IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

PRAIRIE VIEW MANAGEMENT, INC., and ACCIDENT FUND GENERAL INSURANCE COMPANY, Petitioners, vs. **ROSE MORAN,** Respondent.	Case No. **CVCV063754** **RULING ON PETITION FOR JUDICIAL REVIEW**

This matter was brought before the Court on October 28, 2022, for hearing on Petitioner's Request for Judicial Review. Attorney Laura J. Ostrander appeared on behalf of Petitioners Prairie View Management, Inc. and Accident Fund General Insurance Company (Petitioners). Attorney Gary Nelson appeared on behalf of Respondent, Rose Moran (Respondent). The Court having heard the arguments of counsel, reviewed the file, and being fully advised in the circumstances, finds as follows.

BACKGROUND FACTS AND PROCEEDINGS

The case has a long factual history that was set forth in detail in the both the Arbitration and Appeal Decisions. Accordingly, the Court need not repeat such in detail here. The Court refers to the findings of fact as stated in the Deputy Commissioner's decision and will discuss the portions relevant to the issues and the Court's ruling.

Respondent began working for Petitioner on September 19, 2019. *Agy. Rec. pg. 223*. On December 5, 2019, Respondent emailed human resources with her resignation. *Id.* at 259. Human resources explained she had to submit a company letter of resignation to her supervisor which Respondent did on December 10, 2019. *Id.* at 257, 259. On both

her resignation email and her official letter of resignation, she listed her last day of work as December 20, 2019. *Id.*

On December 9, 2019, Respondent sustained an injury to her wrist while working for Petitioner. *Id.* at 253. On December 12, 2019, Petitioners offered Respondent modified duty according to her medical restrictions until December 20, 2019. The record reflects that sometime between December 9 and December 20, Respondent attempted to rescind her resignation and Petitioner declined. *Id.* at 242.

Respondent saw Petitioner's physician, Dr. Richard Naylor (Dr. Naylor) in December, 2019. After some treatment in May, 2020, Dr. Naylor recommended surgery. In February, 2021, Dr. Naylor opined Respondent had reached maximum medical improvement (MMI) and concluded she had a zero permanent impairment rating. *Id.* at 154, 155. Petitioners volunteered and paid $4,825.92 in permanent disability benefits to Respondent. *Id.* at 248. Petitioners also volunteered and paid Respondent $3,400.12 in temporary total disability benefits. *Id.* Respondent then procured an independent medical examination (IME) with Dr. Farid Manshadi (Dr. Manshadi) in June, 2021. *Id.* at 185. Dr. Manshadi issued an impairment rating of 14 percent to the right upper extremity. *Id.* at 195. Respondent filed petition seeking workers' compensation benefits against Petitioner

In January, 2022, the Deputy Commissioner held Respondent was entitled to temporary total disability benefits from December 2021 – September, 2020 and again from November, 2020 to December, 2020. Respondent was also awarded 35 weeks of permanent partial disability benefits at the rate of $412.40 per week based on Dr. Manshadi's impairment rating. The Deputy Commissioner decided Petitioners were to pay for Respondent's IME with Dr. Manshadi; that Petitioners pay penalty benefits in the

amount of 25 percent of all unpaid or underpaid benefits; that Petitioners pay interest on unpaid weekly benefits awarded; and that Petitioners would be given credit for benefits previously paid. *Id.* at 83. In April, 2022, the Commissioner affirmed the Deputy Commissioner's decision in its entirety. *Id.* at 19.

Petitioners seek judicial review on the issue of Respondent being entitled temporary and permanent partial benefits; the issue of Respondent being due reimbursement of Dr. Manshadi's IME; the Commissioner's adoption of Dr. Manshadi's impairment rating and weekly rate calculation; and the Commissioner's assessment of penalty benefits against Petitioner.

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 (2011); *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*. at (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. 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). 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).

LAW AND ANALYSIS

Commissioner's Conclusion to Award Temporary Benefits to Respondent

Petitioners first argue reversal of the Commissioner's award of temporary total disability benefits to Respondent. The award was for Petitioners to pay temporary total disability benefits from December 21, 2019 to September 23, 2020 and also from November 19, 2020 to December 19, 2020. *Agy. Rec. pgs. 83, 21*. Petitioners contend Respondent is not entitled to temporary benefits due to her resignation. The Court examines the relevant statutes and caselaw.

Brief Overview of Temporary Benefits in Iowa

"Permanent benefits and temporary benefits are very different. Temporary benefits compensate the employee for lost wages until he or she is able to return to work, whereas permanent benefits compensate either a disability to a scheduled member or a loss in earning capacity (industrial disability)." *Mannes v. Fleetguard*, *Travelers Ins. Co.*, 770 N.W.2d 826, 830 (Iowa 2009). Referring to Iowa Code, "[s]ection 85.33 clearly defines the purpose of temporary partial benefits and subsection (4) sets forth a formula for calculating temporary partial benefits, based on actual reduction of income. Thus, as a matter of law, temporary partial benefits cannot be awarded where there has been *no reduction* in income." *Id.* (emphasis added); Iowa Code § 85.33(4).

For the issuance of temporary benefits, Iowa Code section 85.33(3)(a) requires the following:

> If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

The language in the statute is straightforward and unambiguous. It requires an employer to offer accommodating work to the claimant and for the claimant to accept or refuse the work. It further states that an employee who refuses an offer of suitable work will not be entitled to temporary benefits during the time of the refusal. *Id.* Observably, the statute contains no instruction on how to proceed in the circumstance of the employee resigning or being terminated. However, in *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549 (Iowa 2010), the Supreme Court was tasked with applying section 85.33 to

such a situation. The Court therefore finds *Schutjer* and its application of section 85.33 relevant and instructive.

The Schutjer Case

The Court acknowledges the facts of *Schutjer* do not mirror the instant case. In the case, Schutjer, the claimant, had sustained an injury at work and her employer offered her modified work according to her restrictions. She accepted the offer and returned to work. Shortly after returning on modified duty however, Schutjer was found to have voluntarily quit her employment and thereby, refused the employer's offer of suitable work. Schutjer denied she had quit but substantial evidence supported the Commissioner's finding. Due to this, she was denied temporary benefits and appealed. Schutjer contended she was entitled to benefits because regardless of whether she had rejected work or not, her rejection ended when she spoke to her supervisor and denied she had quit. *Schutjer*, 780 N.W.2d at 559.

The Iowa Court of Appeals separated the issue of whether Schutjer had quit from the requirements of section 85.33. The issue was remanded with the court holding that regardless of whether she had quit or was terminated, the only issue was whether she was offered work and refused it. *Id.* The Iowa Supreme Court agreed, "the correct test is (1) whether the employee was offered suitable work, (2) which the employee refused. If so, benefits cannot be awarded, as provided in section 85.33(3)." *Id.*

Importantly, despite agreeing with the appeals court regarding the correct two-part test, the Iowa Supreme Court did not separate voluntary quit and refusal, but held the voluntary quit *was* the refusal. "The commissioner's finding that Schutjer voluntarily quit satisfied the second requirement of section 85.33(3)—refusal of suitable work." *Id.* The

opinion goes on to hold, "[t]herefore, [employer] was justified in accepting Schutjer's voluntary quit . . . as a rejection of suitable work on that date *and any future date*." *Id.* (emphasis added). The Supreme Court also took the further step of vacating the appeals court decision on the matter. *Id.* Accordingly, the Court concludes in the context of workers' compensation claims, a voluntary quit, when found, is considered to be a refusal of suitable work, "on that date and any future date." *Id.*

Applicability of *Schutjer* to the Instant Case

The facts of *Schujter* differ from the present case in that Schujter quit after her injury and Respondent had sustained her injury four days prior to her resignation. *Agy. Rec. pg. 259, 253*. For this reason, Respondent argues that *Schujter* is distinct and is not applicable here.

The court in Schujter contains no analysis or discussion implying that if Schutjer had quit before the injury or at any other time, she would be entitled to temporary benefits. *See generally, Schutjer,* 780 N.W.2d 549. Indeed, its analysis concluding a voluntary quit was a refusal of suitable work made no mention of the timing of her resignation at all. *Id.* It simply held, "the commissioner's finding that Schutjer voluntarily quit satisfied the second requirement of section 85.33(3)—refusal of suitable work." *Id.* at 559. As discussed previously, it went on to hold a voluntary quit is a refusal on that date and all future dates. *Id.* at 559. In view of this language, the Court concludes the date of the voluntary quit was not a determining factor in the court's decision. Rather, it was the finding of the voluntary quit itself, regardless of the timing, which was the determining factor.

Additionally, when considering the issue in the context of section 85.33, the

question of a voluntary quit or termination is otherwise, unaddressed regarding refusal. The opinion in *Schujter* is significant in that it introduces an additional method or avenue by which the second requirement of the two-part standard mentioned in section 85.33 is met. The Court also notes the court's unequivocal holding that a finding of a voluntary quit was a refusal even though the employee had accepted the offer of work and thereafter, attempted to stay with her employer by denying she had quit. This and the pointed language finding the voluntary quit was a refusal, "on that date and *any future date*," indicates to the Court a voluntary quit refusal can occur at any time, even if the employee has already accepted the offer of work. *Id.* (emphasis added).

Considering the reasoning of the Iowa Supreme Court, and in accordance with the intent of section 85.33, the Court concludes an employee who is found to have voluntarily quit refuses work from that date and any future date and that employee is not entitled to temporary benefits. Moreover, as discussed above, it is well established that temporary benefits in section 85.33 are predicated on a reduction in income due to a claimant's injury. For this reason, the Court further concludes it is in keeping with the language and intent of 85.33, that if the income reduction is due to a voluntary quit rather than an injury, the claimant is not entitled to temporary benefits.

Commissioner's Application of Section 85.33 and *Schujter* to the Instant Case

The Commissioner decided Respondent was entitled to temporary benefits despite Respondent's undisputed voluntary quit. *Agy. Rec. pg. 21, 83*. This was largely due to the timing of Respondent's resignation and her attempted recission of her resignation. *Id*. pg. 81. With regard to *Schutjer*, the Commissioner mentioned the case in reference to

Petitioner's argument, however, provided no analysis or application to the case before the Court. *Id.* Instead, the Commissioner mentions two cases in which a claimant was found to have refused work or quit and was not disqualified for temporary benefits. *Id.* In *Brenda Lynn Lange, Claimant*, FILE NUMBER: 5002953, 2005 WL 3730686 (Dec. 27, 2005), a voluntary quit was found not to disqualify an employee from temporary benefits because the work offered was found to be retaliatory. In *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 2012 WL 676991 (Iowa 2012), a refusal of work did not disqualify an employee from temporary benefits because the work offered was found to be unsuitable as it was outside a reasonable geographic area for the claimant. Without analysis or application of the cases to the facts, the Commissioner then decided Respondent's voluntary quit did not disqualify her because she quit before her injury and then tried to rescind her resignation. "Given that an injured worker can refuse work proffered and still qualify for temporary benefits, it is consistent to find that a resignation that occurred before an injure followed by a rescission of that resignation after the injury would not disqualify an injured worker from temporary total benefits." *Id.*

The Court finds the Commissioner's decision wholly ignores the reduction in income foundation described in section 85.33 and *Schujter's* two-part standard on the offer and refusal of work. Instead, of an analysis regarding section 85.33, the Commissioner sets forth the mere existence of instances where exceptions were found automatically permits a decision in this case which is contrary to precedent and to the intent of the statute. The Court acknowledges exceptions in the case of retaliatory conduct, work offered that is found to be unsuitable, or any other misconduct from an employer. However, neither of those situations exist or are analogous to the facts in the

instant case. Here, it is undisputed Petitioners offered Respondent modified work according to her restrictions. *Id.* at 260. Unlike the cases relied on by the Commissioner, there was no finding of retaliation or an offer of unsuitable work here. Therefore, the reasoning which justified the entitlement to benefits in those cases does not exist in the present case. The Court finds the Commissioner's reasoning is therefore, erroneous and unsupported in Iowa caselaw.

The Commissioner additionally attempts to justify her decision because Petitioners offered Respondent work until December 20, 2019 and Respondent attempted to rescind her resignation.

> The evidence shows that no light duty work was offered after December 20, 2019. *Because* no light duty work was offered after December 20, 2019, and that claimant was willing to continue to work for the defendants in a light duty capacity, the elements of 85.33(3) are not met and therefore, claimant is entitled to temporary benefits from December 21, 2019 through September 23, 2020, and then again from November, 19, 2020, until December 19, 2020.

Id. at 81. Here, the Commissioner is essentially faulting Petitioner for not hiring Respondent back and not offering her work past her chosen last day as expressed in her resignation writing. *Id.* at 257, 259. In her decision, the Commissioner cites no caselaw or statute which supports that if an employee wants to take their resignation back, they are therefore, entitled to temporary benefits.

The Court finds this reasoning again, ignores the instruction in *Schutjer* and the intent of section 85.33. Outside of discriminatory practices, it is not a matter for the courts, but within the discretion of an employer to accept an employee's resignation. It is further within the employer's discretion to decide to rehire someone who has resigned and any decision against rehire is not something to be held against an employer by the

Commissioner or the courts.

In the instant case, Petitioners had accepted Respondent's voluntary resignation and it was within their discretion to abide by the voluntary resignation when Respondent attempted to rescind. *Id.* at 241, line 4; 242, line 7. It is undisputed, as established by her resignation writing, and confirmed in her official Letter of Resignation, Respondent's last day was to be December 20, 2019. *Id.* at 257, 259. Due to this, the Court finds it reasonable for Petitioner to not offer work past this date.

By the Commissioner's reasoning however, an employer would not only be compelled to accept an employee's rescission, but also be forced to keep an employee who has resigned and continue to offer the employee work after their resignation date. This would additionally permit employees who get injured after they have voluntarily quit a way to force employers to keep them on and pay temporary benefits, which the employee may have otherwise not been entitled to due to their voluntary resignation. The Court declines to set such a precedent and finds it is contrary to *Schujter* and the intent of section 85.33 to do so. As such, the Court concludes the Commissioner's decision is erroneous as it is contrary to Iowa statue and Iowa caselaw. Accordingly, the Court finds the award of penalty benefits imposed due to Petitioners' not issuing or delaying temporary benefits, is also erroneous.

Commissioner's Conclusion to Adopt Dr. Manshadi's Impairment Rating and Award Permanent Partial Disability Benefits

The Commissioner decided to adopt Respondent's impairment rating of 14 percent than Petitioner's rating of zero percent impairment and award permanent partial disability based on the 14 percent impairment rating. *Id.* at 83. The parties dispute the extent of Respondent's impairment with Petitioner alleging abuse of discretion in the

Commissioner's adoption of Respondent's independently gained impairment rating.

Upon judicial review, "our assessment of the evidence focuses not on whether the evidence would support a different finding than the finding made by the commissioner, but whether the evidence supports the findings actually made." *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Because the commissioner is charged with weighing the evidence, we liberally and broadly construe the findings to uphold his decision." *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 331 (Iowa 2005).

In her decision, the Commissioner discussed Dr. Naylor and Dr. Manshadi's findings. The Commissioner included details on how the 14 percent impairment rating was comprised by Dr. Manshadi and why. *Agy. Rec. pg. 80*. As such, the Court concludes the Commissioner's adopting of Dr. Manshadi's impairment rating and award of permanent partial disability benefits is informed and supported by substantial evidence.

The Court, likewise, concludes no abuse of discretion in the Commissioner's decision Respondent is due reimbursement of the IME with Dr. Manshadi. The IME was procured according to the process outlined in Iowa Code section 85.39 having first gained an impairment rating from Petitioners. "Iowa Code section 85.39 does not expose the employer to liability for reimbursement of the cost of a medical evaluation unless the employer has obtained a rating in the same proceeding with which the claimant disagrees." *Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387, 394 (Iowa 2009). "An employer, however, is not obligated to pay for an evaluation obtained by an employee outside the statutory process." *Des Moines Area Reg'l Transit Auth. v. Young*, 867 N.W.2d 839, 844 (Iowa 2015) (internal citations omitted). The Court therefore, finds no abuse of discretion in the Commissioner's conclusion to reimburse pursuant to section 85.39.

The Court finds Petitioner's argument regarding Dr. Manshadi's fee and Iowa Code section 85.29 irrelevant and unpersuasive. Section 85.29 addresses an injury causing death of an employee and liability which the Court finds has little to do with the reasonableness of Dr. Manshadi's fee. As evidence, Petitioners have simply submitted Dr. Manshadi's fee is higher than Dr. Naylor's. The Court, declines to hold a fee unreasonable solely because it is higher than another's fee.

CONCLUSION

In conclusion, the Court affirms the Commissioner's conclusion to adopt Dr. Manshadi's impairment rating of 14 percent and that Respondent was due permanent partial disability based on that rating. The Court also affirms the Commissioner's conclusion that reimbursement is due to Respondent for Dr. Manshadi's IME.

The Court reverses the Commissioner's award of temporary total disability benefits to Respondent as erroneous and contrary to Iowa law. Consequently, the Court declines to impose any penalty payment on Petitioners for temporary benefits late or unpaid.

As such, the Court affirms the Commissioner's decisions on all issues except the award of temporary total disability benefits and any penalties assessed which the Court remands for determination of what is due after proper application of the law and facts including crediting of the amounts Petitioners have already paid Respondent in accordance with the holdings in this ruling.

IT IS THE ORDER OF THE COURT that the Workers' Compensation Commissioner's Decision is **AFFIRMED IN PART** and judicial review is therefore, **DENIED** on the issues of: the determination to adopt Dr. Manshadi's impairment rating; that Respondent is due permanent partial disability benefits at the adopted impairment

rating of 14 percent; and Respondent's being entitled to reimbursement for Dr. Manshadi's IME.

IT IS THE ORDER OF THE COURT that the Workers' Compensation Commissioner's Decision is **REVERSED IN PART** and judicial review is therefore, **GRANTED** as to the finding the Respondent being entitled to temporary benefits of any kind; and as to interest or penalties being due to Respondent for alleged delay or underpayment of temporary benefits.

The case is **REMANDED IN PART** for calculation by the Commissioner what is due after the application of the correct law and facts and after crediting the amounts already paid to Petitioner to Respondent as discussed herein.

SO ORDERED.

State of Iowa Courts

Case Number	**Case Title**
CVCV063754	PRAIRIE VIEW MANAGEMENT INC ET AL VS ROSE MORAN
Type:	ORDER FOR JUDGMENT

So Ordered

Celene Gogerty, District Judge
Fifth Judicial District of Iowa

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