

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ALFRED FRANCES COTÉ’,

Petitioner,

vs.

FEDERAL-MOGUL CORP.

and

**TRAVELERS INDEMNITY COMPANY OF
CT.**

Respondents.

Case No. CVCV057816

RULING ON PETITION FOR JUDICIAL REVIEW

This is a petition for judicial review from a final decision of the Iowa Workers’ Compensation Commissioner. The Court heard this matter on December 13, 2019. Alfred Frances Coté (“Mr. Coté” or “Petitioner”) appeared through attorney Nicholas G. Pothitakis. Federal-Mogul Corp. (“Federal-Mogul”) and Travelers Indemnity Company of CT. (“Respondents”) appeared through attorney Julie A. Burger. After considering the arguments of the parties and having reviewed the file and the applicable case law, the Court now enters the following ruling.

INTRODUCTION

A. Factual Background

At the time of his hearing, Alfred Cote' was 58 years old. [Arbitration Hr'g Tr.at 8]. He is an electrician by trade. [Arbitration Hr'g Tr.at 11]. He started working for Federal-Mogul in May 2010. [Arbitration Hr'g Tr.at 27]. Federal-Mogul is a company that makes automotive parts and they produce spark plugs at their Burlington, Iowa plant. [Arbitration Hr'g Tr.at 28-9]. They use a number of different machines and chemicals in producing their spark plugs. [Arbitration Hr'g Tr.at 29]. Mr. Coté performed electrical maintenance and troubleshooting for some of this machinery. [Arbitration Hr'g Tr.at 27-8].

Mr. Coté typically worked weekend-overnight shifts at the plant, usually from 7 p.m. to 7 a.m. [Arbitration Hr'g Tr.at 37-8]. On November 24, 2013, Mr. Coté and a technician were troubleshooting a SOLO (brand) annealing oven that stopped working earlier in the day. Mr. Coté had worked on this machine a few times before; however, he was less familiar with the machine this time because it was running, and it normally did not run on the weekends. [Arbitration Hr'g Tr.at 38].

At his administrative hearing, Mr. Coté reported that he did not fully understand the operation of the machine or what, if any, chemicals that it could potentially release during operation. [Arbitration Hr'g Tr.at 41]. Mr. Coté explained that he attempted to find this information later in order to figure out what substances he may have been exposed to at times relevant hereto. *Id.*

Per Mr. Coté's September 19, 2016 hearing testimony, the oven operates as follows: Nickel alloy parts are run through the oven on a metal conveyor belt at very slow speeds. The oven is about sixteen feet long. A component of the oven is an "ammonia cracker," which, if functioning properly, heats ammonia to 900 degrees Celsius.¹ The superheated ammonia is piped into the oven to cause a chemical reaction with the nickel alloy parts. [Arbitration Hr'g Tr.at 35]. The process is designed to remove the sulfur from the nickel alloy so that the spark plug parts do not corrode. [Arbitration Hr'g Tr.at 39]. The oven is open at both ends and there are natural gas fires at each opening with flues above them. [Arbitration Hr'g Tr.at 35]. Mr. Coté explained the fires exist to burn off the hydrogen and hydrogen sulfide waste products generated

¹ At this temperature, the ammonia "cracks" and becomes 75 percent hydrogen, 25 percent nitrogen, with a small amount of ammonia residue leftover. [Arbitration Hr'g Tr.at 35].

by the annealing oven process. The nickel that Federal-Mogul uses contains sulfur in the approximate amount of 20 parts per million (“ppm”) Sulphur. [Ex. 10 at 2.]

Mr. Côté explained his exposure event (the “Exposure Event”) as follows: He first checked that the electricity was on for the ammonia cracker and for the oven, which he determined it was. [Arbitration Hr’g Tr.at 44]. At the time, Cote explained that he was sitting in a low chair because the ammonia cracker “[is] way down low” and that he was “maybe within a foot, foot and a half of the end of the annealing oven where the parts come out where normally you’d have ... that open flame.” [Arbitration Hr’g Tr.at 45]. The fires on either end of the oven were not turned on at the time, so any hydrogen and hydrogen sulfide waste products would have accumulated or escaped. [Arbitration Hr’g Tr.at 45]. The pipe that feeds ammonia into the oven from the ammonia cracker was on Mr. Côté’s end of the oven and about six to eight inches from its opening, next to which Mr. Côté’s was seated within 1-1.5 feet. [Arbitration Hr’g Tr.at 48]. The technician was about sixteen feet away at the other end of the oven. [Arbitration Hr’g Tr.at 46].

Mr. Côté related that the technician said he was going to start up the oven so they could figure out what was wrong with it. The technician started the oven and Mr. Côté testified that “almost instantly ... you could hear this hiss, and I got this very warm gas that was just coming out of there very fast.” [Arbitration Hr’g Tr.at 47]. Cote noted that the ammonia gas supply to the cracker was set at 20 psi instead of 5 psi, which resulted in the release of more ammonia gas than usual. [Ex. 5 at 13]. Of the exposure, Mr. Côté stated, “It hit me so hard, I couldn’t get up... I instantly got a really bad headache, irritated my eyes and mouth. I immediately realized I was a bit confused.” [Arbitration Hr’g Tr.at 48]. Mr. Côté testified that the technician “gave out a big yell... He jumped up and jumped backwards ... And then he came back over to [the control panel] and shut [the oven] off.” [Arbitration Hr’g Tr.at 47-8].

Mr. Côté explained that the technician came over and helped him up because, in Mr. Côté’s words, “it just really got me bad.” [Arbitration Hr’g Tr.at 48]. Mr. Côté related that they did not know “what the heck happened” though Mr. Côté observed that “there was an ammonia odor and another bad odor ...” [Arbitration Hr’g Tr.at 47]. Mr. Côté “started feeling worse” and “started noticing that [his] right arm and hand was shaking some.” [Arbitration Hr’g Tr.at 49-50]. He elaborated that he “felt really funny and kind

of tingly on my right side, my right arm” and he “felt funny in [his] face.” [Arbitration Hr’g Tr.at 50]. When Mr. Coté went to make a record of the attempt to fix the machine, he could not use the mouse because his hand was “shaking so bad that my fingers kept on hitting the mouse keys back and forth... realized [he] couldn't even do that... and just couldn't function at all...” [Arbitration Hr’g Tr.at 51].

Mr. Coté went to the Great River Medical Center emergency room shortly thereafter. [Arbitration Hr’g Tr.at 51]. “He had a myriad of symptoms including tremors in the right arm, hand and fingers. He had numbness on the right side of his face, confusion, and a headache.” [Arbitration Decision at 11]. He was immediately administered oxygen. [Arbitration Hr’g Tr.at 52]. Mr. Coté noted that he started feeling better and that they asked him what he was exposed to. *Id.* At the time, the only thing Mr. Coté could think of was ammonia from the ammonia cracker. *Id.* Mr. Coté testified that one of the doctors called the plant and asked them to send over a Material Safety Data Sheet (MSDS) concerning what he might have been exposed to, which they failed to do. [Arbitration Hr’g Tr.at 52]. Mr. Coté related that the hospital pulled up an MSDS for anhydrous ammonia and diagnosed Mr. Coté with a transient ischemic attack (TIA), or a temporary clot or blockage to the brain. [Arbitration Hr’g Tr.at 54]. Mr. Coté was released from the hospital and instructed to see the company doctor in the morning. [Arbitration Hr’g Tr.at 53].

The following morning, Mr. Coté saw Dr. Rachel Oliverio. *Id.* On his occupational medicine clinic intake form, Cote described his current symptoms as “tremors in right arm, hand, and fingers, headache, right face numbness.” [Ex. 1 at 1]. Dr. Oliverio diagnosed Cote with (1) toxic effects from gases and (2) a transient ischemic attack. *Id.* at 4. Dr. Oliverio noted that Cote could return to regular duty, but instructed him to follow up with a neurologist for further evaluation. [Arbitration Hr’g Tr.at 55].

On December 5, 2013, Mr. Coté saw neurologist Dr. Anil Dhuna. Mr. Coté reported having occasional shakiness of the right side and right eye droopiness to Dr. Dhuna. [Ex. 2 at 1]. In his “Assessment and Plan”, Dr. Dhuna noted that:

[Mr. Coté] had exposure at work to superheated anhydrous ammonia. Shortly after exposure [Mr. Coté] had burning in his eyes, shortness of breath and then right-sided weakness and incoordination. His symptoms have greatly improved but he still has some trouble with right hand tremor and right eye ptosis. My suspicion is that the stress of the chemical exposure may have precipitated a mild stroke. [Mr. Coté] has significant risk

factors for stroke with obesity and hypertension. ... I am arranging for an MRI scan of the brain and carotid ultrasound. ... [Mr. Coté] is to continue working full-time without restrictions.

[Ex. 2 at 4]. Cote had a follow-up appointment with Dr. Dhuna on January 9, 2014. *Id.* at 5. Mr. Coté's MRI And EEG exam results were found to be within normal ranges. *Id.* at 7. At this point, Dr. Dhuna indicated Mr. Coté's symptoms were "more suggestive of a central tremor and may be exacerbated by his exposure to anhydrous ammonia, but I cannot rule out a clinical small vascular event. This could be a mild underlying essential tremor exacerbated by stress." *Id.*

Dr. Dhuna referred Cote to a stroke specialist, Dr. Harold Adams. [Arbitration Hr'g Tr.at 60]. On April 16, 2014, Cote saw Dr. Adams at the University of Iowa stroke clinic. [Ex. 5 at 1]. Dr. Adams examined Cote and noted that "[Cote] does have a tremor which is absent at rest but increases dramatically with action and terminally." [Ex. 5 at 3]. Dr. Adams looked at the imaging studies Cote brought and thought it was unlikely that Cote had a stroke. *Id.* Dr. Adams' "working hypothesis" was that Cote had a Parkinson syndrome. *Id.* Dr. Adams' basis for the diagnosis of parkinsonism included Mr. Coté's tremor, rigidity, and bradykinesia. *Id.* As to the possibility of a relationship between his findings and ammonia exposure, Dr. Adams opined that "it is unclear if a couple episodes of environmental ammonia exposure can cause these types of neurologic impairments." *Id.* Dr. Adams ordered imaging studies of Mr. Coté's brain, including a SPECT scan, to explore whether his initial diagnosis was correct. *Id.* The imaging study impression indicated "[f]indings of bilaterally decreased putaminal uptake ... is suspicious for early Parkinsonian syndrome." [Ex. 5 at 5].

On June 4, 2014, Cote saw Dr. Dhuna for a follow-up appointment. [Ex. 2 at 8]. Dr. Dhuna recognized that Cote had a SPECT scan done at the University of Iowa and that the impression was Cote had a tremor consistent with Parkinson's disease. *Id.* Dr. Dhuna observed that Cote "initially had right hand tremor which has improved now and he has more head titubation." [Ex. 2 at 10]. Dr. Dhuna still concluded that he thought Cote most likely had essential tremor. *Id.*

At a July 1, 2014 follow-up appointment, Dr. Adams again examined Cote. [Ex. 5 at 7]. He noted that:

Cote continues to have tremors and some other evidence of raised the [sic] concern of Parkinsonian syndrome. This is not Parkinson's disease. He does not have postural instability. His movements are generally quite good. His findings are primarily rigidity with some element of cogwheeling in the right upper extremity. The cause for his Parkinsonian syndrome has not been established. His symptoms began after possible toxic substances in an incident at work. ... The nature of the toxic substances has not been established. Initially, there was a concern about ammonia. I cannot find evidence of ammonia playing a role in the development of parkinsonian syndrome but there are a number of other substances including heavy metals that may produce neurologic symptoms. I am unsure how we can move forward to establish a cause and effect relationship.

Id. at 9. In a letter to Dr. Janette Glass, Mr. Coté's primary care provider, Dr. Adams reported that:

My diagnosis remains a parkinsonian syndrome. The cause of his parkinsonian syndrome has not been established with certainty. There are cases of parkinsonism that have been associated with exposure to toxic substances. In most circumstances, this has been a chronic exposure. I am unsure on how to determine a cause-and-effect relationship in this incident in part because I do not know the possible substances and their concentrations that may have caused his symptoms. Still, his symptoms appeared shortly after his reported exposure.

[Ex. 5 at 11].

On September 24, 2014, at the request of Travelers Insurance, Cote saw Dr. Frederic Gerr at the University of Iowa Hospitals and Clinics. Dr. Gerr performed an independent medical examination of Cote to address the issue of causation, among other things. [Ex. 5 at 12]. As to diagnosis, Dr. Gerr opined that Cote likely has a parkinsonian syndrome. *Id.* at 17. Dr. Gerr explained Mr. Coté's imaging study and Mr. Coté's treating neurologists supported this diagnosis. *Id.* Dr. Gerr further opined that "to a reasonable degree of medical certainty, the exposure to the ammonia substances and other contents of the vented gas were not a cause of [Mr. Coté's] current condition." *Id.* Dr. Gerr acknowledged that "the reported tight temporal relationship between the onset of Mr. Coté's tremor and his exposure to gasses vented from annealing oven on November 24, 2013, are suggestive of a causal relationship ..." *Id.* But, he determined:

[T]here is no biomedical evidence that such an exposure is capable of causing his condition. ... There are no case reports nor any descriptions of rapid-onset, persistent Parkinsonism following acute exposure to any anhydrous ammonia (or nickel, copper, or zinc) in the biomedical literature. Furthermore, there is no epidemiological evidence that such exposures are capable of causing nearly instantaneous onset Parkinsonian illness (not Parkinsonian illness of less rapid [sic] onset). In addition, the rapidity of onset of the condition ... makes a toxicological cause resulting from the annealing oven exposure virtually impossible.

[Ex. 5 at 17].

Cote sought out a tremor specialist for further evaluation and treatment. [Arbitration Hr'g Tr.at 77]. On April 29, 2015 he saw Dr. Richard Dubinsky of the University of Kansas, Department of Neurology. [Ex. 9 at 1]. Cote represented to Dr. Dubinsky that he had an occupational exposure to hydrogen sulfide gas. *Id.* Dr. Dubinsky explained from the outset that he would not address questions of causation. *Id.* Dr. Dubinsky performed a physical and neurological examination of Cote and observed a tremor in Mr. Coté's "hand both at rest and with action" but no evidence of "cog wheeling." *Id.* at 2. Ultimately, Dr. Dubinsky opined that "[t]here is no clinical evidence of parkinsonism or Parkinson's disease and with a normal sense of smell I am not concerned about incipient PD at this time. *Id.* at 3. Dr. Dubinsky diagnosed Cote with essential tremor. *Id.*

On September 10, 2015. Dr. Dhuna saw Cote again. Cote reported to Dr. Dhuna that the gas(es) he was exposed to included hydrogen sulfide. In his Assessment and Plan notes, Dr. Dhuna explained:

[T]here have also been cases with acute exposure of hydrogen sulfide exceeding 280 mg/m³ causing long-term neurological effects with tremors, reduced motion function, ataxia and cognitive deficits. It would be possible that if [Cote] had been exposed to hydrogen sulfide at these dosages, that his present neurological symptoms could be related to his industrial exposure. There is no other etiology for his tremors determined at this point. His neurological symptoms have occurred after his acute exposure and have remained.

[Ex. 2 at 13].

With the focus changing from ammonia exposure to hydrogen sulfide exposure, Cote and Federal-Mogul each attempted to test for hydrogen sulfide around the annealing oven. Cote noted that sometime in the latter half of 2015, the night supervisor asked him to test for dangerous levels of gases in the plant. [Arbitration Hr'g Tr.at 83]. Cote testified that, when he was about six or seven feet away from the opening of the oven, the testing equipment detected hydrogen sulfide, "[b]ut the level wasn't much higher than whatever that safe level was." [Arbitration Hr'g Tr.at 85, 87]. At the time that Cote was getting his reading, the fire on the side of the oven was out, unlike when Cote was working on the oven on November 24, 2013. [Arbitration Hr'g Tr.at 85]. On March 14, 2016, the Environmental Engineer at Federal-Mogul's Burlington plant, Gary McCauley, sampled the air directly around the annealing oven for hydrogen sulfide. [Ex. 10 at

2]. When the oven was up to temperature and full, McCauley reported that no measurable amount of hydrogen sulfide was exiting the oven. *Id.* However, the oven was in working order when the test was done, and the natural gas flames were both on, unlike when Cote was working on the oven on November 24, 2013. [Arbitration Hr'g Tr.at 90].

Through counsel, Cote sought out Dr. Harry Elston, a chemist and certified industrial hygienist at Midwest Chemical Safety, to give his opinion on whether the annealing oven could generate 280 mg/m³ of hydrogen sulfide, an exposure level Dr. Dhuna opined could cause long term neurological effects. [Ex. 8]. Based on the assumption that the nickel wire processed in the annealing oven contained about 20 ppm of Sulphur, Dr. Elston explained that the hydrogen annealing of 28 pounds of wire could produce the exposure level Dr. Dhuna cited. *Id.* Dr. Elston ultimately opined, based on an assumption of the approximate dimensions of Mr. Coté's working environment, that one could reasonably conclude that Cote more-likely-than not had an acute exposure to hydrogen sulfide from the annealing oven. *Id.*

Cote also sought a medical causation opinion from Dr. Dhuna. In a letter dated February 26, 2016, Dr. Dhuna concluded that Mr. Coté's work-place exposure was more-likely-than-not a "substantial contributing factor" to his essential tremors. [Ex. 6]. Dr. Dhuna explained his opinion was based on the history presented to him, which included that (1) Cote experienced a high-level exposure to hydrogen sulfide and (2) that the tremors came on suddenly after exposure. *Id.* Dr. Dhuna also based his conclusion on his previous determination that an acute exposure to high-levels of hydrogen sulfide can cause essential tremors. *Id.*

On June 15, 2016, Travelers Insurance sought a subsequent medical causation opinion from Dr. Gerr, updating the materials they provided him to reflect Mr. Coté's contention that he was also exposed to hydrogen sulfide and that this exposure explained his present condition. Dr. Gerr's ultimate conclusion was that "there is no biological or medical basis to conclude that [Mr. Coté's] occupational exposure to either ammonia gas or hydrogen sulfide gas caused, contributed to, or aggravated his current neurological illness." [Ex. 7 at 2]. Dr. Gerr explained the rationale for his opinion as follows. First, Dr. Gerr found there was "no credible evidence that Mr. Cote was exposed to clinically or biologically relevant levels of hydrogen sulfide

gas allegedly emitted by the annealing oven” Dr. Gerr’s bases for this opinion were: (1) McCauley's report concerning the amount of hydrogen sulfide found to be leaving the oven when in operation, (2) the fact that [Mr. Coté’s] report of a rotten-egg smell was not made until eighteen months after the exposure event, and (3) that the literature demonstrates that individuals who experienced permanent neurological impairment from hydrogen sulfide exposure had concomitant severe and immediate lung injury, none of which Petitioner reported. Second, Dr. Gerr found that, based on his survey of the medical literature,

[t]here is no known association between exposure to hydrogen sulfide and essential tremor nor between hydrogen sulfide and Parkinsonian syndrome or Parkinson's disease ... [E]xposure to high levels of hydrogen sulfide are associated with potentially permanent neurological impairment. However, such impairment does not manifest as essential tremor nor as parkinsonian illness.

[Ex. 7 at 3].

Prior to Mr. Coté’s exposure event on November 24, 2013, he had numerous health problems related to contracting West Nile virus in 2002. [Arbitration Hr’g Tr.at 13]. Mr. Coté noted it is a chronic condition and left him with a compromised immune system. [Arbitration Hr’g Tr.at 14]. Mr. Coté experienced a number of symptoms following and/or in connection with West Nile virus including headaches, hearing changes, balance problems, left-sided numbness, dizziness, nerve neuropathy, and dysphagia. Mr. Coté saw a number of doctors in connection with these symptoms. The record also shows Mr. Coté has a lengthy medical history of attempting to deal with these issues. Nevertheless, Mr. Coté testified – and the record reflects – that he did not have any type of tremor or shaking of his arms or head on the right side of his body prior to November 24, 2013. [Arbitration Hr’g Tr.at 16].

B. Procedural History

On September 22, 2015, Mr. Coté filed his petition for workers’ compensation benefits. In part, Mr. Coté alleged that he suffered a permanent disability arising from the exposure event from the annealing oven on November 24, 2013. Iowa Workers’ Compensation Deputy Commissioner Michelle McGovern (the “Deputy Commissioner”) held a hearing on this matter on September 19, 2016, and issued an arbitration decision on September 12, 2017. Per the hearing report, the parties stipulated that there was an exposure event, but disputed whether the alleged injury was a cause of temporary and/or permanent disability. If the

alleged injury was found to be a cause of permanent disability, the parties stipulated that it would be an industrial disability.

After considering the facts detailed above, the Deputy Commissioner ultimately found that Mr. Coté sustained a work-place injury entitling him to medical expenses, but that Mr. Coté failed to establish that the exposure event caused him to sustain permanent disability. As an initial matter, the Deputy Commissioner laid out the causation standard that claimants must establish as a matter of law. She then proceeded to her causation analysis, which states in relevant part:

This is an interesting but puzzling case. [Mr. Coté] consulted with a myriad of specialists from several University Medical Centers. He conferred with all types of neurologists, neuro-radiologists, and he underwent countless diagnostic tests. Nevertheless, physicians cannot agree upon a concrete diagnosis for [Mr. Coté]. Currently, it appears [Mr. Coté] suffers from essential tremor. The tremor did develop after the SOLO annealing oven malfunctioned on November 23, 2013. It is unknown whether [Mr. Coté] was exposed to anhydrous ammonia, hydrogen sulfide, both or neither. There is no doubt there was an exposure to something in the air but no sampling was done at the time. There is no empirical data to support an over-exposure to anything. No one knows the length of time [Mr. Coté] spent sitting on a chair next to the annealing oven. As a consequence, there is no data to establish the amount of time [Mr. Coté] was exposed.

The exposure adversely impacted [Mr. Coté] immediately. He was unable to manipulate the mouse of his computer because of tremors in his right hand. [Mr. Coté] sought emergency medical care at the Great Medical Center. From the onset of his medical treatment, [Mr. Coté] complained of right arm, hand and finger tremors. He had other symptoms as well. He was confused, he developed a hoarse voice, both eyes were burning, the right side of his face became numb, he had sustained some toxic effects immediately following the exposure. In short, [Mr. Coté] sustained an injury that arose out of an in the course of his employment.

However, the salient issue is the medical cause for the right hand, and right arm tremors. The other symptoms dissipated with time.

[Arbitration Decision p. 24.]

The Deputy Commissioner went on to identify deficiencies with Dr. Elston's opinion, noting that he could not state that Mr. Coté "was over exposed to hydrogen sulfide on the day in question" and that he "did not conduct any sampling in the [] plant ... or even tour the facility." *Id.* She also found McCauley's sampling data for hydrogen sulfide to be irrelevant because "they do not affect what did or did not occur on November 24, 2013." *Id.* at 25.

The Deputy Commissioner also referenced that “most of the medical professionals ignored the issue of medical causation with respect to the diagnoses they offered [Mr. Coté].” She explained:

Dr. Oliverio opined [Mr. Coté] had a [TIA] but [Mr. Coté] was returned to work without any restrictions. Dr. Adams questioned whether ammonia exposure in the workplace could cause neurologic impairments such as a Parkinson syndrome. Dr. Dubansky [sic] refused to discuss whether hydrogen sulfide could cause essential tremor. No medical provider produced any literature or scientific studies to establish hydrogen sulfide was a cause for essential tremor. Many of [Mr. Coté’s] symptoms were the same as the ones he express after he developed West Nile Virus.

[Arbitration Decision at 25].

With respect to medical experts who offered opinions on causation, the Deputy Commissioner highlighted Dr. Gerr’s emphatic opinion that a causal relationship between Mr. Coté’s condition and exposure to hydrogen sulfide did not exist. And she noted that while Dr. Dhuna found a causal connection based on the history reported to him, she did not give it any weight because the opinion was “not based upon accurate facts” since “[Mr. Coté] reported he was exposed to hydrogen sulfide when there was no empirical data to support [his] contention.” *Id.* The Deputy Commissioner’s ultimate conclusion on the issue of whether Mr. Coté sustained a permanent injury was that Mr. Coté “failed to prove by a preponderance of the evidence that his condition of essential tremor is causally connected to any exposure he sustained on November 24, 2013.” [Arbitration Decision at 25].

Of note, within the ‘Findings of Fact’ section of the Deputy Commissioner’s Arbitration Decision, she included the Mayo Clinic’s definition of essential tremor, their explanation of its symptoms and signs, a comparison between essential tremor and Parkinson’s disease, and causes of essential tremor. [Arbitration Decision at 16-7]. Neither party submitted the Mayo Clinic’s overview of essential tremor into evidence or offered it as an exhibit. Apparently, the Deputy Commissioner incorporated her own research into her findings. It is unclear the extent to which the Deputy Commissioner relied on this information in reaching her decision.

Upon a de novo review, the Workers' Compensation Commissioner (the "Commissioner") reached the same conclusions as the Deputy Commissioner and adopted her findings of fact and conclusions of law as the agency's final decision.

On appeal, Mr. Coté contends that the Commissioner erred in finding that his work injury did not cause him to sustain a permanent disability. Mr. Coté asks the Court to reverse the Commissioner's decision and find that he sustained a permanent injury arising out and in the course of his employment or remand the matter for rehearing before the Commissioner to correct any errors made.

STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law by the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The Court "may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in section 17A.19 (10) (a) through (n)." *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utilities Bd.*, 805 N.W.2d 758, 762 (Iowa 2011)).

Where an agency has been "clearly vested" with fact-finding authority, the appropriate "standard of review [on appeal] depends on the aspect of the agency's decision that form the basis of the petition for judicial review." *Burton*, 813 N.W.2d at 256. The standard of review varies depending on whether the alleged error involves an issue of (1) findings of fact, (2) interpretation of law, or (3) an application of the law to facts.

The Court must also grant appropriate relief from agency action if such action was "[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." Iowa Code § 17A.19(10)(c). With respect to such provisions of law, the Court is not required to defer to the agency's interpretation. Iowa Code § 17A.19(11)(b). Additionally, the Court must grant relief from agency action that is "[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law," based upon a

misapplication of law to the facts, or “[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion.” Iowa Code § 17A.19(1)(l–n).

If “the claim of error lies with the ultimate conclusion reached, then the challenge is to the agency’s application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.” *Meyer*, 710 N.W.2d at 219. In other words, the Court will only reverse the Commissioner’s application of law to the facts if “it is ‘irrational, illogical, or wholly unjustifiable.’” *Neal*, 814 N.W.2d at 518 (quoting *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007); see also *Burton*, 813 N.W.2d at 256 (“When application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency’s application of the law to the facts of a particular case if that application is ‘irrational, illogical, or wholly unjustifiable.’”).

If the alleged error is one of fact, the standard of review is whether the findings are supported by substantial evidence. *Harris*, 778 N.W.2d at 196; *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 557 (Iowa 2010). “[A] reviewing court can only disturb those factual findings if they are ‘not supported by substantial evidence in the record before the court when that record is reviewed as a whole.’” *Burton*, 813 N.W.2d at 256 (quoting Iowa Code § 17A.19(10)(f)). The Court “is limited to the findings that were actually made by the agency and not other findings the agency could have made.” *Id.* “The commissioner, not the court, weighs the evidence.” *Ward v. Iowa Dep’t of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981). “[C]ourts must not simply rubber stamp the agency fact finding without engaging in a fairly intensive review of the record to ensure that the fact finding is itself reasonable.” *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003) (internal quotations and citation omitted).

“Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion.” *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002) (citing *Ehteshamfar v. UTA Engineered Sys. Div.*, 555 N.W.2d 450, 452 (Iowa 1996)).

Here, Petitioner attempts to frame the issue in a way to get a less deferential standard of review. Petitioner argues that the agency applied the incorrect burden of proof. However, the substance of

Petitioner's argument is that the Deputy Commissioner erred by according Dr. Gerr's expert opinion(s) more weight than the opinions of Petitioner's experts. This is a challenge to the agency's findings of fact, which will not be disturbed as long as they are supported by substantial evidence in the record.

ANALYSIS

Petitioner argues that the Deputy Commissioner made two errors. Each is addressed in turn.

A. Incorrect burden of proof regarding causation:

As stated earlier, regardless of how Petitioner phrased the issue, the substance of his argument is that the Deputy Commissioner erred in according Dr. Gerr's expert opinion(s) more weight than the opinions of Petitioner's experts. The Deputy Commissioner cites the appropriate burden of proof.

Iowa Code section 85.3 creates a workers' compensation claim and entails four basic elements. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 220 (Iowa 2006). First, "the claimant suffered a personal injury." *Id.* (quotations omitted). Second, an employer-employee relationship existed between the claimant and the respondent. *Id.* Third, "the injury arose out of the employment." *Id.* Fourth, "the injury arose in the course of the employment." *Id.*

The Iowa Supreme Court has recognized an additional requirement in workers' compensation claims that is not directly implicated by Iowa Code section 85.3—a disability that is the subject of the workers' compensation claim must have been proximately caused by the injury that arose out of and in the course of employment. *Id.* n.2 (citing *Freeman v. Luppes Transp. Co.*, 227 N.W.2d 143, 148 (Iowa 1975)). "A cause is proximate if it is a substantial factor in bringing about the result." *Blacksmith v. All-Am., Inc.*, 290 N.W.2d 348, 354 (Iowa 1980) (citation omitted). "It only needs to be one cause; it does not have to be the only cause." *Id.* (citation omitted). "Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed." *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 560 (Iowa 2010) (citation omitted). "The commissioner must consider the expert testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability." *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998) (citation omitted).

The claimant bears the burden to prove all of the elements of his workers' compensation claim by a preponderance of the evidence, including that his work injury proximately caused the disability for which he seeks compensation. *Id.* "A preponderance of the evidence exists when the causal connection is probable rather than merely possible." *Id.* A preponderance

means superiority in weight, influence, or force. The evidence may preponderate, and yet leave the mind in doubt as to the very truth. In such cases the evidence does not fairly set the question at rest, but merely preponderates in favor of that side whereon the doubts have less weight.

Walthart v. Bd. of Directors of Edgewood-Colesburg Cmty. Sch. Dist., 694 N.W.2d 740, 744 (Iowa 2005) (citation omitted).

As the trier of fact, the Commissioner weighs the evidence and assesses the credibility of the witnesses. The experts in this case leave many questions unanswered. However, it was the Petitioner's burden to prove all of the elements of his claim. Petitioner was inconsistent in his descriptions of what he was exposed to, including his comments to Dr. Dhuna, whose causation opinion Petitioner ultimately relies on. Petitioner speculated what he was exposed to and recounted the Exposure Event accordingly throughout his medical records. The Deputy Commissioner took issue with this inconsistency and found that Petitioner's causation experts did not have accurate facts when rendering their opinions. For this reason, the Deputy Commissioner did not find Petitioner's experts reliable and instead focused on Dr. Gerr's causation opinion, which the Deputy Commissioner found credible and reliable. Whether or not this Court agrees with the Agency's conclusion in this case, there is substantial evidence in the record to support the Deputy Commissioner's finding that Petitioner failed to prove medical causation.

B. Whether the Deputy Commissioner erred in relying on her personal investigation of medical authorities

Petitioner takes issue with the Deputy Commissioner's personal investigation of Essential Tremor. In her "FINDINGS OF FACT" section, the Deputy Commissioner includes the definition and overview of Essential Tremor from the Mayo Clinic's website. [Arbitration Decision at 15-17]. Respondent correctly points out that Petitioner does not cite to any authority that the Deputy Commissioner's incorporation of

her personal research into her findings of fact violates any rule. [Res'p's Brief 19]. This Court suspects that the Deputy Commissioner found herself in a position much like this court – wanting more information. It was Petitioner's burden to prove his claim at the agency level just as it is the Petitioner's burden to prove the merits of this appeal. Petitioner fell short in both instances. Regardless, the Deputy Commissioner does not refer to any of her research in her reasoning or conclusions of law. To the extent that she erred in her investigation, Petitioner failed to show that it resulted in any prejudice to the Petitioner.

CONCLUSION

IT IS THEREFORE ORDERED the Deputy Commissioner's Order, affirmed by the Commissioner, is hereby AFFIRMED. Costs of the appeal are taxed to Petitioner.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV057816
Case Title ALFRED FRANCES COTE VS FEDERAL MOGUL ET AL

So Ordered

A handwritten signature in cursive script that reads "Robert B. Hanson".

**Robert B. Hanson, District Court Judge,
Fifth Judicial District of Iowa**