection because his problems at work, a mortgage foreclosure, and other factors could have contributed to his depression. His treating psychiatrist testified that, in spite of these other factors, the back pain was, in his opinion, the cause of Hope’s depression.

**IV. Conclusion**

Because we find the record contains substantial evidence supporting the commissioner's finding that Hope suffered a permanent disability, we affirm the decision of the district court.

**AFFIRMED.**