

**IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY**

<b>SECOND INJURY FUND OF IOWA,</b>  Petitioner,  vs.  <b>REGENA STRABLE,</b>  Respondent.	Case No. <b>CVCV064995</b>  <b>RULING ON PETITION FOR JUDICIAL REVIEW</b>
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This matter was brought before the Court on July 7, 2023, for hearing on Petitioner's Request for Judicial Review. Attorney Sarah C. Timko appeared on behalf of Petitioner Second Injury Fund of Iowa (Petitioner). Attorney Robert C. Gainer appeared on behalf of Respondent Regena Strable (Respondent). The Court having heard the arguments of counsel, reviewed the file, and being fully advised in the circumstances, finds as follows.

**BACKGROUND FACTS AND PROCEEDINGS**

This case has a long factual history that was set forth in detail in the both the Arbitration and Appeal Decisions. Accordingly, the Court need not repeat same in detail here. The Court refers to the findings of fact as stated in the Deputy Commissioner's decision and will discuss the portions relevant to the Court's ruling.

Respondent began employment at Altoona Nursing and Rehabilitation (ANR) on April 1, 2019. On April 25, 2019, Respondent sustained a left ankle injury while working at ANR. Respondent had surgery which was followed by post operative treatment and physical therapy. Respondent wore a cast on her left foot after the surgery. Respondent developed pain in her left hip, lower back, and left leg as a result of the cast. Respondent also developed mental injuries as a result of the left ankle injury and required counseling to treat post traumatic stress disorder and

generalized anxiety. All physicians and treating counselors agreed the mental injuries were a direct result of Respondent's injury she sustained on April 25, 2019. The mental health injuries were considered permanent.

Respondent received \$38,653.50 in temporary total disability benefits and \$32,270.55 in voluntary permanent partial disability benefits. Respondent also entered into two settlements with ANR for the injuries to the left ankle. One settlement was for \$369,377.29 and the other was a full commutation compromise which awarded more compensation. Both released and discharged ANR from any further liability in exchange for the compensation.

Respondent then filed a notice and petition against Petitioner alleging the left lower extremity injuries suffered on April 25, 2019, was a second injury which qualified for Second Injury Funds. The Deputy Commissioner issued an arbitration decision confirming the left lower extremity injury and the hip, lower back, and mental injuries were a direct result of said injury. The Deputy Commissioner concluded the injury should be compensated as an unscheduled injury which does not qualify for second injury funds. Respondent appealed and the Commissioner reversed stating Respondent's injury qualified for second injury funds. Respondent was awarded an additional \$196,602.12 in Second Injury Funds.

Petitioner filed for judicial review, maintaining the injury on April 25, 2019 was not a qualifying injury for the purposes of the second injury fund award.

### **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 (2011); *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 of the following: 1) the action was ultra vires; 2) legally erroneous; 3) unsupported by substantial evidence in the record when that record is viewed as a whole; or 4) otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See Id.* at (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. 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)(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 Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

In the context of compensation cases, the Court acknowledges that while it, “is correct that we interpret workers’ compensation statutes in favor of the worker, we still must interpret the provisions within the workers’ compensation statutory scheme ‘to ensure our interpretation is harmonious with the statute as a whole.’” *Chavez v. MS Tech. LLC*, 972 N.W.2d 662, 668 (Iowa 2022) quoting *Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016). “Our Supreme Court has determined the legislature has not vested the commissioner with the authority to interpret section 85.34(7).” *Polaris Indus., Inc. v. Hesby*, 881 N.W.2d 471 (Iowa Ct. App. 2016); see *Roberts Dairy v. Billick*, 861 N.W.2d 814, 817 (Iowa 2015). “Therefore, we review the Commissioner’s statutory interpretation ‘to correct errors of law on the part of the agency.’” *Polaris* quoting *Teleconnect Co. v. Iowa State Commerce Comm’n*, 404 N.W.2d 158, 161 (Iowa 1987).

### **LAW AND ANALYSIS**

The primary issue before the Court is whether Respondent’s injury on April 25, 2019, qualified for Second Injury Funds. In order to determine this, the Court briefly examines relevant Iowa caselaw and code on how injuries are categorized and compensated under chapter 85.

#### **Scheduled and Unscheduled Injury Compensation**

“Chapter 85 divides permanent partial disability into either a scheduled or unscheduled loss.” *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12, 15 (Iowa 1993); see Iowa Code § 85.34(2). “Under section 85.34, the classification of a workers’ compensation claimant’s injury as either scheduled or unscheduled determines the extent of the claimant’s entitlement to permanent partial disability benefits.” *Floyd v. Quaker Oats*, 646 N.W.2d 105, 109 (Iowa 2002). “Paragraphs (a) through (u) of section 85.34 govern permanent partial disability payments for injuries to specific members of the body and provide a schedule of benefits for injuries to those specific members.”

*Chavez v. MS Tech. LLC*, 972 N.W.2d 662, 666–67 (Iowa 2022); *see also* Iowa Code § 85.34(2)(a)–(u). These are what are referred to as scheduled injuries. If an injury is a scheduled injury, “the claimant is eligible for a percentage of [a number of] weeks of pay based on the impairment rating of the injury.” *Id.*

Injuries or disabilities resulting from injuries which are not listed in paragraphs (a) through (u) of section 85.34 are considered unscheduled injuries. These injuries allow for benefits based on the injury to the body as a whole and are sometimes referred to as “body as a whole” or BAW injuries. Iowa Code § 85.34(2)(v). The claimant is eligible for the functional impairment resulting from the injury scheduled on a determined number of weeks with additional compensation possible if the claimant does not earn the same or greater wages when they return to work. *Chavez*, 972 N.W.2d at 666-667. “[W]hen there is injury to some scheduled member and also to parts of the body not included in the schedule, the resulting disability is compensated on the basis of an unscheduled injury.” *Mortimer*, 502 N.W.2d at 16.

### **Respondent’s Injury Classification**

In the case before the Court, the parties stipulate Respondent sustained an injury to her left ankle or injury to the left lower extremity (LLE injury) on April 25, 2019. Respondent is seeking compensation for the back, hip, and mental injuries stemming from the LLE injury in April, 2014.

The parties and Commissioner have proceeded treating the LLE injury as a scheduled injury for the purposes of categorization. However, Petitioner asserts that due to the LLE causing hip, back, and mental problems, which are unscheduled, the LLE injury is to be compensated as an unscheduled injury on the basis of *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12 (Iowa 1993). Contending Respondent’s injuries are compensated as unscheduled, Petitioner further asserts that only scheduled injuries trigger the Second Injury Fund as set forth in *Second Inj. Fund of Iowa v.*

*Nelson*, 544 N.W.2d 258, 269 (Iowa 1995), *as amended on denial of reh'g* (Feb. 14, 1996) (superceded on other grounds as stated in *Chavez v. MS Tech. LLC*, 972 N.W.2d 662 (Iowa 2022)). Petitioner's argument holds unscheduled injuries, or injuries compensated as unscheduled, are not sufficient to trigger the Second Injury Fund.

While not a frequent issue in Iowa, the Court finds Petitioner's argument is sufficiently supported in Iowa case law. In *Mortimer* the Iowa Supreme Court held that scheduled injuries affecting unscheduled injuries, including back, hip, and mental injuries, are treated and compensated like unscheduled injuries. 502 N.W.2d at 16, cited with approval in *Architectural Wall Sys. v. Towers*, 854 N.W.2d 74 (Iowa Ct. App. 2014) unpublished; and *Espinosa v. Excel Corp.*, 752 N.W.2d 31 (Iowa Ct. App. 2008) unpublished. During the few times it has arisen in Iowa case law, this holding is consistently upheld and approved of.

Similarly, *Nelson*'s holding that only scheduled injuries trigger the Second Injury Fund has been upheld and approved of in Iowa courts. "Section 85.64 lists specific members, the injury of which triggers Fund liability. All of the injuries listed are scheduled injuries . . . We conclude that section 85.64 requires two scheduled injuries to invoke Fund liability." *Second Inj. Fund of Iowa v. Nelson*, 544 N.W.2d 258, 269 - 270 (Iowa 1995), *as amended on denial of reh'g* (Feb. 14, 1996) (superceded on other grounds as stated in *Chavez v. MS Tech. LLC*, 972 N.W.2d 662 (Iowa 2022); *see also Second Inj. Fund of Iowa v. Armstrong*, 801 N.W.2d 628 (Iowa Ct. App. 2011) unpublished holding, "Both the first and second injuries must be scheduled injuries to invoke Fund liability;" *see also Blake v. Second Inj. Fund of Iowa*, 967 N.W.2d 221 (Iowa Ct. App. 2021) approving of *Nelson* as controlling and holding that even unscheduled injuries which affected an enumerated member were not enough to trigger Second Fund liability.

The Court finds the authorities cited by Respondent, particularly *Gregory v. Second Inj. Fund of Iowa*, 777 N.W.2d 395 (Iowa 2010), are not applicable to the issues before this Court. The issue in *Gregory* was whether a scheduled injury claim made with other scheduled and unscheduled injuries constituted a first qualifying injury. The Court concluded, “[t]he fact that Gregory combined in a single workers' compensation proceeding her claim for that scheduled loss with other scheduled and unscheduled injuries did not disqualify it as a first qualifying injury under section 85.64.” *Gregory*, 777 N.W.2d at 401. As the issue of double recovery and Second Injury Fund is not triggered until there is a second qualifying injury, an analysis and holding dedicated to the first qualifying injury does not assist with the issue before the Court. There was no danger of double recovery because the second injury in *Gregory* was not at issue regarding eligibility for Second Injury Funds. Unlike the instant case, the claimant was not seeking compensation from the Second Injury Fund after also being compensated for the same injury by the employer. Moreover, the claimant in *Gregory* did not enter into a full commutation and settlement for the same injury for which she was claiming eligibility from Respondent. The Court finds *Gregory* is distinct and not controlling. As such, the Court finds Respondent’s injuries on April 25, 2019, are compensated as unscheduled and do not qualify for Second Injury Funds.

### **Respondent Has Been Compensated for Her Injury By Her Employer**

In the instant case, the issue and main concern is a matter of compensation and double recovery. The record shows Respondent’s injury on April 25, 2019 was a LLE injury which resulted in back, hip, and mental injuries rendering it as an unscheduled injury. The record also reflects Respondent entered into full commutation for the LLE injury on April 25, 2019. (Cert. Rec. p. 294). Among other settlements, Respondent entered into another settlement with her employer for left lower extremity, hips, left arm back, and mental health injuries allegedly

sustained on May 15, 2019--only 20 days after the April set of injuries, including those relating to her mental health as well as those relating to her left lower extremity and back. (Cert. Rec. p. 289). Indeed, Respondent's employer has paid her over \$400,000 for her left lower extremity, hips, left arm, back, and mental health injuries.

Notwithstanding the settlements and compensation from her employer, Respondent requested funds from Petitioner for the same LLE injuries for which she was compensated for when she settled and released all claims with her employer. Upon examination of the record, and research, there is no case law where a claimant has been compensated from an employer for an injury and then compensated by the Second Injury Fund for the same injury. The Court finds this is double recovery and contrary to Iowa Code.

### **CONCLUSION**

The Court finds the Commissioner erred in his interpretation of section 85.64 and section 85.34. The Court concludes that Respondent's April 25, 2019 LLE injury and her related lower back, hip, arm, and mental health injuries must be characterized collectively as an unscheduled injury and therefore do not qualify for compensation by Petitioner. The Court further concludes Respondent has been compensated by her employer for the LLE injury on April 25, 2019 via the settlement and full commutation agreements she entered into. For these additional reasons, the Court concludes the LLE injury is not eligible for compensation from Petitioner.

For all the foregoing reasons, the Court reverses the Commissioner's decision to award Respondent Second Injury funds and remands the matter to the Commissioner for such further proceedings as are necessary.

**IT IS THE ORDER OF THE COURT** that the Workers' Compensation Commissioner's Decision is **REVERSED**. The case is **REMANDED** to the Commissioner for such further



proceedings as are necessary.

To the extent any court costs incurred in this matter to date are now taxable, they are hereby taxed to Respondent.



State of Iowa Courts

**Case Number**  
CVCV064995  
**Type:**

**Case Title**  
SECOND INJURY FUND OF IOWA VS REGENA STRABLE  
ORDER FOR JUDGMENT

So Ordered

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

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