

## IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

PAVLICH INC. , NATIONAL INTERSTATE INS., Petitioners, vs.  ZACHARY MARTINEZ Respondent/ Cross Petitioner	Case No. CVCV060634  RULING ON PETITION FOR JUDICIAL REVIEW
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On February 25, 2021, the above captioned matter came before the Court. Abigail A. Wenninghoff and Kalli P. Gloudemans represented the Petitioner. Tom L Drew appeared for the Respondent. After hearing the arguments of counsel and reviewing the court file, including the briefs filed by both parties and the Certified Administrative Record, the Court now enters the following ruling.

**STATEMENT OF THE CASE**

Zachary Martinez (“Martinez”) filed a Petition seeking workers’ compensation benefits from his employer, Pavlich Inc. (“Pavlich”) and its insurance carrier, National Interstate Insurance. Martinez alleges injuries to his right upper extremity, bilateral lower extremities, back, and head as a result of a motor vehicle accident on April 16, 2018. On November 19, 2019, Deputy Workers’ Compensation Commissioner Michael J. Lunn (“Deputy”) ordered that Pavlich pay Martinez 100 weeks of permanent partial disability benefits commencing on July 17, 2018, at the weekly rate of \$594.94 and described the manner of payment.

Pavlich appealed, and on July 30, 2020, Workers’ Compensation Commissioner Joseph S. Cortese II (“Commissioner”) affirmed nearly all rulings set forth by the Deputy but modified the basis of Martinez’s entitlement. On August 27, 2020, Pavlich filed a Petition for Judicial Review

pursuant to Iowa Code sections 17A.19 and 86.26 for review of the final agency action by the Commissioner. Martinez answered the Petition for Judicial Review on September 14, 2020.

### **BACKGROUND FACTS**

Zachary Martinez was born in July 1990 and is a resident of Arkansas. At the time of the injury, Martinez lived in Smithfield, Missouri.<sup>1</sup> He is a high school graduate.<sup>2</sup> Martinez obtained a commercial driver's license (CDL) in 2008 and became a certified emergency medical technician (EMT) in 2012.<sup>3</sup> Martinez became EMT certified in hopes of becoming a firefighter.<sup>4</sup> His work experience is primarily working in construction or as a truck driver.<sup>5</sup>

Martinez was hospitalized from October 6, 2010, to October 18, 2010 as a result of non-work related motorcycle crash.<sup>6</sup> Martinez suffered from multiple facial fractures a traumatic brain injury, cognitive deficits, right upper extremity weakness, and multiple fractures throughout the thoracic spine.<sup>7</sup> Fortunately, Martinez made an excellent recovery and was released from care in November 2010.<sup>8</sup>

Martinez's medical history also includes mental health treatment related to attention deficit disorder.<sup>9</sup> Most of the medical record focuses on Martinez's inability to focus, but the reports also note that Martinez was experiencing two to three headaches a week.<sup>10</sup>

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<sup>1</sup> Hr. Tr. pp. 14, 51.

<sup>2</sup> *Id.*, p. 16.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Ex. 5, p. 40

<sup>6</sup> Joint Exhibit "JE" 1, pp. 1-2

<sup>7</sup> *Id.* p. 9.

<sup>8</sup> *Id.*

<sup>9</sup> JE 2, p. 15.

<sup>10</sup> *Id.*

Pavlich hired Martinez as a semi-truck driver on August 2017.<sup>11</sup> Martinez presented his application to the Pavlich location in Kansas City, Kansas to submit his application.<sup>12</sup> Martinez's role as a driver for Pavlich was to haul freight throughout the Midwest.<sup>13</sup> Martinez was required at times to carry, load, and unload freight in Iowa.<sup>14</sup>

Pavlich is a nonresident employer; it is headquartered and incorporated in Kansas. Pavlich does not have any physical locations in Iowa.<sup>15</sup> Additionally, Pavlich does not pay taxes in the state of Iowa.<sup>16</sup> Pavlich does conduct business in Iowa.<sup>17</sup>

Pavlich is a regional hauling company. Jim Pavlich, the owner of Pavlich Inc., testified that Martinez regularly hauled freight through the state of Iowa in the course and scope of his employment.<sup>18</sup> Furthermore, Mr. Pavlich agreed that Martinez had driven over 4000 miles in Iowa over the course of his employment.<sup>19</sup> Between August 2017 and March 2018, only 4.42 percent of all driving done by Pavlich drivers was in Iowa.<sup>20</sup> While in Iowa, Pavlich's drivers make various stops at Iowa gas stations for fuel. Pavlich drivers are also bound by Iowa traffic laws while travelling through the state.

Pavlich's contacts include driving, picking up, and unloading freight in the state of Iowa. Martinez picked up loads with materials from towns in Iowa like Muscatine, Davenport, and Wilton.<sup>21</sup>

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<sup>11</sup> Hr. Tr. P. 18; *See* Ex. B.

<sup>12</sup> Hr. Tr., p. 51

<sup>13</sup> *Id.*, pp. 19-22.

<sup>14</sup> *Id.* at 22.

<sup>15</sup> *Id.* at 98.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 86-87.

<sup>18</sup> Hr. Tr., pp. 83, 85-86, 90.

<sup>19</sup> Hr. Tr., pp. 97.

<sup>20</sup> Ex. H, p. 1.

<sup>21</sup> Hr. Tr. pp 21-24.

Pavlich's contract for hire includes a jurisdictional provision that provides anyone who suffered an injury "shall be subject to this Workers' Compensation laws of the State of Kansas and jurisdiction shall be solely within the State of Kansas regardless of the location of any-on-the-job accident or where your contract of employment may be deemed made."<sup>22</sup>

On April 16, 2018, Martinez was hauling freight in southeastern Iowa when he was involved in a motor vehicle accident.<sup>23</sup> The parties do not dispute that Martinez was using his cellphone moments before the motor vehicle accident; they do dispute whether Martinez was using his cellphone to text or for GPS.<sup>24</sup> When Martinez looked up from his cellphone, he noticed that the vehicle in front of him had slowed. Martinez swerved and ended up turning his truck over.<sup>25</sup> As a result, Martinez was pinned inside the truck.<sup>26</sup> He sustained injuries to his bilateral lower extremities, right wrist, and back.

Martinez was life-flighted to the University of Iowa Hospital, where he was hospitalized for some days. Once his condition improved, he was transferred to a hospital closer to his Missouri home.<sup>27</sup> Martinez received surgery for a right comminuted intra articular distal radius fracture with open reduction and internal fixation on April 25, 2018.<sup>28</sup> Jeffrey Bradley, M.D. recommended physical therapy to assist with Martinez's range of motion.<sup>29</sup> Martinez had an excellent recovery following his wrist surgery, however the continued to complaint about weakness in his right hand.<sup>30</sup>

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<sup>22</sup> Ex. B p. 5.

<sup>23</sup> Hr. Tr. p. 31.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Hr. Tr. p. 35.

<sup>28</sup> JE 4 pp. 24-26.

<sup>29</sup> *See* JE 5.

<sup>30</sup> JE 5, p. 55.

Dr. Bradley released Martinez back to full-duty work, without restrictions on July 9, 2018.<sup>31</sup> Dr. Bradley opined that Martinez had reached maximum medical Improvement (“MMI”) as of July 2, 2018.<sup>32</sup> Dr. Bradley assigned a six percent impairment to the right wrist based on the American Medical Association (AMA) Guides, Sixth Edition.

Martinez’s left calf was found to have an infected hematoma and degloving injury as a result of the vehicle accident. Martinez’s right thigh had a closed Morel lesion.<sup>33</sup> Martinez had surgery on his left lower extremity to remove a portion of his muscle on April 26, 2018.<sup>34</sup> Following this first surgery, Martinez needed to go through a second surgery in his left lower extremity due to an infection. Zachary Roberts, M.D. later placed his left lower extremity in a wound Vacuum-Assisted Closure (VAC). The hematoma on Martinez’s right thigh became infected and required draining on June 11, 2018. Martinez’s right lower extremity was also placed in a wound VAC.<sup>35</sup>

Dr. Roberts released Martinez back to full-duty work, on July 24, 2018.<sup>36</sup> Dr. Roberts opined Martinez had reached MMI as of March 4, 2019.<sup>37</sup> Roberts assigned a seven percent impairment to the left lower extremity and two percent to the right lower extremity. Both of those impairment ratings were calculated pursuant to AMA Guides, Sixth Edition.<sup>38</sup>

The Commissioner found that there is little evidence that Martinez developed a traumatic brain injury as a result of the accident. He denied having a head injury when he spoke to Dr.

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<sup>31</sup> *Id.* at p. 62.

<sup>32</sup> *Id.* at p. 67.

<sup>33</sup> JE, p. 51.

<sup>34</sup> JE 4, p. 33.

<sup>35</sup> JE 5, p. 58.

<sup>36</sup> *Id.*, p. 64.

<sup>37</sup> *Id.*, p. 68.

<sup>38</sup> *Id.*

Bradley on April 24, 2018.<sup>39</sup> He denied experiencing depression, memory loss, or other effects when speaking to Dr. Bradley and Dr. Roberts. He also denied experiencing headaches, dizziness, and other symptoms when he attended an orthopedic consultation with S. Allan Enriquez, M.D.<sup>40</sup>

Martinez completed an essential functions test for Pavlich.<sup>41</sup> He passed all requirements, including the tests that required him to lift between 25 to 55 pounds, up to three times.<sup>42</sup> Martinez also underwent a grip test, which revealed that his left hand had a significantly stronger grip than the right hand.<sup>43</sup>

Martinez returned to work for Pavlich about three months after the date of injury.<sup>44</sup> Martinez was required to undergo a physical examination.<sup>45</sup> Martinez answered “yes” in regards to “head/brain injuries or illnesses” he provided explanations to the head injuries with his 2010 accident but did not list his work injury as a cause of head/brain injuries.<sup>46</sup>

Martinez continued to work for Pavlich up until September 2018, when he voluntarily left Pavlich to enroll in an apprenticeship program in the construction industry.<sup>47</sup> As of the date of the agency hearing, Martinez worked as a lineman for Chain Electric and builds power lines on a full-duty basis without restrictions.<sup>48</sup> His job duties include setting poles, repairing damaged poles, operating a deer truck, a bucket truck, and shoveling.<sup>49</sup> Martinez works roughly 45 hours a week

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<sup>39</sup> JE 5, p. 46.

<sup>40</sup> JE 4, p. 28.

<sup>41</sup> Ex. 3, p. 23.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Hr. Tr., pp. 37-38.

<sup>45</sup> *See* Ex. E, pp. 1-10.

<sup>46</sup> *Id.*

<sup>47</sup> Hr. Tr., pp. 41-42.

<sup>48</sup> *Id.* at 7.

<sup>49</sup> Ex. G, p. 6.

and lifts up to 50 pounds multiple times per day without accommodations.<sup>50</sup> As of the time of his deposition, Martinez was earning 24 dollars per hour. He also claims that his new job is more physically demanding.

Martinez received an independent medical examination (IME), performed by Jaqueline Stoken, M.D., on February 25, 2019.<sup>51</sup> Dr. Stoken assigned 14 percent impairment to the right upper extremity due to deficits in range of motion, loss of strength, and loss of grip strength. Dr. Stoken assigned five percent impairment to the whole body due to chronic pain, which formed a limp. Dr. Stoken assigned three percent impairment for post-concussive headaches. Dr. Stoken assigned five percent total person impairment due to skin disfigurement and impairment on the right thigh hematoma. Dr. Stoken also assigned nine percent impairment to the whole person due to skin disfigurement and loss of muscle mass. Dr. Stoken assigned 26 percent impairment to the whole person as a result of Martinez's injuries. Dr. Stoken assigned permanent work restrictions to avoid lifting more than 10 pounds on a frequent basis due to the alleged strength deficit in the right upper extremity.<sup>52</sup>

In the Arbitration Decision, the Deputy did not accept Dr. Stoken's assessment as to Martinez's alleged brain injury and lower back.<sup>53</sup> The Deputy held that Dr. Stoken's assessments as related to the brain and lower back were conclusory and lacked objective medical evidence to support those impairments.<sup>54</sup> Finally, the Deputy did agree with Dr. Stoken's impairment ratings as related to Martinez's extremities and held them as more persuasive than the opinions of Drs.

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<sup>50</sup> *Id.* at 32.

<sup>51</sup> Ex. 1 p. 1.

<sup>52</sup> *Id.*, pp. 13-14.

<sup>53</sup> Arb. Dec. p.6.

<sup>54</sup> *Id.*

Bradley and Roberts.<sup>55</sup> The Deputy reached that conclusion because Dr. Stoken's ratings used the Fifth Edition of the AMA guides whereas as Dr. Bradley and Roberts used the Fourth and Sixth Editions. Based on a preponderance of the evidence, the Deputy concluded Martinez carried his burden to demonstrate that he sustained a permanent disability because of the stipulated work injury.<sup>56</sup>

The Deputy ordered that Petitioners pay Martinez 100 weeks of permanent partial disability benefits commencing on July 17, 2018, at the weekly rate of \$594.94. Petitioners were to pay accrued benefits in a lump sum together with interest at an annual rate equal to one-year treasury constant maturity published by the Federal Reserve in the most recent H15 report settled as of the date of injury, plus two percent. The Deputy further ordered Pavlich to pay for Martinez's future medical care for all treatment causally related to his right upper extremity and bilateral lower extremity injuries among other things.<sup>57</sup>

On July 30, 2020, the Commissioner issued an Appeal Decision finding the following:

I affirm the deputy commissioner's findings that this agency has both subject matter jurisdiction and personal jurisdiction over [Respondent]. I affirm the deputy commissioner's finding that defendants failed to carry their burden to prove [Martinez's] claim is barred by the application of Iowa Code section 85.16(1). I affirm the deputy commissioner's finding that claimant is entitled to receive temporary benefits from April 16, 2018, through July 16, 2018. I affirm the deputy commissioner's finding that [Martinez] failed to satisfy his burden to prove he sustained causally related disability to his head or low back. I affirm the deputy commissioner's finding that claimant is entitled to payment for all causally related medical expenses. I affirm the deputy commissioner's finding that claimant is entitled to future medical care at [Respondent's] expense for all treatment causally related to claimant's right upper extremity and bilateral lower extremity injuries. I affirm the deputy commissioner's finding that claimant is not entitled to receive penalty benefits from [Respondent]. I affirm the deputy commissioner's order that [Respondent] pay Martinez's costs of the arbitration proceeding.<sup>58</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Arb. Dec. p 21.

<sup>58</sup> App. Dec. p. 2.

The Commissioner affirmed the Deputy's findings of fact and conclusions of law pertaining to the above issues.<sup>59</sup>

The Commissioner ultimately determined that Pavlich should pay Martinez 100 weeks of permanent partial disability at the weekly rate of \$594.94. He maintained the total amount of payments but instead held that Martinez was entitled to industrial disability as opposed to functional impairment.

### STANDARD OF REVIEW

On judicial review of agency action, the district court functions in an appellate capacity to apply the standards of Iowa Code Section 17A.19.<sup>60</sup> The court shall reverse, modify, or grant other appropriate relief from agency action if the agency action was based 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.<sup>61</sup> “‘Substantial evidence’ means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.”<sup>62</sup>

Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. Conversely, evidence is not insubstantial merely because it would have supported contrary inferences. The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made.<sup>63</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> *Iowa Planners Network v. Iowa State Commerce Comm'n*, 373 N.W.2d 106, 108 (Iowa 1985).

<sup>61</sup> Iowa Code § 17A.19(10)(f).

<sup>62</sup> Iowa Code § 17A.19(10)(f)(1).

<sup>63</sup> *Reed v. Iowa Dept of Transp.*, 478 N.W.2d 844, 846 (Iowa 1992).

The court shall also reverse, modify, or grant other appropriate relief from agency action if such action was based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.<sup>64</sup> The court shall not give deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency.<sup>65</sup> However, appropriate deference is given when the contrary is true.<sup>66</sup> The agency's findings are binding on appeal unless a contrary result is compelled as a matter of law.<sup>67</sup>

Finally, a reviewing court must also reverse, modify, or grant other appropriate relief when the agency's decision is "[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency."<sup>68</sup> "In order to determine an employee's right to benefits, which is the agency's responsibility, the agency, out of necessity, must apply the law to the facts."<sup>69</sup> Because the agency has been entrusted with the responsibility of applying the law to the facts, the "agency's application of the law to the facts can only be reversed if we determine such an application was 'irrational, illogical, or wholly unjustifiable.'"<sup>70</sup>

## MERITS.

### **I. Whether the Iowa Workers' Compensation Commission had Jurisdiction over Pavlich.**

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<sup>64</sup> Iowa Code § 17A.19(10)(c).

<sup>65</sup> Iowa Code § 17A.19(11)(b).

<sup>66</sup> Iowa Code § 17A.19(11)(c).

<sup>67</sup> *Ward v. Iowa Dept. of Transp.*, 304 N.W.2d 236, 238 (Iowa 1981).

<sup>68</sup> Iowa Code § 17A.19(10)(m).

<sup>69</sup> *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004).

<sup>70</sup> *Id.* (citing Iowa Code § 17A.19(10)(m)).

Pavlich's first argument is that the Commissioner erred in finding that the Iowa Workers' Compensation Commission had subject matter and personal jurisdiction over a nonresident Respondent to hear the claim. Errors regarding subject matter jurisdiction are reviewed for errors at law.<sup>71</sup> Pavlich claims that the statutory requirements of Iowa Code section 85.3 are not satisfied, as Martinez was not performing services for it within the state of Iowa at the time of the accident. Iowa Code section 85.3(2) reads:

In addition, every corporation, individual, personal representative, partnership or association that has the necessary minimum contact with this state shall be subject to the jurisdiction of the workers' compensation commissioner, and the workers' compensation commissioner shall hold such corporation, individual, personal representative, partnership, or association amenable to suit in this state in every case not contrary to the provisions of the Constitution of the United States.

Pavlich is a nonresident employer. The corporation is headquartered and incorporated in Kansas. Pavlich does not have any physical locations in the state of Iowa.<sup>72</sup> The corporation does not pay taxes in Iowa.<sup>73</sup> However, Pavlich does conduct business in the state of Iowa.<sup>74</sup>

The Deputy found, and the Commissioner affirmed, that Pavlich did have the necessary minimum contacts under Iowa Code section 85.3. They based their findings on the testimony of Pavlich's owner, Jim Pavlich. Pavlich claims that Martinez was not performing services for Pavlich at the time of the injury, however, Mr. Pavlich testified that Martinez has regularly hauled freight through Iowa through the course and scope of this employment.<sup>75</sup> Furthermore, the parties stipulated that Martinez's injury arose out of and in the course of his employment. Martinez's April 16, 2018 accident took place in Iowa and on a road maintained by the state of Iowa.

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<sup>71</sup> *Ortiz v. Loyd Rolling Constr.*, 928 N.W.2d 651,653 (Iowa 2019).

<sup>72</sup> Hr. Tr., p. 98.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* pp. 86-87.

<sup>75</sup> *Id.* pp. 83, 85-86, 90.

The Court finds that the Iowa Worker's Compensation Commission did have the subject matter jurisdiction necessary to hear this case. The driver logs indicate that Martinez spent the majority of his shift in Iowa on the date of the accident. Martinez was not merely passing through, he also loaded and unloaded his vehicle while in Iowa.<sup>76</sup> According to his deposition, Martinez was driving down the road and looking at the GPS at the time of the accident.<sup>77</sup> He deposed that he was looking for a place to park his truck and rest for the day. The Commissioner reviewed the record and concluded that Martinez was within the scope his employment at the time of the accident. The Court, through its own review of the record affirms the findings of the Commissioner. There is substantial evidence from the logs and Martinez's testimony to conclude that he was working on behalf of Pavlich at the time of the accident.

With regard to personal jurisdiction, a court may exercise personal jurisdiction over a nonresident defendant when it has "certain minimum contacts" with the forum state and it does not offend "traditional notions of fair play and substantial justice."<sup>78</sup> Under this two-step analysis, the Court has found that the Iowa Worker's Compensation Commission has already met the first prong as it was authorized by Iowa Code section 85.3(2) for the reasons explained above.

The remaining prong for personal jurisdiction is whether "the assertion of personal jurisdiction would comport with fair play and substantial justice."<sup>79</sup> Pavlich claims that the Commissioner erred in his finding that personal jurisdiction was proper. "[F]air play and substantial justice" requires a consideration of "the burden on the defendant", "the forum State's

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<sup>76</sup> Ex. H at 12.

<sup>77</sup> Ex. G at 18.

<sup>78</sup> *Shams v. Hassan*, 829 N.W.2d 848 (Iowa 2013); *Int'l Shoe v. Washington*, 326 U.S. 310, 316 (1945).

<sup>79</sup> *Capital Promotions, L.L.C. v. Don King Productions, Inc.*, 756 N.W.2d 828, 834 (Iowa 2008); *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 476 (1985).

interest in adjudicating the dispute”, “the plaintiff’s interest in obtaining convenient and effective relief”, “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies”, and the “shared interest of the several States in furthering fundamental substantive social policies.”<sup>80</sup>

Pavlich’s claims that there is no “fair play and substantial justice” as Martinez contractually agreed to a jurisdictional provision where worker’s compensation claims would be subject to the laws of the state of Kansas.<sup>81</sup> Furthermore, Pavlich alleges that it already had to defend itself against a claim in Kansas and now has to defend itself in Iowa for the same accident.<sup>82</sup>

“No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided”<sup>83</sup> Iowa’s Workers’ Compensation law unequivocally forbids agreements slating to extinguish the jurisdiction of Iowa courts to relieve employers of liability and voids such agreements as void against public policy.<sup>84</sup> Pavlich alleges that it is unfair that it has to defend itself in Iowa when it supposedly already defended itself in Kansas. However, the record does not support Pavlich’s assertion that it already litigated these claims in Kansas. The only thing on the record that mentions the workers compensation claim in Kansas is an insurance company opinion denying benefits to Martinez. The insurance company is not a judicial or quasi-judicial entity, it is not correct to characterize the insurance company’s opinion as any form of adjudication on the merits.<sup>85</sup> Because there is nothing

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<sup>80</sup> *Shams*, 829 N.W.2d at 857(quoting *Burger King*, 471 U.S. at 477).

<sup>81</sup> Ex. B at 6.

<sup>82</sup> Petitioners’ Judicial Review Brief (“Pavlich Brief”) at 18.

<sup>83</sup> Iowa Code section 85.18

<sup>84</sup> *Springer v. Weeks and Leo Co., Inc.*, 429 N.W.2d 558,560-61 (Iowa 1998).

<sup>85</sup> Ex. 2, p. 21.

on the record that indicates a lack of “fair play and substantial justice,” the Court finds that it does have personal jurisdiction over Pavlich.

## **II. Whether Martinez’s Claim Was Barred by Application of Iowa Code 85.16(1).**

Pavlich claims that the Deputy and the Commissioner applied the wrong standard in determining whether Martinez acted with willful intent at the time of the accident. Compensation is not allowed for injuries caused “[b]y the employee’s willful intent to injure the employee’s self or to willfully injure another.” Iowa Code section 85.16(1). Pavlich admits, and the Court acknowledges, that the Iowa Court of Appeal and Iowa Supreme Court applied section 85.16(1) primarily to fact patterns where suicides occurred and never to facts similar these.<sup>86</sup>

Pavlich argues that Martinez’s acts of looking at this phone and exchanging text messages while driving is reckless behavior and tantamount to intent to injure himself. Pavlich supports this assertion through *Holmes v. Homes Animal Clinic*, File No. 500143 (App. Dec. 2003). The Commissioner in *Holmes* mentions: “mere negligence is not a defense. Conduct that manifests intentional self-injury is required. Conduct that is so reckless as to be tantamount to intentional self-injury is sufficient.”<sup>87</sup> Pavlich’s reliance on *Holmes* is misguided. First, the Iowa Workers’ Compensation Commission lacks the legislature’s expressly vested authority to interpret workers’ compensation statutes.<sup>88</sup> “[W]e have declined to defer to the commissioner’s interpretations of various provisions of chapter 85 in recent years”<sup>89</sup>

Although the Court is not required to, it does agree with part of the Commissioner’s

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<sup>86</sup> See *Humboldt Community Schools v. Fleming*, N.W.2d 759 (Iowa 1999); *Kostelac v. Feldman’s Inc.*, 479 N.W.2d 853 (Iowa 1993) (cases that dealt with suicide as a form of willful intent to harm oneself).

<sup>87</sup> *Id* at \*1.

<sup>88</sup> *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W. 2d 759, 770 (Iowa 2016).

<sup>89</sup> *Id*.

interpretation of section 85.16(1) in *Holmes*. “Workers’ compensation law recognizes human imperfection and compensates injuries that occur as a result of the employee’s personal negligence. To do so otherwise would cause many injuries to go without compensation with all the adverse consequences that befall society when an injury is uncompensated.”<sup>90</sup> Furthermore, it is the law of Iowa to interpret statutory provisions in the Iowa Workers’ Compensation Acts liberally in favor of the injured worker.<sup>91</sup>

The Court declines to undertake the recklessness analysis proposed by Pavlich. It found above that Martinez was within the scope of his employment at the time the alleged reckless conduct occurred. It will not expand the definition of “willful intent” to include reckless conduct as it goes against the directives to interpret the Workers’ Compensation Acts liberally in favor of the injured worker. If the Court expands the definition of “willful intent” to reckless conduct, it would necessitate future analysis on whether a worker acting within the scope of his or her employment was acting merely negligently or recklessly. Such an interpretation would go against the humanitarian mission of the Iowa Workers’ Compensation, it would open the door the negligence arguments closed by the Act, but now instead disguised as recklessness arguments. For this reason, the Court affirms the Commissioner’s finding that Iowa Code section 85.16(1) does not apply here.

### **III. Whether the Commissioner erred in finding Martinez was entitled to industrial disability benefits under Iowa Code section 85.34(2)(v).**

The Commissioner ultimately found substantial evidence that Martinez sustained permanent injuries to his right upper extremity and bilateral lower extremities.<sup>92</sup> The

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<sup>90</sup> *Holmes*, File No. 500143 at \*1.

<sup>91</sup> *Bluml v. Dee Jay’s Inc.*, 920 N.W.2d 82, 91 (Iowa 2018); *Xenia Rural Water Dist. v. Vegors*, 786 N.W.2d 250, 257 (Iowa 2010).

<sup>92</sup> Arb. Dec., p. 17; App. Dec., p. 3.

Commissioner and Pavlich agree that Martinez sustained injuries amounting to 20 percent of the whole person and 100 weeks of permanent partial disability benefits.<sup>93</sup> Furthermore, Pavlich and the Commissioner agree that the catch all provision, Iowa Code section 85.43(2)(v) applies here.

In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs “a” through “u” hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee’s earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee’s earning capacity caused by disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury.<sup>94</sup>

If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of injury, the employee shall be compensated based *only* upon the employee’s functional impairment resulting from the injury and *not* in relation to the employee’s capacity.<sup>95</sup>

Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated only upon the employee’s functional impairment resulting from the injury as provided in this paragraph and is *terminated from employment by employer*, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee’s earning capacity caused by the employee’s permanent partial disability.<sup>96</sup>

Moreover, the difference between functional impairment and industrial disability is as follows:

The two methods used to evaluate a disability, functional and industrial, are dissimilar. Functional disability is assessed solely by determining the impairment of the body function of the employee; industrial disability is gauged by determining the loss to the employee’s earning capacity. Functional disability is limited to the loss of physiological capacity of the body or body part. Industrial disability is not bound to the organ or body incapacity, but measures the extent to which the injury impairs the employee in the ability to earn wages. Criteria for the test of industrial

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<sup>93</sup> Pet. at 27; Arb. Dec. at \*6; App. Dec. at \*6.

<sup>94</sup> Iowa Code § 85.43(2)(v).

<sup>95</sup> *Id.* (emphasis added).

<sup>96</sup> *Id.*

disability include the extent of functional disability, along with the employee's age, education, qualification, experiences, and the injury-induced inability of the employee to engage in employment for which the employee is fitted.<sup>97</sup>

The facts in this case appear to differ from the scenarios contemplated by Iowa Code section 85.43(2)(v). In this case, Martinez returned to work at Pavlich with the same or greater salary. Based on this section, Martinez would only be entitled to functional impairment benefits resulting from the injury. However, Martinez later voluntarily resigned from Pavlich and found employment as a lineman for higher wages than his position at Pavlich. Pavlich did not terminate its employment relationship with Martinez in any form.

The Commissioner found that under such a scenario, a claimant would be entitled to benefits under an industrial disability analysis. He reasoned that if a claimant received only a functional disability analysis under that scenario, it would lead to unreasonable outcomes.

. . . [M]ight be better off not seeking employment after being terminated by a defendant-employer because her or she would potentially risk entitlement to benefits under the industrial disability analysis should a different employer offer the same or greater earnings than the claimant was receiving at the time of the injury. Certainly the legislature did not intend to discourage claimants from seeking gainful employment after a work injury.<sup>98</sup>

To reiterate, the Commissioner's decision to adopt the industrial method calculation was in line with Pavlich's contentions on appeal.<sup>99</sup> The Commissioner ultimately decided that Martinez sustained a 20 percent industrial disability and was entitled to 100 weeks of permanent partial disability benefits, which is the amount Pavlich now contends Martinez is entitled to in its

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<sup>97</sup> *Simbro v. Delong's Sportswear*, 332 N.W.2D 886,887 (Iowa 1983) (citing *Graves v. Eagle Iron Works*, 331 N.W.2d 116, 117-18 (Iowa 1983)).

<sup>98</sup> Arb. App. at \*6.

<sup>99</sup> Pavlich Appeal from the Arbitration Decision of November 19, 2019 at 8.

Petition.<sup>100</sup> However, Pavlich now alleges for the first time that Martinez should be compensated according to only functional impairment.<sup>101</sup>

Pavlich takes issue with the Commissioner's interpretation of 85.43(2)(v). In summary, it posits that the Commissioner's interpretation would make an inevitability that a claimant would be entitled to industrial disability benefits at some point. Pavlich argues that at some point, an employee's employment will end through either voluntary resignation, layoff or being fired; and then at that point the employee would be entitled industrial disability benefits. Pavlich complains that the Commissioner's interpretation would have the effect of delaying the timing of industrial benefits for some indeterminate amount of time. It claims that under that logic, an employer would be better off simply terminating the injured employee and paying industrial disabilities rather than waiting for such exposure to happen.<sup>102</sup> Pavlich contends that the proper interpretation of Iowa Code section 85.43 is:

. . . An employee is entitled to industrial disability benefits only if the defendant-employer terminates the employment relationship, then it incentivizes the employer to return the injured employee back to work, or at least offer such employment, at the same or greater wages as the time of injury [ . . . ] However, if an employee is the one who terminates the employment relationship or is terminated for reasons unrelated to the injury, such as attendance or misconduct, then the defendant-employer should not be punished with additional exposure. *Id.*

The Iowa Supreme Court has repeatedly stated that the Iowa Workers' Compensation Commission does not have the legislature's expressly vested authority to interpret workers' compensation statutes.<sup>103</sup> When the plain language of the statute is clear as to its meaning, courts

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<sup>100</sup> Pet. at 27.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Ramirez-Trujillo*, 878 N.W.2d at 770.

apply the plain language and do not search for legislative intent beyond its express terms of the statute.<sup>104</sup>

Statutes should be read as a whole, rather than looking at specific words or phrases in isolation.<sup>105</sup> When making statutory changes, the legislature is deemed to have known and understood the status of the law, including any interpretation made by the agency and the Iowa Supreme Court as to existing statutes.<sup>106</sup>

The Commissioner's statutory interpretation is reviewed for errors of law.<sup>107</sup> The Court also considers the statute's "subject matter, the object sought to be accomplished, the purpose to be accomplished, the purpose to be served, underlying policies, remedies provided and the consequences of the various interpretations."<sup>108</sup> Finally, when a statute leaves ambiguity as to its meaning or intent, it has long been the law of Iowa that a statutory provision in the Iowa Workers' Compensation acts should be interpreted liberally in favor of the injured worker.<sup>109</sup> Therefore, the Court will analyze at the subsection of section 85.43(2)(v) separately to determine if the Commissioner committed an error of law.

In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "u" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury.<sup>110</sup>

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<sup>104</sup> *Denison Municipal Utilities v. Iowa Workers' Compensation Com'r*, 857 N.W.2d 230, 235 (Iowa 2014).

<sup>105</sup> *Iowa Ins. Institute v. Core Group of Iowa Ass'n for Justice*, 867 N.W.2d 58, 72 (Iowa 2015)

<sup>106</sup> *Roberts Daily v. Billick*, 861 N.W.2d 814, 821 (Iowa 2015).

<sup>107</sup> *Westling v. Hormel Foods Corp.*, 810 N.W.2d 247, 251 (Iowa 2012).

<sup>108</sup> *Cox v. State*, 686 N.W.2d 209, 213 (Iowa 2004).

<sup>109</sup> *Bluml*, 920 N.W.2d at 91.

<sup>110</sup> Iowa Code § 85.43(2)(v).

This section begins with a description of its applicability. If an injured worker is found to have permanent partial disabilities other than in sections “a” through “u” of the law, then the determination of benefits shall take into account the employee’s earning capacity and the permanent partial disability of the employee’s earning capacity. In other words, this section proscribes an industrial disability analysis to an injured employee. Given that, the Court holds that Martinez suffered injuries to his right upper extremity and bilateral lower extremities, his disability analysis starts here.

**If** an employee who is eligible for compensation under this paragraph returns to work **or** is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of injury, the employee shall be compensated based **only** upon the employee’s functional impairment resulting from the injury and **not** in relation to the employee’s capacity.<sup>111</sup>

This section is a conditional. Martinez initially meets this condition as he returned to work for Pavlich at the same or higher wages, which would entitle him to a functional impairment analysis only. Notice that this section does not specify by *whom* the employee is offered work at greater or equal earnings. Notice also that Martinez accepted work as a lineman for higher or equal wages. Given Martinez’s current, more profitable employment, his disability calculations should follow the functional method.

Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the **same employer and** is compensated only upon the employee’s functional impairment resulting from the injury as provided in this paragraph and is **terminated from employment by employer**, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee’s earning capacity caused by the employee’s permanent partial disability.<sup>112</sup>

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<sup>111</sup> *Id.* (emphasis added).

<sup>112</sup> *Id.* (emphasis added).

Here, Pavlich correctly points out that Martinez voluntarily left its employment, which would not trigger this condition for an industrial earning capacity adjustment. The law is silent on this current situation where an employee under functional impairment voluntarily leaves for a better earning job.

Martinez's subsequent employment at higher wages is relevant here. Under this section, an employee who meets the injury criteria defaults to an industrial disability analysis. If the worker then finds a new position, where the worker receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment. Martinez left Pavlich for a position that paid him the same or greater salary, wages or earnings than the position he had at the time of injury. Given Martinez's injuries and the lack of specificity within the law of who needs to offer the better position, a functional impairment analysis is proper here.

The Court notes the hypothetical situations warned by the Commissioner, namely that where a person leaves employment for a job that pays less to change the calculation on purpose, or where workers are deterred from looking for employment in fear that they would risk entitlement benefits under the industrial disability analysis. However, these are not the facts that this Court was presented, and therefore it cannot and will not further address them.

Regardless of the calculation, the Commissioner and the parties agree that a 20 percent impairment rating or 100 weeks of pay is appropriate here. Given that there is substantial evidence that Martinez suffered injuries to three scheduled members, he should be remunerated for the permanent disabilities he sustained.

**RULING AND DISPOSITION**

For all of the reasons set forth above, the Court concludes there was substantial evidence in the record to support the Commissioner's findings of fact. Additionally, the Commissioner correctly stated and applied the law when he held that (1) The Iowa Workers' Compensation Commission did have jurisdiction over Pavlich and (2) Iowa Code 85.16(1) did not apply to this case. The Court also agrees with the overall calculation of benefits to be paid by Pavlich, but finds that under Iowa Code section 85.43(2)(v) Martinez is entitled to the same amount of benefits under a functional impairment analysis and not under industrial disability. The Court further concludes none of the Commissioner's application of the law to these factual findings was irrational, illogical, or wholly unjustifiable. Accordingly, Petitioners' Petition for Judicial Review is hereby **DENIED**.



State of Iowa Courts

**Case Number**  
CVCV060634  
**Type:**

**Case Title**  
PAVLICH INC ET AL VS ZACHARY MARTINEZ  
OTHER ORDER

So Ordered

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Paul D. Scott, District Court Judge,  
Fifth Judicial District of Iowa

Electronically signed on 2021-04-21 14:19:26