IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

AMERICAN HOME ASSURANCE, ***Petitioner*,** **v.** **LIBERTY MUTUAL FIRE INSURANCE COMPANY,** ***Respondent*.**	**Case No. CVCV059200** **RULING ON JUDICIAL REVIEW**

On January 12, 2017 Petitioner filed a Petition for Contribution. The parties submitted motions for summary judgment to determine the claims for contribution. A decision was filed on July 24, 2018. Final agency action issued on October 7, 2019. This is a petition for judicial review from the final decision of the Iowa Workers' Compensation Commission. A hearing was held in the Iowa District Court on January 31, 2020. Petitioner American Home Assurance ("AHA") appeared through its attorney Aaron Oliver. Respondent Liberty Mutual Fire Insurance Company ("Liberty Mutual") appeared through its attorneys Benjamin Erickson and Andrew Hall.

I. BACKGROUND FACTS AND PROCEDURAL POSTURE

The facts before the Court are undisputed. On November 30, 2010, John Thompson ("Thompson"), who is not a party to this action, filed a petition with the Commission seeking workers' compensation benefits. Pet. Br. at 2. Thompson alleged a work-related injury to his left elbow and both shoulders while employed with Keokuk Steel Castings ("KSC") in November 2007. Pet. Ex. 1, p. 1; Pet. Br. at 2. Thereafter, KSC and AHA filed their Answer to Thompson's Petition and affirmatively stated that AHA was the workers' compensation insurance carrier for KSC at the time of the claimant's alleged, November 2007, injury. Pet. at ¶ 1; Answer at ¶ 1; Pet. Ex. 1, p. 1. Prior to the contested case hearing before the Commission, Thompson moved to amend his Petition to allege an alternative injury date of June 30, 2008. Pet. Ex. 1, p. 1.

Thompson's case proceeded to arbitration before the Commission in 2011. Pet. Br. at 2. At hearing, the parties raised the proper injury date as an issue to be determined by the presiding deputy commissioner. Pet. Ex. 1, p. 1. The parties provided three possible injury dates: November 12, 2007; June 16, 2008; and June 30, 2008. Pet. Ex. 1, p. 1. On February 22, 2012, the deputy issued the arbitration decision, finding Thompson suffered from a cumulative injury, and the date of his injury was June 16, 2008. Pet. Ex. 1, p. 1; Pet. Br. at 2-3. On intra-agency appeal, the Commission summarily affirmed the arbitration decision. Pet. Ex. 1, p. 1-2.

AHA made its final benefits payment to Thompson on or about May 21, 2013. Pet. Ex. 1, p. 2. Nearly three years later, Thompson filed a review-reopening petition before the Commission seeking additional benefits related to his injury. Pet. Ex. 1, p. 2. In its answer, AHA stated it discovered that KSC was insured by Liberty Mutual on June 16, 2008, not by AHA. Consequently, AHA claims it had mistakenly paid Thompson's workers' compensation benefits. AHA argues those benefits should have been paid by Liberty Mutual. Pet. Ex. 1, p. 2; Pet. Br. at 3.

At the end of December 2016, AHA filed an application and consent order for the payments of benefits under Iowa Code section 85.21, which was approved by the Commission. Pet Ex. 1, pp. 1-2. AHA then filed a Petition before the Commission seeking contribution and reimbursement from Liberty Mutual for benefits paid to Thompson. Pet. Ex. 1, pp. 1-2. In its Petition, AHA noted Liberty Mutual's coverage period for KSC began on May 1, 2008, approximately six and one-half weeks before Thompson's determined date of injury. Pet. Ex. 1, pp. 1-2.

In response, Liberty Mutual filed a motion for partial summary judgment with respect to AHA's contribution claims, arguing AHA could only be reimbursed for benefits paid after the issuance of the Commission's January 2017 consent order. Pet. Ex. 1, p. 3; *see generally* Resp. Br. at 1-5. AHA resisted Liberty Mutual's Motion and cross-filed seeking summary judgment. In its

motion, AHA requested Liberty Mutual be required to pay contribution for benefits paid to Thompson by AHA, as Liberty Mutual was KSC's workers' compensation insurance carrier on the date of Thompson's injury. Pet. Ex. 1, p. 3; Pet. at ¶ 2.

On July 24, 2018, the presiding deputy commissioner granted summary judgment to AHA, determining Liberty Mutual was responsible for contribution from the date of Thompson's injuries, including reimbursement for any benefits paid by AHA before the January 2017 consent order. Pet. Ex. 1, pp. 7-8; Pet. at ¶ 5. In ruling, the Deputy reviewed the law of contribution and reimbursement under Chapter 85 and provided an overview of the Commission's agency decisions relied on by Liberty Mutual. Pet. Ex. 1, pp. 2, 5-6. In doing so, the deputy recognized that questions of contribution, good faith, and mistake are likely within the jurisdiction of the courts, not the Commission. Pet. Ex. 1, p. 6 ("*Dakota Truck Underwriters* set forth the applicable law on section 85.21 claims [] however, the commissioner found contribution in that claim was a contract matter under district court jurisdiction"). The Deputy further observed that there is an absence of law on this matter, thus presenting an issue of first impression for the Commission and courts on whether cumulative injuries are considered under the same procedural strictures as non-cumulative injuries under Section 85.21. Pet. Ex. 1, pp. 5-8. Liberty Mutual then appealed. Pet. at ¶ 5.

On October 7, 2019, the Deputy Workers' Compensation Commissioner provided the Commission's final agency action and reversed the July 24, 2018 Ruling on Motions for Summary Judgment, holding instead that Iowa Code section 85.21 does not allow for retroactive contribution or reimbursement for any benefits paid by AHA to Thompson after arbitration. Pet. Ex. 2, p. 1; Pet. at ¶ 5; Answer at ¶ 5. On appeal, the Deputy found retroactive reimbursement would be improper because AHA failed to obtain a consent order prior to the underlying arbitration for Thompson's injuries. Pet. Ex. 2, pp. 12-13 ("Because [AHA] failed to seek an Iowa Code section

85.21 consent order prior to arbitration hearing, Liberty Mutual is not liable. . ..."). The Deputy reasoned AHA had notice of the possibility that Liberty Mutual was the carrier responsible for paying benefits on the underlying claim when Thompson amended his date of injury to fall outside AHA's coverage period for KSC. Pet. Ex. 2, pp. 9-10. Additionally it was asserted, to affirm the conclusions of the Proposed Decision would be to overturn the Commission's 20-year precedent surrounding Section 85.21. Pet. Ex. 2, p. 12. The Deputy further found that the legislature and Iowa's courts have acquiesced in its interpretation by not modifying the Commission's interpretation of the Statute, as set out in *Van Wyngarden*. Pet. Ex. 2, p. 12; *see Employers Mut. Cas. Companies v. Van Wyngarden & Abrahamson*, Workers' Comp. Comm'n File Nos. 1059572, 1059573, 10595, 1011165 (App. June 30, 1998).

Stephanie J. Copley, Deputy Workers' Compensation Commissioner ultimately held in the Appeal Decision:

> Liberty Mutual is not liable for contribution to American Home for benefits ordered to be paid and paid pursuant to the arbitration decision. Liberty Mutual's motion is denied and American Home's cross motion is granted to the extent that Liberty Mutual is liable for contribution to American Home for any payments of permanent partial disability benefits paid in excess of the 125 weeks ordered by the arbitration decision (which does not appear to have occurred) and for any medical benefits paid after the date of the arbitration hearing and not ordered by the arbitration decision (if any such payments exist). Pet. Ex. 2, p. 13.

Subsequently, AHA filed this Petition for Judicial Review now before the Court on November 4, 2019. AHA alleges the Commission's final decision and interpretation of Iowa Code Section 85.21 was erroneous and violates the interpretation of the Statute by Iowa's courts. Pet. at ¶¶ 3, 6-7; Pet. Br. at 7, 13-17.

II. STANDARD OF REVIEW

Iowa Code Chapter 17A governs the judicial review of an agency's final decision, including those of the Iowa Workers' Compensation Commission ("Commission"). *Ramirez-*

Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 768 (Iowa 2016), *reh'g denied* (May 27, 2016); *See* Iowa Code § 86.26 (2020).[1] The district court acts in an appellate capacity to correct errors of law made by the Commission. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The standard of review varies based upon the type of terror allegedly committed by the Commission. *Jacobson Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010). Where an agency has been "clearly vested" with a fact-finding function, the "standard of review [on appeal] depends on the aspect of the agency's decision that forms the basis of judicial review" depending on if it involves an issue of (1) findings of fact, (2) an interpretation of law, or (3) an application of law to fact. *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012) (internal citations and quotations omitted).

a. Review of Agency's Findings of Fact.

If the alleged error is one of fact, the Court reviews the record to determine if the findings are supported by substantial evidence. *Harris*, 778 N.W.2d at 196. "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) (internal citation omitted). In reviewing the record, 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 Court must engage in a "fairly intensive review of the record to ensure the fact finding is itself reasonable." *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003); *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012). The Court's task is "not to determine whether the evidence supports a different finding; rather [it] is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made." *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839,

[1] Hereinafter, all references to the Iowa Code or the Iowa Administrative Code are from 2020.

845 (Iowa 2011) (internal citations and quotations omitted). There are no issues of fact impacting this decision.

b. Review of Agency's Legal Interpretations.

If the Commission's interpretation of law is the claimed error, the question on review is whether its interpretation was erroneous. *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 604 (Iowa 2005). The Court has discretion to substitute its own interpretation of law for that of the agency when legal challenges are made on judicial review and the Court is not required to give the agency's interpretation deference. *Meyer*, 710 N.W.2d at 219; *see also Iowa Ass'n of Sch. Bds. v. Iowa Dept. of Educ.*, 739 N.W.2d 303, 306 (Iowa 2007). However, the Court is required to give "appropriate deference" to the agency's interpretation of law when it has been "clearly vested" with the authority to interpret a statute's provisions. *Burton*, 813 N.W.2d at 256; Iowa Code § 17A.19(11)(c). If this is the case, the agency's interpretation will be followed unless it is "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(f).

"In deciding whether the interpretation of a statute has clearly been vested by a provision of law in the agency's discretion, we give no deference to the agency's view of this matter." *Iowa Ass'n of Sch. Bds.*, 739 N.W.2d at 307. In order to reach the correct decision, the Court considers "the precise language of the statute, its context, the purpose of the statute, and the practical considerations involved." *Mosher v. Dep't of Inspections Appeals*, 671 N.W.2d 501, 509 (Iowa 2003) (internal citations and quotations omitted). In doing so, the Court uses its "own independent judgment" to determine where "the legislature actually intended (or would have intended had it thought about the question) to delegate the agency interpretive power with the binding force of law over the elaboration of the provision in question." *Id*.

c. Review of Agency's Application of Law to Fact.

If the Commission's ultimate conclusion is the claimed error, "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; Iowa Code §§ 17A.19(10)(i), (j). The Court will only reverse the agency's application of law to the facts if it is irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(m); *Neal,* 814 N.W.2d at 518.

III. ANALYSIS AND CONCLUSIONS OF LAW

On July 24, 2018 the Deputy Commissioner succinctly summed up the arguments of the parties. Liberty Mutual asserts "a consent order was not approved until January 3, 2017 and it would be improper to order contribution for benefits paid prior to this date." *Ruling on Motions, p. 5.* AHA counters: "Liberty Mutual was the proper insurance carrier on the date of injury determined by this agency and as such, Liberty Mutual owes American Home contribution for any benefits paid in connection with June 16, 2008 injury." *Id.* The legal interpretation of Iowa Code Section 85.21 settles the argument.

The facts before the Court are undisputed. As such, neither party challenges the factual determinations of the Commission. Instead, AHA appears to only raise a single challenge on appeal, claiming that the Commission's final decision represents an incorrect legal interpretation of Iowa Code Section 85.21.[2]

1. Whether the Commission's Interpretation was Erroneous.

[2] The Court recognizes that AHA's Petition includes every possible ground for relief on judicial review contained in Iowa Code section 17A.19(10)(a)-(n). Likewise, the Court recognizes that both parties raise public policy arguments in support of their positions. However, the substance of AHA's claims on judicial review challenge the Commission's legal interpretation of Iowa Code section 85.21. Thus, as the facts are not in dispute, the Court will focus its analysis only on the Commission's legal interpretation of the relevant section.

First, AHA alleges the Commission's final decision misinterprets Iowa Code section 85.21. As this challenge is a legal one, the Court reviews the Commission's interpretation of law to determine whether it was erroneous. *Burton*, 813 N.W.2d at 256; *Clark*, 696 N.W.2d at 604; *see also* Erroneous Definition, *Black's Law Dictionary* (11th ed. 2019) (defining "erroneous" as "Incorrect; inconsistent with the law or the facts.").

On review, the Court is allowed to substitute its own legal interpretation unless the Commission is "clearly vested" with the authority to interpret the Law's provisions. *Burton*, 813 N.W.2d at 256. "In deciding whether the interpretation of a statute has clearly been vested by a provision of law in the agency's discretion, we give no deference to the agency's view of this matter." *Iowa Ass'n of Sch. Bds.*, 739 N.W.2d at 307. The Court must consider "the precise language of the statute, its context, the purpose of the statute, and the practical considerations involved." *Mosher*, 671 N.W.2d at 509.

In recent years, Iowa's appellate courts have "repeatedly declined to give deference to the commissioner's interpretations of various provisions in chapter 85." *JBS Swift & Co. v. Ochoa*, 888 N.W.2d 887, 892-93 (Iowa 2016) (quoting *Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Justice*, 867 N.W.2d 58, 65 (Iowa 2015). This is largely because the terms of our workers' compensation statute are not "uniquely within the subject matter expertise of the agency." *Id.* (quoting *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 14 (Iowa 2010)). Our Supreme Court has conclusively held that "nothing in the workers' compensation statutes [] convinces us that the legislature has delegated any special powers to the agency regarding the interpretation of case law or statutes. So the agency's interpretation has not 'clearly been vested by a provision of law in the discretion of the agency.'" *P.D.S.I. v. Peterson*, 685 N.W.2d 627, 633 (Iowa 2004); *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004) ("We see nothing in Iowa Code chapter 85 that

convinces us that the legislature has delegated any special powers to the agency regarding statutory interpretation in these areas."). Consequently, the Court need not give the Commission any deference as it relates to its legal interpretation and is free to substitute its judgment. *P.D.S.I.*, 685 N.W.2d at 633 (citing Iowa Code §§ 17A.19(10)(c), 11(b); *Mycogen Seeds*, 686 N.W.2d at 464)).

The Court begins with reviewing the exact language of the statute at-issue. In doing so, the Court keeps "in mind that the workers' compensation law 'must be construed according to the language the legislature has chosen.'" *Zomer v. West River Farms*, 666 N.W.2d 130, 133 (Iowa 2003) (quoting *Ehteshamfar v. UTA Engineered Sys. Div.*, 555 N.W.2d 450, 453 (Iowa 1996)). The Statute, in relevant part, provides as follows:

> 1. The workers' compensation commissioner may order any number or combination of alleged workers' compensation insurance carriers and alleged employers, which are parties to a contested case or to a dispute which could culminate in a contested case, to pay all or part of the benefits due to an employee or an employee's dependent or legal representative if any of the carriers or employers agree, or the commissioner determines after an evidentiary hearing, that one or more of the carriers or employers is liable to the employee or to the employee's dependent or legal representative for benefits under this chapter or under chapter 85A or 85B, but the carriers or employers cannot agree, or the commissioner has not determined which carriers or employers are liable.
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> 3. When liability is finally determined by the workers' compensation commissioner, the commissioner shall order the carriers or employers liable to the employee or to the employee's dependent or legal representative to reimburse the carriers or employers which are not liable but were required to pay benefits. Benefits paid or reimbursed pursuant to an order authorized by this section do not require the filing of a memorandum of agreement. However, a contested case for benefits under this chapter or under chapter 85A or 85B shall not be maintained against a party to a case or dispute resulting in an order authorized by this section unless the contested case is commenced within three years from the date of the last benefit payment under the order. The commissioner may determine liability for the payment of workers' compensation benefits under this section.

Iowa Code § 85.21. Based on its text, the law authorizes the commissioner to order a workers' compensation insurance carrier to pay any benefits due to an injured worker. *Taylor v. Maytag Co.*, 2004 WL2002501, at *1 (Iowa Ct. App. Sept. 9, 2004). It likewise "empowers the [commissioner] to apportion liability between insurance carriers and to order reimbursement to any carrier that was not liable but was required to pay." *United Technologies Corp. v. Bahmler*, 2003 WL553855, at *5 (Iowa Ct. App. Feb. 28, 2003) (citing Iowa Code § 85.21(1)(3)); *Second Injury Fund of Iowa v. Bergeson*, 526 N.W.2d 543, 549 (Iowa 1995) ("Section 85.21 gives the commissioner authority to order reimbursement where one party makes voluntary payment that ultimately the commissioner determines should have been paid by another party.").

Based on a plain text reading of Section 85.21(1), the commissioner may order a workers' compensation insurance carrier to provide reimbursement to another carrier when both "are parties to a contested case or to a dispute which could culminate in a contested case." However, the commissioner cannot apportion liability or order contribution when the liable carrier is not a party to the contested case. *Hartman v. Clarke Cty. Homemakers*, 520 N.W.2d 323, 326 (Iowa Ct. App. 1994). The term "contested case" therefore becomes important for purposes of this analysis.

As it relates to our workers' compensation law, the term "contested case" takes two relevant forms. First, Section 85.21 disputes between insurance carriers to determine liability or to seek reimbursement are by definition "contested case" proceedings before the Commission. 876 IAC 4.1(16). Second, the Commission has restrained the understanding and application of the term "contested case" through its agency rulings to only permit reimbursement, once requested, "before the evidentiary hearing in a case." *See Van Wyngarden & Abrahamson*, File Nos. 1059572, 1059573, 1059574, 1011165. This aforementioned phrase replaces the language of Section 85.21(1), which uses "contested case." *See* Iowa Code § 85.21(1). In construing and applying the

term "evidentiary hearing in a case," the Commission has interpreted this substitute phrase to only reference the underlying injured worker's arbitration hearing. *Id*.; *Cambridge Integrated v. Fareway Stores, Inc.*, 2001 WL 34111282, at *3 (Iowa Workers' Comp. Comm'n Arb. Dec. 21, 2001); *see also* Pet Ex. 2, p. 8. As far as the Court can tell, Iowa's appellate courts have not interpreted the Commission's substituted phrase since the Commission began its use. However, the Court does not give any deference to the agency's interpretation when construing the Statute. *Iowa Ass'n of Sch. Bds.*, 739 N.W.2d at 307 (citing Iowa Code § 17A.19(11)(a)).

Upon review, it is clear to the Court that the legislature used the term "contested case" and not "evidentiary hearing in a case" that the Commission has substituted in its place. The meaning of "contested case" is not so narrow as to mean only the arbitration proceedings that determine the factual basis, liability, and the scope of compensability of a claimant's injuries. *See generally* Iowa Code §§ 86.14, 86.17. Chapters 85 (Iowa's workers' compensation statute) and 86 (creating the Commission) do not define the term "contested case." *See, in absentia*, Iowa Code §§ 85, 86. Instead, the Commission's relevant administrative rule provides the types of proceedings that constitute a contested case before the Commission without defining "contested case." 876 IAC 4.1. Even more, the Commission's Rule specifically states that it "is intended to implement Iowa Code sections 17A.2(2) and 86.8 and the statutory sections noted in each category of the rule." *Id*. In looking to Chapter 17A, the law defines a contested case as "any proceeding in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing." Iowa Code § 17A.2(5). However, the Chapter does not limit the term "evidentiary hearing" to mean only those proceedings which determine an injured worker's right to benefits. In fact, as an exception to the general rule, Section 85.21 grants standing to parties like insurance carriers to dispute liability or seek reimbursement

for any benefits incorrectly paid *after* liability is determined before the Commission. *See* Iowa Code § 85.26(4); Iowa Code §§ 85.21(1), (3); *Dakota Truck Underwriters v. Continental W. Ins.*, File Nos. 5028722, 5028738 (Iowa Workers' Comp. Comm'n App. Sept. 28, 2011); *Cambridge Integrated*, 2001 WL34111282 at *3.

The Court finds the term "contested case" for purposes of Iowa Code section 85.21 is broad enough to permit independent proceedings under the Statute's plain text. As such, the requirement that those seeking relief under Iowa Code section 85.21 be "a party to a contested case" refers to those who are a part of the proceeding before the Commission that was brought to determine liability and/or whether reimbursement is warranted. The Statute's language, in addition to the relevant terms and their definitions provided by the legislature, is broad enough to include not only those who were a party to the underlying arbitration proceeding, but also those who are potentially responsible for reimbursement or the payment of benefits under Section 85.21.

Importantly, "When liability is finally determined by the workers' compensation commissioner, the commissioner shall order the carriers or employers liable to the employee to reimburse the carriers or employers which are not liable but were required to pay benefits." Iowa Code § 85.21(3). Of course, the language of Section 85.21(3) grants authority to the commissioner to determine who is responsible for the payment of benefits to the injured worker, which is consistent with the authority the commissioner is extended more generally under Chapter 85. However, while Chapter 85 vests the commissioner with the discretion and authority "to decide any issue necessary to a determination of whether a [injured worker] is entitled to workers' compensation benefits," this authority as applied to Section 85.21 is limited to factual determinations, rather than the interpretation of the law itself. *See Taylor*, 2004 WL2002501 at *1; *Zomer*, 666 N.W.2d at 134 (citing *Travelers Ins. Co. v. Sneddon*, 86 N.W.2d 870, 877 (Iowa 1957))

(finding "the commissioner ha[s] jurisdiction to decide whether [a] workers' compensation policy at issue was in effect at the time of the employee's injury."). As it relates here, it has been undisputed by the parties since this action's commencement that Thompson's July 2008 injury—determined by the Commission after the evidentiary hearing—was outside the scope of AHA's coverage period for KSC. It is further undisputed that Liberty Mutual was the carrier in-interest for KSC at the time of Thompson's injury. As no factual dispute exists, the discretion and authority granted to the Commissioner is not in dispute, implicated, or at issue now.

Next, continuing with its review of Section 85.2's precise language, the Court finds there is nothing in the Iowa Code's specific text that limits a carrier's ability to be reimbursed for benefits that they paid, but are not liable for, from another carrier that is actually liable. Simply put, there is no time constraint expressed in the Statute's clear language. *See* Iowa Code § 85.21(3). To the contrary, our Supreme Court has provided that "Employers may generally recover payments made by mistake in workers' compensation matters." *Wilson Food Corp. v. Cherry*, 315 N.W.2d 756, 757 (Iowa 1982) (citing 101 C.J.S. Workmen's Compensation § 835 (1958); 82 Am Jur 2d, *Workmen's Compensation* § 365 (1976); *Lemmer v. Batzli Elect. Co.*, 267 Minn. 8, 16-21, 125 N.W.2d 434, 440-42 (1963); *Bland Casket Co. v. Davenport*, 221 Tenn. 492, 427 S.W.2d 839, 845 (1968); *Ratzlaff v. Friedeman Serv. Store*, 200 Kan. 430, 436 P.2d 389, 394 (1968); *Wilborn Construction Co. v. Parker*, 281 Ala. 626, 206 So.2d 872, 873-75 (Ala.1968); *Dunlap v. State Comp. Dir.*, 140 S.E.2d 448, 452 (W.Va.1965)).

In *Wilson Food Corporation v. Cherry*, the Iowa Supreme Court determined that an employer in a workers' compensation proceeding was entitled to a credit for a mistaken overpayment of healing period benefits. *Id*. In reaching its conclusion, the Iowa Supreme Court determined that inconvenience to a claimant by an acceleration of payments was not a reason to

prevent an employer from receiving a credit. *Id*. Instead, the Court held that "the public interest will be better served by encouraging employers to freely pay injured employees without adversary strictness." *Id*. This Court finds *Cherry* instructive. Even though it was not in the context of seeking reimbursement under Iowa Code § 85.21. Although it references healing period benefits, its conclusions support a finding that mistaken payments made under Section 85.21 are also recoverable after being provided to an injured worker. It follows then that the overarching purpose of Iowa's workers' compensation law may be relevant to the Court's analysis in order to properly determine Section 85.21's meaning.

Iowa's workers' compensation law, first enacted in 1913, was created to fulfill the promise "that the disability of a work[er] resulting from an injury arising out of and in the course of [their] employment is a loss that should be borne by the industry itself . . . and not suffered alone by the work[er] or the employer, depending on individual fault or negligence." *Baker v. Bridgestone/Firestone and Old Republic Ins.*, 872 N.W.2d 672, 676 (Iowa 2015) (quoting *Tunnicliff v. Bettendorf*, 204 Iowa 168, 171, 214 N.W. 516, 517-18 (1927)); *Hansen v. State*, 91 N.W.2d 555, 556 (Iowa 1958). "The fundamental reason for the enactment of this legislation is to avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act." *Zomer*, 666 N.W.2d at 133 (quoting *Flint v. City of Eldon*, 191 Iowa 845, 847, 183 N.W. 344, 345 (1921)). As it relates to Section 85.21, the law's purpose "was to facilitate a more prompt payment of benefits for obvious work injuries when liability is disputed among two or more employers or insurance carriers." *Cambridge Integrated*, 2001 WL 34111282 at *3. "By recognizing the commissioner's authority to order reimbursement we further the beneficial purpose of encouraging the voluntary payment of benefits to the employee while the case is

pending." *Bergeson*, 526 N.W.2d at 549. In short, the overarching purpose of Iowa's workers' compensation statute is to provide prompt payment of benefits to an injured worker. Separately, the purpose of Section 85.21 is to encourage employers or insurance carriers to provide such benefits quickly, all while allowing the Commission to determine who is truly responsible for those benefits later on. The Court also found persuasive reasons that the Deputy discussed in the July 24, 2018 Ruling on Summary Judgment which included public policy rationales, the nature of cumulative trauma claims, and the burden on the employer as to dates of coverage. *See* 2018 Ruling pp. 6-8.

Thus, the Court's conclusion that Section 85.21 is not constricted to only allow reimbursement proactively after arbitration, and only for those parties who were a part of the underlying arbitration, is supported by the plain text of the Statute and is consistent with the legislature's purpose for adopting it. Our Supreme Court has determined that "Section 85.21 gives the commissioner authority to order reimbursement where one party makes voluntary payment that ultimately the commissioner determines should have been paid by another party." *Bergeson*, 526 N.W.2d at 549. Section 85.21, as explained by the Iowa Supreme Court, is not time bound nor limited only to arbitration. *Id*. Instead, the Court observes the plain terms of Section 85.21 effectuate the law's purpose—to provide payments quickly to an injured worker without waiting to first resolve tangential disputes about which insurance carrier is liable. *See Baker*, 872 N.W.2d at 678 (citing 1 Larson § 1.03[7], at 1-13) ("workers' compensation is a system, not a contest, to supply security to injured workers...."). Furthermore, the public policy goals of Iowa's workers' compensation laws are better met by not requiring "adversar[ial] strictness" against carriers who pay in a timely manner and in good faith. *Cherry*, 315 N.W.2d at 757.

In turning to this case, the Court finds the Commission's legal interpretation of Section 85.21 in its final agency action was erroneous. Liberty Mutual points out that in interpreting Iowa Code § 85.21, the Commission has consistently held that Iowa Code § 85.21 only permits a petitioner to obtain contribution or reimbursement from a third party for benefit payments made after an 85.21 order has been issued. In this case, Thompson suffered a cumulative injury while employed with KSC. Prior to the Commission's issuance of its arbitration decision, the date of Thompson's injuries was disputed and undetermined. Instead, three injury dates were provided at the arbitration hearing, one date which AHA would have been responsible for the payment of all benefits. The Commission ultimately found Thompson's date of injury to be outside of AHA's coverage period for KSC, but AHA continued to make benefits payments consistent with the Commission's arbitration decision as required under Chapter 85.

Once AHA discovered it mistakenly made the required 125 weeks of payments to Thompson, AHA sought to remedy the action under its only statutory option for reimbursement, Section 85.21. It is not disputed that Liberty Mutual was the insurance carrier for KSC that was supposed to be responsible for making payments to Thompson. In reaching its conclusion, the Court finds no case law specifically holding that reimbursement or contribution is statutorily improper for benefits mistakenly paid by an insurance carrier. Indeed, as noted above, neither our legislature nor our Supreme Court has placed a time limitation on reimbursement actions or a carrier's right to recovery.

Moreover, in applying *Wilson Food Corporation v. Cherry*, allowing reimbursement for benefits mistakenly paid "furthers the beneficial purpose" of Iowa's workers' compensation system. *Bergeson*, 526 N.W.2d at 549. With this in mind, the Court finds that when an employer or insurance carrier mistakenly paid benefits prior to the determination of the proper date of injury,

but discovered its mistake after it had made or completed payments, they are entitled to reimbursement under Section 85.21. Their entitlement is, of course, still subject to the Commission's factual determination of who is liable. Iowa Code §§ 85.21(1), (3). However, whether the mistake or "oversight" in making payments was on the part of AHA matters not under the Code's plain language. As the Deputy pointed out, "American Home mistakenly continued to admit it was the correct insurer for the next five and a half years, including at the arbitration hearing, before it recognized its error in November of 2016." Appeal Decision*, p.5*. It seems that this finding may reward a sophisticated insurer who may be asleep at the wheel but I cannot find limiting language in the statute. The Court will not read into the Statute something that is not there. *State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998) ("When a statute is plain and its meaning is clear, courts are not permitted to search for meaning beyond its express terms."). Consequently, as Liberty Mutual cites no case law other than the Commission's administrative decisions in its support, the Court finds Liberty Mutual's reliance misplaced at this level.

It is important at this juncture to state that the Court recognizes this interpretation is contrary to the cases that have followed the Commission's restricted interpretation of Section 85.21. The Deputy Commissioner in October 7, 2019 detailed the reasons why this court should continue to apply the Van Wyngarden rule. However, as far as this Court, the Commission, or the parties can tell, this issue is one of first impression before Iowa's Courts with these unique facts. As such, the Court's consideration of Iowa Code section 85.21 interprets and applies what the law actually says by analyzing its plain language and context in a manner consistent with the Section's purpose.

For predictability, planning and providing attorneys guidance for advising clients, bright lines are very helpful and instructive. In the Appeal Decision, the Commissioner held that "the

Van Wyngarden rule draws a line in the sand at evidentiary hearing. . . ," stating that an insurance carrier's failure to obtain an 85.21 order before the arbitration hearing is a "bar to retroactive reimbursement." App. Dec. pp. 7, 12 (citing Employers Mutual Casualty Co. v. Van Wyngarden & Abrahamson, File Nos. 1059572, 1059573, 1059574 (App. Dec. 6/20/98)). This Ruling is taking away the line in the sand for this set of facts.

2. Summary Judgment.

This judicial review action arises from denial of summary judgment for AHA and a grant of summary judgment for Liberty Mutual. As such, the Court is required to consider whether summary judgment is a proper remedy under Iowa Code section 17A.19(10).

"Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Honomichi v. Valley View Swine, L.L.C.*, 914 N.W.2d 223, 230 (Iowa 2018). "An issue is genuine if the evidence in the record is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* Summary judgment is only appropriate if the parties agree that all material facts are undisputed and the case presents only legal issues for review. *Kucera v. Baldazo*, 745 N.W.2d 481, 483 (Iowa 2008). "A fact issue is generated if reasonable minds can differ on how the issue should be resolved." *Schlueter v. Grinnell Mut. Reins. Co.*, 553 N.W.2d 614, 616 (Iowa Ct. App. 1996) (citing *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986)). The Court views the record in light most favorable to the nonmoving party and "will grant that party all reasonable inferences that can be drawn from the record." *Honomichi*, 914 N.W.2d at 230. To resist the motion, the nonmoving party must set forth facts constituting competent evidence showing a prima facie claim. *Hoefer v. Wisconsin Educ. Ass'n Ins. Trust*, 470 N.W.2d 336, 339 (Iowa 1991).

There is no genuine dispute of material fact at-issue in this case. As a result, summary judgment may be properly granted following resolution of a case's legal issues. *Kucera*, 745 N.W.2d at 483. Liberty Mutual does not contest, if discovered, it should have been responsible for paying Thompson's workers' compensation benefits. Nor does it contend it was not KSC's insurance carrier at the time of Thompson's injuries. In light of the holding articulated above, the Court hereby grants summary judgment in favor of AHA, entitling it to reimbursement from Liberty Mutual. *See* Iowa Code § 85.21.

V. ORDER

IT IS THEREFORE ORDERED that the decision of the Iowa Workers' Compensation Commission denying summary judgment to petitioner American Home Assurance is **REVERSED.** Liberty Mutual's motion for partial summary judgment is overruled. American Home Assurance's motion for summary judgment is sustained.

IT IS FURTHER ORDERED that respondent Liberty Mutual Fire Insurance Company is hereby ordered to provide reimbursement under Iowa Code section 85.21 to petitioner American Home Assurance for the appropriate costs of benefits paid to John Thompson from the determined date of his injury, June 16, 2008. This includes benefits paid before and after the January 3, 2017 consent order.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV059200	AMERICAN HOME ASSURANCE VS LIBERTY MUTUAL FIRE INSURANCE CO

So Ordered

William P. Kelly, District Court Judge,
Fifth Judicial District of Iowa