

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CHERI BLAKE,)	Case No. CVCVo60322
)	
Petitioner,)	
)	
vs.)	
)	
SECOND INJURY FUND OF IOWA,)	ORDER ON PETITION FOR
)	JUDICIAL REVIEW
Respondent,)	

Petitioner sought judicial review of a decision by the Iowa workers' compensation commissioner (the Commissioner) that found her ineligible for Iowa Second Injury Fund (ISIF) benefits under the Second Injury Fund Compensation Act (SIFCA). Oral argument was held on August 21, 2020. Petitioner Cheri Blake was represented by attorney Andrew W. Bribriesco. Respondent Second Injury Fund of Iowa (SIFI) was represented by Assistant Attorney General Amanda R. Rutherford. Oral argument was not reported.

This case presents a single legal issue for the court to decide: Does permanent disability to an eye caused by a disease extending into the body as a whole constitute a first qualifying loss under Iowa Code section 85.64 or the common law? Upon review of the Petition and the court file in light of the relevant law, and after carefully considering the respective arguments of counsel, the court enters the following Order.

BACKGROUND FACTS AND PROCEEDINGS

Petitioner suffers from Graves' disease. (Arb. Dec. at p. 3). The parties agree that Petitioner has a right eye disability arising from the Graves' disease. (Arb. Dec. at p. 8). Petitioner ultimately sought ISIF benefits from SIFI and appeals an adverse decision by the Iowa workers' compensation commissioner (the Commissioner) denying her claim for

such benefits.

Petitioner's claim against SIFI was tried on November 14, 2018, before a deputy workers' compensation commissioner (the Deputy). At the hearing Petitioner alleged a first qualifying injury to her right eye due to Graves' disease symptoms. Petitioner testified she was diagnosed with Graves' disease in 2010 and it affects her vision. (Ex. 10 at p. 34; Arb. Dec. at pp. 3, 5 – 8).

Graves's disease is an immune system disorder causing overproduction of thyroid hormones. (Arb. Dec. at p. 5). In addition to blurry vision, Petitioner suffers from pressure behind both her eyes, weekly headaches, cramping in her legs, insomnia, significant weight loss, anxiety/racing heart, and skin rashes. (Ex. FF at p. 23; Ex. KK at p. 48). She was proscribed Propylthiouracil, an anti-thyroid drug, for these symptoms. It decreases the amount of hormone the thyroid gland produces.

The medical records indicate Petitioner first sought treatment for Graves' disease on January 27, 2016. (Ex. 4 at p. 21). On that date she was evaluated by family physician Dr. Narayana for complaints of decreased vision in her right eye, ptosis in her left eye, a skin rash, and fatigue. (*Id.*) Dr. Naranyana referred Petitioner to an endocrinologist.

Petitioner saw endocrinologist Dr. Wilczynski on February 2, 2016. (Ex. 5 at p. 28; Arb. Dec. at pp. 3 – 5). At this appointment she complained of blurry vision in her left eye, pressure build-up in both eyes, leg cramping and insomnia. (Ex. 5 at p. 26). Dr. Wilczynski diagnosed her with Graves' hyperthyroidism with eye manifestations. (*Id.* at pp. 27 – 27). He proscribed Methimazole, an anti-thyroid medication, and referred Petitioner to an eye surgeon for evaluation. (*Id.* at p. 27) Petitioner testified at the hearing that she has never been to see an eye surgeon.

Petitioner had one follow-up appointment with Dr. Wilczynski's clinic in February 2016. (Ex. 5 at pp. 26 – 27). On April 19, 2016, Dr. Wilczynski changed her medication from Methimazole to Propylthiouracil because of side effects. (*Id.* at p. 24). Dr. Wilczynski again referred Petitioner to an eye surgeon. (*Id.*). Petitioner did not do so because her insurance would not cover it. (Tr. at p. 16).

In November 2016, Petitioner returned to Dr. Narayana for anxiety and insomnia. There are no medical records in evidence (1) detailing any treatment to Petitioner's right eye, nor (2) showing loss of vision in the right eye. At the hearing Petitioner testified she does not have prescription eyeglasses. (Arb. Dec. at p. 5). She also does not have any work restrictions for her right eye. (*Id.*)

On August 17, 2018, Petitioner underwent an independent medical exam (IME) with Dr. Bansal. (Ex. 2 at p. 5). Dr. Bansal diagnosed her with Graves' disease. (Ex. 2 – 12). He opined that pursuant to the AMA Guides, Fifth Edition, she had a 4% permanent visual impairment due to the Graves' disease. (Ex. 2 at p. 16). He also suggested she avoid jobs that require bilateral intact vision such as commercial driving, avoid nighttime driving, and install blind-spot mirrors on her car.¹ (*Id.*).

On August 15, 2019, the Deputy issued the arbitration decision. The Deputy found Petitioner did not have a first qualifying injury to her right eye and thus did not qualify for benefits from Respondent. (Arb. Dec. at p. 9). Specifically, the Deputy found Petitioner's

¹ Petitioner asserted a second qualifying injury to her right upper extremity on September 12, 2016. During the IME, Dr. Bansal was also asked to evaluate Petitioner's right upper extremity for permanent impairment. At the hearing Respondent stipulated that Petitioner suffered a permanent injury to her right upper extremity on September 12, 2016, but the parties disagreed on the amount of credit Respondent should receive for that injury. The Deputy made no fact findings about Petitioner's second alleged injury and it is not an issue in the instant appeal.

eye complaints are “the result of inflammation and other immune system events affecting the muscles and tissues around the eyes.” (Arb. Dec. at p. 9; Ex. FF at p. 23). The Deputy explained that the inflammation was caused by hyperthyroidism, a condition of the endocrine system. (*Id.*). Injuries to the endocrine system are addressed in chapter 10 of the AMA Guides, Firth Edition and are rated to the body as a whole. (*Id.* at pp. 8-9). The Deputy did not award Petitioner any benefits. (*Id.* at p. 9).

On August 23, 2019, Petitioner filed a Motion for Rehearing of the arbitration decision. On August 28, 2019, Respondent filed a Resistance. The agency did not rule upon the Motion, effectively denying it. Iowa Admin. r. 876-4.24.

Petitioner sought intra-agency review on September 17, 2019. On June 10, 2020, the Commissioner issued a decision affirming the Deputy’s decision in its entirety. The Commissioner reiterated that Petitioner’s first alleged injury was located in the body as a whole, not her right eye. The Commissioner stated:

I affirm the deputy commissioner’s finding that claimant failed to prove she sustained a first qualifying scheduled member injury to her right eye for the purpose of receiving benefits from [Respondent]. I affirm the deputy commissioner’s finding that the alleged first qualifying injury was actually an injury to the claimant’s body as a whole with the result that claimant is not eligible to receive benefits from [Respondent].

(App. Dec. at p. 2).

On June 15, 2020, Petitioner filed the instant Petition seeking review of the Commissioner’s final agency decision.

STANDARD OF REVIEW

Iowa Code chapter 17A governs judicial review of final agency action. “Under the Act, [the court] 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 v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). A party challenging agency action bears the burden of demonstrating the action’s invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). In exercising the power of judicial review, the district court acts in an appellate capacity. *Nance v. Iowa Dep’t of Revenue*, 908 N.W.2d 261, 267 (Iowa 2018) (quoting *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 463 (Iowa 2004)).

To determine the applicable standard of review under section 17A.19, the court must first ascertain the basis of Petitioner’s claim. After thoughtful consideration of the parties’ briefs and arguments, it appears Petitioner takes issue with the Commissioner’s finding that Petitioner did not prove a first qualifying injury to her right eye, but rather presented evidence of a body as a whole condition. This is a question of fact.

Petitioner attempts to paint this appeal as one of law by claiming the agency was required to apply the precedent established in *Gregory v. Second Injury Fund of Iowa*, 777 N.W.2d 395 (Iowa) to the facts of this case and find Petitioner’s first alleged injury qualified for benefits. As explained below, the *Gregory* decision is not applicable to the facts of this case. Under the court’s holding in *Gregory*, injuries located in a petitioner’s body as a whole do not qualify for ISIF benefits. As noted above, the Commissioner specifically found Petitioner’s injury was located in her body as a whole, not in her right eye—a finding of fact.

The Iowa legislature vested the Commissioner with authority to make factual findings. Iowa Code §§ 86.14 – 24. When the court reviews factual findings made by the Commissioner, those findings have the effect of a jury verdict. *Kostelac v. Feldman’s, Inc.*, 497 N.W.2d 853, 856 (Iowa 1993). The court must broadly and liberally construe the Commissioner’s findings to uphold, rather than defeat, the Commissioner’s decision. *Second Injury Fund of Iowa v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995).

The court can only reverse the Commissioner's factual findings if they are not supported by substantial evidence in the record as a whole. Iowa Code § 17A.19(10)(f). Evidence is substantial "if a reasonable mind would find it adequate to reach a conclusion. An agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence." *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994). On appeal, the question is whether the evidence supports the findings actually made, not whether the evidence could support a different finding. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000).

As an alternative argument, Petitioner argues that under the language of SIFCA, the symptoms in her right eye should qualify for ISIF benefits. She says this question is an issue of first impression in Iowa. The Iowa Supreme Court (the Court) has issued previous decisions addressing this issue. The most applicable decision is *Second Injury Fund v. Nelson*, 544 N.W.2d 258, 269 (Iowa 1995). The question in the instant matter is whether the agency correctly applied established legal precedent.

When the court is asked to review an agency's interpretation of law, the court affords the agency a level of deference if the authority to interpret that law has "clearly been vested by a provision of law in the discretion of the agency." *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 813 N.W.2d 250, 256 (Iowa 2012). Where the legislature has clearly vested the agency with such authority, the court "will only reverse a decision of statutory construction which is irrational, illogical, or wholly unjustifiable." *Xenia Rural Water Dist v. Vegors*, 786 N.W.2d 252, 252 (Iowa 2010).

If the agency has not been clearly vested with the authority to interpret the law, the court reviews questions of law for correction of errors at law. *Waldinger Corp. v. Mettler*,

817 N.W.2d 1, 7 (Iowa 2012). The Commissioner has not been vested with authority to interpret the law regarding the criteria to establish liability under Iowa Code section 85.64. The court's review of this issue is therefore for correction of errors at law. *Xenia*, 786 N.W.2d at 252.

ANALYSIS

The underlying dispute in this case arises from the Commissioner's determination that Petitioner did not prove a qualifying scheduled member injury to her right eye itself, but rather offered evidence of an injury located in the body as a whole. Petitioner argues this was legal error and under the Court's holding in *Gregory*, the Commissioner was required to find a qualifying injury to the right eye. Respondent argues the holding in *Gregory* does not apply to this case because the Commissioner specifically found Petitioner's alleged injury was located in the body as a whole and that finding is supported by substantial evidence.

A. Whether the Commissioner correctly found Petitioner's first alleged injury was located in the body as a whole and was not a qualifying injury for ISIF benefits. To establish a claim against SIFI, Petitioner had to establish (1) she lost, or lost the use of, a hand, arm, foot, leg, or eye, (2) she sustained a loss or loss of use of another specified member or organ through a compensable work-related injury, and (3) there is permanent disability from both the first and second scheduled member injuries. *Shank*, 516 N.W.2d at 812. It is the claimant's burden to prove permanent disability resulting from both the initial scheduled member injury and the second alleged scheduled member injury by a preponderance of the evidence. *Bergeson*, 526 N.W.2d at 547 – 48; Iowa R. App. P. 6.14(6).

The Deputy found Petitioner's eye complaints are "the result of inflammation and other immune system events affecting the muscles and tissues around the eyes." (Arb. Dec. at p. 9). On appeal, the Commissioner confirmed that an injury located in the endocrine system which causes swelling in the muscles and tissues of the head is an "injury to claimant's body as a whole with the result that claimant is not eligible to receive benefits from [SIFI]." (Appeal Dec. at p. 2).

The parties agree that the only diagnosis for Petitioner's first alleged injury is Graves' disease and the Commissioner correctly found that the only diagnosis for Petitioner's first alleged injury was Graves' disease. (Arb. Dec. at p. 8). As noted above, Graves' disease is an immune system disorder causing the overproduction of thyroid hormones. (*Id.*) The thyroid is located in the neck and is considered part of the endocrine system. (*Id.*) Under the AMA Guides, Fifth Edition, permanent impairment to the endocrine system is addressed in chapter 10. (*Id.*) Under chapter 10, permanent impairment caused by Graves' disease is a rating to the body as a whole. (*Id.*)

Endocrine deficiencies can cause impairment to many different organ systems because hormones flow freely throughout the whole body. Because of this, the signs and symptoms of Graves' disease are wide ranging. At the hearing, Petitioner testified that she suffers from a number of common symptoms of Graves' disease, including pressure behind her eyes, headaches, cramping in her extremities, insomnia, significant weight loss, anxiety/racing heart, and skin rashes. (Ex. FF at p. 23). Petitioner also testified she suffers from blurry vision because of Graves' disease. (*Id.*)

However, medical evidence in the record show that Petitioner's vision issues are not an injury to the eye organ itself. They are a side effect of her endocrine condition which is causing a build-up of certain carbohydrates in the muscles and tissues located in her skull behind the

eyes. It is the anatomical situs of the injury which determines whether a claimant has a scheduled member injury or an injury to the body as a whole. *Lauhoff Grain Co. v. McIntosh*, 395 N.W.2d 834, 840 (Iowa 1986); *Dailey v. Pooley Lbr. Co.*, 233 Iowa 758, 763, 10 N.W.2d 569, 572 (1943). “The situs of an injury is determined by the anatomical or physiological location of the damage or derangement.” *Spainhower v. Second Injury Fund*, File No. 1110759, 1999 WL 33619875 (Arb. Dec., Sept. 30, 1999); *Prewitt v. Firestone Tire*, File Nos. 876688, 931128, 1993 WL 13015946 (App. Dec., June 30, 1995) (stating the anatomical situs of the physical injury determines whether the disability is to a scheduled member or to the body as a whole).

Like diabetes, RSD/CRPS, and vascular conditions, Graves’ disease may manifest or produce symptoms in a particular part of the body, but its origin is in the body system as a whole. *Blacksmith v. All-American, Inc.*, 290 N.W.2d 348, 353 (Iowa 1980) (finding vascular injury that affected the leg was an injury to the body as a whole); *Collins v. Dep’t of Human Res.*, 529 N.W.2d 627, 629 (Iowa Ct. App. 1995) (holding RSD is an injury to the sympathetic nervous system even though it affected the claimant’s hands); *see also Rivers v. Second Injury Fund*, File No. 1253705, 2002 WL 32125606 (Arb. Dec., March 4, 2002) (holding diabetes/peripheral neuropathy is an injury that may manifest in a scheduled member but its origin is in the body as a whole).

Petitioner has never received any treatment on her right eye itself—she does not even wear prescription eyeglasses. While Dr. Wilczynski referred Petitioner to any eye surgeon, she has never seen one. (Arb. Dec. at p. 8). Medical records show she has been proscribed Propylthiouracil for all the symptoms she experiences due to her endocrine disorder. As noted above, this is an anti-thyroid drug. It decreases the amount of hormone produced by the thyroid gland, thereby decreasing the swelling in the tissue behind

her eyes. The only condition Petitioner has sought treatment for is a whole body condition. This determination is supported by her expert witness report.

When asked for a diagnosis for Petitioner's right eye complaints, Dr. Bansal diagnosed her with Graves' disease. Dr. Bansal agrees her vision complaints are a side-effect of her Graves' disease—a body as a whole condition.² He did not diagnose her with any injury to the right eye itself and there is no evidence in the hearing record indicating Petitioner's vision loss issues are caused by an actual injury to the eye which could be separated from her endocrine condition. *See Briggs v. Second Injury Fund*, File No. 5024615, 2011 WL 3475696 (Aug. 9, 2011) (Claimant denied ISIF benefits because alleged scheduled member injury could not be separated from body-as-a-whole condition).

The Deputy found Petitioner's eye complaints are “the result of inflammation and

² In her Brief Petitioner argues the agency had to adopt Dr. Bansal's impairment rating to the right eye because he was the only designated expert. This assertion is incorrect. “The Commissioner, as the fact finder, determines the weight to be given to any expert testimony,” and “[s]uch weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances.” *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). The determination of whether to accept or reject an expert opinion is within the “peculiar province” of the Commissioner. *Deaver v. Armstrong Rubber Co.*, 170 N.W.2d 455, 464 (Iowa 1969). Remand is only required if the Commissioner has rejected or disregarded material evidence without stating why. *McDowell v. Town of Clarksville*, 241 N.W.2d 904, 908-909 (Iowa 1976).

The Commissioner clearly found Dr. Bansal's own diagnosis for Petitioner's eye complaints was Graves' disease—a body as a whole condition that does not qualify for ISIF benefits. (Arb. Dec. at pp. 7 – 8). There is nothing under Iowa law compelling the Commissioner to adopt an expert's rating when it is demonstrably incorrect under the law and not in compliance with the AMA Guides to the Evaluation of Permanent Impairment. *See Bergeson*, 526 N.W.2d at 548 (stating “Iowa has adopted the guides for the determination of permanent partial disability.”). Under chapter 10, permanent impairment caused by Graves' disease is a rating to the body as a whole.

other immune system events affecting the muscles and tissues around the eyes.” (Arb. Dec. at p. 9; Ex. FF at p. 23). This is an “injury to claimant’s body as a whole with the result that claimant is not eligible to receive benefits from [SIFI]. (App. Dec. at p. 2). This factual finding is supported by substantial evidence in the record and should be upheld.

B. Whether the holding in *Gregory v. Second Injury Fund of Iowa*, 777 N.W.2d 395 (Iowa 2010) applies to the facts of this case. Petitioner also urges that the Commissioner erred by not applying the court’s holding in *Gregory v. Second Injury Fund of Iowa*, 777 N.W.2d 395 (Iowa 2010) to the facts of her case. She claims “*Gregory* stands for the proposition that an injury that extends into the body as a whole can still be considered a first qualifying injury if it affects an enumerated member under SIFCA.” (Pet. Jud. Rev. Brief at p. 14).

Petitioner misinterprets the *Gregory* holding. As stated above, the Commissioner found Petitioner’s first alleged injury was located in her body as a whole. This finding is supported by substantial evidence. Under the holding in *Gregory* a claimant must still prove that the first alleged injury is physically located in an enumerated scheduled member. Petitioner did not meet this burden.

In *Gregory* the question before the court was whether a prior carpal tunnel release surgery to the claimant’s left hand qualified as a first injury, when the claimant later underwent bilateral shoulder surgeries that were determined to be causally related to the same date of injury as the left carpal tunnel release. *Gregory*, 777 N.W.2d at 396. In looking at this unique set of facts, the Court concluded that a first qualifying injury can occur simultaneously with an injury to another area of the body. *Id.* at 400. But the court clarified “[t]he 2000 injury to Gregory’s left hand qualifies as a first

injury *only because it was situated in an enumerated member* and was not confined to an unenumerated part of her body.” *Id.* at 401 (emphasis added).

This is not true in Petitioner’s case. Her alleged injury is not located in an enumerated member. It is located in the muscles and tissues in her head. Further, Gregory’s left hand was injured in such a way that it was impossible to completely separate it from his body as a whole conditions and accurately rate the hand. *Id.*

Gregory’s left hand and shoulders underwent separate surgeries, were given separate impairment ratings, and had separate work restrictions. *Id.* at 396. *See also Briggs*, File No. 5024615 (Claimant denied ISIF benefits because alleged scheduled member injury could not be separated from body as a whole condition). Petitioner’s alleged first injury does not meet any of the requirements outlined in *Gregory*. She is suffering from a body as a whole condition which is affecting her eyes. She does not have a separate ratable injury to the right eye.

The *Gregory* Court determined that an injury to an enumerated scheduled member could occur at the same time as a separate injury to the body as a whole and still qualify for ISIF benefits. *Gregory*, 777 N.W.2d at 398. The *Gregory* Court did not state that a first qualifying loss could be caused by an injury to the body as a whole or be one of the symptoms from a body as a whole condition.

Gregory does not stand for the proposition that claimants may carve out scheduled member impairment ratings from body as a whole conditions. That is the factual scenario Petitioner presents. She has a systemic disease (Graves’ disease) located in her body as a whole. The systemic disease is causing symptoms in her eyes. She does not have a separate injury physically located in her right eye, as *Gregory* requires. The

holding in *Gregory* is not applicable to the instant facts.

C. Whether body as a whole conditions that affect or produce symptoms in enumerated scheduled members are qualifying injuries under section 85.64. Petitioner alternatively contends that if *Gregory* is inapplicable to the instant facts, she still has a first qualifying injury because under the language of section 85.64, body as a whole conditions are qualifying as long as they affect an enumerated scheduled member. The court does not find this argument persuasive for the following reasons.

The language of section 85.64 clearly requires permanent impairment to an enumerated scheduled member:

If an employee who *has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye*, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no preexisting disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the “Second Injury Fund” created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ. . . .

Id. (emphasis added).

Our appellate courts have consistently interpreted this language to require a showing of permanent impairment to two enumerated scheduled members themselves. *See Stumpff v. Second Injury Fund*, 543 N.W.2d 904, 906-907 (Iowa 1996) (stating the first loss must be to a scheduled member named in SIFCA and whether there is a loss to an enumerated scheduled member is determined by the site of the injury, not what body parts it affects); *Gregory*, 777 N.W.2d at 399-400 (stating “we interpreted the phrase ‘loss of

or loss of use to another such member’ to mean a subsequent loss to another enumerated member Liability of the Fund under section 85.64 expressly turns on the part(s) of the body permanently injured in successive injuries.”); *Second Injury Fund of Iowa v. George*, 737 N.W.2d 141, 146 (Iowa 2007) (stating under section 85.64 a qualifying loss must be scheduled and must be to an enumerated member).

Under established legal precedent, providing proof of symptoms in a scheduled member due to a body as a whole condition is not sufficient to qualify for ISIF benefits. This interpretation is consistent with the language used in the statute. Section 85.64 states that a claimant must prove they “previously lost, or lost the use of” an enumerated scheduled member.

When interpreting Iowa Code chapter 85, the court’s goal is to determine and effectuate the legislature’s intent. *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016). To determine legislative intent, the court looks to the language chosen by the legislature and not what the legislature might have said. *Id.* (citing *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 337 (Iowa 2008)). Absent a statutory definition, the court considers statutory terms in the context in which they appear and gives each term its ordinary and common meaning. *Id.* Only when the meaning of a statute is ambiguous does the court consider the rules of statutory construction in its analysis. *Id.*

When ambiguous statutes are construed, they are assessed in their entirety rather than in isolated words or phrases. *Id.* This ensures that the court’s interpretation is harmonious with the statute as a whole. *Id.* The Court presumes the legislature included each word in a statute to have a purpose and avoids construing a statutory provision in a manner that makes words or portions irrelevant. *Id.*

Petitioner urges the court to interpret section 85.64 to allow a previous bodily injury to qualify if it has any impact at all on an enumerated member. The legislature specifically used the language “previously lost, or lost the use of.” It did not say “any injury which affects” an enumerated member. The commonly accepted definition of the word “of” is “used as a function word to indicate origin or occurring in.” <https://www.merriam-webster.com/dictionary/of>. As detailed above, the *Gregory* Court interpreted the phrase “loss of, or loss of use of” to mean injury to an enumerated member. *Gregory*, 777 N.W.2d at 399-400. The Court stated liability under section 85.64 “expressly turns on the parts of the body permanently injured.” *Id.*³

The legislature set the scope of individuals eligible for ISIF benefits under section 85.64. Petitioner’s suggested interpretation of section 85.64 far exceeds that scope, and unreasonably so.

The court agrees with the Commissioner’s decision because the Court has already addressed, and rejected, Petitioner’s argument. In *Second Injury Fund v. Nelson*, 554 N.W.2d 258, 269 (Iowa 1995), the court was asked to decide whether a shoulder injury that caused symptoms in the claimant’s arm qualified for ISIF benefits. In a thoughtful analysis, the Court decided it was not:

The ultimate question here is whether an unscheduled injury can trigger Second Injury Fund liability. The commissioner interpreted section 85.64 to require an injury that merely affects a scheduled member; thus, he held that Nelson’s unscheduled shoulder injury that affects his arm, a

³ The Court also noted that other jurisdictions have purposefully expanded the class of individuals covered under their second injury fund statutes by removing the language which requires the prior injury be situated in an enumerated scheduled member. *Gregory*, 777 N.W.2d at 405, n.5 (observing Colorado expanded its state second injury fund benefits by replacing the language “previously suffered the loss, or total loss of use, of one hand, one foot, one leg or the vision in one eye” with a simple requirement that there be “previous permanent partial industrial disability.”). Unlike Colorado, the Iowa legislature has not amended the language of section 85.64 or removed the scheduled member requirement.

scheduled member, is sufficient to make the Fund liable. This conclusion is inconsistent with the clear language of section 85.64 as well as with our prior cases interpreting the workers' compensation statute.

Section 85.64 lists specific members, the injury of which triggers Fund liability. All of the injuries listed are scheduled injuries. We have consistently interpreted the workers' compensation statute as making a clear distinction between scheduled and unscheduled injuries. *E.g.*, *Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 547 (Iowa 1995); *Lauhoff Grain*, 395 N.W.2d at 839; 840; *Alm*, 240 Iowa at 1177, 38 N.W.2d at 163. We find nothing in section 85.64 that would cause us to blur that distinction here. *See Lauhoff Grain*, 395 N.W.2d at 840 (refusing to apply benefits schedule for injury to the leg merely because the hip impairment affects the leg); *see also Taylor v. Pfeiffer Plumbing & Heating Co.*, 8 Ark. App. 144, 648 S.W.2d 526, 527 (1983) ("Even if the effects of the shoulder injury extended into his arm . . . , this fact would not make the injury a scheduled one.").

Id. at 269-70. *See also Klapproth v. Second Injury Fund*, File No. 5052845, 2017 WL 1136380 (Arb. Dec., Jan. 11, 2017) (finding a body as a whole injury which affected the use of a scheduled member is not qualifying for ISIF benefits).

Petitioner posits two arguments about why the *Nelson* holding should not apply to her case. First, she claims that *Nelson* was overruled by the Court's holding in *Gregory*. *Gregory* did not overrule *Nelson*. *Gregory* held that an injury to an enumerated scheduled member could occur at the same time as a separate injury to the body as a whole and still qualify for ISIF benefits. *Gregory* did not take away the statutory requirement that the first injury must be situated in an enumerated scheduled member. *Gregory*, 777 N.W.2d at 398.

Petitioner alternatively asserts that the *Nelson* holding only applies to second alleged injuries. The court finds no evidence to support this assertion. One year after the Court decided *Nelson*, the Court addressed a similar claim in *Stumpff v. Second Injury Fund*, 543 N.W.2d 904 (Iowa 1996). In *Stumpff*, the claimant alleged an injury situated in his index finger was a first qualifying injury for ISIF benefits because the injury affected

his hand, an enumerated member under section 85.64. *Stumpff*, 543 N.W.2d at 906-07. The Court rejected that argument, holding the site of the injury was in the claimant's finger and the language of section 85.64 did not permit a finger injury to be treated as a hand merely because it affected the hand. *Id.* The *Stumpff* Court clearly did not believe the precedent established in *Nelson* only applied to second alleged injuries.

The court finds the *Nelson* holding applies to the instant facts. Under that decision, a body as a whole condition that merely affects an enumerated scheduled member is not a qualifying injury under section 85.64. The agency reasonably found Petitioner's vision complaints are a side effect of her Graves's disease, a body as a whole condition/injury. Her vision issues are not an actual physical injury to the eye itself. Relevant common law does not support Petitioner's position. Any changes to existing statutory language permitting Petitioner to prevail on the issues Petitioner raises here are for the Iowa legislature to make.

When the agency record is considered as a whole, the final agency decision should be affirmed and the Petition should be dismissed in its entirety.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Commissioner's decision is affirmed in its entirety and the Petition is dismissed in its entirety.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs are assessed to Petitioner.



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
CVCV060322	CHERI BLAKE VS SECOND INJURY FUND OF IOWA

So Ordered

A handwritten signature in cursive script, reading "Jeanie Vaudt".

Jeanie Vaudt, District Court Judge,
Fifth Judicial District of Iowa