IN THE IOWA DISTRICT COURT FOR POLK COUNTY

EATON CORPORATION and OLD REPUBLIC INS. CO., **Petitioners,** **vs.** **RAY P. OPPMAN and SECOND INJURY FUND OF IOWA,** **Respondents.**	**Case No. CVCV065676** **RULING ON PETITION FOR JUDICIAL REVIEW**

On November 3, 2023, the above-captioned matter came before this Court for hearing. Petitioners Eaton Corporation ("Eaton") and Old Republic Insurance Company were represented by attorney Kent Smith. Respondent Ray Oppman ("Oppman") appeared through attorney James Fitzsimmons, and the Second Injury Fund of Iowa was represented by Jonathan Bergman. After hearing the arguments of Counsel and reviewing the court file, including the briefs filed by the parties and the Certified Administrative Record ("Cert. Rec."), the Court enters this Ruling.

I. BACKGROUND FACTS.

Oppman began working for Eaton in 1994 at its plant in Belmond, Iowa. At issue in this particular case is an injury he sustained on January 23, 2018. While working on some equipment, Oppman stepped on a slippery patch on the floor, causing him to fall and injure his right knee. He was immediately taken to a doctor, who gave Oppman a knee brace, crutches, and a recommendation that he limit ambulation at work. Cert. Rec. 428-29. An MRI later revealed that Oppman had torn several ligaments and his meniscus. *Id.* at 434. Following his knee injury and the resulting surgery on May 2, 2018, medical professionals continued to note Oppman's

antalgic[1] gait. *Id.* at 31-32. Shortly after his surgery, Oppman's doctors and physical therapist made notes regarding Oppman's worsening lower back pain. *Id.* On or around September 25, 2018, an MRI of Oppman's lower back indicated degenerative changes throughout his lumbar spine, including a diffuse disc bulge and severe central canal narrowing. *Id.* at 547. Oppman has since had many doctor visits and procedures related to the pain in his lower back. On October 15, 2018, Oppman was terminated by Eaton for excessive absences following the exhaustion of his FMLA leave. *Id.* at 311.

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While Eaton has agreed that Oppman's knee injury was work-related, they deny that the back injury was also work-related. On November 9, 2022, Deputy Workers' Compensation Commissioner Joseph Walsh issued an Arbitration Decision that concluded that the back injury was a sequela condition for which Eaton must compensate Oppman. Oppman was awarded permanent total disability benefits as well as the cost of any future medical treatment for his knee and back conditions. On appeal, Workers' Compensation Commissioner Joseph Cortese affirmed the Deputy Commissioner's findings with some substituted analysis, the specifics of which will be discussed below as necessary. Ultimately Commissioner Cortese agreed that the back condition was a sequela injury and also that Oppman was permanently and totally disabled. This decision constituted final agency action. Eaton now petitions this court for judicial review of Commissioner Cortese's decision.

II. STANDARD OF REVIEW.

In an administrative proceeding, the Court's review is governed by Iowa Code section 17A.19. A party challenging agency action bears the burden of demonstrating

[1] Antalgic means "marked by or being an unnatural position or movement assumed by someone to minimize or alleviate pain or discomfort (as in the leg or back)." *Antalgic*, MERRIAM-WEBSTER MEDICAL DICTIONARY, available at https://www.merriam-webster.com/medical/antalgic.

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). Where the issue is one of fact, the Court must accept the agency's factual findings unless they are "not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f); *see also Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-465 (Iowa 2004).

III. ANALYSIS.

Eaton challenges the agency's decision on two grounds. First, they argue that the finding of a sequela injury is not supported by substantial evidence. Second, they claim the finding of total and permanent disability is irrational, illogical, or wholly unjustifiable.

A. Sequela Injury

Eaton first challenges the finding that Oppman's back injury was causally related to the knee injury. "Medical causation presents a question of fact that is vested in the discretion of the workers' compensation commission." *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 844-45 (Iowa 2011) (citing *Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995)). A determination of fact can only be overturned on judicial review if it "is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f). "'Substantial evidence' means the quantity and quality of evidence that

would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." *Id.* § 17A.19(10)(f)(1).

Deputy Commissioner Walsh weighed the evidence, including expert testimony, provided by both parties.

> Having reviewed the entire record as a whole, I find that a greater weight of evidence supports a finding that Mr. Oppman did sustain a functional impairment in his low back which resulted from his original work injury. This is based upon Dr. Kuhnlein's expert opinion, Dr. Baker's opinion as a treating physician, combined with Mr. Oppman's credible testimony, as well as relevant treatment records. I reject the opinion of [Eaton's expert] Dr. Chen . . . this opinion is simply not believable in light of the treatment records and opinions of Dr. Baker.

Id. at 36. On appeal, Eaton presented an additional expert opinion, that of Dr. Bollier, which Commissioner Cortese did not find persuasive.

> When claimant reported his back pain to Dr. Bollier during treatment, Dr. Bollier documented, "[w]e explained that per work comp rules, the back pain is not considered a work injury" and he directed claimant to follow up with his primary care provider. . . Dr. Bollier cited to no specific "work comp rules" supporting his assertion. He later agreed with Dr. Chen's opinions and provided no analysis to explain his bare conclusions. I do not find Dr. Bollier's opinion persuasive.

Id. at 23-24 (alteration in original). Commissioner Cortese also agreed with Deputy Commissioner Walsh that Oppman's experts were more persuasive.

As the finder of fact, the agency determines the weight to assign an expert opinion, assessing the accuracy of the facts provided to the expert as well as other surrounding circumstances. *Sherman v. Pella Corp.,* 576 N.W.2d 312, 321 (Iowa 1998). The agency may reject or accept the expert evidence entirely or in part. *Pease,* 807 N.W.2d at 850. In our appellate posture, we "are not at liberty to accept contradictory opinions of other experts in order to reject the finding of the commissioner." *Id.* (citation omitted).

In sum, the law is clear; the Court cannot reweigh the evidence in this case.

Both the Deputy Commissioner and the Commissioner found Oppman's experts were stronger than Eaton's and therefore agreed that the back injury was caused by the knee injury. There is substantial evidence in the form of multiple expert opinions that support this finding. The Commission's finding on this issue is affirmed.[2]

B. Total and Permanent Disability

Eaton also contends that the Commission incorrectly awarded industrial disability based on the conclusion that Oppman was totally and permanently disabled as a result of his work injury. They note that none of the doctors who evaluated Oppman found that he was totally disabled. Furthermore, Eaton argues that even if Oppman is totally and permanently disabled, it is due to health concerns that were diagnosed after his work injury and Eaton is therefore not liable. The determination of industrial disability is an application of law to the facts; therefore, the Court must consider if the decision reached was "irrational, illogical, or wholly unjustifiable." *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 857 (Iowa 2009).

There are two ways that a claimant can show total and permanent disability. *Michael Eberhart Const. v. Curtin*, 674 N.W.2d 123, 126 (Iowa 2004). The first is to show that the claimant's "medical impairment together with the nonmedical factors total 100%." *Id.* (quoting *Boley v. Indus. Special Indem. Fund,* 939 P.2d 854, 857 (Idaho 1997)). The second is to show that the claimant is an "odd-lot" worker. *Id.*

> [A] worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist[.]" . . .
>
> We therefore hold that when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not

[2] Because of this, the finding that the Second Injury Fund is not liable for Oppman's injury is also affirmed. *See* Cert. Rec. 11, 36.

> employable in the competitive labor market, the burden to produce evidence of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of fact finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability.

Guyton v. Irving Jensen Co., 373 N.W.2d 101, 105-107 (Iowa 1985) (quoting *Lee v. Minneapolis St. Ry. Co.,* 41 N.W.2d 433, 436 (Minn. 1950)). Oppman argues that he is an odd-lot worker, because he has spent the entirety of his twenty-four-year career working for Eaton in manufacturing and is unable to continue his work there given his limitations. Cert. Rec. 274.

Though Deputy Commissioner Walsh did not explicitly address if Oppman was an odd-lot worker, he did conclude that there was no meaningful employment available for Oppman at Eaton. Referring to the recommendation from multiple doctors that Oppman avoid working on slippery surfaces, the Deputy Commissioner stated, "While the stated reason for his termination appears to be excessive absenteeism, the reality is there was no gainful work that Mr. Oppman could perform for Eaton because of the slippery surfaces." *Id.* at 38. Deputy Commissioner Walsh then acknowledged Oppman's many other health conditions.

> I agree that claimant has numerous health concerns which are not related to his work injury, however, the facts demonstrate convincingly that Mr. Oppman has had these conditions for some time and he was always able to work with these conditions. In fact, he not only worked but he was highly productive and valuable. He was able to perform all of the tasks in a fairly heavy work environment with minimal limitations. He is now unable to work because of a combination of all of these conditions – both work related and non-work related. The employer is required to "take the injured worker as it finds him." Given the serious conditions in his right knee and back, I have found he is no longer able to perform any meaningful work in the competitive job market.

Id.

On appeal, Commissioner Cortese disagreed with the determination that there was no meaningful employment available for Oppman at Eaton at the time that

Oppman was released to return to work following his injury. *Id.* at 25. He did find that at the time of the hearing, Oppman would not be able to return to work at Eaton "given his current permanent restrictions." *Id.* The Commissioner then concluded his analysis with the following:

> Claimant has a number of serious medical conditions that either preexisted or developed after he injured his right knee and low back. Claimant has a history of asthma dating back to childhood and morbid obesity. At the time of his first appointment with Dr. Bollier on April 5, 2018, claimant had been taking prednisone daily to manage his asthma for at least three years. He was short of breath and had a history of sleep apnea and used a CPAP at night. After Dr. Bollier released him from care claimant was diagnosed with lymphedema, lower extremity edema, left lower extremity cellulitis and necrosis of muscle, chronic right-sided heart failure, chronic heart failure with preserved injection fracture, chronic obstructive pulmonary disease, nocturnal hypoxemia, pulmonary hypertension, cor pulmonale, uncontrolled diabetes type 2, and drug-induced hypokalemia.
>
> Claimant is a seriously ill, morbidly obese man. I do not find the work injury caused or materially aggravated, accelerated or "lit up" his pulmonary, cardiac, or other health conditions. The work injury caused claimant's right knee condition and materially aggravated, accelerated, and "lit up" his low back condition, and he now requires permanent work restrictions. As correctly noted by the deputy commissioner, despite his personal comorbidities and another prior work injury he worked full-time for defendant-employer for 20 years. Claimant was a motivated worker, despite his breathing problems and large size. Following his termination claimant applied for work but was not hired before the Social Security Administration found he was permanently and totally disabled. Considering all the factors of industrial disability, I find claimant has established he is permanently and totally disabled under the statute.

Id. at 26 (internal citations omitted).

The Court has three main concerns regarding the Commissioners' industrial disability analysis. First, there seems to be a contradiction between the finding that Eaton had suitable employment for Oppman after his injury and the finding of permanent and total disability. Second, it seems to equate conditions that Oppman had before his injury and conditions that were diagnosed after. Finally, it does not engage in the burden-shifting analysis prescribed by Iowa courts in *Guyton* and

similar cases, which is to say there is no discussion of whether there is suitable employment available elsewhere in the market. This does not mean that the Commissioner's conclusion is necessarily incorrect; rather, it is impossible with the record before the Court to determine if the Commissioner's decision was irrational, illogical, or wholly unjustifiable.

The Court therefore remands this case to the Commissioner for a more specific finding on Oppman's industrial disability that the Court can review. The record before the Court contains little evidence regarding Oppman's employability[3]; therefore, on remand both parties should be given the opportunity to present evidence regarding whether Oppman was an odd-lot worker. The agency should then make a specific finding on this issue when considering only the limitations created by Oppman's work injury and the conditions that preexisted the injury so that the Court can conduct a more intelligent review, if necessary, of the agency's findings.

IV. DISPOSITION.

IT IS THE ORDER OF THE COURT that Decision of the Workers' Compensation Commission is **AFFIRMED** with regard to the designation of the sequela injury of the lower back. Court costs are taxed to Petitioner.

IT IS FURTHER ORDERED that the Decision is **REMANDED** to the agency for the limited purpose of conducting a more specific finding and analysis regarding the designation of permanent and total disability in accordance with this decision.

[3] Oppman noted at the agency hearing that he had applied for employment at "a couple of places" following his termination. Cert. Rec. 357. It is unclear from the record if he was rejected, and he stopped his search all together once he was approved for SSDI benefits. *Id*. That said, rejected job applications are not the only way to demonstrate a prima facie case of permanent and total disability. *Second Inj. Fund of Iowa v. Nelson*, 544 N.W.2d 258, 267 (Iowa 1995).

State of Iowa Courts

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CVCV065676	EASTON CORPORATION ET AL VS RAY P OPPMAN ET AL
Type:	ORDER FOR JUDGMENT

So Ordered

Coleman McAllister, District Judge
Fifth Judicial District of Iowa

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