

IN THE IOWA DISTRICT COURT  
IN AND FOR POLK COUNTY

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DES MOINES PUBLIC SCHOOLS  
(Employer) and EMC RISK SERVICES,  
LLC. TPA,  
Petitioners,  
  
v.  
  
THOMAS HILDRETH (deceased)  
by JANE HILDRETH (spouse),  
Respondent.

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Case No.: CVCV058103

**ORDER:**

Ruling on Petition  
for Judicial Review

On October 11, 2019, this matter came before the Court on Petitioners' Application for Judicial Review. Petitioners appeared by and through attorney, Valerie Landis. Attorney Gerald Jackson appeared and argued on behalf of Respondent. Having considered the arguments and authority from the parties, and after studying the underlying record herein, the Court enters the following ruling.

**A. FACTUAL AND PROCEDURAL BACKGROUND**

On November 1, 2017, the Deputy Workers' Compensation Commissioner issued an arbitration decision in this matter. Therein, the Deputy Commissioner made certain findings of fact. Unable to improve upon them, this Court will quote them instead:

On or about August 26, 2011, decedent slipped and fell on a wet floor while at work. He suffered a right rotator cuff tear, a lumbar disk injury, and post-concussion syndrome. (Joint Exhibit 10) Following this injury, he continued to have pain and discomfort in his shoulder and low back. He also had vision complaints, tinnitus, and headaches. Those post-concussion headaches progressed into migraines. (JE 8:12) He received physical therapy and medication treatment for the headaches ordered by Donna Bahls, M.D.; Marshall Greiman, M.D., of the Mercy Ears, Nose and Throat clinic suggested that the tinnitus was the result of the head trauma. (JE 12:3)

A psychological evaluation was conducted on April 11, 2012. He scored well and showed no evidence of any cognitive dysfunction. (JE 9:1)

In July 2012, decedent reported to Dr. Bahls that his headaches had abated. She found him to be at maximum medical improvement (MMI) on July 10, 2012. (JE 8:4)

Throughout 2012 and 2013, decedent continued to receive treatments for various ailments arising out of his August 26, 2011, injury, including injections, steroid bursts, physical therapy, and surgery. (JE 1:6; 6) He had

surgery on March 8, 2013, but continued to report problems, relating that his conditions appeared to be worsening. (JE 7:5, 7:3)

On or about October 11, 2013, he presented to Mountain Vista Medical Center with signs of a stroke. He had slurred speech and right eyelid droop. (JE 5:1) A CT of the brain showed "possible acute right basal ganglia infarct." (JE 5:6; 5:8) There was also some suggestion that there was an old injury, or rather, a sign of a previous stroke in the right parietal and left cerebellar region. (JE 5:8)

Treatment was provided, but ultimately decedent died as a result of this stroke on October 16, 2013. (Ex. A:1) The death certificate identified the immediate cause of death as an "acute basilar artery infarction" with the "etiology uncertain." (Ex. A:1)

There are four opinion letters regarding the question of whether the stroke was related to the concussion. Francis Miller, M.D., is a national and international expert in vascular biology. (JE 2:2) For the past twenty-five years, he has routinely cared for patients in the coronary care unit, general medicine wards, outpatient clinics, and cardiac catheterization lab. (Ex. JE 2:2) He opined that decedent did not have the traditional risk factors for stroke:

Mr. Hildreth did not have the traditional risk factors for stroke. For example, review of records show his documented blood pressures ranged from 108-132 mmHG systolic and 78-87 mmHg diastolic. These are within a normal range. Furthermore, he had no history of tobacco use and no hypercholesterolemia. There was no clinical evidence of coronary or peripheral vascular disease. Moreover, review of the electrocardiograms at the time of his stroke shows no evidence of atrial fibrillation or other conditions associated with cardioembolic events. (JE2-2)

He went on to state "[a]s a vascular biologist who investigates the vascular response to injury, it is my opinion that traumatic brain injury can result in functional and structural damage to the vasculature. This opinion is supported by clinical observations that individuals with traumatic brain injury have an increased risk of stroke." (JE 2:3) In conclusion, "based on the clinical presentation and the medical literature," Dr. Miller wrote, "it is my opinion that the traumatic brain injury suffered by Mr. Thomas Hildreth on August 26, 2011, was a substantial contributing cause of his stroke on October 11, 2013." (JE 2:3)

The claimant also included medical literature in support of the causation argument. One is from the American Academy of Neurology and the other is from the International Journal of Research and Public Health. (Hereinafter known as "Taiwanese Study[sic]")(Ex. 6 and 7) Neither article is authored by any of the experts in the case, but Dr. Miller does cite to these

two research papers as a "high quality stud[y] published in peer-reviewed journals" that provide "growing evidence that a prior history of traumatic brain injury increases the subsequent risk of stroke." (JE 2:3)

Michael Jacoby, M.D., is a stroke specialist. He is the director of the Ruan Neurology Clinical Research Center and Mercy Stroke Center. (Ex. D) He is the director of medical education at Mercy Neuroscience Department. (Ex. D) Dr. Jacoby was not able to identify a direct correlation between any injury and the stroke. "No reasonable evidence exists to support a relationship between trauma of any sort and stroke years later," he writes in his May 1, 2017, letter to defendant. (JE 1:8) "There is significant medical literature to support the increased risk of stroke through a natural process of aging that increases to its greatest degree after one reaches the age of 55, even in an otherwise healthy individual." (JE 1:8) Dr. Jacoby continues, "In addition, Mr. Hildreth was not as healthy as claimed. He was obese and the MRI done at the time of his demise showed an old stroke, which is also a very strong risk factor for subsequent stroke." (JE 1:8)

During Dr. Jacoby's examination at hearing, he took issue with the aforementioned studies. He felt that a records review was not as scientifically rigorous as following concussion patients and then documenting their deaths as opposed to sampling records of already deceased patients. He also felt that the sample pool in the studies failed to contain sufficient information to adequately support the hypothesis. In other words, the sample group's medical history was not precise enough to rule out other causes for the individual's death. For instance, the severity of the head trauma was not noted.

The Taiwanese Study concluded that concussion was an independent risk factor and recommended diagnostic and clinical treatment protocols be implemented to treat the concussion as a risk factor. (Ex. 7) The US article's conclusion was that TBI was associated with ischemic stroke and more studies needed to be concluded. Prospective cohort and/or population-based, cross-sectional studies are needed to confirm the association," the article stated. (Ex. 6:6)

Dr. Jacoby testified that at this time, he remained unconvinced that the research is sound enough to draw a causal line between the traumatic brain injury and the stroke.

Dr. Jacoby pointed to other factors as being contributors to decedent's stroke. Age is a primary risk factor, as is smoking, high cholesterol, hypertension, diabetes, prior stroke. Once individuals reach the age of 55, there is a doubling in the risk of stroke because of age, according to Dr. Jacoby.

Decedent was 66 years of age at the time of his stroke. There was evidence of a prior stroke. His medical records do not contain precise tracking of decedent's high blood pressure, cholesterol, or diabetes risk. Decedent's weight was 269 pounds in November 2011 and around 250 pounds

in September 2013. (JE 8:20; JE6:5) His blood pressure was elevated, per Dr. Jacoby's review of the records, but not so high decedent needed a prescription to manage the blood pressure. Dr. Jacoby did not recall or remember that the decedent was a non smoker or non drinker.

Jane Hildreth testified that her husband was in generally good health, but she acknowledged she did not attend his physicals, nor review the medical records.

In a follow-up letter from Dr. Miller, he agreed with some of the points made by Dr. Jacoby in that decedent was at risk for stroke because of his age and that individuals with prior strokes have an increased risk of a subsequent stroke. (JE2:1) However, Dr. Miller maintained the causal connection between the stroke and the traumatic brain injury.

Dr. Miller felt that the prior stroke could have happened after the head trauma given the normal results of the CT taken in 2011 shortly after the concussion occurred. Further, Dr. Miller was frustrated that Dr. Jacoby would not acknowledge the literature that suggests a connection between traumatic brain injury and subsequent stroke. He mentions this twice in his five paragraph letter. (JE 2:1)

The other two experts providing opinions were Marc Hines, M.D., a neurologist in Waterloo, Iowa, who provided more of a medical literature review, and Joe Hawk, M.D., at the Iowa Clinic. (JE 3 and 4)

Dr. Hines, after a summary of various medical articles, opined that decedent was "at risk of stroke as a result of his mild traumatic brain injury" and that according to the studies, a mild traumatic brain injury carries the same increased risk for stroke as does hypertension. "It is, therefore, my opinion, to a reasonable degree of medical certainty, that [the mild traumatic brain injury] is a significant risk factor for the subsequent stroke in Mr. Hildreth." (JE 3:4)

Dr. Hawk agreed that "research into TBI and its long-term medical complications is in its infancy." (JE 4:2) However, "although Mr. Hildreth would be classified as obese, he did not have the other common risk factors for stroke, such as hypertension, atrial fibrillation, diabetes mellitus, hyperlipidemia." (JE 4:3) Dr. Hawk also agreed that decedent's TBI/concussion "likely would have played a significant part in contributing to his stroke." (JE 4:3)

## **B. STANDARD OF REVIEW**

Final decisions rendered by the Iowa Workers' Compensation Commission are reviewed under Iowa Code Chapter 17A, the Iowa Administrative Procedures Act.<sup>1</sup> "Under the Act, [a court] may only interfere with the commissioner's decision if it is erroneous

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<sup>1</sup> *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 768 (Iowa 2016), *reh'g denied* (May 27, 2016); see Iowa Code § 86.26 (2019).

under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced."<sup>2</sup> The standard of review depends on the type of error alleged by the Petitioner.<sup>3</sup>

When, as here, the alleged error is one of fact, the standard of review is whether the findings are supported by substantial evidence.<sup>4</sup> "[A] reviewing court can only disturb those factual findings if they are 'not supported by substantial evidence in the record before the court when that record is reviewed as a whole.'"<sup>5</sup> Additionally, in workers' compensation cases, factual questions are "delegated by the legislature to the [C]ommissioner."<sup>6</sup> Consequently, the Court does not apply a "scrutinizing analysis" to factual findings of the Commissioner, but only reverses the Commissioner's findings if they are not supported by substantial evidence.<sup>7</sup>

"Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion."<sup>8</sup> The Court is "not to determine whether the evidence supports a different finding; rather, our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made."<sup>9</sup>

### C. DISCUSSION

The issue in this Petition for Judicial Review is not whether the commission correctly decided the etiology of Mr. Hildreth's stroke. Rather, the issue is whether there is sufficient evidence in the record to support the commission's conclusion that the stroke that claimed Mr. Hildreth's life in October 2013 and was causally related to the concussion he sustained

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<sup>2</sup> *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006).

<sup>3</sup> *Jacobson Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010).

<sup>4</sup> *Harris*, 778 N.W.2d at 196; *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 557 (Iowa 2010).

<sup>5</sup> *Burton*, 813 N.W.2d at 256 (quoting Iowa Code § 17A.19(10)(f)).

<sup>6</sup> *Larson Mfg. Co., v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

<sup>7</sup> *Mercy Med. Ctr. v. Healy*, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011) (citing *Midwest Ambulance Serv. v. Ruud*, 754 N.W.2d 860, 864, 866 (Iowa 2008)).

<sup>8</sup> *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002) (citing *Ehteshamfar v. UTA Engineered Sys. Div.*, 555 N.W.2d 450, 452 (Iowa 1996)).

<sup>9</sup> *Cedar Rapids Community School District v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (internal citations and quotations omitted).

in August 2011. Because the issue is one of medical causation, the sufficient evidence standard turns on the weight, quality, and credibility of expert testimony.

Here, the commission examined the testimony of two experts,<sup>10</sup> Dr. Miller and Dr. Jacoby, both of whom are highly respected, well-credentialed medical professionals.

Francis Miller, M.D., is a national and international expert in vascular biology. For the past twenty-five (25) years, Dr. Miller has cared for patients in coronary care units, general medicine wards, outpatient clinics, and cardiac catheterization labs. (Ex. JE 2:2) Unlike Dr. Jacoby, and at the risk of oversimplifying his expertise, Dr. Miller is a cardiologist.

The foundation of Dr. Miller's testimony appears to be two journal articles: One is from the American Academy of Neurology, and the other is from the International Journal of Research and Public Health. Both articles suggest a connection between traumatic brain injury and subsequent strokes. Building on that foundation, Dr. Miller searched for other factors that would have made Mr. Hildreth a higher stroke risk. Having failed to discover any documented high blood pressure, history of tobacco use, high cholesterol, atrial fibrillation, or other conditions associated with cardioembolic events, Dr. Miller opined that the stroke Mr. Hildreth suffered and died from in 2013 was causally related to the concussion he sustained in August 2011.

Michael Jacoby, M.D., is the director of the Ruan Neurology Clinical Research Center and Mercy Stroke Center. He is also the director of medical education at Mercy Neuroscience Department. (Ex. D) At the risk of oversimplifying his expertise, he is a stroke specialist.

Dr. Jacoby opined that Mr. Hildreth's concussion and his subsequent stroke in October 2013 were not causally related. (Jt. Ex. 1 p. 7.) In support of that position, Dr. Jacoby posited a number of undisputed explanations. First, Dr. Jacoby explained that Mr.

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<sup>10</sup> While four experts provided opinions, the deputy commissioner concluded those of Dr. Jacoby and Dr. Miller carried greater weight. As it related to the other two experts, the deputy commissioner concluded, "Dr. Hawk and Dr. Hines did not display the medical knowledge and experience of Dr. Jacoby and Dr. Miller."

Hildreth's death was due primarily to occlusion or clots blocking the basilar artery. He explained that with age, more clots form that may occlude a blood vessel, including a critical blood vessel, such as the basilar artery. (Jt. Ex. 1 p. 7.) Second, the records at the time of Mr. Hildreth's stroke in October of 2013 included a CT and an MRI of the brain that showed evidence of a previous stroke, suggesting premorbid risk or another risk factor for stroke. (Jt. Ex. 1 p. 8.) Third, Mr. Hildreth was medically classified as obese; yet another factor which increased his risk of stroke. (Jt. Ex. 1 p. 8.) Critically, at no point did Dr. Miller challenge Dr. Jacoby's analysis concerning the *primary* risk factors for a stroke (age, prior history of stroke, and obesity). Instead, Dr. Miller, challenged Dr. Jacoby's ultimate conclusion of no causation.

In rejecting the theory that Mr. Hildreth's death was causally connected to his fall in August 2011, Dr. Jacoby made several observations. First, Mr. Hildreth lost consciousness briefly, suggesting only a mild concussion. Furthermore, a CT of Mr. Hildreth's brain at that time was negative, which is indicative of a lack of severity of any concussion. (Jt. Ex. 1 p. 2.) Finally, whatever headaches Mr. Hildreth complained of following his August 2011 concussion abated approximately one year before the October 2013 stroke.

Dr. Jacoby expressed reservations concerning the two studies Dr. Miller relied upon for two reasons. First, the International Journal of Research and Public Health article was "based on research that used objectionable methodology not appropriate for this type of scientific study, including retrospective analysis, selection bias, and a lack of definition of concussion or traumatic brain injury and of stroke as referred to in these studies." (Tr. pp. 19-20 and 21-28.) This Court was unable to find anything in Dr. Miller's testimony that rebutted Dr. Jacoby's criticism regarding methodology. Second, and as Petitioners correctly note, the authors of the American Academy of Neurology article injected uncertainty in their own conclusions by acknowledging the need for additional studies concerning the connection between traumatic brain injuries and strokes. (Tr. pp. 29 and 62-63.) It is precisely because of this uncertainty that the opinions expressed in the medical literature presented to the commission have not been accepted into the main body of medical knowledge. Whether the commission found the studies compelling because they

were “nationwide, population-based” or “involved over a million subjects” is immaterial. What is material is whether the scientific and medical communities have accepted the studies as scientifically or medically valid. At best, the studies Dr. Miller relied upon (and the commission gave credence to) have simply opened a discussion in the medical community concerning the causality between traumatic brain injuries and subsequent strokes. Opening a discussion, however, is not the same as drawing conclusions to reasonable degree of scientific certainty.

Therefore, while the commission may accept or reject any expert opinion in whole or in part, the commission’s decision here is based on evidence that, at this stage, is merely conjectural. Without that evidence, there is insufficient evidence in the record to support the commission’s conclusion that the stroke that claimed Mr. Hildreth’s life in October 2013, was causally related to the concussion he sustained in August 2011.

**D. CONCLUSION**

For all of the foregoing reasons, Petitioner’s Application for Judicial Review should be and is hereby GRANTED.

**ORDER**

IT IS THEREFORE ORDERED, Petitioner’s Application for Judicial Review should be and is hereby GRANTED.

IT IS FURTHER ORDERED decision of the Iowa Workers’ Compensation Commissioner should be and is hereby REVERSED.

IT IS FURTHER ORDERED that each party shall pay their own costs in prosecuting or defending this action.

So Ordered.





State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV058103  
**Case Title** DES MOINES PUBLIC SCHOOLS ET AL VS JANE HILDRETH

So Ordered

A handwritten signature in black ink, appearing to read 'David Porter', written over a horizontal line.

David Porter, District Court Judge,  
Fifth Judicial District of Iowa