



# SIMMONS PERRINE MOYER BERGMAN PLC

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November 7, 2022

Deputy James Christenson *sent via email* james.christenson@iwd.iowa.gov  
Deputy Workers' Compensation Commissioner  
Iowa Workforce Development  
150 Des Moines Street  
Des Moines, Iowa 50309-1836

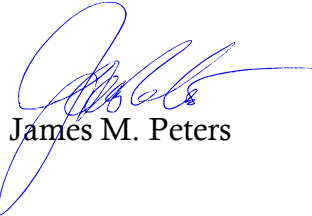
RE: Claimant: Joseph Moyer  
Employer: Interstate Power & Light Co.  
DOI: 3-20-12  
File No: 5047944.01

Dear Jim:

Please find enclosed Polk County District Court's Ruling on our Petitioner's Petition for Judicial Review.

Thank you.

Very truly yours,



James M. Peters

JMP/jl

Cc: Mark Sullivan

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**IN THE IOWA DISTRICT COURT FOR POLK COUNTY****INTERSTATE POWER & LIGHT CO.,**

Defendant/Petitioner,

vs.

**JOSEPH MOYER,**

Claimant/Respondent.

**Case No. CVCV063401****RULING ON PETITIONER'S  
PETITION FOR JUDICIAL REVIEW**

This matter was previously before the Court for hearing on Petitioner's Petition for Judicial Review filed March 31, 2022. Petitioner, Interstate Power & Light Co. (Interstate Power), appeared through Attorney James Peters. Respondent, Joseph Moyer (Moyer), was represented by Attorney Zeke McCartney. After hearing the arguments of Counsel and reviewing the court file, including the briefs filed by the parties and the Certified Administrative Record, the Court now enters the following ruling.

**I. BACKGROUND PROCEEDINGS**

On March 20, 2012, Moyer sustained a work-related injury when the outrigger on a boom truck smashed his right foot. Moyer's subsequent request for workers' compensation benefits came for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch. In her March 16, 2017 arbitration decision Deputy Fitch:

"(1) found claimant failed to prove the work injury was a cause of permanent disability of his right knee, right hip, or low back; (2) found claimant established he sustained permanent impairment of 15 percent of his right lower extremity, as opposed to his right foot, entitled claimant to receive 33 weeks of permanent partial disability benefits at the weekly rate of \$866.74, commencing on November 8, 2012; (3) ordered defendant to pay claimant's medical expenses and medical mileage; (4) awarded claimant alternate medical care with Kobusch Chiropractic for his low back and right hip pain caused by changes in his gait; (5) found while claimant established a second qualifying loss of his right lower

extremity, he failed to prove he sustained a first qualifying loss of his left knee, and therefore, claimant was not entitled to receive benefits from the Second Injury Fund of Iowa; and (6) ordered defendant to pay a portion of claimant's costs."

Certified Record (CR), Part 1, p. 11.<sup>1</sup>

Moyer appealed the March 16, 2017 arbitration decision. Interstate Power cross-appealed. The Commissioner filed his decision on November 15, 2018, adopting the findings of Deputy Fitch and affirming the arbitration decision in its entirety, with some additional analysis. Moyer then sought judicial review. The District Court dismissed Moyer's Petition for Judicial Review and affirmed the Commissioner's decision on June 28, 2019. The matter was not appealed, and the decision became final.

On January 27, 2020, Moyer filed a Petition for Review-Reopening asserting that after the arbitration decision was filed, he sustained a change of condition based on injuries to his right foot, right knee, right leg, right hip, low back, and mental health as a result of his May 20, 2012 work injury. Interstate Power resisted, asserting, relative to the issues before the Court, that Moyer's claim of a change in condition was barred by res judicata and that the evidence would not support a change in Moyer's physical or mental condition or that he is now permanently and totally disabled.

Deputy Workers' Compensation Commissioner Heather L. Palmer issued her decision on October 5, 2021. She found, in part: (1) Interstate Power failed to prove Moyer's claim was barred by res judicata; (2) Moyer carried his burden of proof to establish he sustained a change of condition of both his physical and mental condition related to the work injury after the arbitration

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<sup>1</sup> The pages of the Certified Record are not numbered. The Court has used the page numbers of the Certified Record as it was electronically submitted.

decision was filed; and (3) as a result of the change in his physical and mental condition, Moyer is entitled to receive permanent total disability benefits for the work injury.

Interstate Power appealed Deputy Palmer's review-reopening decision. On March 9, 2022, Workers' Compensation Commission Joseph S. Cortese, II, affirmed the decision in its entirety. Interstate Power subsequently filed this Petition for Judicial Review on March 31, 2022. Its Judicial Review Brief raises the following issues:

- I. Does res judicata bar Claimant from re-litigating the issue of whether he has a whole body injury after he lost on his claim for permanency for his low back/right hip in the original arbitration proceeding and all of the facts and circumstances relating to his mental health issues were known or knowable at the time of the arbitration hearing?
- II. Has there been a substantial change in physical condition of his low back and right hip warranting a whole body award?
- III. Does Claimant's obtaining treatment and restrictions for his mental health condition result in any permanent disability when he worked full time for many years until his right foot/leg issues resulted in restriction from working on uneven ground and, thus, ended his employment with Alliant?
- IV. Even if Claimant establishes the prerequisites for review reopening, is he permanently and totally disabled from any and all work?

Judicial Review Brief, pp. 1-2.

## **II. SCOPE AND STANDARDS OF REVIEW**

The Iowa Administrative Procedure Act (IAPA), Iowa Code chapter 17A, governs the scope of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2021); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). The Court's review of final agency action is "severely circumscribed." *Sellers v. Emp. Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa Ct. App. 1995). Nearly all disputes are won or lost at the agency level; the cardinal rule of administrative law is that judgment calls are within the province of the administrative tribunal, not the courts. *See id.*

“Under the [IAPA], we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced.” *Meyer*, 710 N.W.2d at 218. The party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id.* § 17A.19(10). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002).

“If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact” when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the Commissioner's discretion, so the Court is bound by the Commissioner's findings of fact, if they are supported by substantial evidence. *Clark v. Vicorp Rest., Inc.*, 696 N.W.2d 596, 604 (Iowa 2005). Substantial evidence is defined as evidence of the quality and quantity “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.” Iowa Code § 17A.19(10)(f)(1); *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 850 (Iowa 2011). The burden on the movant to prove there is not substantial evidence in the record is a heavy one. *See McComas-Lacina Constr. v. Drake*, 884 N.W.2d 225 (Table), 2016 WL 2744948, at \*1 (Iowa Ct. App. May 11, 2016) (“A case reversing final agency action on the ground the agency’s action is unsupported by substantial

evidence . . . is the Bigfoot of the legal community - an urban legend, rumored to exist but never confirmed.”)

The application of the law to the facts is also an enterprise vested in the commissioner. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). Accordingly, the Court will reverse only if the commissioner's application was “irrational, illogical, or wholly unjustifiable.” *Id.*; Iowa Code § 17A.19(10)(l). This standard requires the Court to allocate some deference to the commissioner's application of law to the facts but less than it gives to the agency's findings of fact. *Larson*, 763 N.W.2d at 850.

### **III. MERITS**

#### **A. Res Judicata**

Interstate Power contends that the Agency erred in failing to bar Moyer’s review reopening claims for permanent back, hip, and mental health conditions under the principles of Res Judicata, claim preclusion, and/or issue preclusion. in violation of Iowa Code section 17A.19(10)(c),(f),(h),(i), and (m). CR, Part 1, p. 5; P.J.R., p. 2. Specifically, Interstate Power alleges Moyer should have been barred from re-litigating the issue of whether he has a whole body injury after he lost on his claim for permanency for his low back and right hip in the original Agency proceeding. It further alleges all of the facts and circumstances relating to his mental health issues were known or knowable at the time of the original Agency hearing and, thus, his claim for mental health conditions should have also been barred. Pet. Brief, p. 1.

The doctrine of Res Judicata includes two concepts, claim preclusion and issue preclusion. *Braunschweig v. Fahrenkrog*, 773 N.W.2d 888, 893 (Iowa 2009) (citations omitted). Issue preclusion occurs when an issue has been already litigated, whereas in claim preclusion a specific issue does not have to have been already litigated. *Id.* To invoke the doctrine of claim preclusion,

it must be established that: (1) the parties in the first and second action are the same; (2) the claim made in the second action could have been “fully and fairly adjudicated in the prior case,” and; (3) a final judgment on the merits was issued in the first action. *Id.* To invoke the doctrine of issue preclusion, a party must establish the following elements: (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment. *Grant v. Iowa Dep’t of Human Services*, 722 N.W.2d 169, 173–174 (Iowa 2006) (citations omitted).

Workers’ compensation cases provide a claimant the possibility of a review reopening proceeding. A review reopening proceeding under Iowa Code section 86.14(2) authorizes a workers’ compensation commissioner to “reopen an award for payments or agreement for settlement ... [to inquire] into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon.” *Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387, 391 (Iowa 2009). However, workers’ compensation cases also are subject to the doctrine of Res Judicata. “. . . [W]e emphasize the principles of res judicata still apply – that the agency, in a review reopening petition, should not reevaluate an employee’s level of physical impairment or earning capacity if all of the facts and circumstances were known or knowable at the time of the original action.” *Id.* at 393.

### **1. Depressive Disorder**

Interstate Power contends Moyer should have been barred under the doctrine of claim preclusion from raising his mental health condition (depressive disorder) in the review reopening proceedings. The Commissioner, in affirming and adopting the Deputy’s Review Reopening

Decision entered on October 5, 2021, determined, “There is no evidence Moyer [claimant] ever complained of depression or sought treatment for depression prior to Dr. Hadlandsmyth’s evaluation.” CR, Part 1, p. 140; R.R. Dec., p. 29. As such, the Commissioner found Interstate Power’s claim of Res Judicata lacked merit. CR, Part 1, p. 141; R.R. Dec., p. 30.

However, making statements regarding depression or seeking treatment for depression is not what is required under the doctrine of claim preclusion. Claim preclusion applies to all facts and circumstances that are *known* at the time of the first proceeding or were *knowable* at the time of the first proceeding. *Kohlhaas* at 393. Thus, Moyer does not have to make a statement or seek treatment for depression or another mental health condition – here, depressive disorder – to be barred under the doctrine of claim preclusion. Moyer is only required to know of the facts and/or circumstances or the facts and/or circumstances must have been knowable.

Moyer attended an appointment on May 30, 2018, with Mark Mittauer, M.D. CR, Part 4, p. 11-12; Joint Exhibit (JE) 8, p. 178-179. The overview narrative specifically states, “Claimant began feeling depressed about 3 years after he sustained a foot injury in 2012. His depression has persisted and is currently moderate in severity, and sometimes severe.” CR, Part 4, p. 12; JE 8, p. 179. The Arbitration Decision was rendered on March 16, 2017. The work-related injury occurred on March 20, 2012. Thus, three years after the foot injury, which is the work-related injury, would be around the spring of 2015. This is nearly two full years prior to the Arbitration Decision. Thus, at the time of the first Agency proceeding, Moyer knew his mental health had been impacted by his foot injury and that he was experiencing feelings of depression, although he had not yet been formally diagnosed. Accordingly, the Court concludes the elements of claim preclusion are met in this case.



The parties to the first proceeding, the Arbitration Decision, and the review reopening proceeding currently under Judicial Review are the same. *Braunschweig*, 773N.W.2d at 893. The claim of depressive disorder brought in the review reopening proceeding could have been “fully and fairly adjudicated in the prior case.” *Id.* Moyer was aware of his feelings of depression related to the work injury and, thus, could have, but did not, choose to litigate this issue. Additionally, a final judgment regarding Moyer’s work-related injury of March 20, 2012, was reached under the Arbitration Decision entered on March 16, 2017. *Id.* Thus, the Court concludes the mental health condition of a depressive disorder should have been barred in the review reopening proceeding under the doctrine of claim preclusion. The Commissioner committed an error of law in not so concluding.

## **2. Right Knee**

The Commissioner in his Appeal Decision of the Review Reopening Decision correctly determined that Claimant’s right knee pain is barred by the doctrine of issue preclusion. CR, Part 1, p. 13; Review Reopening Appeal Decision (RRAD), p. 3.

In the underlying Arbitration Decision of 2017, Moyer raised and litigated whether the March 20, 2012 work injury was a cause of permanent disability to his right knee, right hip, and/or low back. It was determined that Claimant did not sustain a permanent disability to his right knee because of the March 20, 2012 work injury. Claimant then attempted to relitigate in the review reopening proceedings whether the March 20, 2012 work injury was a cause of permanent disability to his right knee. These issues are identical and have already been raised and litigated in the Arbitration Decision. *Grant*, 722 N.W.2d 173-174. The issue of permanent disability of Claimant’s right knee was material and relevant to the disposition of the prior action. *Id.* Additionally, the Arbitration Decision determining that Claimant had not sustained permanent

disability to his right knee was necessary and essential to the resulting judgment. *Id.* Thus, the Court concludes the level of permanent disability to Claimant's right knee was properly barred in the review reopening proceeding under the doctrine of issue preclusion. The Commissioner did not err in making a determination on this claim.

### **3. Right Hip and Low Back**

Defendant in the review reopening proceeding contended that Claimant should have been barred under the doctrine of Res Judicata from attempting to relitigate the issue of whether he sustained permanent impairments to his right hip, right knee, and low back in the review reopening proceedings. The Commissioner determined that although Deputy Finch determined in the original Agency action that Claimant failed to establish he sustained permanent impairments to his right hip and low back, the Deputy did not determine that the right hip and low back conditions had resolved without any permanency. *Id.* Thus, because the conditions had not resolved, the Commissioner in the review reopening reasoned that the claims could not be barred under the doctrine of Res Judicata. *Id.*

The purpose of a review reopening proceeding is to inquire into whether or not the condition of an employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon. *Kohlhaas*, 387 N.W.2d at 391. The purpose is not to reevaluate an employee's level of physical impairment or earning capacity if all of the facts and circumstances were known or knowable at the time of the original action. *Id.* at 393.

However, Claimant here did relitigate the same issue in the review reopening proceeding. He relitigated whether the March 20, 2012 work injury was a cause of permanent disability to his right knee, right hip, and/or low back. The same litigation of an issue – here, right hip and low back permanent disability – is subject to the doctrine of issue preclusion. Thus, the issue concluded

in the review reopening regarding the level of permanent disability to Claimant's right hip and low back is identical to this issue that was already litigated in the Arbitration Decision. *Grant*, 722 N.W.2d 173-174. Claimant did actually raise and attempt to litigate the issue of permanent disability to his right hip and low back in the original arbitration proceedings, which is the prior action. *Id.* The issue of permanent disability of Claimant's right hip and low back were material and relevant to the disposition of the prior action. *Id.* Lastly, the determination of no permanent disability to Claimant's right hip and low back were necessary and essential to the resulting judgment. *Id.* Thus, the Court concludes the level of permanent disability to Claimant's right hip and low back should have been barred in the review reopening proceeding under the doctrine of issue preclusion. The Commissioner erred in making a determination on this claim, as it was barred by issue preclusion.

All parties cite to the case of *Green v. North Central Iowa Regional Solid Waste Authority*. 977 N.W.2d 122 (Table), 2022 WL 610555 (Iowa Ct. App. March 2, 2022). In this case Green alleged that she had suffered a permanent disability due to a work-related injury in which she suffered from cervical strain, head trauma, and right shoulder strain. *Id.* at \*1. The Deputy Commissioner of the arbitration decision determined that Green did not meet her burden of establishing that her work-related injury caused any permanent impairment or loss of earning capacity. *Id.* The Deputy Commissioner, in contrast, found that her injuries had resolved without any permanency and, as such, she was not entitled to additional temporary benefits or medical benefits beyond those that had already been paid. *Id.* Green appealed the arbitration decision, and it was affirmed in full, with some additional analysis. *Id.* Green then filed a petition for Judicial Review. *Id.* The district court affirmed the Commissioner's ruling but reversed and remanded the portion of the Commissioner's ruling regarding Green's claims for reimbursement of past medical

expenses. *Id.* at \*2. On remand, it was determined that the employer was liable for past medical expenses. *Id.*

Green later filed a review reopening petition asserting that she was permanently and totally disabled as a result of the work-related injury. *Id.* The defendant employer moved for summary judgment on the grounds that Green had not been found to have sustained a permanent disability and, thus, there was nothing that could be reviewed in the review reopening proceeding. *Id.* Green resisted and asserted genuine issues of material fact. However, a Deputy Commissioner granted the summary judgment, reasoning that Green's claims for future medical benefits and temporary and permanent disability were previously ripe for determination and decided against her. *Id.* On intra-agency appeal, the Commissioner affirmed the grant of summary judgment to the employer, specifically agreeing that Green had already litigated her claim for permanency, and it had already been decided. *Id.* at \*3.

Green sought Judicial Review, and the district court reversed the Commissioner. *Id.* The district court concluded that the Commissioner's reasoning that Green's claim could not be increased was illogical and that Green being precluded from bringing a review reopening claim was erroneous. *Id.* The employer then appealed to the Iowa Court of Appeals, asserting that the district court erred in asserting that Green's review reopening claim was not barred by Res Judicata. *Id.*

The court of appeals concluded that Green's alleged change of condition, including her current condition constituting a worsening of her physical condition or that a temporary disability has developed into a permanent disability, if proved, are ways to warrant a review reopening, despite a lack of finding of permanent impairment following her 2012 work-related injury. *Id.* at \*4. (Citations Omitted). As such, the Court concluded Green had asserted a genuine issue of

material fact and summary judgment is not appropriate and the district court erred in granting the employer's motion for summary judgment. *Id.* This case has been remanded back to the agency for further proceedings.

While all parties cite to *Green*, the issues in *Green* are not relevant and on point with the issues in this case. The issue in this case is that Claimant asserted, litigated, and lost his claim for permanent impairment to his right knee, right hip, and low back. Claimant then asserted the same, identical claim for permanent impairment to his right knee, right hip, and low back in the review reopening proceeding and won. This case does not turn on whether Claimant's symptoms had resolved without any permanency and then came back later as in *Green* but, rather, that Claimant litigated an identical issue that should have been barred by issue preclusion.

It is important to note that the Commissioner in the Review Reopening Decision determined that Claimant's claim regarding his right knee was barred under the doctrine of issue preclusion because the Deputy Commissioner of the Arbitration Decision had determined that he had not sustained permanent impairment to his knee. C.A.R., Part 1, p. 141; R.R. Dec., p. 30. However, the Commissioner failed to apply this logic to Claimant's claim regarding his right hip and low back, although the Deputy Commissioner of the arbitration decision had also determined that Claimant had not sustained permanent impairment to his right hip and low back. *Id.* Thus, the Court concludes that claims for permanent disability to Claimant's right hip and low back should have been barred in the review reopening proceeding under the doctrine of issue preclusion. The Commissioner committed an error of law in not so concluding.

#### **B. Erroneous Findings of Fact and Application of Facts to the Law**

Defendant additionally alleges that if Res Judicata, claim preclusion, and/or issue preclusion do not bar Claimant's claims for permanent back, hip, and mental health conditions,

then, in the alternative, the Commissioner erred by making erroneous findings of fact and application of facts to the law on: (1) whether the claimant established a change in condition and has permanent low back, right hip, and mental conditions causally related to his injury; and (2) whether Claimant established a change in condition and has lost all earning capacity entitling him to lifetime weekly benefits in violation of Iowa Code section 17A.19(10)(f),(h),(i), and (m). C.A.R., Part 1, p. 5; P.J.R., p. 2.

The Court has determined that Claimant's claims regarding permanent disability pertaining to his mental health condition of depressive disorder, his right knee, right hip, and low back are all barred by Res Judicata, claim preclusion, and/or issue preclusion. Thus, the Commissioner also erred by making erroneous findings of fact and application of facts to the law on: (1) whether Claimant established a change in condition and has permanent low back, right hip, and mental conditions causally related to his injury; and (2) whether Claimant established a change in condition and has lost all earning capacity entitling him to lifetime weekly benefits in violation of Iowa Code Section 17A.19(10)(f), (h), (i), and(m) because all of these claims should have been barred. C.A.R., Part 1, p. 5; P.J.R., p. 2.

#### **IV. CONCLUSION AND DISPOSITION**

For all of the reasons set forth above, the Court concludes that Defendant's substantial rights were prejudiced. It further concludes that the Commissioner's decision was erroneous, inconsistent, irrational, illogical, and/or wholly unjustifiable. Accordingly, Defendant/Petitioner's Petition for Judicial Review is **GRANTED**.



State of Iowa Courts

**Case Number**  
CVCV063401

**Case Title**  
INTERSTATE POWER AND LIGHT COMPANY V JOSEPH  
MOYER  
**Type:** ORDER FOR JUDGMENT

So Ordered

A handwritten signature in cursive script, reading "Samantha Gronewald".

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Samantha Gronewald, District Court Judge  
Fifth Judicial District of Iowa

Electronically signed on 2022-10-31 10:55:59