

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>ALL LINES PAINTING, INC. and AUTO-OWNERS INSURANCE CO.,</p> <p>Petitioners,</p> <p>v.</p> <p>JERRY MCWILLIAMS,</p> <p>Respondent.</p>	<p>CASE NO. CVCV059154</p> <p><b>ORDER RE: PETITION FOR JUDICIAL REVIEW</b></p>
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The court has before it petitioners, All Lines Painting, Inc. (“All Lines”) and Auto-Owners Insurance Co.’s (“Auto-Owners”) petition for judicial review of the Iowa Workers’ Compensation Commissioner’s (“commissioner” or “agency”) appeal decision filed September 30, 2019. Jerry McWilliams (“McWilliams”) resisted the petition. A hearing was held on March 12, 2020. Valerie Foote appeared as counsel for All Lines and Auto-Owners. Jason Neifert appeared as counsel for McWilliams. The court having reviewed the memorandums of law filed by the parties, the certified administrative record and having heard arguments of counsel finds and orders as follows.

The commissioner in its decision adopted and affirmed the arbitration decision of the deputy workers’ compensation commissioner which was filed on April 18, 2018. In the decision the commissioner found McWilliams proved he was entitled to healing period benefits from December 18, 2015 through December 30, 2016. The commissioner found claimant proved he was entitled to permanent total disability benefits commencing on December 31, 2016. The commissioner also ordered petitioner to pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) percent for all weekly benefits payable and not paid when due

which accrued before July 1, 2017 and all interest on past due weekly compensation benefits accruing on or after July 1, 2017 setting the annual rate equal to the one-year treasury constant maturity. The commissioner ordered the respondent to pay McWilliams' past medical expenses and costs of the arbitration.<sup>1</sup>

Petitioners filed their petition for judicial review on October 29, 2019. Petitioners filed their memorandum of law in support of their petition on December 27, 2019. McWilliams filed his memorandum of law in resistance to the petition on January 27, 2020. Petitioners filed a reply brief on February 27, 2020.

Specifically, petitioners contend the commissioner's findings of fact with regard to the causal relationship between McWilliams' back and neck conditions and his work activities are not supported by substantial evidence in accordance with Iowa Code section 17A.19(10). They also allege the commissioner's application of the law to the facts was irrational and illogical and the commissioner incorrectly interpreted statutes and case law precedent in concluding McWilliams' work at All Lines from July through December 2015 was a substantial contributing factor to the aggravation, acceleration, worsening, or lighting up of his underlying condition.

The parties meticulously outlined their arguments in their memorandums of law supporting their arguments with appropriate references to the administrative record. The parties also provided the court with the applicable law for this review. Due to the parties conscientious and meticulous recitation to the facts and applicable law the court does not restate those references here.

With regard to the causal relationship argument urged first by All Lines and whether there is substantial evidence to support the commissioner's decision the court is required to

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<sup>1</sup> Appeal Decision, at 3 (Iowa Worker's Compensation Comm'n Sept. 30, 2019)

review the entire administrative record.<sup>2</sup> The court is required to consider the evidence that supports the challenged finding and the evidence that detracts from it.<sup>3</sup> In reviewing the record the court is not to determine whether there is evidence to support a decision the commissioner did not make but to determine if there is substantial evidence to support the decision made by the commissioner.<sup>4</sup> If the court could have reached a different conclusion the court is not to reverse unless the commissioner's decision is not supported by substantial evidence.<sup>5</sup>

When the challenge is to the commissioner's application of the of the law to the facts the court is to reverse only if the commissioner's decision is irrational, illogical or wholly unjustifiable<sup>6</sup> In reviewing the commissioner's decision the court is to give deference to the commissioner's determination but less deference than is given to the commissioner's findings of fact.<sup>7</sup>

In addition, the court is mindful of the following principles of law that govern the court's review of this issue. McWilliams only needed to prove his injury was caused in substantial part by his work activities. These work activities do not need to be the sole or even the primary factor contributing to the injury.<sup>8</sup> An employer takes its employee as it finds him, so a pre-existing condition does not by itself defeat a workers' compensation claim.<sup>9</sup> When a preexisting condition is materially "aggravated, accelerated, worsened or lighted up" resulting in a disability the

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<sup>2</sup> *Meyer v. IBP*, 710 N.W.2d 213, 219 (Iowa 2006)

<sup>3</sup> Iowa Code § 17A.19(10)(f)(3); *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)

<sup>4</sup> *Musselman v. Cent. Tel. Co.*, 154 N.W.2d 128, 130 (Iowa 1967)

<sup>5</sup> *Christiansen v. Iowa Bd. of Educational Examiners*, 831 N.W.2d 179, 192 (Iowa 2013)

<sup>6</sup> *Larson Mfg. Co., Inc. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009)

<sup>7</sup> *Id.*

<sup>8</sup> *Blacksmith v. All-American*, 290 N.W.2d 348, 354 (Iowa 1980)

<sup>9</sup> *Hanson v. Dickinson*, 176 N.W. 823, 825 (Iowa 1920); *Aluminum Co. of America v. Quinones*, 522 N.W.2d 63, 65-66 (Iowa 1994)

claimant is entitled to benefits notwithstanding the preexisting condition.<sup>10</sup> A compensable injury occurs when the employee “because of pain or physical inability” can no longer work.<sup>11</sup>

The court finds after a careful review of the administrative record, the commissioner’s decision and that of the deputy commissioner are supported by substantial evidence in the record. The decisions of the commissioner and the deputy commissioner were well-reasoned analyses of the record. The deputy commissioner also specifically referenced the administrative record in making his fact findings. The deputy commissioner engaged in a careful and methodical analysis of the medical record presented to him. The deputy commissioner weighed the evidence and found the medical evidence presented by Drs. Ransdell and Sassman to be more credible than the one examination conducted by Dr. Mooney. The deputy commissioner’s specific findings of fact are supported by the evidence in the record. Based upon the court’s review of the record there is substantial evidence to support the decision reached by the commissioner. Likewise, the decision of the commissioner was not irrational or illogical. Finally, the commissioner did not incorrectly interpret the statutes and caselaw in finding McWilliams’ work at All Lines from July through December 2015 was a substantial contributing factor to the aggravation, acceleration, worsening, or lighting up of his underlying condition.

Petitioners also assert the commissioner’s finding that McWilliams is entitled to temporary total disability benefits from December 18, 2015 through December 30, 2016 is not supported by substantial evidence. Petitioners also assert the commissioner’s decision is irrational and illogical and the commissioner incorrectly interpreted statutes and case law in reaching his decision. For the reasons noted above the commissioner’s decision finding

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<sup>10</sup> *Musselman v. Cent. Tel. Co.*, 154 N.W.2d at 132

<sup>11</sup> *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 287 (Iowa 2001) (citing *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 374 (Iowa 1985))

McWilliams proved he was entitled to temporary total disability benefits from December 18, 2015 through December 30, 2016 is supported by substantial evidence in the record, his decision is not irrational or illogical and he did interpret the statutes and case law correctly on this issue.

The third challenge is to the commissioner's finding that McWilliams was permanently and totally disabled. To determine whether a claimant is totally and permanently is a multifactorial analysis that includes:

the employee's medical condition prior to the injury, immediately after the injury, and presently; the situs of the injury, its severity and the length of the healing period; the work experience of the employee prior to the injury and after the injury and the potential for rehabilitation; the employee's qualifications intellectually, emotionally, and physically; earnings prior and subsequent to the injury; age; education; motivation; functional impairment as a result of the injury; inability, because of the injury, to engage in employment for which the employee is fitted; loss of earnings caused by a job transfer for reasons related to the injury; and the employer's refusal to give any sort of work to an impaired employee.<sup>12</sup>

Likewise, "total disability does not mean a state of absolute helplessness."<sup>13</sup> Permanent total disability occurs "when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform."<sup>14</sup> A review of the administrative record demonstrates there is substantial evidence to support this conclusion.

The fourth challenge is to the commissioner's decision that McWilliams is entitled to medical costs and costs of the proceeding. These decisions are supported by substantial evidence in the record.

**IT IS THEREFORE ORDERED** the commissioner's decision of September 30, 2019 is **AFFIRMED**.

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<sup>12</sup> *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632-633 (Iowa 2000)

<sup>13</sup> *Id.* at 633

<sup>14</sup> *Id.*

**IT IS FURTHER ORDERED** costs of this action are assessed against the petitioners.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV059154  
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So Ordered

A handwritten signature in black ink, appearing to read "L. P. McLellan". The signature is written in a cursive style and is positioned above a horizontal line.

Lawrence P. McLellan, District Court Judge,  
Fifth Judicial District of Iowa