

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY****DURHAM SCHOOL SERVICES,**

Employer/Petitioner,

**OLD REPUBLIC INSURANCE  
COMPANY,**

Insurance Carrier/Petitioner,

vs.

**ABE CAMP**

Claimant/Respondent.

**Case No. CVCV063500****RULING ON PETITION FOR  
JUDICIAL REVIEW**

On September 2, 2022, the above-captioned matter came before this Court for hearing. Petitioners Durham School Services (“Durham”) and Old Republic Insurance Company (“Old Republic”) were represented by attorney Lori N. Scardina Utsinger. Respondent, Abe Camp, was represented by attorney Valerie A. Foote. After hearing the arguments of Counsel and reviewing the court file, including the briefs filed by the parties and the Certified Administrative Record, the Court enters this Order.

**I. BACKGROUND FACTS AND PROCEEDINGS**

Abe Camp filed a petition in arbitration with the Iowa Workers’ Compensation Commission seeking benefits from Durham, his employer, and Old Republic, Durham’s insurer, as a result of an alleged work injury sustained on November 27, 2017. Certified Record, (“CR”), Part 1, p. 109. An Arbitration Decision was filed by a Deputy Commissioner on September 13, 2021. *Id.* p. 127.

The Deputy Commissioner, Jessica Cleereman (“Deputy”) found that an accident occurred on November 27, 2017. *Id.* p. 121. Specifically, the Deputy found that the bus in which Respondent

was working as a bus monitor was struck from behind at a stop light by a pickup truck. *Id.* pp. 112-13, 191, 266, 294. The Deputy found that at the time of impact Respondent was walking towards the front of the bus to talk with the driver, Ms. Griffiths. *Id.* pp. 112-13, 191, 266. The impact from the truck hitting the bus caused Respondent to lurch forward and grab the back of a bus seat to steady himself. The Deputy also found that the day after the accident Respondent began feeling pain in his back and sought medical care. *Id.* p. 121.

There were three expert opinions regarding whether Respondent's subsequent back treatment was a result of the accident. *Id.* pp. 121-22. Dr. Schmitz opined that he could not state within a reasonable degree of medical certainty that Respondent sustained a low back injury at the time of the bus accident on November 27, 2017. *Id.* p. 116; CR, Part 2, p. 216. However, Drs. Millea and Taylor opined that the November 27, 2017, accident was the cause of Respondent's need for medical treatment related to his back after the accident date. CR, Part 1, p. 122.

The Deputy did not find Dr. Schmitz's opinion to be reliable because it was initially based on inaccurate information and, when provided with additional information, Dr. Schmitz did not change his opinion nor did he provide a convincing explanation as to why his opinion remained the same. *Id.* However, the Deputy did find the opinions of Drs. Millea and Taylor to be reliable and afforded them weight. *Id.*

The Deputy found that the opinions of Drs. Millea and Taylor were thorough and based on accurate information. *Id.* Specifically, she gave the greatest weight to Dr. Millea's opinion that the November 27, 2017, accident at work caused Respondent's subsequent need for medical treatment related to his back. *Id.* p. 118. The Deputy gave the greatest weight to Dr. Millea's opinion because Dr. Millea was the treating surgeon who saw Respondent on multiple occasions, he gave

Respondent a great deal of treatment, he had a clear understanding of Respondent's previous low back surgeries, and he had detailed and accurate records. *Id.* pp. 118, 122.

The Deputy also gave weight to Dr. Taylor's opinion that the November 27, 2017, accident caused Respondent's subsequent need for medical treatment related to his back. *Id.* p. 118. She gave weight to Dr. Taylor's opinion because his report was consistent with the medical evidence in the record as well as Respondent's testimony. *Id.* Additionally, the Deputy found Dr. Taylor's opinion to be more credible than Dr. Schmitz's opinions because Dr. Taylor was provided with more complete medical records, had a more accurate understanding of Respondent's prior medical history and physical condition, his report was detailed and accurate, and was consistent with the other medical records and Respondent's testimony. *Id.* pp. 118, 122.

The Deputy did note that Respondent had extensive pre-existing back problems. *Id.* p. 122. However, prior to the bus accident, Respondent was able to work with little to no difficulty, he did not need a walker to ambulate, his symptoms were manageable, and he did not have permanent restrictions. *Id.* Thus, taking this into account and based on the opinions of Drs. Millea and Taylor the Deputy determined that Respondent sustained an injury to his low back arising out of and in the course of his employment with Durham on November 27, 2017. *Id.*

It was further determined by the Deputy that the injury to Respondent's low back is considered an impairment to the body as a whole. *Id.* As such, Respondent's low back injury was determined to be an industrial disability. *Id.* She determined that although Respondent is close to a normal retirement age, this proximity could not be considered in assessing the extent of his industrial disability. *Id.* p. 123. However, she determined that they could consider voluntary retirement or withdrawal from the work force unrelated to the work injury. *Id.* The Deputy concluded that Respondent is permanently and totally disabled. *Id.* She reached this conclusion

based on Respondent's age, his education, his previous ability to function and work despite a history of low back problems, his employment history, his need to ambulate with a walker after the accident, his significant permanent restrictions recommended by Dr. Taylor, and his award of Social Security Disability benefits. *Id.* The Deputy did note Respondent's lack of applying for jobs since the work injury, but concluded it was not due to a lack of motivation, but rather his inability to find suitable work given his physical limitations. *Id.*

The Deputy concluded that Respondent's permanent and total disability commenced as of the date of the injury, November 27, 2017. *Id.* She did not address the issue of healing period benefits because she concluded that Respondent is permanently and totally disabled as of the date of injury. *Id.* As such, healing period benefits were not appropriate. The Deputy ordered Petitioners to pay Respondent permanent total disability benefits at a rate of \$217.99 per week commencing as of November 27, 2017, and continuing during the period of permanent total disability with credit for all benefits previously paid. *Id.* p. 126.

It was further determined by the Deputy that Respondent's extensive pre-existing cardiac medical history was relevant to the current workers' compensation case. *Id.* pp. 111, 123-24. However, she concluded that the Iowa Workers' Compensation Commission has a long history of precedents that require an employer to treat a pre-existing, non-work-related condition to the extent that doing so is necessary in order to effectively treat a work-related condition. *Id.* p. 124. As such, the Deputy concluded that it was necessary to remedy Respondent's heart condition prior to proceeding to his back surgery. *Id.* Thus, she concluded that the heart surgery in April 2018 was reasonable and necessary medical treatment relating to Respondent's work-related back injury. *Id.*

Petitioners were ordered to pay for the April 2018 heart surgery, but not for any treatment related to Respondent's cardiac condition after his back surgery in September of 2018. *Id.*

Additionally, the Deputy ordered Petitioners to pay for all reasonable and necessary medical treatment casually related to Respondent's low back condition beginning on the date of injury, November 27, 2017. *Id.* She further ordered Petitioners to reimburse Respondent for the portions of medical bills he paid from his own funds along with reimbursing any providers or lienholders with outstanding claims. *Id.* p. 125. Further, per Iowa Code section 85.27, she ordered Petitioners to reimburse Respondent \$213.95 for his walker, despite there not being a prescription for it, and for his prescription for hydrocodone from Dr. Millea, in the amount of \$14.33. *Id.*

The Deputy concluded that Respondent's independent medical examination ("IME") with Dr. Taylor was properly reimbursable per Iowa Code section 85.39. *Id.* She reached this determination based on Dr. Schmitz's finding of no causation, reasoning that a finding of no causation is equivalent to an impairment rating of zero. *Id.* p. 126. As such, she ordered the Petitioners to reimburse Respondent for his IME with Dr. Taylor in the amount of \$4,572.50. *Id.* p. 126; CR, Part 2, p. 130. She additionally exercised her discretion and awarded Respondent reimbursement for the \$100.00 filing fee. CR, Part 1, p. 126.

Petitioners filed a Notice of Appeal with the Iowa Workers' Compensation Commissioner on September 15, 2021, appealing the Deputy's September 13, 2021, Arbitration Decision in its entirety. *Id.* pp. 72, 108. Specifically, the Petitioners asserted the Deputy erred in finding: (1) Respondent sustained a work-related injury on November 27, 2017; (2) Respondent is permanently and totally disabled as a result of the work injury; (3) Petitioners are responsible for the requested past medical charges related to Respondent's back condition; (4) Petitioners are responsible for the requested past medical charges related to Respondent's heart surgery; (5) Respondent is entitled to receive weekly benefits while he was off work related to his heart surgery; (6) the commencement date for permanent disability benefits as November 27, 2017; and (7) Respondent

was entitled to reimbursement for the cost of his walker and hydrocodone prescription. *Id.* pp. 31-32.

The Commissioner filed his Appeal Decision on March 21, 2022. *Id.* p. 35. He found that the Deputy Commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding and affirmed and adopted in its entirety the Deputy Commissioner's findings of fact and conclusions of law pertaining to those issues. *Id.*

Specifically, the Commissioner affirmed that Respondent sustained a work-related injury on November 27, 2017. *Id.* As such, he affirmed that Respondent is permanently and totally disabled as a result of the work injury and is entitled to permanent total disability benefits for the injury. *Id.* The Commissioner also affirmed that Petitioners are responsible for all requested past medical charges related to Respondent's back condition, and are responsible to pay Respondent reimbursement for his walker and hydrocodone prescription. *Id.* He affirmed that Petitioners are responsible for the cost of the arbitration proceeding in the amount of \$100.00. *Id.* The above affirmations were made without additional analysis or comment by the Commissioner. *Id.*

The Commissioner also affirmed the finding that Petitioners are responsible for the medical charges for Respondent's April 2018 heart surgery. *Id.* The Commissioner made additional analysis, citing Iowa Workers' Compensation Commission precedent that has never been addressed beyond the Agency, that requires an employer to treat a pre-existing non-work-related condition to the extent that doing so is necessary in order to affectively treat a work-related condition. *Id.* pp. 32-33. The Commissioner further ordered the Petitioners to pay the cost of the appeal, including the cost of the hearing transcript. *Id.* p. 34. Petitioners subsequently filed this Petition for Judicial Review on April 20, 2022. Petition for Judicial Review ("Pet."), p. 1.

## II. SCOPE AND STANDARDS OF REVIEW

The Iowa Administrative Procedure Act (“IAPA”), 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). The Court’s review of final agency action is “severely circumscribed.” *Sellers v. Emp. Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa Ct. App. 1995). Nearly all disputes are won or lost at the agency level; the cardinal rule of administrative law is that judgment calls are within the province of the administrative tribunal, not the courts. *See id.*

“Under the [IAPA], 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. The 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. *Clark v. Vicorp Rest., Inc.*, 696 N.W.2d 596, 604 (Iowa 2005). 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); *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 850 (Iowa 2011). The burden on the movant to prove there is not substantial evidence in the record is a heavy one. *See McComas-Lacina Constr. v. Drake*, 884 N.W.2d 225 (Table), 2016 WL 2744948, at \*1 (Iowa Ct. App. May 11, 2016) (“A case reversing final agency action on the ground the agency’s action is unsupported by substantial evidence . . . is the Bigfoot of the legal community - an urban legend, rumored to exist but never confirmed.”)

The application of the law to the facts is also vested in the commissioner. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009). Accordingly, the Court will reverse only if the commissioner’s application was “irrational, illogical, or wholly unjustifiable.” *Id.*; Iowa Code § 17A.19(10)(l). 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*, 763 N.W.2d at 850. “[I]f the claimed error pertains to the agency’s interpretation of law, then the question on review was whether the agency’s interpretation was wrong.” *Tripp v. Scott Emergency Communication Center*, 977 N.W.2d 459, 464 (Iowa 2022) (citing *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006)).

### **III. MERITS**

#### **A. November 27, 2017, Accident Giving Rise to Present Litigation**

Petitioners assert that the Commissioner’s affirmance of the Arbitration Decision was in violation of Iowa Code sections 17A.19(10)(a)-(n). Pet., p. 2. Specifically, Petitioners assert that the Commissioner’s Appeal Decision was: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) in violation of or inconsistent with an



agency rule and/or the agency's prior precedents; (4) made upon unlawful procedures; (5) 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; (5) affected by other errors of law; (6) the product of reasoning that is so illogical as to render it wholly irrational; (6) unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; (7) unreasonable, arbitrary, capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; and (8) otherwise erroneous based upon Iowa Code section 17A.19(10)(a)-(n). *Id.* pp. 1-2. More specifically, Petitioners assert that the substantial evidence shows that Respondent did not have an injury that arose out of and in the course of his employment, particularly considering Respondent's long standing and significant personal lumbar back conditions. Petitioners further assert that the Commissioner erred in not giving Dr. Schmitz's opinions greater weight as he was the primary care physician and he did consider Respondent's substantial back history when he issued his opinions. As such, Petitioners assert Dr. Schmitz's opinions did not change because Respondent's significant medical history remained the same, the post-injury MRI showed degenerative issues, and the mechanism of injury was benign and minimal.

Respondent asserts that the Commissioner's findings of fact regarding causation of permanent disability are supported by substantial evidence in accordance with Iowa Code section 17A.19(10), and thus correct. Respondent further asserts that the Commissioner's application of the law to the facts in this case was rational and logical. Respondent supports their assertions by pointing to the Deputy's extensive Arbitration Decision, which the Commissioner adopted in full, that weighted Respondent's pre-existing lumbar conditions along with each doctors' opinions, including the multiple errors in Dr. Schmitz's opinion.

Petitioners assert in their reply brief that Dr. Schmitz's opinion should be put in the proper context. Specifically, Petitioners assert that Dr. Schmitz's opinion should be put in the context of not only Respondent's significant prior back treatment and treatment after the injury, but also in the context of the minor nature of the alleged mechanism of injury. As such, taking these contextual factors into consideration Petitioners assert that the Deputy erred in discounting Dr. Schmitz's opinion.

The Commissioner performed a detailed review of the evidentiary record and arguments of the parties. Additionally, the Commissioner reviewed the analysis, findings of facts, and conclusions of law of the Deputy Commissioner. CR, Part 1, p. 32. The Commissioner found that the Deputy Commissioner provided a well-reasoned analysis of all the issues raised in the arbitration proceeding. *Id.* As such, the Commissioner adopted the Deputy's Commissioner's findings of fact and conclusions of law pertaining to all issues, those on appeal and those not on appeal. *Id.* Specifically, the Commissioner found that Respondent met his burden of proof, proving that he sustained a work-related injury on November 27, 2017. *Id.*

The record, when viewed as a whole, has substantial evidence to support the Commissioner's finding that Respondent sustained an injury that arose out of and in the course of his employment with Durham. Specifically, there is evidence within the record that indicates to a neutral, detached, and reasonable person, that the conclusion that Respondent sustained a work injury was appropriate, and was supported by substantial evidence. Iowa Code § 17A.19(10)(f)(1); *Cedar Rapids Cmty. Sch. Dist.*, 807 N.W.2d 839, 850 (Iowa 2011).

The agency, as the fact finder, determines the weight to be given to any expert testimony. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998); *Dodd v. Fleetguard, Inc.*, 759 N.W.2d 133, 138 (Iowa Ct. App. 2008). Such weight depends on the accuracy of the facts relied upon by

the expert and other surrounding circumstances. *Id.* The commissioner may accept or reject the expert opinion in whole or in part. *Sherman*, 576 N.W.2d at 321.

Making a determination as to whether evidence “trumps” other evidence or whether one piece of evidence is “qualitatively weaker” than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision.

*Arndt v. City of Le Claire*, 728 N.W.2d 389, 394 (Iowa 2007). Furthermore, when the Court reviews factual questions delegated by the legislature to the Commissioner such as the one here, the question before the Court is not whether the evidence might support different findings than those made by the Commissioner, but whether the evidence supports the findings actually made. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 649 (Iowa 2000). Thus, although there may be evidence here to support a different finding, there clearly is evidence in the record to support the findings made by the Commissioner regarding whether Respondent had sustained a work-injury arising out of and in the course of his employment with Durham on November 27, 2017. Evidence in support of an agency decision is not insubstantial merely because it would have supported contrary inferences; nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996).

For the foregoing reasons, the Court concludes that the finding that Respondent suffered a work-related injury is supported by substantial evidence. Furthermore, based on the substantial evidence supporting the Commissioner’s determination, his application of law to the facts was rational, logical, and wholly justifiable. *Larson*, 763 N.W.2d 842, 850 (Iowa 2009); Iowa Code § 17A.19(10)(l).

**B. Respondent's April 2018 Cardiac Treatment**

Petitioners also assert that Respondent is not entitled to payment for his April 2018 cardiac treatment. Specifically, Petitioners assert that the Commissioner committed an error of law in awarding Respondent payment for his April 2018 cardiac treatment, that doing so was against the substantial evidence, unreasonable, arbitrary, and capricious. Petitioners support their assertions based on the opinion of Dr. Klappa who opined that Respondent needed heart surgery—whether or not he needed treatment for a work-related injury—because the cardiac condition placed Respondent's life in danger.

As such, Petitioners assert that Respondent's April 2018 cardiac treatment was not necessary to treat his alleged work-related back injury, but was instead necessary to save his life. Thus, Petitioners argue that there was no connection between Respondent's 2018 cardiac care and his work-related back injury and therefore the Agency precedent cited does not support the Commissioner's decision to award Respondent payment for his April 2018 cardiac treatment.

Respondent asserts that the Commissioner's findings of fact regarding his entitlement to payment/reimbursement for his 2018 cardiac treatment in connection with his work-related injury are supported by substantial evidence per Iowa Code section 17A.19(10). He further asserts that the Commissioner's application of the law to the facts was rational and logical. In addition, Respondent contends that the Commissioner correctly interpreted statutes and case law in rendering his conclusion that the 2018 cardiac treatment expenses were properly reimbursable per Iowa Code section 85.27. Respondent supports his assertions by citing to various Agency opinions, which in essence hold that treatment of pre-existing, non-work-related conditions that are necessary to complete treatment of work-related injuries are compensable.

Petitioners assert in their reply brief that Respondent's award of payment/reimbursement for his 2018 cardiac treatment would grossly expand workers' compensation benefits beyond the purpose of the Workers' Compensation Act to cover clearly unrelated personal health conditions. Petitioners re-assert their argument that Respondent's 2018 cardiac treatment was obtained not so that he could undergo his back surgery related to his work injury, but rather was to save his life. Respondent does not refute the assertion that his heart condition was life-threatening.

The Deputy Commissioner and subsequently the Commissioner cite to a multitude of Agency decisions. *Shilling v. Eby Construction Company*, is one of the main cases that the Deputy Commissioner, Commissioner, and Respondent cite to. *Marvin Shilling*, Claimant, II Iowa Indus. Comm'r Rep. 350 (1981). In *Shilling*, Commissioner Landess found that "[A]ny treatment of claimant's back problems requires prior treatment of his obesity, regardless of whether the diagnosis of claimant's problem is back strain or a herniated disc." *Id.* at 354. Additionally, the Commissioner found, "But, in the event that weight loss together with physical therapy do not relieve claimant's back symptoms, and surgical intervention is necessary, claimant must still shed his excess weight." *Id.* As such, the Commissioner found that medical treatment related to claimant's obesity was reasonable and necessary per Iowa Code section 85.27 so that the work-related injury could be treated. *Id.* at 355.

Another case cited to was *Woods v. Siemens-Furnas Controls. Martha F. Woods*, Claimant, FILE NUMBER 1303082, 2002 WL 32125776 (July 2, 2002). In *Woods*, Interim Commissioner Trier found that "Martha's preexisting diabetes and failure to have it controlled with appropriate medication is a preexisting condition. It did not intervene subsequent to her injury. It was necessary to remedy it prior to proceeding to surgery." *Id.* at \*11. As such, the Interim Commissioner found

that medical treatment related to claimant's diabetes was reasonable and necessary per Iowa Code section 85.27 so that their work-related injury could be treated. *Id.* at \*15.

Another case cited to is *Gray v. Five Star Quality Care. Deloris Gray*, Claimant, FILE NUMBER 5001178, 2003 WL 27377205 (Sep. 16, 2003). In *Gray*, a Deputy Commissioner found that "[A]lthough she [claimant] was obese before the injury, she did not medically require a gastric stapling procedure until her work injury prompted the need for knee surgery." *Id.* at \*10. As such, the Deputy Commissioner ordered the defendants to pay for the claimant's gastric surgery per Iowa Code section 85.27 so that their work-related injury could be treated. *Id.* at \*11.

In *Edgington v. Iowa Spring Mfg.*, a Deputy Commissioner found that "The vein operation may have had some benefits beyond allowing the amputation surgery, but its purpose was to allow the claimant to proceed with his foot surgery. I find that the vein surgery was a necessary and reasonable medical expense arising out of claimant's work injury." *Larry Edgington*, Claimant, FILE NUMBER 1281672, 2014 WL 6862420 (Nov. 24, 2014), at \*3. Further, the Deputy Commissioner explained, "[T]he reason claimant had surgery on the veins in his leg was so that he could have the amputation surgery on his foot. The purpose of the vein surgery was a condition precedent to his foot surgery." *Id.* at \*4. As such, the Deputy Commissioner ordered the defendant to pay for the claimant's vein surgery per Iowa Code section 85.27 so that their work-related injury could be treated. *Id.* at \*5.

The present case is distinguishable from all of the cases cited to by the Commissioner. All cases cited by the Commissioner found the reason the employer must cover the non-work-related injury was because the sole purpose of treating the non-work-related condition was to allow for treatment of the work-related condition. Any other health benefits were ancillary. In *Shilling*, the purpose of allowing claimant to receive treatment for their obesity was so that surgery for the

claimant's work-related injury would be possible. II Iowa Indus. Comm'r Rep., at 354-55. In *Woods*, the purpose of allowing claimant to receive treatment for their diabetes was to allow for treatment of their work-related injury. 2002 WL 32125776 at \*11. In *Gray*, the purpose of allowing claimant to receive treatment for their obesity was so that treatment of their work-related injury would be possible. 2003 WL 27377205 at \*11-12. The *Gray* decision noted that treatment of claimant's obesity was not medically required but for the need to treat the work-related injury. *Id.* Lastly, in *Edgington* the purpose of allowing claimant to receive treatment of their veins was so that subsequent surgery for the work-related injury was viable. 2014 WL 6862420 at \*4-5.

In each of the cited cases, treatment of the non-work-related medical issue was required as a precursor to treating the work-related issue. However, each of these cases is distinguishable because, but for the work-related issue, the employee could have continued living without treatment. None of the underlying conditions (diabetes, vein difficulty, obesity) was life - threatening, at least not in the short term.

In the present case, the purpose of Respondent undergoing cardiac treatment in April 2018 was due to the high risk of death Respondent faced if the cardiac condition was left untreated. The Deputy Commissioner specifically addressed the risk of death Respondent faced in the Arbitration Decision and the Commissioner adopted such in full in his Appeal Decision. The Agency precedent focuses on the purpose of treatment. In every Agency precedent case cited, the purpose of treating the non-work-related condition was so the work-related injury could be treated. This is not the case for Respondent.

Rather, the Commissioner directly points to the urgency of which Respondent underwent cardiac treatment. The urgency of which was due to the high risk that Respondent's cardiac condition would be potentially fatal. Accordingly, the Court concludes the purpose of

Respondent's April 2018 cardiac care was to prevent potentially imminent death. The purpose of Respondent's April 2018 cardiac care was not to allow him to go undergo treatment for his work-related injury. Rather, treatment of Respondent's work-related injury took a back seat so that Respondent's life could be saved. The two treatments do not share the common purpose of treating Respondent's work-related injury via back surgery.

Although Respondent needed to be alive to undergo treatment for his work-related back injury, the Court finds it a bridge too far to say that all life-saving treatments are compensable under the Workers' Compensation Act. It would not be surprising that medical professionals would require an employee to recover from pneumonia or cancer or any other life-threatening condition before undergoing surgery or other taxing treatments for a less-serious work-related issue. But workers' compensation insurance is not health insurance. It is unreasonable to hold Petitioners responsible for the life-saving care Respondent needed when that treatment was not rendered necessary by a work-related injury or required solely as a precursor to treating a work-related injury. The fact that the unrelated condition was discovered during a pre-operative appointment for the work-related injury is a fortunate coincidence for Respondent. It is not sufficient to make Petitioners liable for the costs of the subsequent cardiac surgery.

Thus, the Court concludes the Commissioner erroneously interpreted the Agency precedent. As such, per Iowa Code section 85.27, Respondent's April 2018 cardiac care is not properly reimbursable by Petitioners.

Therefore, the Court concludes the Commissioner incorrectly applied the law to the facts in concluding that Petitioners are responsible for payment and/or reimbursement of Respondent's April 2018 cardiac care. The Commissioner's decision was irrational, illogical, and wholly unjustifiable. *Larson*, 763 N.W.2d at 850; Iowa Code § 17A.19(10)(l). Furthermore, Petitioners'



substantial rights have been prejudiced. *Meyer*, 710 N.W.2d at 218. Accordingly, the Court concludes the Commissioner committed an error of law in awarding Respondent payment/reimbursement for his April 2018 cardiac care.

**C. Application of Iowa Code Section 85.34(v)**

Petitioners further assert that the Commissioner failed to correctly apply Iowa Code section 85.34(v) to the facts of the case and that the substantial evidence supports a finding that Respondent is not permanently and totally disabled. Petitioners support their assertion by arguing the new Workers' Compensation statute allows the Commissioner to consider the number of years in the future it was reasonably anticipated that Respondent would work at the time of injury. As such, Petitioners assert Respondent is not permanently and totally disabled given his close age to retirement and his ability to find suitable work.

Respondent asserts that the Commissioner's finding that he is permanently and totally disabled as a result of the November 27, 2017 work-injury is supported by substantial evidence per Iowa Code section 17A.19(10). Furthermore, Respondent asserts that the Commissioner's application of the law to the facts was rational, logical, and a correct interpretation of the statutes and case law, per Iowa Code section 85.34. Respondent supports his assertions by pointing to the Deputy's detailed Arbitration Decision. Specifically, Respondent points to the Deputy addressing Respondent's desire to work for Durham for another 10 to 15 years after the accident. Additionally, Respondent points to the Deputy's finding that Respondent did not lack motivation to seek work, rather he had not sought work due to his extensive physical limitations.

Petitioners assert in their reply brief that Respondent has downplayed his ability to work given his past work history in the same geographical area that he is currently located. Additionally, they assert that Respondent has failed to ask his doctor if he could work in a supervisory position,

management position, or office type position. Petitioners also re-asserted that the Commissioner committed an error of law by not considering Respondent's proximity to retirement. As such, Petitioners contend that Respondent is not permanently and totally disabled due to the November 27, 2017 work-related injury.

The Commissioner performed a detailed review of the evidentiary record and arguments of the parties. Specifically, the Commissioner found that Respondent is permanently and totally disabled as a result of the work injury sustained on November 27, 2017. CR, Part 1, p. 32. Furthermore, the Commissioner did consider Respondent's desire to continue working for 10 to 15 more years, which directly goes against the argument that Respondent would be retiring relatively soon. *Id.*

The record, when viewed as a whole, has substantial evidence to support the Commissioner's finding that Respondent sustained an injury that arose out of and in the course of his employment with Durham that resulted in him being permanently and totally disabled. Specifically, there is evidence within the record, including testimony by experts along with extensive medical records, that indicates to a neutral, detached, and reasonable person, that the conclusion that Respondent sustained a work injury resulting in permanent and total disability was appropriate, and was supported by substantial evidence. Iowa Code § 17A.19(10)(f)(1); *Cedar Rapids Cmty. Sch. Dist.*, 807 N.W.2d 839, 850 (Iowa 2011). The Court further concludes the Commissioner did not commit an error of law and correctly applied the law to the facts as he considered Respondent's desire to continue working for another 10 to 15 years at the time of the work-related injury. Additionally, the Court concludes that the finding that Respondent suffered a work-related injury resulting in permanent and total disability is supported by substantial evidence.

**D. Other Issues****1. Entitlement to Temporary Total Disability Benefits During Cardiac Care**

Per Iowa Code section 85.34 temporary total disability benefits, or healing period benefits, terminate at the time permanent benefits are paid. Thus, based on the Court's finding that substantial evidence supports the Commissioner's decision that Respondent is permanently and totally disabled as a result of the work injury sustained on November 27, 2017, the Court need not address the issue of temporary total disability benefits as they do not apply in the present case.

**2. Commencement of Permanent Partial Disability Benefits**

Similarly, because the date of permanent impairment also began on the date of injury, the Court need not address the issue of the commencement date for permanent partial disability benefits.

**3. Reimbursement for Walker and Hydrocodone Prescription**

Petitioners assert that the walker and hydrocodone prescription are not properly reimbursable medical expenses because Respondent did not follow the requirements of Iowa Code section 85.27 based on the substantial evidence. Respondent asserts that just because a medical expense is not authorized, does not mean that it cannot be found to be reimbursable. As such, Respondent points to the Commissioner's finding that the walker and hydrocodone prescription were properly reimbursable expenses because Dr. Millea documented that Respondent was using the walker due to his work-related injury and issued the prescription for the medication due to the injury.

The Commissioner performed a detailed review of the evidentiary record and arguments of the parties. Specifically, the Commissioner found that Respondent was entitled to reimbursement for his walker and hydrocodone prescription. CR, Part 1, p. 32. The record, when

viewed as a whole, has substantial evidence to support the Commissioner's finding that Respondent began using a walker and hydrocodone prescription due to the November 27, 2017 work-related injury. Specifically, the Commissioner found that the walker is properly reimbursable, based on Respondent's testimony that Dr. Millea suggested he use the walker, Dr. Millea's records which reference the use of a walker, and Respondent's mobility difficulties. *Id.* p. 125. Furthermore, the Commissioner also relied on the prescription for hydrocodone, prescribed by Dr. Millea, in finding the hydrocodone prescription to be properly reimbursable. *Id.* Thus, there is evidence within the record that indicates to a neutral, detached, and reasonable person, that the conclusion that Respondent was entitled to reimbursement for his walker and hydrocodone prescription was appropriate, and was supported by substantial evidence. Iowa Code § 17A.19(10)(f)(1); *Pease*, 807 N.W.2d at 850. Accordingly, the Court concludes that the finding that Respondent was entitled to reimbursement for his walker and hydrocodone prescription is supported by substantial evidence.

#### **4. Entitlement to Independent Medical Examination and Costs**

Based on the Court's conclusion above, the Court need not address the issue regarding entitlement to independent medical examination and costs. This need not be addressed because Petitioners' argument that Respondent is not entitled to IME and costs is based on the allegation that Respondent did not suffer a compensable injury. The Court has rejected that argument.

#### **IV. CONCLUSION AND DISPOSITION**

For all the reasons set forth above, the Court concludes the Commissioner's decision was erroneous, inconsistent, irrational, illogical, and/or wholly unjustifiable regarding the award of reimbursement/payment to Respondent for his April 2018 cardiac care, and that Petitioners'

substantial rights were prejudiced with such award. Accordingly, the Commissioner's decision in that regard is **REVERSED**. Petitioners are not obligated to pay for the cardiac care.

For all the reasons set forth above, the Court concludes there is substantial evidence in the record when viewed as a whole to support all of the Commissioner's other findings of fact. The Court further concludes none of the Commissioner's application of the law to these factual findings was irrational, illogical, wholly unjustifiable, arbitrary, or capricious and he did not commit any other errors of law or abuse of discretion. Therefore, the Commissioner's decision is **AFFIRMED in all respects other than regarding the cardiac care.**

Accordingly, Petitioners' Petition for Judicial Review is **GRANTED IN PART and DENIED IN PART.**



State of Iowa Courts

**Case Number**  
CVCV063500  
**Type:**

**Case Title**  
DURHAM SCHOOL SERVICES ET AL VS ABE CAMP  
ORDER FOR JUDGMENT

So Ordered

A handwritten signature in blue ink that reads "David Nelmark".

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David Nelmark, District Judge  
Fifth Judicial District of Iowa

Electronically signed on 2022-10-28 16:43:55