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IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

DANIEL F. WELSH, Petitioner, v. BEST BUY, Employer, and GALLAGHER BASSETT, Carrier, Respondents.	NO. CVCV182080 RULING AND ORDER RE: PETITION FOR JUDICAL REVIEW

The above file came before the court at the time and date set for oral arguments on the Petition for Judicial Review filed by Petitioner Daniel Welsh (hereinafter Welsh). Welsh appeared personally and with counsel Al Sturgeon. Respondents appeared telephonically by counsel Kathryn Johnson. Giving consideration to the Agency Record, the parties' Briefs, and additional argument of counsel, the court enters the within Ruling and Order.

BACKGROUND FACTS AND PROCEEDINGS

Welsh was injured while working at Best Buy on December 12, 2012. On that date, Welsh was working in the warehouse and was unloading a pallet from a truck. While unloading the pallet a lift fell onto Welsh's right foot, trapping it for several seconds in a crevice. After Welsh was able to free his foot, a coworker drove him to the emergency room. The next day, on a referral from the ER, Welsh went to see Dr. Emerson at CNOS. Welsh was informed by Dr. Emerson that there were no broken bones, but that Welsh should avoid placing weight on his foot. Welsh continued to see

Dr. Emerson until Dr. Emerson's retirement, at which time he transferred his care to Dr. Nguyen. Welsh began seeing Dr. Nguyen on August 27, 2013.

Welsh was referred by Dr. Nguyen to Dr. Johnson, who specializes in pain management. Dr. Johnson provided pain management care to Welsh. Welsh also received a pain consult with Dr. Benedetti in Iowa City to get a second opinion at the suggestion of Dr. Johnson. Dr. Martin did an independent evaluation of Welsh for the purposes of evaluating his degree of impairment at the request of Respondents, and Dr. Bansal conducted an independent review of Welsh and his medical records at the request of Welsh.

A. Evidence as Reflected in Medical Records and Exhibits

Welsh began having hypersensitivity in his foot after his injury. Exhibit 2 at 8-10, 13. Four months after the injury he had a "[p]ins and needles sensation over the midlateral aspect of his forefoot and midfoot area." *Id*. at 12. Dr. Emerson noted approximately five months after the injury that Welsh's hypersensitivity was becoming more localized than it had been previously. *Id*. at 14.

On May 3, 2013, approximately six months after Welsh's injury, Dr. Emerson noted that the amount of Welsh's hypersensitivity had decreased and that it had become localized to two small areas near his small toe and his third toe. *Id*. at 15. He further stated that Welsh was able to move his toe without discomfort. *Id*. At this same visit Dr. Emerson noted that Welsh showed fewer "symptoms of complex regional pain syndrome." *Id*.

On May 20, 2013, Dr. Emerson stated that Welsh "has had gradual improvement and continues to do so. He feels a lot more comfortable now." *Id*. at 16. At that same visit Dr. Emerson stated that Welsh had "a little bit of discomfort" over the two areas

near his small toe and third toe where he had experienced hypersensitivity before. *Id*. At a visit with Dr. Emerson on June 10, 2013, Welsh stated that some days at work he was standing and walking for four hours at a time. *Id*. at 21. Dr. Emerson noted as temporary restrictions that Welsh should be standing or walking for no more than one hour at a time and should be resting for at least one hour in between. *Id*. at 20. In his notes from this visit, Dr. Emerson stated that Welsh had complex regional pain syndrome symptoms. *Id*. at 20.

At his visit to Dr. Emerson on July 10, 2013, Welsh continued to report hypersensitivity near the base of his third, fourth, and fifth toes. *Id*. at 23. Also at this visit Dr. Emerson noted that Welsh may need to see a pain specialist but increased the time Welsh could spend on his feet at work to two hours on and two hours off for up to six total hours. *Id*. at 23-24. On July 24, 2013, Welsh continued to report hypersensitivity near the base of his toes and Dr. Emerson increased the amount of time he could spend on his feet at work to three hours continuously. *Id*. at 25. At this visit Dr. Emerson introduced Welsh to Dr. Nguyen, because Dr. Emerson was retiring. *Id*.

On August 27, 2013, Welsh had his first visit with Dr. Nguyen. *Id*. at 27. In the notes for this visit, Dr. Nguyen stated that Welsh had symptoms consistent with complex regional pain syndrome. *Id*. at 27. Dr. Nguyen reported in his assessment for this visit that Welsh "is having some form of chronic pain issue likely a form of complex regional pain syndrome." *Id*. at 28. On September 19, 2013, Dr. Nguyen stated in his notes that Welsh's pain seemed to be nerve related and had "some features of chronic [sic] regional pain syndrome." *Id*. at 33. Dr. Nguyen stated that he was going to defer to the pain specialists regarding Welsh's ongoing pain as there were no longer any orthopedic issues to treat. *Id*.

On July 8, 2014, Dr. Fitzgibbons evaluated Welsh. Exhibit 3 at 1, 4. Dr. Fitzgibbons stated "[w]hether it's a complete and total complex regional pain syndrome could be questioned." *Id*. at 2.

On July 23, 2013, Welsh visited Dr. Johnson at the Siouxland Pain Clinic. Exhibit 4 at 1. During this visit Dr. Johnson noted that Welsh stated that the physical therapy and desensitization treatment benefitted his condition. *Id*. Welsh also stated that he was greatly improved from his original injury. *Id*. During this visit Dr. Johnson found that Welsh was hypersensitive to touch on the lateral aspect of his right foot. *Id*. In his initial assessment at the termination of this visit, Dr. Johnson states that he believes that Welsh has peripheral neuropathy. *Id*. at 2. Dr. Johnson also opined at the close of the visit that he did "not feel he has Complex Regional Pain Syndrome." *Id*.

Welsh visited Dr. Johnson again on August 19, 2013. *Id*. at 4. At this visit Welsh told Dr. Johnson that he had had improvement after using the compounding cream prescribed by Dr. Johnson during the previous visit. *Id*. At this visit Dr. Johnson's assessment remained peripheral neuropathy. *Id*. at 4.

On September 16, 2013, Welsh again visited Dr. Johnson. *Id*. at 5. At this visit Dr. Johnson was accompanied by a physician's assistant, Mr. Fernando. *Id*. For active problems for this visit Mr. Fernando noted "Chronic pain syndrome" and "Peripheral Neuropathy." *Id*. During a visit with Mr. Fernando again on October 11, 2013, Mr. Fernando listed the same active problems and Welsh reported that he was only getting poor to fair improvement with the compounding cream. *Id*. at 8. On this date Dr. Johnson added reflex sympathetic dystrophy[1] to his list of active problems. *Id*.

[1] Reflex sympathetic dystrophy is a previously used name for Complex Regional Pain Syndrome.

On November 4, 2013, Welsh again saw Dr. Johnson. *Id*. at 11. On this date listed under active problems were chronic pain syndrome, crush injury, peripheral neuropathy, and reflex sympathetic dystrophy. *Id*. At this visit in the notes, however, Dr. Johnson states, "[Welsh] presents today for a right lumbar sympathetic plexus block to rule out Complex Regional Pain Syndrome." *Id*. Dr. Johnson continued to note hypersensitivity to Welsh's right foot. *Id*. At the conclusion of the right lumbar sympathetic plexus block, Welsh reported to Dr. Johnson that the pain was 35-40% improved. *Id*. at 12. On November 25, 2013, Welsh received another lumbar sympathetic plexus block from Dr. Johnson. *Id*. at 18. After this lumbar sympathetic plexus block, Welsh stated that his pain was 50% better. *Id*. at 18.

During Welsh's visit to Dr. Johnson on January 3, 2014, Dr. Johnson maintained his assessment that Welsh had peripheral neuropathy. *Id*. at 20. On March 7, 2014, Welsh visited Dr. Johnson and Dr. Johnson noted in his report that Welsh did not have significant hypersensitivity on that date. *Id*. at 24.

On April 7, 2014, Dr. Johnson stated in his clinical notes: "Dr. Benedetti at Iowa City who agrees that he does not have Complex Regional Pain Syndrome but has peripheral neuropathy." *Id*. at 26. On September 8, 2014, Dr. Johnson stated in his clinical notes that Welsh was "originally treated for a possible Complex Regional Pain Syndrome with short term benefit. He did receive an evaluation and consultation from Dr. Benedetti who agreed that [Welsh] has . . . peripheral neuropathy not Complex Regional Pain Syndrome." *Id*. at 30. On that same date Dr. Johnson stated that Welsh did not have hypersensitivity. *Id*. at 31. During his December 15, 2014 visit with Dr. Johnson, Welsh told Dr. Johnson that his medication regimen was working well for him,

that physical therapy was going well, and that his condition had been improved by his orthotic shoes. *Id*. at 32.

On January 22, 2014, Welsh had gone for a consult with Dr. Benedetti in Iowa City. Exhibit 9 at 3. Dr. Benedetti diagnosed Welsh with chronic right foot pain. *Id*. Dr. Benedetti did not opine in her report that Welsh suffered from either peripheral neuropathy or complex regional pain syndrome. *See* Exhibit 9. In the three phase bone scan recommended by Dr. Benedetti, however, the radiologist states that there is "[n]o specific evidence for reflex sympathetic dystrophy." Exhibit 6 at 2.

In his May 19, 2015 report, Dr. Martin found that Welsh suffered from a 5% impairment rating. Exhibit 10 at 8. Further, Dr. Martin stated that Welsh should be encouraged to use his extremities and declined to place any permanent restriction on Welsh's activity level. *Id*. at 9. Most importantly to the within review, Dr. Martin specifically opined that Welsh did not suffer from complex regional pain syndrome (CRPS). *See* Exhibit 10.

Dr. Bansal performed an independent review of Welsh's medical records and an exam of the Welsh. *See* Exhibit 11. Dr. Bansal opined in his report that he believed that Welsh suffered from CRPS as a result of his crush injury, specifically referencing Budapest criteria. *Id*. Dr. Bansal also opined that he believed that Welsh suffered from a 9% whole person impairment. *Id* at 14.

B. Procedural History

A hearing was held on Welsh's claim for workers' compensation benefits before Deputy Workers' Compensation Commissioner Palmer on August 21, 2016. On December 2, 2016, Deputy Palmer issued her deicision and found that Welsh suffered an injury to a scheduled member, specifically that he suffered from peripheral

neuropathy in his foot. On January 5, 2017, the decision was affirmed on rehearing. Welsh appealed Deputy Palmer's decision to the Commissioner and on July 10, 2018, Ms. Palmer's decision was adopted and affirmed, specifically including her full findings and conclusions regarding weight of the evidence and the scheduled injury / peripheral neuropathy. Welsh now requests that this Court reverse the decision of the Commissioner and find that the Commissioner erred in not finding that Welsh suffered an injury to the body as a whole / CRPS.

STANDARD OF REVIEW

The standard of review applicable to agency action is delineated at Iowa Code Section 17A.19. The section provides that the reviewing district court shall grant "appropriate relief from agency action" if the court has decided that the agency action is based upon the occurrence of any one of several factors. Iowa Code § 17A.19(10) (2018). One occurrence that mandates relief is when an agency's decision is "[b]ased 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." *Id.* § 17A.19(10)(c). Relief from an agency's decision is also appropriate when the agency's interpretation of law or application of law to fact is "[b]ased upon an irrational, illogical, or wholly unjustifiable" interpretation or application. *Id.* § 17A.19(10)(l), (m). Additionally, relief from an agency decision should be granted when the agency's decision was "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion." *Id.* § 17A.19(10)(n).

Most importantly in relation to the claims asserted by Welsh, relief from an agency decision is granted when the decision is "[b]ased upon a determination of fact clearly vested . . . to the agency that is not supported by substantial evidence in the

record before the court when that record is viewed as a whole." § 17A.19(10)(f). The district court is "bound by the agency's fact findings if those findings are supported by substantial evidence. Evidence is substantial if a reasonable person would find it adequate for reaching a decision." *Fairfield Toyota, Inc. v. Bruegge*, 449 N.W.2d 395, 397 (Iowa Ct. App. 1989).

> 'The mere possibility that the record would support another conclusion does not permit the district court or this court to make a finding inconsistent with the agency findings so long as there is substantial evidence to support it.' While the substantiality of evidence must take into account whatever in the record fairly detracts from its weight, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. The question is not whether there is sufficient evidence to warrant a decision the agency did not make, but rather whether there is substantial evidence to warrant the decision it did make.

Peoples Mem'l Hosp. v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 91 (Iowa 1982) (citing *Woods v. Iowa Dept. of Job Service*, 315 N.W.2d 383, 841 (Iowa Ct. App. 1981); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488, (1951); *City of Davenport v. PERB*, 264 N.W.2d 307, 311 (Iowa 1978); *Reisner v. Board of Trustees of Fire Retirement System*, 203 N.W.2d 812, 814 (Iowa 1973)).

ANALYSIS

Welsh argues that the Commissioner erred in ruling that Welsh's injury was an injury to a scheduled member based on a diagnosis of peripheral neuropathy and not an injury to the body as a whole based on a diagnosis of complex regional pain syndrome. Welsh's argument is that the Commissioner's decision was not supported by substantial evidence in the record. Welsh argues that the Commissioner erred in finding he has peripheral neuropathy rather than CRPS, which is an injury to the body as a whole. *See*

Sandberg v. Rubbermaid Home Prod., an unpublished decision found at 760 N.W.2d 210 (Table), 2008 WL 5234378 at *5 (Iowa Ct. App. December 17, 2008) (citing *Collins v. Dep't of Human Servs.*, 529 N.W.2d 627, 629 (Iowa 1995)).

As noted by the Court of Appeals in *Sandberg* at *4-5:

> It is the anatomical situs of the permanent injury or impairment that determines whether the schedules in Iowa Code section 85.34(2)(a)-(t) are applied. *Lauhoff Grain v. McIntosh,* 395 N.W.2d 834 (Iowa 1986). In determining whether an impairment is scheduled or unscheduled, we look beyond the situs of the original injury and consider the impact of the injury on all parts of the body. *Barton v. Nevada Poultry Co.,* 253 Iowa 285, 290, 110 N.W.2d 660, 663–64 (1961). In *Barton,* the employee suffered an injury to the foot, a scheduled member. *Id.* at 287, 110 N.W.2d at 661. Because of the injury, causalgia affected the employee's entire nervous system. *Id.* The supreme court held that because of the causalgia, the employee was entitled to compensation based on industrial disability. *Id.* at 292, 110 N.W.2d at 664. Thus, it is clear that when an employee has an injury to a scheduled member and also to a part of the body not included in the schedule, the resultant permanent disability is compensable as an unscheduled injury. *Id.; see also Sherman v. Pella Corp.,* 576 N.W.2d 312, 320–21 (Iowa 1998) (discussing thoracic outlet syndrome, which would allow finding of industrial disability). Here, if an actual impairment occurred to an unscheduled portion of the body, a disability has been sustained to the body as a whole.
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> From this exchange, the agency concludes Sandberg's injury extends to her brain. There is no evidentiary basis for this finding—only an unreasonable interpretation of testimony. We agree with the district court that there is nothing in the statute or existing case law that suggests that a scheduled member injury becomes converted to an injury to the body as a whole where chronic pain results from the injury unless the pain becomes invasive to other parts of the body as it does with CRPS.
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> Dr. Pollack repeatedly rejected a diagnosis of CRPS, which is a recognized body—as—a—whole injury under *Collins v. Department of Human Services,* 529 N.W.2d 627, 629 (Iowa 1995) (finding that reflex sympathetic dystrophy, now known as CRPS, which is a dysfunction of the

sympathetic nervous system is compensable as an unscheduled injury). Dr. Pollack described CRPS in this manner:

> A. It's a condition of chronic pain and hypersensitivity that leads to progressive deformity and dysfunction of the limb.
> And it's a disease of the central nervous system.
> It's thought to involve a loss of the modulating pathways in the brain and spinal cord that suppress pain signals.

Dr. Pollack found no evidence to support a finding of CRPS. The agency made a specific finding that Sandberg did not suffer from CRPS. Dr. Pollack concluded Sandberg suffered a thirteen percent impairment of her lower extremity. Dr. Pollack's 2002 written opinion, noted above, also concluded that Sandberg's impairment is confined to the right lower extremity.

With this as a backdrop, the Court review's the record and the Commissioner's decision. It is the Commissioner's duty to make determinations as to the credibility and weight of the evidence presented before the agency as the fact finder. *See Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007) ("It is the commissioner's duty as the trier of fact to determine the credibility of the witnesses, weigh the evidence, and decide the facts in issue."). In the present case the Commissioner, through Deputy Commissioner Palmer, found that the opinions of Drs. Johnson, Benedetti, and Martin were more persuasive than the opinion of Dr. Bansal. It is sufficient that Commissioner provided his rationale for the weight given each of the doctor's opinions in assigning greater weight to Drs. Johnson, Benedetti, and Martin. *See Fruehauf Trailer Corp. v. Watts*, No. 00-1362, 2001 WL 726195, at *4 (Iowa Ct. App. June 29, 2001) (finding that the commissioner could afford more weight to a less recent medical opinion because he provided a logical rationale for affording more weight to that opinion).

Upon this judicial review, the Court has given particular consideration and focus on the findings of the Commissioner in comparison with the various medical records and

specific diagnoses referenced by the different medical providers. The testimony of Welsh and his description of the symptoms and problems he has experienced are relevant and important, particularly in assessing what weight and credibility to give to the medical opinions. The issue of injury and diagnosis, however, is primarily based upon expert testimony / evidence; and, as noted above, it is the situs of the injury that determines whether it is scheduled or body as a whole, and pain (even chronic pain) beyond the foot or lower extremity is not necessarily evidence of a permanent injury to the body or central nervous system.

In conducting this review, the Court agrees with Welsh that there appear to be some inconsistencies or contradictions in the record. There certainly is conflicting evidence in regard to the diagnosis and whether Welsh sustained an injury to the body as a whole (CRPS) or a scheduled injury (peripheral neuropathy). The Court is also troubled by the misstatement and somewhat misleading representations made by counsel for Respondents to the medical providers, specifically Dr. Nguyen.

In this regard, Dr. Nguyen deferred to Dr. Johnson and Dr. Benedetti in regard to a diagnosis. Dr. Nguyen did so after communicating with counsel. Counsel specifically represented to Dr. Nguyen that both Dr. Johnson and Dr. Benedetti expressed opinions that Welsh did not suffer from chronic regional pain syndrome (counsel did not represent that neither Dr. Johnson nor Dr. Benedetti diagnosed CRPS, which would at least have been accurate). This is clearly incorrect in regard to Dr. Benedetti who expressed no opinion either way and, at a minimum, is not clearly accurate in regard to Dr. Johnson.

Additionally, to the extent any other medical provider or the Commissioner relied upon an affirmative opinion of Dr. Benedetti that Welsh did not suffer from CRPS (i.e.

Dr. Johnson), such reliance would be somewhat misplaced. Again, Dr. Benedetti did not provide a specific diagnosis in regard to either CRPS or peripheral neuropathy.

The question is whether such inconsistencies and misstatements warrant a reversal of the Commissioner's decision. The question remains as to whether the Commissioner's findings are supported by substantial evidence. In this regard, the Commissioner received and reviewed the correspondence from counsel for Respondents to Dr. Nguyen. The Commissioner reviewed all of the medical records, including those of Dr. Benedetti, and was able to weigh and consider the effect, if any, of those records and any potential misunderstanding of Dr. Benedetti's opinion on other doctors' assessments. The Commissioner was able to consider the misrepresentation by counsel and any other inconsistencies within the records in weighing the credibility of the various medical providers. In particular, even though Dr. Nguyen had deferred to the misstated opinions of Dr. Johnson and Dr. Benedetti in regard to a diagnosis, neither the Commissioner nor this Court are required to do so, and Dr. Nugyen's medical records were received and reviewed in this regard.

The Commissioner found that Dr. Johnson's opinion was of greater weight because Dr. Johnson had treated Welsh's pain for many months. Admin. Decision at 13. The Commissioner also assigned greater weight to the opinion of Dr. Benedetti because she conducted additional diagnostic testing to test for CRPS and the diagnostic testing did not support a finding of CRPS. *Id*. As discussed above, Dr. Benedetti essentially expressed no opinion regarding either diagnosis. The Commissioner, however, did not find or rely on any opinion of Dr. Benedetti that Welsh did not have CRPS or had peripheral neuropathy; the Commissioner simply considered the fact that Dr. Benedetti did not affirmatively diagnose Welsh with CRPS after the

diagnostic tests in relation to Welsh's burden of proof. The Commissioner considered the opinion of Dr. Bansal even it was not afforded much weight because Dr. Bansal only examined Welsh once for an independent medical examination and did not provide an explanation or analysis of the objective evidence in Welsh's medical record. *Id*. Finally, the Commissioner gave some weight to the opinion of Dr. Martin. The Court finds these reasons to be reasonable and rational; and, again, the question is whether these weight findings and the ultimate conclusion were supported by substantial evidence.

In this regard, the evidence demonstrates that Dr. Johnson considered a diagnosis of CRPS, but never affirmatively diagnosed Welsh with CRPS. Further, he noted that part of the right lumbar sympathetic plexus block was to rule out CRPS. Exhibit 3 at 11. After two lumbar sympathetic plexus blocks, Dr. Johnson still did not affirmatively diagnose Welsh with CRPS and continued to consider peripheral neuropathy.

In regard to Dr. Benedetti, although she did not express an opinion one way or the other regarding a diagnosis, her records are still relevant to the issue presented in this matter. The Commissioner may make inferences as the fact finder as to the evidence presented in the record and where that finding is supported by substantial evidence the Court cannot intervene. *See Enfield v. Certain-Teed Products Co.*, 233 N.W. 141, 143 (Iowa 1930). Again, Welsh has the burden to prove an injury to the body as a whole. Merely because Dr. Benedetti did not diagnose Welsh with peripheral neuropathy does not mean that Welsh has CRPS. Additionally, the objective evidence of the bone scan ordered by Dr. Benedetti, as analyzed by the radiologist, would not support a finding that Welsh suffered from CRPS.

In looking at the records and opinions of Dr. Nguyen, specifically putting aside his deferment to Dr. Johnson and Dr. Benedetti, he in follow-up to Dr. Emerson considered whether Welsh had CRPS. Dr. Nguyen specifically noted that Welsh had symptoms consistent with and "some features of" CRPS; however, the records of Dr. Nguyen do not reflect an affirmative diagnosed CRPS even before the communication from counsel.

Welsh also asserts that Dr. Johnson's notation of reflex sympathetic dystrophy, another name for CRPS, in the active problems list is proof that Welsh has CRPS. Exhibit 4 at 8, 11, 15, 16, 18, 20, 22, 24,26, 28, 30, 32, 34, 36, 38. The Court, however, is not convinced that "active problems" is the same as a diagnosis or Dr. Johnson's "assessment" which was also listed in each of the office visit notes. In fact, peripheral neuropathy is also listed as an active problem every time that Dr. Johnson saw Welsh except for the last visit. *See* Exhibit 4 at 1, 3, 5, 8, 11, 15, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38. Otherwise, in his assessments, Dr. Johnson frequently states that Welsh had peripheral neuropathy. Exhibit 4 at 2, 4, 6, 9, 14, 16, 20, 23, 27, 29. The other listed assessment is chronic pain, which also does not equate an injury to the body as a whole. Dr. Johnson at no time referenced a diagnosis or assessment of CRPS, and his consideration of CRPS as a possible problem is not the same as a definitive diagnosis.

Finally, the two IME's of Dr. Bansal and Dr. Martin contradict each other in regard to a diagnosis, with both doctors giving their reasons for such diagnoses, including Dr. Bansal's review of the Budapest criteria for CRPS.

SUMMARY AND CONCLUSION

Welsh suffered a crush injury to his foot, which has resulted in chronic pain in his right foot. Welsh alleges that there is not substantial evidence in the record to support the Commissioner's finding that Welsh did not suffer from CRPS and an injury to the body as a whole.

In reviewing and summarizing the records and opinions of the experts, Dr. Emerson and Dr. Nguyen gave assessments of "probable" CRPS, "symptoms" of CRPS, and "features" of CRPS. It is questionable, however, whether Dr. Nguyen or Dr. Emerson ever specifically and formally diagnosed Welsh with CRPS as a permanent injury. Dr. Johnson indicated an assessment of reflex sympathetic dystrophy one time in November 2013 before referring Welsh for lumbar blocks to rule out CRPS. After those lumbar blocks, Dr. Johnson consistently assessed Welsh with peripheral neuropathy and/or chronic pain syndrome and never included either CRPS or reflex sympathetic dystrophy. Dr. Benedetti expressed no diagnosis either way, however, the bone scan conducted at her request revealed no evidence of reflex sympathetic dystrophy. Dr. Martin specifically and clearly expressed an opinion that Welsh did not suffer CRPS. Only Dr. Bansal, therefore, provided a specific diagnosis of CRPS.

Welsh bears the burden to prove his disability. *See Sanchez v. Blue Bird Midwest*, 554 N.W.2d 283, 285 (Iowa Ct. App. 1996). The Commissioner found that Welsh had not met his burden to prove that he had CRPS and therefore an injury to the body as a whole. The Commissioner found that Welsh had only proven injury to a scheduled member. Based on the above review, the medical records and opinions appear to actually weigh against a finding that Welsh suffered CRPS. The Court otherwise concludes that the record is conflicted and could support a finding of either diagnosis and, thus, similarly concludes there is substantial evidence in the record

supporting the Commissioner's findings. *See Second Injury Fund of Iowa v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994) ("An agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence").

The Court, therefore, cannot say that the Commissioner erred as a matter of law in finding that Welsh did not prove an injury to the body as a whole (CRPS) but did prove an injury to a scheduled member. For these same reasons, the Court cannot conclude that the Commissioner's interpretation of law or application of law to fact was "based upon an irrational, illogical, or wholly unjustifiable" interpretation or application, or was "otherwise unreasonable, arbitrary, capricious, or an abuse of discretion."

ORDER

IT IS THEREFORE ORDERED that the Commissioner's Decision is hereby affirmed.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV182080	DANIEL WELSH V. BEST BUY ET AL

So Ordered

Steven J. Andreasen, District Court Judge
Third Judicial District of Iowa