IN THE IOWA DISTRICT COURT FOR POLK COUNTY

EARLING GRAIN AND FEED and FIREMENS INSURANCE CO. OF WASHINGTON DC, **Petitioners,** **v.** **RICKY MARTIN,** **Respondent.**	**Case No.: CVCV061534** **RULING ON PETITION FOR JUDICIAL REVIEW**

NOW on the 30th day of July, 2021, the above captioned matter came on for hearing. The hearing was held via Zoom and was not reported. Attorney David Scieszinski appeared for the Petitioner. Attorney Corey Walker appeared for the Respondent. This matter comes before the Court on Earling Grain and Feed and Firemens Insurance Co. of Washington DC's[1] Petition for Judicial Review of an Iowa Workers' Compensation Commissioner's reconsideration of an appeal decision filed on February 24, 2021. After considering the parties' arguments and briefs, as well as the relevant case law, the Court enters the following ruling.

BACKGROUND

I. Factual History

Ricky Martin was 50 years of age at the time of the hearing. After graduating high school, Respondent Ricky Martin spent most of his working life as a truck driver. IWD Arbitration Dec. at 1 (Arb. Dec.). Due to problems with macular degeneration,[2] Martin was unable to drive a truck and from 2010 through 2016, Martin worked for a security company as well as receiving social security disability. *Id.* at 1-2. In addition to the macular degeneration, Martin suffered from work

[1] Hereinafter collectively known as "Earling."

[2] Macular degeneration is a common eye disorder that reduces central vision. *Dry Macular Degeneration*, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/dry-macular-degeneration/symptoms-causes/syc-20350375, (last visited August 3, 2021).

related back injuries in 2001 and 2003. *Id.* at 2. However, Martin's condition improved and he was able to return to truck driving in 2016. *Id.*

Petitioner Earling Grain and Feed hired Martin in May of 2017 as a truck driver but his duties also included loading and unloading the truck. Arb. Dec. at 2. On July 21, 2017, Martin was driving for Earling near Denison, Iowa when another vehicle stopped in front of him causing Martin to drive into a field. *Id.* Martin climbed from the totaled semi-truck and lost consciousness. *Id.* The next thing he recalls is waking up in an emergency room. *Id.*

Martin was treated at Myrtue Medical Center for a laceration above his left eye and headaches. Arb. Dec. at 2. Martin underwent a CT scan of his head and an x-ray of his chest. *Id.* The x-ray came back negative, however, the CT scan showed a right fontal scalp hematoma[3] and other brain injuries.

On July 25, 2017, R. Adam Bendorf, M.D. examined Martin. *Id.* Dr. Bendorf observed that Martin had bruising on his lower back, pain in the left wrist, and a headache with nausea. *Id.* Dr. Bendorf diagnosed Martin with having a concussion and a lift wrist sprain. *Id.* Martin returned to an emergency room on July 26, 2017, complaining of nausea and headaches. Arb. Dec. at 2. There, he was diagnosed with post-concussive symptoms.[4] Following that trip to the emergency room, Martin returned to Dr. Bendorf on July 28, 2017. *Id.* Following this appointment, Dr. Bendorf released Martin to return to work without restrictions. *Id.* Martin returned to work for Earling on July 31, 2017, where he worked until he was laid off on November 28, 2017. *Id.* at 3.

[3] Frontal Scalp hematoma is a collection of blood in the skull most commonly caused by trauma such as a car accident. *Intracranial Hematoma*, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/intracranial-hematoma/symptoms-causes/syc-20356145 (last visited August 3, 2021).
[4] Concussion symptoms include *inter alia*, headaches, nausea, vomiting, and blurry vision. *Concussion*, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/concussion/symptoms-causes/syc-20355594 (last visited August 3, 2021).

Martin's spouse testified that after the injury, Martin became forgetful, irritable, and began distancing himself from family members. *Id.* Before the accident she would describe Martin as relatively happy. Arb. Dec. at 3.

Following the termination of his employment at Earling, Martin attempted to work for two other trucking companies but was subsequently fired due to him displaying aggressive behavior. *Id.* Martin attempted to work at a third trucking company but due to his vision and high blood pressure, failed an Iowa Department of Transportation physical and was unable to work. *Id.* Martin has not sought employment since failing the DOT physical and has not worked since December 2017. *Id.*

On February 14, 2018, Morgan LaHolt M.D. diagnosed Martin with a traumatic brain injury from a motor vehicle accident with cognitive, emotional, and somatic complaints. *Id.* Dr. LaHolt prescribed Martin medication and therapy. *Id.* He stated Martin's symptoms where consistent with post-concussive syndrome and recommended Martin not return to work. *Id.* On April 16, 2018, Brandon Wachal, M.D., an ear and throat specialist, diagnosed Martin with tinnitus and recommended hearing aids for him. Arb. Dec. at 3. Martin continued to see a myriad of different doctors throughout his treatment. *Id.* at 2-5. What is relevant to this case is that on March 25, 2019, Dr. LaHolt found Martin to be at maximum medical improvement (MMI). *Id.* at 4. John Kuhnlein D.O., also found Martin to be at MMI as of March 25, 2019. *Id.* at 5. Dr. Kuhnlein did however, recommend Martin to continue his treatment with Dr. LaHolt. *Id.* Watler Duffy, M.D., found claimant at MMI for his mental health issues as of August 30, 2019. Arb. Dec. at 4. Bruce D. Gutnik M.D., Earling's expert witness, examined Martin on November 12, 2019, and could not conclude whether Martin's injuries were caused by the accident on July 21, 2017. Martin qualified for social security benefits and receives $1,253 per month. *Id.* at 6.

II. Procedural History

This matter proceeded to an arbitration hearing on October 15, 2019. Pet.'s Br. at 1. The deputy commissioner found Martin to be totally and permanently disabled. *Id.* at 2. Earling appealed this decision and the Commissioner affirmed the deputy's decision in all respects except he changed the date of MMI from March 25, 2019 to August 30, 2019. *Id.* In a reconsideration of the appeal (App. Reconsid.) the Commissioner stated that Earling did not contest the connection between Martin's injury and the date of injury, July 21, 2017. App. Reconsid. at 1. Additionally, the Commissioner found Earling did not introduce evidence to support a claim that Martin's injury was not casually connected to the July 21, 2017, injury. *Id.* at 2. On March 18, 2021, Earling filed this Petition for Judicial Review of the ruling on defendants' application for rehearing and request for reconsideration of appeal decision. Pet. for Judicial Review.

Petitioners seek judicial review in regards to whether the agency erred as a matter of law in finding that respondent Ricky Martin had reached maximum medical improvement, finding certain complaints were causally related to his alleged motor vehicle accident, and finding respondent permanently and totally disabled. The petitioners are asking the district court to review and reverse the agency's decisions and/or remand this matter to the agency to correct the errors they allege to have been made. Pet. for Judicial Review.

STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2019); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, 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. A 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. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). 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); *Mycogen*, 686 N.W.2d at 464. "When reviewing a finding of fact for substantial evidence, we judge the finding '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.'" *Cedar Rapids Comm. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Iowa Code § 17A.19(10)(f)(3)). "Evidence is not insubstantial merely because different conclusions may be drawn from the evidence." *Pease*, 807 N.W.2d at 845. "To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder." *Id.* "Judicial review of a decision of the

[Commission] is not de novo, and the commissioner's findings have the force of a jury verdict." *Holmes v. Bruce Motor Freight*, 215 N.W.2d 296, 297-98 (Iowa 1974).

The application of the law to the facts is also an enterprise vested in the commissioner. *Mycogen*, 686 N.W.2d at 465. Accordingly, the Court will reverse only if the commissioner's application was "irrational, illogical, or wholly unjustifiable." *Id.*; Iowa Code § 17A.19(10)(l). "A decision is "irrational" when it is not governed by or according to reason." *Christensen v. Iowa Dep't. of Revenue*, 944 N.W.2d 895 at 905 (Iowa 2020). A decision is "illogical" when it is "contrary to or devoid of logic." *Id.* "A decision is "unjustifiable" when it has no foundation in fact or reason" or is "lacking in justice." *Id.* 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 Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). "A case reversing final agency action on the ground the agency's action is unsupported by substantial evidence or is irrational, illogical, or wholly unjustifiable is the Bigfoot of the legal community—an urban legend, rumored to exist but never confirmed." *McComas Lacina Const. v. Drake*, No. 15-0922, 884 N.W.2d 225 (table) 2016 WL 2744948 at *1 (Iowa Ct. App. May 11, 2016). This court will search through the arguments presented to determine whether the commissioner legally erred in determining if Martin had reached maximum medical improvement and whether the commissioner legally erred in determining all of Martin's current complaints relate to his motor vehicle accident.

MERITS

I. Whether the Agency's finding of MMI is supported by substantial evidence.

Earling argues that the Commissioner's award of permanent benefits is premature due to Martin not reaching MMI. Pet.'s Br. at 16. In support of this contention, Earling cites *Bell Bros. Heating and Air Conditioning v. Gwinn*, 779 N.W.2d 193 (Iowa 2010) (Bell Bros.). In *Bell Bros.*, the Iowa Supreme Court held that a determination of permanent injury is premature without a

finding that the claimant reached MMI. *Bell Bros.*, 779 N.W.2d at 201-02. Unlike in *Bell Bros.*, here the Commissioner specifically found Martin has reached MMI. Arb. Dec. at 6; App. Dec. at 2. If, however, the commission was mistaken in their finding of MMI then the finding of permanent injury is premature. *Bell Bros.*, 779 N.W.2d at 201-02. The proper question of whether the finding of MMI is factual and is accordingly determined by the "substantial evidence" standard. *Meyer*, 710 N.W.2d at 219.

To that end, Earling points to testimony by Dr. Kuhnlein in which they claim he opined that additional treatment may improve Martin's condition. Pet. Br. at 16. The actual exchange was:

> Q: Okay. And you did have some suggestions of some additional care that you thought might help; is that correct?
> A: or at least evaluations, yes.
> ...
> Q: There may be some treatment with that physician that could actually improve his condition?
> A: I don't know. That's not my area of specialty, but if it is in his brain, that would be up to the neuro-ophthalmologist's area of expertise. I doubt it, but –
> ...
> Q: You think that may help his condition?
> A: It might.
> ...
> A: Might improve his pain. Won't improve the other aspects of his condition.

Depo. of Dr. Kuhnlein, at 55-56.

Additionally, Earling mentioned Dr. Kuhnlein opined he could not determine MMI yet. Pet. Br. at 16. However, Dr. Kuhnlein mentioned that he did not believe Martin would get any better. Depo. of Dr. Kuhnlein, at 58. Finally, Earling mentions testimony of Martin and Martin's spouse, neither of whom are doctors, and both opined he was getting better. Pet. Br. at 16.

The agency, as the fact finder, determines the weight to be given to any expert testimony. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998); *Dodd v. Fleetguard, Inc.*, 759 N.W.2d 133, 138 (Iowa Ct. App. 2008). Such weight depends on the accuracy of the facts relied upon by

the expert and other surrounding circumstances. *Id.* The commissioner may accept or reject the expert opinion in whole or in part. *Sherman,* 576 N.W.2d at 321.

> Making a determination as to whether evidence "trumps" other evidence or whether one piece of evidence is "qualitatively weaker" than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision.

Arndt, 728 N.W.2d at 394.

The petitioner pointed out evidence in its brief that they believe shows that this case may not be ripe to determine the extent of any permanent benefits. The petitioner suggested that this case could be remanded to the agency with instructions that the determination of Martin's permanency benefits should not be decided until potential recommended treatment is completed and the results of the treatment are known. The Commissioner weighed the experts' testimonies regarding MMI. App. Dec. at 2. The Commissioner noted that while both Dr. Kuhnlein and Dr. LaHolt suggested March 25, 2019 as the MMI date, Dr. LaHolt stated he would defer to Dr. Duffy's opinion. *Id.* The Commissioner concluded that Dr. Duffy's August 30, 2019 date of MMI is "supported by the greater weight of medical evidence and is consistent with [Martin]'s continued medical treatment after March 25, 2019." *Id.* This fact lead the Agency to assign August 30, 2019, as the MMI date. *Id.* The Commissioner opted to give greater weight to Dr. Duffy's expert testimony, which is precisely within their purview. *Sherman*, 576 N.W.2d at 321. Therefore, the finding of August 30, 2019, as the date of MMI is supported by the substantial evidence of Dr. Duffy's expertise.

II. Whether Martin's current injuries are casually related to the motor vehicle accident.

Earling argues that Martin's injuries are not related to the July 21, 2017, injury. Pet. Br. at 18. The Commissioner noted that the parties stipulated that Martin suffered an injury which arose out of the course of employment on July 21, 2017, and that injury resulted in at least a temporary

disability. Recon. of App. at 1; Hr'g Report at 1. The Commissioner stated that because Earling did not dispute the causal relationship between the injuries and the work injury, the deputy commissioner did not expressly make that finding. Recon. of App. at 1.

> The term "injury" is not analogous with "incident" or "accident" in the Hearing Report. By stipulating the injury arose out of and in the course of employment, defendants are not simply acknowledging that claimant was involved in a motor vehicle accident on July 21, 2017. Rather, they are acknowledging that the injuries and conditions asserted by claimant arose out of an in the course of his employment with defendant-employer.
>
> With this in mind, it would be permissible for defendants to argue claimant only sustained temporary injuries to the alleged body parts, or temporary aggravations of this pre-existing conditions, on July 21, 2017. However, because defendants stipulated that claimant's alleged injuries arose out of and in the course of employment on July 21, 2017, defendants could not argue claimant failed to prove he sustained any injuries whatsoever to his back neck, hip, brain, and tinnitus on July 21, 2017.

Recon. of App. at 2.

Regardless, of the above analysis, the Commissioner still expressly found a causal relationship between the July 21, 2017, accident and Maritn's neck and brain injuries, as well as his tinnitus. Recon. of App. at 5. Causation is a question of fact and therefore is also governed by the substantial evidence standard. *Pease*, 807 N.W.2d at 845. "Whether an injury has a direct causal connection with the employment of arose independently thereof is ordinarily established by expert testimony, and the weight to be given such an opinion is for the finder of fact." *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 652 (Iowa 2000) (citing *Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995).

In support of finding a causal connection the Commissioner cites the opinions of Dr. LaHolt, Dr. Duffy, and Dr. Kuhnlein, who stated there is a causal connection. Recon. of App. at 3. Specifically, LaHolt said the brain injury was caused by the accident, Dr. Duffy said the depressive disorder and other cognitive impairments where caused by the accident, and Dr.

Kuhnlein said the brain injury and all related symptoms where caused by the accident. Recon. of App. at 3. Additionally, Dr. Kuhnlein opined that it is more likely than not that Martin's neck injuries and lower back strain resulted from the July 21, 2017 accident. *Id.* However, Dr. Kuhnlein thought the hip pain was not caused by the accident. *Id.* The Commissioner then mentions that Earling's sole expert witness did not address Martin's lower back pain, neck pain, hip pain, or tinnitus. *Id.* at 4.

The Commissioner then analyzes Martin's medical history, which need not be repeated here. *Id.* at 4-5. Earling disputed that Martin's current neck, hip, back, tinnitus and hearing loss complaints are work-related. Ultimately, the commission found the specific doctors mentioned above to be the most persuasive and adopted their opinions. Recon. of App. at 5. As stated previously, the weight given to experts and their testimony is within the peculiar province of the commission. *Sherman,* 576 N.W.2d at 321. Accordingly, the Commissioner's finding of a causal relationship between the July 21, 2017, work accident and Martin's neck injury, brain injury, and tinnitus is supported by substantial evidence. The Commissioner's final agency decision should be affirmed in all respects.

ORDER

Therefore, for the reasons stated above, the Commission's ruling on defendant's application for rehearing and request for reconsideration of appeal is hereby **AFFIRMED**.

State of Iowa Courts

Case Number	**Case Title**
CVCV061534	EARLING GRAIN AND FEED ET AL VS RICKY MARTIN
Type:	OTHER ORDER

So Ordered

William P. Kelly, District Court Judge,
Fifth Judicial District of Iowa

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