IN THE IOWA DISTRICT COURT FOR POLK COUNTY

WARREN A. HAVILL, **Petitioner,** **v.** **QUAKER OATS COMPANY and INDEMNITY INS. CO. OF N. AMERICA,** **Respondents.**	**Case No. CVCV061593** **RULING ON PETITIONER'S APPLICATION FOR JUDICIAL REVIEW**

Before the Court is Petitioner's Application for Judicial Review in the above-captioned case. The Court held a hearing regarding this matter on October 1, 2021. After considering the arguments of the parties, and having reviewed the file and the applicable case law, the Court now enters the following ruling:

RELEVANT FACTS

The Commission adequately and thoroughly addressed the facts in their holding. As such, the Court will not restate the facts in the entirety here. As the issue presented involves the statute of limitations, only the facts relevant to that question will be addressed.

Respondent hired Havill in 1984. He underwent a pre-employment physical and had no ear or hearing troubles. Throughout his employment, Havill was advised to and did wear hearing protection. Hearing tests in 1992, 2001, 2005, and 2010, all indicated hearing loss that worsened over time. In March of 2005, Havill completed a hearing history form and indicated he had ringing in his ears after work.

On March 26, 2012, Havill had an annual hearing examination that showed a significant difference in hearing between both ears. Havill was encouraged to consult with an ear specialist to determine the cause.

Annual hearing tests in 2013, 2014, and 2016, indicated that Havill had no ringing or roaring in his ears. Havill did indicate in 2015 that he did have ringing in his ears. Havill went to a doctor in 2014 complaining of intermittent tinnitus, but in a doctor's visit in 2016, denied tinnitus and hearing loss but reported vertigo. In 2016, Havill had an incident in which he heard cicadas outside. Finding nothing outside causing the noise, he returned indoors and took a nap.

Havill continued to suffer intermittent "chirping," and on July 14, 2017, he had an MRI that came back normal. The doctor did note Havill's history of tinnitus and hearing loss. Havill argues that this is when he was put on notice of his injury and that the statute of limitations started running.

Havill alleges his tinnitus was caused by noise exposure in the course of his employment and asserts the injury date was June 10, 2019. Havill filed a Petition for workers' compensation benefits on June 18, 2019. Respondent denied compensability of this claim on August 14, 2019. This matter came for hearing before Deputy Commissioner Andrew Phillips on August 18, 2020. In the Arbitration Decision filed on November 12, 2020, the Deputy Commissioner determined Havill failed to timely file his Petition within two years of the date of the occurrence of his injury pursuant to Iowa Code section 85.26. As such, Havill was not entitled to workers' compensation benefits, and the other issues were not decided as they were moot. Havill filed an appeal of the Arbitration Decision to the Iowa Workers' Compensation Commissioner on November 30, 2020. In the Appeal Decision filed on March 10, 2021, the Commissioner affirmed the Arbitration Decision in its entirety. Havill filed an appeal of the Appeal Decision to the Polk County District Court on March 26, 2021.

STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope

of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2021); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was *ultra vires*; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id*. § 17A.19(10). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co*., 649 N.W.2d 744, 748 (Iowa 2002).

"If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the commissioner's discretion, so the Court is bound by the commissioner's findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1); *Mycogen*, 686 N.W.2d at 464. "When reviewing a finding of fact for substantial evidence, we judge the finding 'in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it.'" *Cedar Rapids Comm. Sch.*

Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Iowa Code § 17A.19(10)(f)(3)). "Evidence is not insubstantial merely because different conclusions may be drawn from the evidence." *Pease*, 807 N.W.2d at 845. "To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder." *Id.* "Judicial review of a decision of the [Commission] is not de novo, and the commissioner's findings have the force of a jury verdict." *Holmes v. Bruce Motor Freight*, 215 N.W.2d 296, 297-98 (Iowa 1974).

The application of the law to the facts is also an enterprise vested in the commissioner. *Mycogen*, 686 N.W.2d at 465. Accordingly, the Court will reverse only if the commissioner's application was "irrational, illogical, or wholly unjustifiable." *Id*.; Iowa Code § 17A.19(10). "A decision is "irrational" when it is not governed by or according to reason." *Christensen v. Iowa Dep't. of Revenue*, 944 N.W.2d 895 at 905 (Iowa 2020). A decision is "illogical" when it is "contrary to or devoid of logic." *Id*. "A decision is "unjustifiable" when it has no foundation in fact or reason" or is "lacking in justice." *Id*. This standard requires the Court to allocate some deference to the commissioner's application of law to the facts, but less than it gives to the agency's findings of fact. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

MERITS

I. The Commission's interpretation of Iowa Code section 85.26.

Havill argues the agency erroneously interpreted the law. Iowa Code section 85.26, reads:

> An original proceeding for benefits under this chapter or chapter 85A, 85B, or 86, shall not be maintained in any contested case unless the proceeding is commenced within two years from the date of the occurrence of the injury for which benefits are claimed…For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

Iowa Code § 85.26(1).

The Commissioner accepted the Deputy Commissioner's interpretation of section 85.26, to mean that the statute of limitations for workers' compensation actions is two years. Arb. Dec. 18. This is the correct interpretation of the law and therefore, the Commissioner's conclusions are not based on erroneous interpretations of law.

II. The Commission's finding that the statute of limitations bars Havill's claims.

The "statute of limitation on a workers' compensation claim does not begin to run until the claimant knows or should recognize the nature, seriousness, and probable compensable character of his or her injury." *Baker v. Bridgestone/Firestone*, 872 N.W.2d 672, 680-81 (Iowa 2015). "[A] claimant must have knowledge, either actual or implied, of all three characteristics of the injury before the statute begins to run." *Perkins v. HEA of Iowa, Inc.*, 651 N.W.2d 40, 45 (Iowa 2002) (citing *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 650 (Iowa 2000). The court applies the discovery rule in cases where cumulative injuries or occupational diseases developed over time. *Baker*, 872 N.W.2d at 681. In cases where a cumulative injury occurs, it is deemed to have occurred when it manifests. *Id.* Manifestation is the time when "both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Id.* (citing *Oscar Mayer Foods Corp. v. Tasler*, 483 N.E.2d 824, 829 (Iowa 1992). This is a factual question and the Court is bound by the Commission's determination if it is supported by substantial evidence. *Gates v. John Deere Ottumwa Works*, 587 N.W.2d 471, 475 (Iowa 1998).

a. Nature of the Injury

In terms of Havill knowing the nature of his injury, the Commission found:

> In 2001, Mr. Havill began experiencing mild hearing loss in his left ear. This progressed as he continued his employment with Quaker. By 2008, Mr. Havill's hearing loss was deemed moderate in the left ear. This continued into 2010. Quaker, or its agents counseled Mr.

> Havill to seek examination with a hearing specialist as early as 2010, and again in 2012 and 2013. In 2014, records noted intermittent tinnitus, and in 2015, records indicated an affirmative response to a question regarding hearing, ringing, or roaring. In October of 2016, Mr. Havill indicated experiencing an incident of vertigo, but at that time, denied tinnitus. By January of 2017, Mr. Havill reported tinnitus in his left ear since the previous fall. In February of 2017, Mr. Havill reported ringing and roaring or chirping in his left ear. The sheer number of incidences and diagnoses, including a worsening in the fall of 2016, and early part of 2017, show that Mr. Havill was aware of the nature of his hearing and tinnitus issues prior to June of 2017.

Arb. Dec. at 18-19.

Havill learned something was wrong with his hearing as far back as 2001, when he began noticing hearing loss in his left ear. As such, he was aware of the nature of his injury prior to June 2017. The above evidence based on medical records and testimony is substantial, sufficient to support a finding that Havill was aware of the nature of his injury prior to June 2017.

b. Seriousness of the injury

The Iowa Supreme Court clarified "seriousness" to mean the employee "knows the physical condition is serious enough to have a permanent adverse impact on the claimant's employment or employability." *Baker*, 872 N.W.2d at 681 (quoting *Herrera*, 633 N.W.2d at 288).

As for when Havill knew of the seriousness of the injury the Commission found:

> As noted above, Mr. Havill has a long history of hearing loss and intermittent ringing in his ears after exposure to loud noise on multiple occasions. He also noted in his discovery responses an incident in the fall of 2016, when he heard cicadas or a buzzing noise outside of his house while watching television. He went to investigate this, and saw no cicadas. This caused Mr. Havill to become distraught. He took a nap, and when he awoke, the noise was gone. He also reported four straight days of tinnitus or buzzing in his ears which caused him to seek medical examination with a personal provider in early 2017. Between becoming distraught about the alleged cicada noises and seeking care, I find ample evidence that Mr. Havill understood the seriousness of his condition. A reasonable person would be concerned with the seriousness of this

> occurring after being exposed to noise through their work, being required to wear hearing protection on the job, and having experienced ringing or roaring in their ears in the past. This is not a case where there was an "ache or pain" as the court noted, this is a case where a reasonable person would be concerned about the occurrence in the fall of 2016, and early parts of 2017, as evidenced by the fact that the claimant sought care for his ears despite recommendations to do so dating back to 2010, 2012, and 2013.

Arb. Dec. at 19.

Havill argues the Commission did not specifically state they found the injury to be permanent. In the ruling, the Commission defined the term "seriousness" as a "permanent adverse impact." Arb. Dec. at 19. Clearly, when the Commission found that Havill was aware that the injury was serious, the Commission was finding that Havill knew the injury had a permanent adverse impact, as required by *Baker*.

Additionally, the Commission's finding is supported by the substantial evidence of Havill having the symptoms for a long period of time, as well as the cicada incident detailed above. This is sufficient to affirm the Commission's finding.

c. Probable compensable character of the injury

In *Perkins v. HEA of Iowa, Inc.,* the Iowa Supreme Court held, "[k]knowledge is imputed to a claimant when he gains information sufficient to alert a reasonable person of the need to investigate. As of that date he is on inquiry notice of all facts that would have been disclosed by a reasonably diligent investigation." 651 N.W.2d 40, 44 (Iowa 2002)(citing *Ranney v. Parawax Co.*, 582 N.W.2d 152, 155 (Iowa 1998)). Here, the Commission found:

> In this case, the claimant testified that he did not consider Quaker the source of his issues until he went through a process of elimination of all other potential issues. He alleges that it was not until after his MRI in July of 2017 that he considered the probable compensable nature of his tinnitus. The MRI as a timeline for probable compensability is problematic considering the claimant spends most of his post-hearing brief discussing the noise levels at Quaker.

> After his tinnitus incident in the fall of 2016, the medical records pertaining to his treatment in 2017 note his exposure to loud noises at Quaker. Mr. Havill has worked for Quaker for 36 years. During that time, Quaker has done annual noise studies, including having employees wear dosimeters. Mr. Havill wore hearing protection while on the job at Quaker. After several decades of employment at Quaker, Mr. Havill experienced hearing loss and later tinnitus issues. It was recommended as early as 2010 that he seek additional medical help from an ear specialist. He continued to have progressively worse hearing test results. Finally, in the fall of 2016, Mr. Havill experienced an episode of tinnitus that was so severe it caused him to have an emotional reaction, including the need to lie down. Mr. Havill then noted to his medical providers that he worked around noise at Quaker. The subsequent treatment was Mr. Havill being a reasonable person investigating the cause of his tinnitus. This satisfies the third aspect of the discovery rule.

Arb. Dec. at 19-20.

While true that the actual noise studies were not available to Havill until this case, he was aware that his place of employment was loud and required the use of hearing protection. A reasonable person would be alerted by these facts that their hearing problems result from work. As such, the Commission's decision is supported by substantial evidence.

d. Conclusion

The Commission's decision that Havill was aware of the nature, seriousness, and probable compensable characteristic of the injury in 2016 is supported by substantial evidence.

ORDER

Therefore, for the reasons stated above, Petitioner's Petition for Judicial Review is hereby **DENIED**.

State of Iowa Courts

Case Number	**Case Title**
CVCV061593	WARREN HAVILL V QUAKER OATS COMPANY ET AL
Type:	OTHER ORDER

So Ordered

Paul D. Scott, District Court Judge,
Fifth Judicial District of Iowa

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