E-FILED 2020 JUN 01 10:07 AM LINN - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

Cynthia S. Mahoney,	)	
	)	
Petitioner,	)	
	)	**No. CVCV094466**
vs.	)	
	)	**RULING**
RHI, Insurance Co. of the State of	)	
Pennsylvania, and Second Injury Fund,	)	
	)	
Respondents.	)	

On this date, the Petition for Judicial Review filed by Petitioner came before the undersigned for review. The Court finds a hearing on the Petition is unnecessary. Having considered the file, relevant case law, and written arguments of counsel, the Court hereby enters the following ruling:

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner filed petitions for arbitration seeking workers' compensation benefits from her employer, RHI; the Insurance Co. of the State of Pennsylvania; and the Second Injury Fund of Iowa, regarding an injury that occurred on October 20, 2014. A hearing took place before Deputy Workers' Compensation Commissioner Joseph L. Walsh, who issued an Arbitration Decision on March 28, 2018. The issues and stipulations are summarized by Deputy Walsh:

> All parties stipulated that the claimant sustained an injury which arose out of and in the course of her employment on October 20, 2014. The injury affected the claimant's left arm. All parties have stipulated that the injury is a cause of both temporary and permanent disability. While the defendants admit that there is some permanent partial disability, the extent of functional disability in the left arm is disputed. The commencement date for benefits is also disputed. The elements which comprise the rate of compensation are stipulated and based upon this stipulation, I find the appropriate rate of compensation is $590.26 per week. Affirmative defenses have been waived. There is no claim for medical benefits. Defendants claim an overpayment of both temporary and permanency benefits. The claimant alleges she suffered a prior injury on October 16, 2006, which resulted in a functional disability to her right arm. The claimant alleges that she is entitled to Second Injury Fund benefits. The Fund denies this. If claimant is entitled to industrial disability benefits through the extent of industrial disability is disputed, as well as the amount of the credits.
> …
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> The claimant has alleged she sustained a cumulative trauma injury on March 2, 2015. The defendants, including the Fund, dispute that claimant sustained an injury which arose out of and in the course of employment. All defendants further assert that the claimant did not provide legal notice of such injury under Section 85.23. If an injury did manifest, the defendants dispute that it is a cause of any temporary or permanent disability. The

> claimant contends the alleged injury is a cause of a permanent loss of function of her right arm. Defendants dispute this and the commencement date of any benefits owed, is disputed. The elements which comprise the rate of compensation are stipulated, and based upon those stipulations I find that the weekly rate of compensation is $562.54 per week. Other than the affirmative defense of notice, all other affirmative defenses have been waived. Claimant seeks an independent medical evaluation as set forth in claimant's exhibit 9. There is no claim for other medical expenses. The claimant further alleges that this alleged work injury entitles her to Second Injury Fund benefits as a result of this injury. The Fund denies this.

See Arbitration Decision, pp. 1-2.

Deputy Walsh went on to make the following findings of fact (citations within Deputy Walsh's Decision are omitted):

> Cynthia Mahoney is a pleasant, married 58-year-old resident of Cedar Rapids, Iowa. She has a master's degree in accounting as well as a law degree, although she has never sought a law license. She is an intelligent, articulate and professional woman, who presented as highly organized and competent. She is right handed.
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> Ms. Mahoney testified at hearing and I find her to be highly credible. Her testimony was highly consistent with the records in the file, including medical documentation. Her testimony was consistent with her previous discovery answers in the record, including her sworn deposition. Her demeanor was straightforward and factual. She is an excellent historian. There was certainly nothing about her demeanor which would cause me any concern regarding her truthfulness.
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> Ms. Mahoney has worked primarily as an accountant for various firms. From 1993 through 2010, she worked for Pearson's as a senior accountant. Her annual earnings exceeded $60,000.00 per year plus bonuses. Much of her more recent employment has been assigned through employment staffing agencies, although it is generally the same type of work. Based upon the record before me, I believe the claimant is very good at what she does. She has high-demand skills.
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> In October 2006, Ms. Mahoney suffered a significant injury to her right arm and wrist. During a traffic accident, she testified she shattered bones in her right wrist. The parties all concede claimant suffered this injury. In this injury, claimant suffered a "distal radius and ulnar fracture requiring closed reduction intraoperatively." She was treated at St. Luke's. She was treated by Lisa Coester, M.D. According to records reviewed by Robin Sassman, M.D., claimant continued to follow up with right-sided complaints in September 2007, and had ongoing difficulties through 2012 and 2013.
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> Following her 2006 traffic accident, the claimant continued to work in accounting. The traffic accident, at that time, had very little impact on her employment or her employability. She was not given an impairment rating or permanent restrictions at that

time. She undoubtedly, however, suffered some permanent functional impairment in her right hand and arm from this injury.

In October 2014, claimant worked for Robert Half International, which claimant also referred to as Account Temps (hereafter, "RHI"). She began taking assignments from RHI in 2011. On October 20, 2014, Ms. Mahoney suffered an injury to her left wrist and arm which arose out of and in the course of her employment. She was assigned to a job at Transamerica at that time. On that date, she tripped on a trash can in her cubicle and stumbled. When she did so, her left hand and arm hit a beam positioned between the cubicle walls and "shattered bones" in her left wrist. She was immediately evaluated at St. Luke's Hospital and began undergoing a course of treatment directed and authorized by her employer.

After an appropriate work-up, Ms. Mahoney was diagnosed with fractures of the distal radius and ulna with intra-articular extension. Timothy Loth, M.D., became her authorized treatment provider through Physicians' Clinic of Iowa (PCI). He performed surgery on her left wrist on November 7, 2014, described as open reduction and internal fixation left distal radius three part fracture, intra-articular; closed treatment distal ulna fracture. She followed up with Dr. Loth through the end of 2014 and began attending occupational therapy in January 2015 where she had numerous visits up through April 8, 2015.

RHI assigned claimant a position with Tax Act in this timeframe. The job at Tax Act was different than the work she performed for Transamerica. Ms. Mahoney testified it was much faster paced and involved much more keyboarding. Shortly after she started working at the Tax Act position she started having a new pain and numbness in her right hand which she attributed to her work activities. She was not allowed to have treatment on her right hand, however, until such treatment was approved through the insurance carrier. Ms. Mahoney testified she reported the problems to Yvonne King and asked for authority for treatment. On March 2, 2015, she complained of "aching in both wrists by the end of the day" and was diagnosed with "right intersection syndrome with physiologic cramping." She was offered an injection on the right which she refused due to her concerns about authorization. Melissa Fagan, ARNP, recommended an ergonomic evaluation of her work station at that time as well as occupational therapy. Ms. Mahoney had some occupational therapy but ended up leaving the Tax Act job due to her condition.

In May 2015, Dr. Loth authored a letter opining that her right arm symptoms were "not directly related to her October 2014 injury." Thereafter, Ms. Mahoney continued to follow up on her left arm condition. Dr. Loth released Ms. Mahoney from care in November 2015, with a 3 percent functional impairment rating of her left arm and restrictions of no lifting more than 20 pounds with no forceful use of the left hand.

Since November 2015, Ms. Mahoney has continued to accept assignments within her restrictions from RHI, including higher level accounting positions with Transamerica and Terex. She has been able to perform these jobs without any significant difficulty.

> Claimant did testify that she is no longer able to perform the faster-paced work, such as she performed for Tax Act and Pearson's due to recurrent pain in her bilateral arms. She has not accepted any assignments such as this since her work injury. Ms. Mahoney did suffer a loss of earnings in 2014 and 2015 as reflected in her W-2s. This was the period of time she was receiving treatment on her hands, wrists and arms.
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> In February 2017, Ms. Mahoney was evaluated by Robin Sassman, M.D., for purposes of a second opinion evaluation. Dr. Sassman reviewed all of the appropriate medical records and had an accurate history of the course of events. She performed an evaluation as well, noting "numbness in the anterior aspect of the [sic] both wrists," as well as aching in the 4th and 5th digits of both hands. She assigned an impairment rating of 12 percent of the left arm causally-related to her October 2014, work injury. For the right arm, she assigned a 3 percent left arm impairment for tenosynovitis, which she attributed to a new, repetitive motion injury in 2015. She also assigned a 10 percent left arm rating causally connected to the 2006 motor vehicle accident. She assigned permanent restrictions attributable to a combination of injuries.
>
> There are also expert vocational reports in the record. At her attorney's request, Ms. Mahoney was evaluated by Barbara Laughlin in April 2017. She assessed a substantial loss of employability based upon her inability to return to past employment. At the Fund's request, Rene Haigh also prepared a report in April 2017. Utilizing the restrictions only assigned by Dr. Loth, she opined claimant is able to maintain employment in the light work category. The vocational experts provided more detailed analysis in rebuttal reports.

See Arbitration Decision, pp. 2-4.

After citing to the applicable legal authorities, Deputy Walsh entered the following conclusions of law (the Court has omitted the legal authorities cited by Deputy Walsh):

> The first question is the extent of claimant's left arm functional disability.
> …
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> Having reviewed all of the medical and lay evidence, I conclude that the claimant has suffered a 12 percent loss of function to her left arm as a result of her October 2014, work injury. The rating provided by Dr. Sassman is more consistent with the symptoms and limitations described by claimant in testimony. Therefore, claimant is entitled to 30 weeks of compensation at the stipulated rate of compensation.
>
> The next issue is whether the claimant has proven a first qualifying injury and disability such that Second Injury Fund liability is triggered.
> …
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> The question presented is whether the claimant's October 2006 auto accident resulted in a first qualifying loss under the Act. I find that it did. The Fund argues that the claimant never suffered any industrial loss between 2006 and 2014. She worked unrestricted

during this period of time. The right arm had never resulted in any permanent restrictions or and had not been rated until after her October 2014, work injury. While this is true, there is no doubt in this record that Ms. Mahoney broker her wrist in that accident and it never fully healed. She had an actual permanent functional loss of use of her right arm which preexisted the injury and permanent disability in her left arm. Based upon the evidence in the record, I find that the claimant had suffered a 10 percent loss of function of her right arm prior to the March 2014, work injury. This is exactly the purpose of the Second Injury Fund. I therefore conclude that the Second Injury Fund Act is applicable.

The next issue is the extent of industrial disability.
…

While Ms. Mahoney has demand work skills and is highly educated, she is, in fact, an older worker. I find the restrictions set forth by Dr. Loth are the most accurate reflection of claimant's work restrictions in the record. The primary problem with Dr. Loth's restrictions is that he made no consideration of claimant's preexisting right arm difficulties in his assessment. He restricted claimant from lifting more than 20 pounds and recommended that she avoid the forceful use of her left hand.

Ms. Mahoney immediately ceased working in the position where she was assigned to work for Tax Act when her symptoms failed to resolve while performing faster-paced repetitive work. She has refused certain assignments from RHI and has not looked for assignments which involve fast-paced repetitious use of her hands and arms. I find that this is related to a combination of her October 2014, work injury and her earlier right arm disability. Her restrictions undoubtedly make her a less attractive candidate in the competitive job market in spite of her advanced education, training and experience. She has to be more selective about what types of accounting positions she accepts.

Having stated this, it is also true that claimant had already, in approximately 2011, transitioned into a work career where she primarily worked in temporary job assignments through RHI. She had decided, based upon a variety of factors, including the reality of the job market, to transition to this type of work life before the work injury occurred. The combination of her disabilities simply makes it more difficult for her, as an older worker, to secure assignments regularly and consistently. I find it is likely there will be longer periods between assignments, as well as a requirement to occasionally accept positions for which she is overqualified, such as call center work. Considering all of the factors of industrial disability, I find claimant has suffered a 30 percent loss of access to the competitive job market.

This finding entitles claimant to 150 weeks of benefits minus the 30 weeks for her left upper extremity functional loss and 25 weeks for her preexisting right upper extremity functional loss. Therefore, claimant is entitled to 95 weeks of compensation from the Second Injury Fund of Iowa.

> The next issue is whether the claimant sustained a new cumulative injury to her right arm which arose out of and in the course of employment which manifested on or about March 2, 2015.
> …
>
> I find that the claimant has failed to meet her burden of proof that she suffered a new cumulative injury which manifested in March 2015. While the claimant did suffer some new symptoms during that timeframe, I do not find the quality of evidence in this record to qualify these symptoms as a new, distinct work injury. The claim was not worked up independently. Other than Dr. Sassman, no physician has opined that she suffered a new work injury. Ms. Mahoney had consistently experienced symptoms and difficulties in her right wrist from the auto accident as late as 2012 and 2013. It appears that, at most, she suffered a temporary aggravation of her other impairments set forth above. Moreover, I find that, even if she did suffer a new work injury, it did not substantially increase her loss of function in her right arm.

See Arbitration Decision, pp. 5-9.

Petitioner filed a motion for rehearing before Deputy Walsh, which Deputy Walsh addressed in a Ruling on Rehearing filed May 1, 2018 (citations are omitted):

> On March 28, 2018, I entered an arbitration decision which broadly accepted the parties' stipulation regarding credit.
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> On April 17, 2018, claimant filed a Motion for Rehearing, seeking a more specific ruling on the credit issue. Claimant argues that defendants are seeking a credit for the full amount of an overpayment paid to claimant against this award. Defendants' employer and insurance carrier have not filed a resistance, although they did set forth their position regarding credit in their brief.
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> The claimant is correct that I did not address the issue with the necessary specificity as requested by the parties in their Hearing Report and Order. The defendant employer and insurance carrier are, in fact, seeking a credit for all benefits paid against the award of permanency in this case. The defendant employer and insurance carrier are not entitled to such a credit under the Iowa Supreme Court decision in Swiss Colony v. Deutmeyer, 789 N.W.2d 129, 136 (Iowa 2010). I read Deutmeyer to strictly limit such credit in Iowa Code section 85.34 to future benefits. I am bound by this decision. As a result, defendants employer and insurance carrier are only entitled to a credit for the overpayments against future benefits for a subsequent injury and not against future benefits for this injury.
>
> Defendants' credit is limited to seven point five (7.5) weeks of benefits at the stipulated rate of five hundred ninety and 26/100 dollars ($590.26).

See Ruling on Rehearing, pp. 1-2.

Petitioner and the Second Injury Fund filed appeals to the Iowa Workers' Compensation Commissioner. Commissioner Joseph S. Cortese II issued an Appeal Decision on November 8, 2019. After setting forth the procedural history for Petitioner's claims, Commissioner Cortese found as follows (certain citations to the record and legal authorities are omitted):

> Claimant asserts on appeal that the deputy commissioner erred in File No. 5056922 in finding claimant did not sustain a compensable, cumulative work injury to her right upper extremity on or about March 2, 2015. Claimant further asserts the deputy commissioner erred in failing to address the other issues raised in File No. 5056922. Specifically, claimant asserts the deputy commissioner erred in not addressing the extent of permanent functional disability caused by the alleged March 2, 2015, work injury. Claimant asserts the deputy commissioner erred in not assessing penalty benefits for defendant employer and defendant insurer's unreasonable denial of benefits related to the alleged March 2, 2015, cumulative injury. Lastly, claimant asserts the deputy commissioner erred in not assessing the extent of claimant's industrial disability as a combined result of the October 2014 and March 2015 injuries.
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> The Fund asserts on cross-appeal that the deputy commissioner erred in File No. 5056921 in finding claimant sustained a first qualifying injury of the right upper extremity on October 16, 2006. The Fund also asserts the deputy commissioner erred in finding claimant sustained industrial disability in excess of Fund credits. Lastly, the Fund asserts the deputy commissioner erred in assessing costs against the Fund.
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> Defendants RHI and ICSP assert on appeal that the arbitration decision should be affirmed in its entirety.
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> Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.
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> I have performed a de novo review of the evidentiary record and the detailed arguments of the parties and I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.
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> Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on March 28, 2018, which relate to the issues properly raised on intra-agency appeal.
>
> In File No. 5056921, I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that the claimant sustained scheduled member functional impairment of 12 percent of the left upper extremity as a result of the October 20, 2014, work injury which entitles her to receive 30 weeks of PPD benefits from defendants employer and insurer, commencing November 18, 2015. I affirm the deputy commissioner's finding that pursuant to Iowa Code section 85.64, claimant is entitled to receive benefits from the Fund as claimant sustained a first qualifying injury to her right

upper extremity on October 16, 2006, and because claimant's October 20, 2014, work-related left upper extremity injury is a second qualifying injury. I affirm the deputy commissioner's finding that the combined effects of the two injuries result in 30 percent industrial disability, which entitles claimant to 150 weeks of PPD benefits, less credit to the Fund. I affirm the deputy commissioner's finding that the Fund is entitled to a credit of 25 weeks of PPD benefits for the October 16, 2006, first injury and a credit of 30 weeks of PPD benefits for the October 20, 2014, second injury for a total credit of 55 weeks of PPD benefits. I affirm the deputy commissioner's finding that after the deduction of the credit, claimant is entitled to receive 95 weeks of PPD benefits from the Fund commencing 30 weeks after November 18, 2015. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues.

In File No. 5056922, I find the deputy commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof that she sustained a cumulative injury to her right upper extremity arising out of and in the course of her employment on or about March 2, 2015. Because I affirm the deputy commissioner's finding that claimant failed to carry her burden of proof on the issues of causation and compensability, I affirm the deputy commissioner's finding that it is unnecessary to address the other issues raised in the arbitration proceeding.

I affirm the deputy commissioner's findings, conclusions and analysis regarding all of the above issues. I provide the following additional analysis for my decision:

Further analysis is appropriate to respond to the Fund's assertions regarding costs. The Fund seeks clarification with respect to the deputy commissioner's general order that, "costs are taxed to defendants."

The Second Injury Fund does not provide for costs to be paid by the Fund. Iowa Code section 85.64. Additionally, subsection 2 of Iowa Code section 85.66, which codifies the creation of the Fund, specifically states, in pertinent part "…Moneys collected in the second injury fund shall be disbursed only for the purposes stated in this subchapter, and shall not at any time be appropriated or diverted to any other use or purpose." The plain language of Iowa Code section 85.66 does not allow for the assessment of costs against the Fund.

Therefore, I amend the arbitration decision to reflect claimant is entitled to reimbursement from RHI and ICSP for costs associated with the underlying arbitration decision. Claimant is not entitled to reimbursement for costs from the Fund.

See Appeal Decision, pp. 2-4.

Petitioner has filed a Petition for Judicial Review with this Court, seeking review of the final agency action of the Iowa Workers' Compensation Commissioner. Petitioner has argued that the agency abused its discretion in determining Petitioner did not suffer a cumulative trauma

claim on March 2, 2015. Petitioner contends Commissioner Cortese erred in rejecting the only expert medical opinion in the record to render a causation opinion on Petitioner's cumulative trauma injury. Petitioner also contends that, with her credible testimony, the medical records, and an unrebutted expert medical opinion, she has met her burden of establishing a permanent cumulative trauma injury to her right arm. Petitioner requests the Court find that she sustained a cumulative trauma claim on March 2, 2015, and remand the case back to the agency for additional findings regarding the extent of impairment, penalties, and the extent of Second Injury Fund benefits, if any. Petitioner asserts the record supports a finding of a 3% functional loss of use associated with the injury. Petitioner further asserts that RHI failed to conduct a reasonable investigation, asking Dr. Loth a legally irrelevant question and failing to further investigate the claim upon receipt of Dr. Sassman's report. Petitioner claims penalty benefits should be assessed, and on remand, the agency should find Petitioner has suffered from substantial industrial loss associated with her claim for Second Injury Fund benefits.

RHI and ICSP have filed a brief in response to Petitioner's claims on judicial review. RHI and ICSP argue that there is substantial evidence to support the agency's decision that Petitioner did not sustain a compensable, cumulative work injury to her right upper extremity on or about March 2, 2015. The Second Injury Fund has joined in RHI's and ICSP's argument.

Petitioner replies that she has demonstrated and met her burden of proof that she had sustained a new cumulative workplace injury that manifested on March 2, 2015.

CONCLUSIONS OF LAW

Petitioner is entitled to judicial review of this action pursuant to Iowa Code § 17A.19 (2019). Iowa Code § 17A.19(10) provides:

> The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:
>
> a. Unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied.
>
> b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.
>
> c. 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.
>
> d. Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process.

e. The product of decision making undertaken by persons who were improperly constituted as a decision-making body, were motivated by an improper purpose, or were subject to disqualification.

f. 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. For purposes of this paragraph, the following terms have the following meanings:

(1) "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.

(2) "Record before the court" means the agency record for judicial review, as defined by this chapter, supplemented by any additional evidence received by the court under the provisions of this chapter.

(3) "When that record is viewed as a whole" means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.

g. Action other than a rule that is inconsistent with a rule of the agency.

h. Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.

i. The product of reasoning that is so illogical as to render it wholly irrational.

j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.

k. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy.

l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

m. Based 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.

n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

Iowa Code § 17A.19(10) (2019).

"A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter." Iowa Code § 17A.19(1) (2019). "Iowa Code section 17A.19(8)(g) authorizes relief from agency action that is 'unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.'" Dico, Inc. v. Emp. Appeal Bd., 576 N.W.2d 352, 355 (Iowa 1998). "These terms have established meanings: 'An agency's action is "arbitrary" or "capricious" when it is taken without regard to the law or facts of the case…Agency action is "unreasonable" when it is "clearly against reason and evidence."'" Id. (citing Soo Line R.R. v. Iowa Dep't of Transp., 521 N.W.2d 685, 688-89 (Iowa 1994)). "An abuse of discretion occurs when the agency action 'rests on grounds or reasons clearly untenable or unreasonable.'" Id. (citing Schoenfeld v. FDL Foods, Inc., 560 N.W.2d 595, 598 (Iowa 1997)). The Iowa Supreme Court has stated that an "abuse of discretion is synonymous with unreasonableness, and involves a lack of rationality, focusing on whether the agency has made a decision clearly against reason and evidence." Id. (citing Schoenfeld, 560 N.W.2d at 598).

"Section 17A.19[10] provides that a party may successfully challenge an agency decision when the party's substantial rights have been prejudiced because the agency action 'is unsupported by substantial evidence' or 'is affected by other error of law.'" Titan Tire Corp. v. Emp. Appeal Bd., 641 N.W.2d 752, 754 (Iowa 2003). Factual findings are reversed "only if they are unsupported by substantial evidence in the record made before the agency when the record is viewed as a whole." Loeb v. Emp. Appeal Bd., 530 N.W.2d 450, 451 (Iowa 1995). "Evidence is substantial if a reasonable mind would find it adequate to reach the same conclusion. Id. (citing Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845, 849 (Iowa 1995)). "The agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence." Id. (citing Dunlavey, 526 N.W.2d at 849).

"Substantial evidence is '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.'" University of Iowa Hospitals and Clinics v. Waters, 674 N.W.2d 92, 95 (Iowa 2004). "'While "courts must not simply rubber stamp the agency fact finding without engaging in a fairly intensive review of the record to ensure that the fact finding is itself reasonable ⋯ evidence is not insubstantial merely because it would have supported contrary inferences.'" Id. "'The substantial evidence rule requires to review the record *as a whole* to determine whether there is sufficient evidence to support the decision the commission made.'" Stark Const. v. Lauterwasser, No. 13-0609, 2014 WL 1495479, *8 (Iowa Ct. App. 2014) (citing Woodbury Cnty. v. Iowa Civil Rights Comm'n, 335 N.W.2d 161, 164 (Iowa 1983)).

"[T]he agency is not required to mention each item of evidence in its decision and explain why it found the evidence persuasive or not persuasive." Keystone Nursing Care Center v. Craddock, 705 N.W.2d 299, 305 (Iowa 2005). "While it is true that the commissioner's decision must be 'sufficiently detailed to show the path he has taken through conflicting evidence,'…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." Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 274 (Iowa 1995). "Such a requirement would be unnecessary and burdensome." Id.

If a "claim of error lies with the agency's interpretation of the law, the question on review is whether the agency's interpretation was erroneous, and we may substitute our interpretation for the agency's." Meyer v. IBP, Inc., 710 N.W.2d 213, 219 (Iowa 2006). "Still, if there is no challenge to the agency's findings of fact or interpretation of the law, but the claim of error lies with the ultimate conclusion reached, then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." Id. "In sum, when an agency decision on appeal involves mixed questions of law and fact, care must be taken to articulate the proper inquiry for review instead of lumping the fact, law, and application questions together within the umbrella of a substantial-evidence issue." Id.

Petitioner has argued that the agency abused its discretion in determining Petitioner did not suffer a cumulative trauma claim on March 2, 2015, ignored important and relevant evidence, and asserted erroneous facts. Petitioner states that the only medical opinions are from Dr. Sassman and Dr. Loth, and Petitioner argues Dr. Loth's opinion does not address Petitioner's cumulative trauma claim, but rather answers a question posed by the workers' compensation adjuster. Petitioner further argues there are no medical opinions contrary to that presented by Dr. Sassman. Petitioner notes that Deputy Walsh specifically found her testimony to be very credible, yet the record does not support a finding that she had consistently experienced symptoms and difficulties in her right wrist from the auto accident as late as 2012 and 2013. Petitioner relies on her own testimony that she began experiencing new symptoms associated with the significant amount of keyboarding she was doing when she began working at Tax Act, and states the condition was diagnosed by three medical providers and forced Petitioner to stop doing this kind of fast-paced work. Petitioner contends her actions are not consistent with no injury, or with a temporary injury. Petitioner also contends she has met her burden of establishing a permanent cumulative trauma injury to her right arm on or about March 2, 2015.

The Court concludes that substantial evidence supports the agency's ruling that Petitioner did not sustain a compensable, cumulative work injury to her right upper extremity on or about March 2, 2015. It is clear that the agency considered the testimony of Petitioner and of Dr. Sassman. However, when this testimony is considered in light of the other arm symptoms described by Petitioner, including as a result of her 2006 car accident and resulting surgery, as well as her description of the effects the symptoms had on her over the years, there is substantial evidence in the record to support a conclusion that Petitioner has not established a permanent cumulative trauma injury to her right arm on or about March 2, 2015. The agency also could view the work Petitioner performed at Tax Act as differing from the description provided by Petitioner, particularly when the testimony of the senior staffing manager, Gina Carson, is

considered. Further, there is substantial evidence in the record to provide a basis for the agency to conclude that Dr. Sassman's opinion is not persuasive, including with regard to Dr. Sassman's opinion having been based on what the agency could have found as inaccurate facts provided by Petitioner regarding her job description at Tax Act, as well as when her wrist symptoms actually started.

While Petitioner has argued that the agency failed to consider important and relevant evidence, the Court finds that the thorough decisions issued by Deputy Walsh and Commissioner Cortese establish that the agency did, in fact, consider all of the evidence presented by Petitioner, but did not find this evidence sufficient for Petitioner to meet her burden of proof on her claim. The issue before the Court is not whether this Court would have reached a different conclusion. It is whether the agency had substantial evidence to support its conclusion, or made any error of law in reaching its conclusion. There is substantial evidence in the record to support the agency's conclusion, and the Court finds the agency committed no error of law in reaching its conclusion. The agency's decision should be affirmed, and Petitioner's request for relief on judicial review should be denied.

RULING

IT IS THEREFORE ORDERED that the agency action in this case is affirmed. Petitioner's request for relief on judicial review is denied. If there are costs to be assessed, they are assessed to Petitioner.

Clerk to notify.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV094466	CYNTHIA S MAHONEY VS RHI ETAL

So Ordered

Christopher L. Bruns

Christopher L. Bruns, District Court Judge
Sixth Judicial District of Iowa