IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DAVID KNAEBLE, **Petitioner,** **v.** **JOHN DEERE DUBUQUE WORKS,** **Respondent.**	)	**Case No. CVCV061932** **ORDER ON PETITION FOR JUDICIAL REVIEW**

I. INTRODUCTION

Petitioner David Knaeble filed a Petition for Judicial Review from a decision of the Workers' Compensation Commissioner. The Court held a hearing on October 8, 2020. Mark Sullivan represented the Petitioner. Dirk Hamel represented Deere.

II. COURSE OF PROCEEDINGS

The underlying facts and apportionment of disabilities in this case are not seriously disputed. Mostly, the parties largely disagree with the underlying calculations done by the deputy and the commissioner. On May 29, 2014, while working at Deere, Knaeble sustained an injury to his bilateral lower extremities when a forklift struck him. Knaeble developed Complex Regional Pain Syndrome ("CRPS") in his left foot. Knaeble received from Deere 30% industrial disability for those injuries (frequently referred to in this decision as the "leg injury"). *Knaeble v. John Deere*, File No. #5055713 (Arb. Dec. Sept. 20, 2019).

Knaeble continued working at John Deere at a less physically demanding position. Knaeble's new role was to work on engines for small caterpillar machines. His job required

handwork for about 30 minutes. Eventually the plant shifted to production measures that required more torque and effort from Knaeble. (Arb. Dec. Nov. 30, 2020 at 2). In 2017, Knaeble experienced increasing bilateral carpal tunnel syndrome and an injury to the right trigger finger. In 2018, he began experiencing pain in his left shoulder especially when working above shoulder height. *Id.* As a result, Knaeble filed two new workers' compensation claims – one regarding the hand and one regarding the shoulder.

On November 30, 2020, the Deputy Commissioner ("Deputy") issued an Arbitration Decision. This decision ordered that the Second Injury Fund pay Knaeble 85% industrial disability regarding the injury to the hand (in combination with the prior leg injury) and that Deere pay 92% industrial disability for the combined disability of the bilateral CTS, the lower extremity injuries, and left shoulder injury. The Decision further awarded Deere a credit for the 30% impairment previously paid. *Id.* at 10.

Deere filed a Motion to Reconsider. In her ruling on the motion, the Deputy cited to the 2004 amendments to Iowa Code section 85.34(7), which was the law applicable to the injuries occurring in 2014 and 2017. The deputy commissioner then set out the reasoning for her calculations:

> A review of the law indicates claimant's argument is correct. In *Warren Properties v. Stewart*, the Iowa Supreme Court directed the fact finding to determine the earning capacity when the successive injury occurred and the reduction in earning capacity caused by the disabilities. *Warren Properties v. Stewart*, 864 N.W.2d 307, 320 (Iowa 2015), as corrected (July 1, 2015). In *Second Injury Fund of Iowa v. Nelson*, the Supreme Court wrote that "[w]hen there are two successive *work-related* injuries, the employer liable for the second injury "is generally held liable for the entire disability resulting from the combination of the prior disability and the present injury." *Celotex Corp. v. Auten*, 541 N.W.2d 252, 254 (Iowa 1995). "In another opinion filed today, we applied this "full responsibility" rule, holding the employer liable for its employee's 100% permanent industrial disability resulting from a recent work-related injury and two prior work-related injuries." *Id.* Thus, the employer liable for the current injury is also liable for any preexisting industrial

> disability caused by a work-related injury when that disability combines with industrial disability caused by a later injury." *Second Injury Fund of Iowa v. Nelson*, 544 N.W.2d 258, 265 (Iowa 1995), as amended on denial of reh'g (Feb. 14, 1996).

Rehearing at pp. 3-4 (emphasis added).

The Deputy then applied a formula set forth in *Dunham v. United Parcel Service*, File Nos. 504229 and 5062713 (Arb. Dec. May 11, 2018). The Deputy calculated Knaeble's reduction in earning capacity due to the successive injury to be 62% (92% - 30% = 62%) and then divided this amount by the earning capacity at the time of the successive injury which was 70% (100% - 30%). She then ended with a percentage of 88.57% and awarded the Knaeble 442.85 weeks of compensation. Notably, the Deputy assigned a 5% impairment rating to the shoulder.

Deere filed a Notice of Appeal and the matter went before the Commissioner. The Commissioner found that awarding Knaeble an 85% industrial disability from the Second Injury Fund and a 92% industrial disability from Deere would amount to a double recovery. (App. Dec. at 5). This was based on the finding (by both the Deputy and the Commissioner) that the vast majority of Knable's loss in reduction of earning capacity resulted from the combination of the two scheduled injuries (the leg and the carpal tunnel to the hand) and not from the shoulder. The Commissioner ordered a reduction of Knaeble's 2014 injuries and 2017 shoulder injury from 88.57% to 35% industrial disability. *Id.* at 6. Following the reduction of 30% that Deere paid for the first injury, the Commissioner ordered that Deere pay Knaeble 30 weeks (or 5%) of permanent partial disability benefits at the rate of $665.09 per week. The Commissioner left in place the award against the Second Injury Fund due to a defect in the appeal filed by the Fund.

On June 2, 2021, Knaeble filed a Petition for Judicial Review. He asked the Court to reverse the Commissioner's Appeal Decision award of 35% disability regarding the shoulder injury and remand the case for another determination of industrial disability for the combined injuries.

III. STANDARD OF REVIEW

The Iowa Administrative Procedure Act governs judicial review of administrative agency decisions. *See* Iowa Code chapter 17A. The Court shall reverse, modify, or grant other appropriate relief from final agency action if it determines the substantial rights of a petitioner have been prejudiced by any of the means set forth in Iowa Code section 17A.19(10)(a)-(n). Review of agency action is at law, not de novo, and is limited to the record made before the agency. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 537 (Iowa 1985). The Court cannot consider additional evidence or issues not considered by the agency. Iowa Code § 17A.19(7) (2021); *Meads v. Iowa Dep't of Social Servs.*, 366 N.W.2d 555, 559 (Iowa 1985). The Court may not substitute its judgment for that of the agency. *Mercy Health Center v. State Health Facilities Council*, 360 N.W.2d 808, 809 (Iowa 1985). The Court may not usurp the agency's function of making factual findings. *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 186 (Iowa 1980).

The Court shall reverse, modify, or grant other appropriate relief from agency action if the agency action was based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that 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). "Record viewed as a whole" means that the adequacy of the evidence in the record before the court to support a particular finding of fact, must be judged in light of all the relevant evidence in the record cited by any party that detracts from the findings, as well as all of the relevant evidence in the record cited by any party that supports it. *Id.* at § 17A.19(10)(f)(3). This includes any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. *Id.*

The evidence need not amount to a preponderance in order to be substantial evidence, but a mere scintilla will not suffice. *Elliot v. Iowa Dep't of Transp.*, 377 N.W.2d 250, 256 (Iowa Ct. App. 1985). 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. Iowa Code § 17A.19(10)(f)(1). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. *Moore v. Iowa Dep't of Transp.*, 473 N.W.2d 230, 232 (Iowa Ct. App. 1991). The relevant inquiry is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. *Id.*

The Commissioner has a duty to state the evidence relied upon and detail the reasons for any conclusions. *Pitzer v. Rowley Interstate*, 507 N.W.2d 389, 392 (Iowa 1993) (citing *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 510 (Iowa 1973)). This requirement is satisfied if the reviewing court is able to determine with reasonable certainty the factual basis on which the administrative officer acted. *Id.* at 393. Courts understand that an administrative agency "cannot in its decision set out verbatim all testimony in a case." *Id.* at 392 (citing *McDowell v. Town of Clarksville*, 241 N.W.2d 904, 908 (Iowa 1976)) "Nor, when the agency specifically refers to some of the evidence, should the losing party be able, ipso facto, to urge successfully that the agency did not weigh all the other evidence." *Id.* An agency decision is final if supported by substantial evidence. *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 234 (Iowa 1996).

The Court shall also reverse, modify, or grant other appropriate relief from agency action if such action was based 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). The court shall not give deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency. *Id.* at § 17A.19(11)(b). However, appropriate deference is given when the contrary is true. *Id.* at § 17A.19(11)(c). The agency's findings are binding on appeal unless a contrary result is compelled as a matter of law. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 238 (Iowa 1981).

Additionally, a reviewing court must also reverse, modify, or grant other appropriate relief when the agency's decision is "[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(m). "In order to determine an employee's right to benefits, which is the agency's responsibility, the agency, out of necessity, must apply the law to the facts." *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004). Because the agency has been entrusted with the responsibility of applying the law to the facts, the "agency's application of the law to the facts can only be reversed if we determine such an application was 'irrational, illogical, or wholly unjustifiable.'" *Id.* (citing Iowa Code § 17A.19(10)(m)).

"The findings of the commissioner are akin to a jury verdict, and we broadly apply them to uphold the commissioner's decision." *Quaker Oats Co. v. Ciha*, 552 N.W.2d 143, 150 (Iowa 1996) (quoting *Second Inj. Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994) (citation omitted)). "We may reverse, modify, affirm or remand the case to the commissioner for further proceedings if we conclude the agency's action is affected by an error at law or if it is not supported by substantial evidence." *Id.* at 150.

The legislature has not expressly granted the commissioner the power to interpret Iowa Code sections 85.34(2)(u) and (7)(a). *Roberts Dairy v. Billick*, 861 N.W.2d 814, 817 (Iowa 2015), The *Roberts* court further concluded that the general rule-making authority in the statute

did not clearly vest the commissioner with authority to interpret the subsections relevant to this case. *Id*. Accordingly, the standard of review on all legal questions is for correction of errors at law. *Id*.

IV. MERITS

A. Whether the Commissioner's Interpretation and Application of Amended Iowa Code Section 85.34(7) Should be Substituted by the Court.

The relevant injuries occurred in 2014 and 2017, so statutory changes taking effect after these injuries do not impact this case.[1] The law governing this case is governed the 2004 amendments to Iowa Code section 85.34(7) stated:

> a. An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.
>
> (1) If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the *same employer*, and the preexisting disability was compensable under the same paragraph of subsection 2 as the employee's present injury, the employer is liable for the *combined disability* that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.
>
> (2) If, however, an employer is liable to an employee for a combined disability that is payable under subsection 2, paragraph "u", and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.

[1] The legislature amended section 85.34 in 2017. The amendments only applied to injuries on or after the effective date of the statute. 2017 Iowa Acts ch. 23, § 24. Both of Knaeble's 2017 injuries occurred prior to the July 1, 2017 effective date. *See* Iowa Code § 3.7(1).

(Emphasis added). Iowa Code section 85.34(2)(u) is also relevant here. It reads:

> In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "t" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred.

The Commissioner's reasoning is useful when applying the facts of this case to the law. He viewed each of the 2017 injuries separately. The injury to the hand was a scheduled injury that implicated the Second Injury Fund due to the combined loss of earning capacity due to the 2014 leg injury. There is no dispute that, absent any other injury, that calculation was in accord with the law. He then evaluated the shoulder injury in combination with the 2014 leg injury. While he disagreed with the deputy's assignment of total industrial disability, he applied the formula set forth in *Ditsworth v. ICON Ag*, 947 N.W.2d 233 (Iowa Ct. App. 2020). In *Ditsworth*, the Commissioner and the Court first determined total disability and then granted the award for the second injury after subtracting the industrial disability assigned to the first injury. Again, if only those two injuries are considered, the result is clear.

The complicating factor in this case is the presence of two new separate injuries, with one being a scheduled injury and one a whole-body injury. The Deputy found that the injury to the hand, in combination with the prior injury to the leg, dramatically impacted Knaeble's earnings capacity. That resulted in the high industrial disability rating primarily assessed to the Second Injury Fund. She also found that shoulder injury was a small part of the increase in industrial disability because it did not dramatically increase Knaeble's total disability. Still, she assessed the total increase in Knaeble's total work incapacity to the employer after deducting the share assigned to the 2014 injury.

The Commissioner considered this a double recovery. This logic is supported by further examples. Let's say both of the 2017 injuries were scheduled injuries. The employer would be responsible for the scheduled amounts and the Fund would pick up the difference for industrial disability. *See* Iowa Code § 85.64. There would be no double recovery. Or, if both of the 2017 injuries were to the body as a whole, the employer would be responsible for the total industrial disability minus a credit for the percentage of the 2014 injury. There would be no double recovery. In this instance, Knaeble seeks to recover the large increase in industrial disability against both the employer and the Fund.

The Commissioner's interpretation is consistent with the statute. Iowa Code section 85.34(7)(a) provides that an employer is "fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer." Further, subsection (a)(2) states that if both injuries are to the body as a whole, the employer is responsible for the total disability minus a credit for the first injury. Both statutory provisions are intended to provide for full compensation for loss of earning capacity resulting from multiple workplace injuries. Neither section is intended to allow double or more-than-full recovery.

In this instance, Knaeble has been awarded funds accounting for his lost earning capacity resulting from multiple injuries. Both agency decisions found that the loss in earning capacity primarily resulted from the combination of the leg and hand injuries. The Second Injury Fund was assessed most of that payment, but only based on the statutory requirement in section 85.64. The agency awarded Knaeble additional benefits assigned to the shoulder injury after accounting for the apportionment for the first injury. He received nearly maximum permanent partial disability benefits. He has been fairly compensated under the statutory provisions with no duplicate recovery.

This finding is not inconsistent with the case law. In *Roberts Dairy*, the Court discussed successive injuries occurring while in the employment of a subsequent employer. 861 N.W.2d at 824. The district court found a double recovery, but the Supreme Court held that the employee was granted a "fresh-start" when starting employment with a new employer. *Id*. The Court expressly distinguished the 2004 amendments as only applying to multiple injuries occurring with one employer. *Id.*

Similarly, in *Warren Properties*, the Court also discussed the distinction made in the 2004 amendments between successive injuries occurring with the same employer as opposed to different employers. 864 N.W.2d 307, 313 (Iowa 2015). *Warren Properties* involved concurrent injuries with different employers. *Id*. The Court evaluated the case similarly to *Roberts Dairy*, holding that the 2004 amendments did not impact successive injuries with different employers. *Id*. Once again, the Court made clear that the 2004 amendments were focused on successive injuries with the same employer. *Id*.

In *JBS Swift & Co. v. Ochoa*, the argument swung somewhat the other way. *See* 888 N.W.2d 887, 899 (Iowa 2016). In *Swift*, the employee suffered successive injuries with the same employer. *Id*. The last resulted in permanent total disability. *Id*. The Court again evaluated the 2004 amendments but found they did not offer relief to the employer when the last injury resulted in total disability. *Id.* The Court noted the double recovery argument, but stated that the amendments did not include language offering an apportionment for the temporary benefits when total disability was later awarded. *Id*. However, the agency did not award total disability, so *Swift* does not apply.

In contrast, this case involves successive permanent partial disabilities with the same employer, which was the subject of the 2004 amendments. Thus, the double recovery arguments

made in the aforementioned cases are in play. The case is not entirely straight-forward because the last two injuries are covered by different statutes and were considered at the same hearing. However, the third injury, which is the injury at issue in this hearing, is covered by the statute. The statute allows for apportionment of the first injury because both were deemed injuries to the body as a whole. The Commissioner's decision does not frustrate the claimant's interests because his loss of earning capacity was addressed by the award for the second injury. Moreover, if the second injury (that is, the scheduled injury to the hand) had never occurred, claimant has no real argument that the decision is erroneous. The Commissioner's decision appears to abide by the statutory language and the underlying legislative intent.

The one portion of the Commissioner's decision that is confusing is the assessment of permanent partial disability between the two injuries. He affirmed the finding of 85% permanent partial disability for the scheduled injury. However, he found a 35% permanent partial disability for the shoulder injury, which occurred after the hand injury. It seems illogical to find a higher level of disability for a second injury and a lower level of disability for a subsequent injury. The Commissioner did not fully explain this conclusion. It seems somewhat like a work-around, but does not appear inconsistent with section 85.34 either, as the statute did not specifically address the factual situation here.

This concern could be the basis for a remand but the Commissioner's decision is consistent with the law, so there is no real reason to remand. The Deputy likewise assessed the shoulder injury at 5% and stated it was not a major contributor to the significant loss in earning capacity. The substantial evidence issue will be discussed in the next section, but the legal conclusions are consistent with the law. Accordingly, the Commissioner's legal conclusions are affirmed.

B. Whether the Commissioner's Award of 35% Industrial Disability for the March 13, 2017 Left Shoulder Injury is Supported by Substantial Evidence.

Knaeble also takes issue with the Commissioner's 35% industrial disability award. He believes that an award of five percent industrial disability for the March 13, 2017 left shoulder injury and a 35% industrial disability for the combined March 13, 2017 and May 29, 2014 injury is inadequate and is not supported by substantial evidence.

In *Knaeble v. John Deere*, File No. 5055713, Knaeble received an award from Deere for 30% industrial disability for his CRPS related injury. *Id.* at 8. As for the 5% figure for the shoulder injury, the Commissioner affirmed the Deputy's adoption of Mark Taylor, M.D's impairment ratings. App. Dec. at 2. The Commissioner reviewed the record and found that Dr. Taylor's report was more detailed than the opinions of Christopher Palmer M.D., and David Field, M.D. *Id.*

Dr. Taylor opined that due to the substantial amount of overhead activities in Knaeble's work, he sustained injuries to his left shoulder, which contributed to the development of arthritis. Nov 30. at 4. Dr. Taylor recommended that Knaeble lift only 10 to 15 pounds above the shoulder and only occasionally. *Id.* Dr. Taylor found that the left shoulder injury amounted to a 5% whole person impairment.

The Court concludes that these figures are findings of fact that are supported by substantial evidence on the record. As for the calculation, which is an application of law to facts, the Commissioner reached the 35% whole body injury figure by applying Iowa Code section 85.34(7)(b) to the above facts. App. Dec. at 7. Section 85.34(7)(b) explains "exactly how the offset is to be calculated when an employee suffers successive injuries while working for the same employer". *Roberts Dairy*, 861 N.W.2d at 821. Knaeble worked for John Deere when he sustained his bilateral lower extremity injury that caused CRPS. Likewise, Knaeble's shoulder injury also

occurred while he worked at Deere. It was proper for the Commissioner to apply section 85.34(7)(b) in this situation.

"In order to determine an employee's right to benefits, which is the agency's responsibility, the agency, out of necessity, must apply the law to the facts." *Mycogen Seeds*, 686 N.W.2d at 465. Because the agency has been entrusted with the responsibility of applying the law to the facts, the "agency's application of the law to the facts can only be reversed if we determine such an application was 'irrational, illogical, or wholly unjustifiable.'" *Id.* (citing Iowa Code § 17A.19(10)(m)). The Court finds that the Commissioner's application of Iowa Code section 85.34 (7)(b) was not irrational, illogical, or wholly unjustifiable. The Commissioner found the shoulder injury was relatively minor and resulted in a 5% disability. It is evident that the Commissioner found that because the shoulder injury was minor the combined industrial disability rating was not anything beyond the addition of the 35% from the CRPS and shoulder disabilities. Naturally, there may be disagreement as to how the Commissioner ultimately applied section 85.34(7)(b) but he did give effect to the law when he determined that Deere was liable for an additional 5% industrial disability after subtracting the CRPS injury from the combined injury. The Court affirms the Commissioner's calculation.

V. RULING

The decision of the Workers' Compensation Commissioner is affirmed. The petition for judicial review is denied. All costs are assessed to petitioner.

State of Iowa Courts

Case Number	**Case Title**
CVCV061932	DAVID KNAEBLE VS JOHN DEERE DUBUQUE WORKS
Type:	OTHER ORDER

So Ordered

Jeffrey Farrell, District Court Judge,
Fifth Judicial District of Iowa

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