IN THE IOWA DISTRICT COURT FOR CRAWFORD COUNTY

MARY DENG, Petitioner, vs. FARMLAND FOOD, INC., Respondent, and SAFETY NATIONAL CASUALTY CORP., Respondent.	FILE NO. CVCV041545 AGENCY FILE NO. 5061883 RULING ON PETITION FOR JUDICIAL REVIEW

This matter came before the Court on March 12 2021, for hearing on Petition for Judicial Review filed by Petitioner, Mary Deng, on October 21, 2020. Hearing was held by videoconference. Petitioner appeared through counsel of record, Jennifer Zupp. Respondents appeared through counsel of record, Kathryn Johnson and Eric Lanham. The proceeding was formally reported by Cristi Bauerly.

The Court, having heard arguments of the parties, reviewed the briefs and filings herein, reviewed the administrative record, and considered applicable law, now enters the following ruling.

PROCEDURAL HISTORY

On April 13 2018, Mary Deng ("Deng" herein) filed a Petition with the Iowa Division of Workers' Compensation ("Agency" herein), alleging a work-related injury. The Petition named Farmland Foods, Inc., Deng's employer, and Safety National Casualty Corporation, the employer's insurance carrier, as Defendants ("Respondents" herein).

On February 26 2019, a contested arbitration hearing was held on the Petition. The hearing was held before Deputy Workers' Compensation Commissioner Michelle A. McGovern, who issued an "Arbitration Decision" on February 25 2020, finding that Deng had sustained work-related injuries to her infraspinatus muscle and labrum (both of which are located in the general area of the shoulder). Deputy Commissioner McGovern found that Deng's injury was a "whole-body" injury, which should be compensated pursuant to Iowa Code §85.34(2)(v), and ordered that Respondents must pay permanent partial disability payments to Deng in the amount of $628.46 per week, commencing from September 5 2018, for a duration of 25 weeks. Deputy Commissioner McGovern also ordered Respondents to pay interest on all past-due weekly benefits, to reimburse Deng in the amount of $171.20 for medical mileage, to pay to Deng the sum of $1,000.00 in penalty benefits, and to pay claimant's costs in the amount of $462.91. Deputy Commissioner McGovern further ordered, based on stipulation of the parties, that Respondents were entitled to a credit for all benefits paid prior to hearing as against the benefits awarded.

On March 13 2020, Respondents filed a Notice of Appeal to the Workers' Compensation Commissioner. On appeal, Respondents raised eight issues, which were set forth as follows:

1. Whether [Deng's] injury involves the left shoulder and should be compensated as a scheduled member injury or involves an unscheduled injury?
2. If the injury is limited to the left shoulder, what is the applicable permanent impairment rating under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition?

3. If the injury is limited to the left shoulder, should [Deng] be awarded permanent disability benefits above the permanent impairment rating due to permanent restrictions?
4. If the injury is limited to the left shoulder, should the injury be compensated as a scheduled member to the arm or should the impairment rating be converted to the whole person before being awarded?
5. If it is determined that the injury should be compensated as an unscheduled injury, what is the extent of [Deng's] entitlement to permanent disability benefits for the functional impairment rating?
6. What is the proper commencement date for permanent disability benefits?
7. Whether [Respondents] should be ordered to pay penalty benefits for allegedly late-paid and allegedly unreasonably delayed payment of permanent disability benefits?
8. Whether [Deng's] costs should be assessed against [Respondents] and, if so, in what amount?

On March 17 2020, Deng filed a Notice of Cross Appeal. On cross-appeal, Deng set forth seven issues as follows:

1. Whether a shoulder injury includes a rotator cuff injury?
2. Whether [Deng] proved she injured her rotator cuff?
3. Whether [Deng] has a 5% or 2% whole body impairment?
4. Whether [Deng] reached MMI on 7/30/18, 9/4/18, or 1/10/19?
5. Whether penalty benefits were properly awarded?
6. Whether mileage benefits were properly awarded?

7. Whether taxable costs were properly awarded?

On September 29 2020, Workers' Compensation Commissioner Joseph S. Cortese issued an "Appeal Decision," ruling on the issues appealed. Commissioner Cortese, upon review of the Arbitration Decision of Deputy McGovern, affirmed it in part, modified it in part, and reversed it in part. Specifically, the Commissioner reversed the Deputy's determination that the injury to Deng's infraspinatus muscle was a "whole body" injury, finding instead that this injury should be compensated as a "shoulder" injury under Iowa Code §85.34(2)(n); the Commissioner modified the Deputy's award of permanent partial disability payments from 25 weeks to 32 weeks; the Commissioner affirmed the Deputy's finding that the commencement date for permanent partial disability benefits, defined as when Deng reached Maximum Medical Improvement, was September 4 2018; the Commissioner affirmed the Deputy's order for the payment of penalty benefits in the amount of $1,000.00; the Commissioner affirmed the Deputy's taxation of the cost of a supplemental medical report; and the Commissioner amended the Arbitration Order to include reimbursement to Deng from Respondents for outstanding mileage in the amount of $171.20.

On October 9 2020, Deng filed an Application for Rehearing and/or Order Nunc Pro Tunc, challenging the Commissioner's finding as to the date of Deng's Maximum Medical Improvement and also challenging the Commissioner's consideration of legislative history, specifically his review of "study bills," in reaching his conclusions. The Commissioner entered a "Ruling on Claimant's Application for Rehearing and/or Order Nunc Pro Tunc" on October 20, 2019. In this Ruling, the Commissioner denied Deng's motion for a rehearing, but did amend the Appeal Decision, nunc pro tunc, to correct two

scrivener's errors with regard to dates. The Commissioner made clear that the correction of these scrivener's errors had no effect upon his determination that Deng reached Maximum Medical Improvement on September 4 2018, which determination he reaffirmed. The Commissioner also defended his review of legislative "study bill" language in reaching his conclusions in the Appeal Decision, asserting that his use of study bills was proper and further noting that his consideration of the study bills was only one factor in his overall analysis.

On October 21 2020, Deng filed the instant Petition for Judicial Review. Deng identifies seven issues for judicial review, which are stated as follows:

1. The agency committed an error of law when it determined that Deng's rotator cuff injury was a "shoulder" injury.
2. The agency committed an error of law by considering study bills which were not considered by the legislature.
3. The agency's finding that Deng reached Maximum Medical Improvement on 9/4/18 was not supported by substantial evidence, nor the law.
4. The agency's finding that Deng's impairment rating was eight percent of the upper extremity is supported by substantial evidence.
5. The agency correctly imposed a penalty against Respondents, but the amount should be increased due to the MMI date being incorrectly decided.
6. The agency correctly awarded mileage benefits to Deng, which have still not been paid by Respondents.
7. The agency correctly awarded taxable costs to Deng, which have still not been paid by Respondents.

Respondents answered the Petition on November 19 2020. Respondent's Answer included a Cross Petition for Judicial Review, asserting that, "[t]he grounds upon which relief is sought are those enumerated in Cross-Petitioner/Respondents' intra-agency appeal briefs and those stated in Iowa Code §17A.19(10)(b)-(g), (l)-(m)," and seeking relief "from those portions of the Workers' Compensation Commissioner's decision adverse to Cross-Petitioners/Respondents." Deng filed an Answer to the Cross Petition in which they asserted a general denial of Respondents' grounds "on the basis that Respondents failed to assign specific errors committed by the agency, so it is not clear with which parts of the decision Respondents agree, and with which they do not."

LEGAL STANDARDS

Judicial review of the decisions of the workers' compensation commissioner has been clearly outlined in the case of *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512 (Iowa 2012). Judicial review of such decisions is governed by Iowa Code Chapter 17A and is generally limited to correction of errors at law. Iowa Code Section 17A.19; *Neal*, 814 N.W.2d at 518. *See also, Hager v. Iowa Department of Transportation*, 687 N.W.2d 106, 108 (Iowa App. 2004); *Lee v. Employment Appeals Board*, 616 N.W.2d 661, 664 (Iowa 2000).

The District Court may affirm the decision of the workers' compensation commissioner or remand the case to the commissioner for further proceedings; and shall reverse, modify, or grant other appropriate relief from the commissioner's decision if the Court determines that substantial rights of the person seeking judicial relief have been prejudiced because the commissioner's decision is any one of the characterizations enumerated in Iowa Code Section 17A.19(10)(a)-(n).

The primary purpose of the workers' compensation law is to benefit injured employees, thus courts should interpret the statute liberally in favor of the employee. *Griffen Pipe Products Co. v. Guarino*, 663 N.W.2d 862, 865 (Iowa 2010), *citing Stone Container Corp. v. Castle*, 657 N.W.2d 485, 489 (Iowa 2003) and *IBP v. Harker*, 633 N.W.2d 322, 325 (Iowa 2001). *See also Des Moines Area Reg'l Transit Auth. V. Young*, 867 N.W.2d 839, 842 (Iowa 2015; *Jacobson Transp. Co. V. Harris*, 778 N.W.2d 192, 297 (Iowa 2010); *Xenia Rural Water Dist. V. Vegors*, 786 N.W.2d 250, 257 (Iowa 2010).

The District Court acts in an appellate capacity when exercising its authority to review such an agency decision. *Neal*, 814 N.W.2d at 518; *Hager*, 687 N.W.2d at 108.

Review of a decision of the workers' compensation commissioner varies depending on the type of error alleged. If the error alleged is one of fact, this Court is bound by the findings of fact made by the commissioner if they are supported by substantial evidence in the record as a whole. Iowa Code Section 17A.19(10)(f); *Neal*, 814 N.W.2d at 518. *See also, Gaborit v. Employment Appeal Board*, 743 N.W.2d 554, 556 – 557 (Iowa App. 2007); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). In determining whether substantial evidence supports the commissioner's factual findings, the District Court engages in a fairly intensive review of the record to make sure the factual findings are reasonable; however, the District Court does not engage in a scrutinizing analysis. *Neal*, 814 N.W.2d at 525. The question also is not whether the evidence in the record as a whole supports a different finding or whether the District Court would make a different finding; but, rather, whether the evidence in the record as a whole supports the findings actually made. *Neal*, 814 N.W.2d at 527. *See also, Grant v. Iowa Department of Human Services*, 722 N.W.2d 169 (Iowa 2006); *Hy-Vee, Inc. v. Employment Appeal*

Board, 710 N.W.2d 1, 3 – 4 (Iowa 2005) (noting that the court must not reassess the weight to be accorded various items of evidence which remains within the agency's exclusive domain).

"Substantial Evidence" means "the quantity and quality of evidence 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). "When that record is viewed as a whole" means "the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact." Iowa Code §17A.19(10)(f)(3).

If the alleged error challenges the commissioner's application of law to facts, such application will not be disturbed unless it is "irrational, illogical, or wholly unjustifiable" (Iowa Code § 17A.19(10)(m)); or it is "the product of reasoning that is so illogical as to render it wholly irrational" (Iowa Code §17A.19(10)(i)); or the agency failed to consider relevant matters (Iowa Code §17A.19(10)(j)). If the application has not been clearly vested in the discretion of the commissioner, the Court also considers whether the application is based on an erroneous interpretation of a provision of law (Iowa Code §17A.19(10)(c)). See also *Meyer*, 710 N.W.2d at 218-19; *Neal*, 814 N.W.2d at 518, 526.

Finally, if the alleged error challenges the commissioner's interpretation of law, the District Court will give deference to the commissioner's interpretation if the commissioner

has clearly been vested with the discretionary authority to interpret the specific provision in question. If the commissioner has not clearly been vested with such discretion, the District Court will substitute its judgment and interpretation of the statutory provision in question for that of the commissioner's if the Court concludes the commissioner made an error of law. Iowa Code Section 17A.19(10)(c), (l); *Neal*, 814 N.W.2d at 518. *See also*, *Gaborit*, 743 N.W.2d at 556-557; *Meyer*, 710 N.W.2d at 219.

It was long held that no deference is given to the commissioner's interpretation of workers' compensation statutes because "the interpretation of the workers' compensation statutes and related case law has not been clearly vested by a provision of law in the discretion of the agency." *Neal*, 814 N.W.2d at 518, *quoting Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 558 (Iowa 2010). However, the determination of whether an agency such as the workers' compensation commissioner has been delegated the authority to interpret a provision of law was clarified in the case of *Renda v. Iowa Civil Rights Commission*, 784 N.W.2d 8, (Iowa 2010). *Renda* made clear that in making such a determination, the Court looks carefully at the specific language or statutory provision that the commissioner has interpreted as well as the specific duties and authority given to the commissioner with respect to enforcing the particular statute. *Renda*, 784 N.W.2d at 13. See also, *Neal*, 814 N.W.2d at 518 (citing *Renda*). Factors or indications considered by the Court in determining whether the legislature has clearly vested interpretive authority to the commissioner include rule-making authority, decision-making or enforcement authority that requires the commissioner to interpret the statutory language, and the commissioner's expertise on the subject or on the term to be interpreted. *Neal*, 814 N.W.2d at 518-519 (citations omitted). If the Court determines

such interpretive authority has clearly been vested in the commissioner, deference to that interpretation is given, and the commissioner's interpretation will be affirmed by the Court unless it is "based upon an irrational, illogical, or wholly unjustifiable interpretation." Iowa Code Section 17A.19(10)(l).

Interconnected findings of fact, interpretations of law, and applications of law to fact pose a uniquely difficult problem on judicial review:

> [t]hese different approaches to our review of mixed questions of law and fact make it essential for counsel to search for and pinpoint the precise claim of error on appeal. 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. If the findings of fact are not challenged, but the claim of error lies with the agency's interpretation of the *law*, the question on review is whether the agency's interpretation was erroneous, and we may substitute our interpretation for the agency's. Still, if there is no challenge to the agency's findings of fact or interpretation of the law, but the claim of error lies with the *ultimate conclusion* reached, 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. In sum, when an agency decision on appeal involves mixed questions of law and fact, care must be taken to articulate the proper inquiry for review instead of lumping the fact, law, and application questions together within the umbrella of a substantial-evidence issue.
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> *Burton v. Hilltop Care Center*, 813 N.W.2d 250, 259 (Iowa 2012), *citing Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006)

The commissioner need not discuss every evidentiary fact and the basis for its acceptance or rejection so long as the commissioner's analytical process can be followed on appeal… the commissioner's duty to furnish a reasoned opinion is satisfied if "it is possible to work backward… and to deduce what must have been [the agency's] legal conclusions and [its] findings of fact." *Id.*, at 260.

FINDINGS AND CONCLUSIONS

1. Whether the agency committed an error of law when it determined that Deng's rotator cuff injury was a "shoulder" injury:

The primary point of contention in this case may be distilled into one short, simple question: What is a "shoulder"? This seemingly innocuous question has proven a thorny one, spawning an administrative appeal, the filing of amicus curiae briefs by interested outside parties, the overturning of a Deputy Commissioner's ruling by the Commissioner, and now the instant judicial review. A brief discussion of the pertinent portions of Iowa's workers' compensation statutes is required to appreciate the impact of the question at issue.

How Permanent Disability Works

Compensation for an injury to a worker that arises out of and in the course of the workers' employment is governed by the Iowa Workers' Compensation Act, codified as Iowa Code Chapter 85. The right to recovery by a worker is expressly limited to the remedies provided by that chapter. Iowa Code §85.20.

Compensation for injuries causing a permanent disability is governed by §85.34, which distinguishes between permanent total disability, under §85.34(3), and permanent partial disabilities, under §85.34(2). Permanent partial disabilities are further subcategorized into two broad categories: If the claimant has suffered a permanent partial disability to a body part specifically enumerated in §85.34(2)(a)-(u), the claimant is said to have suffered a "scheduled" disability and the appropriate compensation is determined by the claimant's "functional disability," the value of which is statutorily prescribed for each scheduled disability and expressed by a specified number of weeks

for which weekly compensation is payable. On the other hand, if the claimant has suffered a permanent partial disability which does not fall into any of the enumerated categories set forth in §85.34(2)(a)-(u), then that claimant's disability falls under the ambit of §85.34(2)(v) and is said to be a "whole body" injury which is, in turn, compensated according to the claimant's "industrial disability," the value of which reflects the impact of the disability upon the claimant's earning capacity. Iowa Code §85.34(2)(v); *See also, e.g., Second Injury Fund v. Shank*, 516 N.W.2d 808, 813 (Iowa 1994); *Gilleland v. Armstrong Rubber Co.*, 524 N.W.2d 404, 407 (Iowa 1994); *Graves v. Eagle Iron Works*, 331 N.W.2d 116 (Iowa 1983).

The distinction between scheduled and unscheduled injuries is important because the method for determining compensation is different and "the amount of compensation for an unscheduled injury is often much greater than for a scheduled injury." *Prewitt v. Firestone Tire & Rubber Co*., 564 N.W.2d 852, 854 (Iowa Ct. App. 1997).

The scheduled partial disabilities enumerated in §85.34(2)(a)-(u) are based upon the loss of specific body parts, such as a finger, a toe, a hand, a foot, an eye, etc. Prior to 2017, none of the scheduled disabilities in §85.34(2)(a)-(u) included loss of a bodily joint, such as an ankle, knee, hip, wrist, elbow, or shoulder. Rather, as the Agency and the courts were called upon to interpret and apply this statutory framework in order to determine appropriate compensation for injuries to various parts of the body, joints were viewed as the dividing lines between various parts of the body. Through this analysis, there developed a maxim which Commissioner Cortese refers to in his Appeal Decision as the "proximal rule." Under this rule, if a disability extended proximally (nearer the torso) beyond a certain body part or member, it would be deemed a disability to the more

proximal part or member of the body, as opposed to the more distal (further from the torso) part or member. *See, e.g., Holstein Elec. v. Breyfogle*, 756 N.W.2d 812, 816 (Iowa 2008). For example, injuries that extended to the hip were deemed to be proximal to the leg and were therefore classified as "whole body" injuries rather than scheduled injuries to the leg. *Lauhoff Grain Co. v. McIntosh*, 395 N.W.2d 834 (Iowa 1986); *see also Dailey v. Pooley Lumber. Co*., 233 Iowa 758, 10 N.W.2d 569 (Iowa 1943). Likewise, and notably, injuries to the shoulder area, including rotator cuff tears, were determined to be proximal to the arm and therefore to be "whole body" disabilities. *Second Injury Fund of Iowa v. Nelson*, 544 N.W.2d 258 (Iowa 1995). The Agency has applied the proximal rule accordingly, finding, for example, that injuries involving the joint between the finger and the hand are proximal to the finger and are therefore hand injuries, and that wrist and carpal tunnel injuries extend proximal to the hand and are therefore arm injuries. *Miranda v. IBP*, File No. 5008521 (App. Dec. August, 2005).

It has been noted often throughout the cases that when there is a choice or ambiguity between two or more methods of compensation for a given injury, the application of this "proximal rule" generally leads to the granting of greater compensation to the claimant. This has been particularly true when the dividing line at issue has been the hip or shoulder because these joints have been viewed as the dividing lines between the torso and the distal limbs. Thus, when the proximal rule is applied in such cases, it leads to a determination that the claimant has suffered a "whole-body" disability and is therefore entitled to industrial disability compensation rather than the scheduled compensation for the distal limb, which is typically far less. Therefore, the proximal rule serves the purpose of workers' compensation law, which is to benefit injured employees,

and it comports with the doctrine that these statutes should be interpreted broadly and liberally in favor of the employee. Thus, the proximal rule has become well established in workers' compensation jurisprudence.

The 2017 Amendment

In 2017, however, the legislature amended §85.34(2). Among the various amendments enacted, the most pertinent to this case was the addition of §85.34(2)(n), which states, "[f]or the loss of a shoulder, weekly compensation during four hundred weeks." In other words, in 2017, the legislature created a wholly new scheduled disability by adding "shoulder" injuries to the list of scheduled permanent partial disabilities. Now such injuries would be compensable according to the arbitrary legislative determination of functional disability, whereas previously, under *Nelson*, shoulder injuries were compensated as whole-body injuries which merited industrial disability compensation. This change is also of note because, as mentioned, no joint had previously been enumerated as a distinct body part or limb. Joints had been viewed only as a line of demarcation for application of the proximal rule. The text quoted above, "[f]or the loss of a shoulder, weekly compensation during four hundred weeks," is the entire text of the new §85.34(2)(n). Neither the term "shoulder" nor the phrase "loss of a shoulder" is defined in that section or elsewhere in the statute. Thus arises the instant question: What is a "shoulder"?

Application to This Case

In this case, it is undisputed that Claimant Mary Deng suffered two anatomically distinct injuries: one to her glenoid labrum and one to her infraspinatus muscle. The Court need not here digress into defining the glenoid labrum or describing Deng's specific injury

thereto, as it is also undisputed that Deng's labrum injury is entirely within the glenohumeral joint (the "ball and socket" joint of the shoulder where the "ball" at the top of the humerus arm bone meets the "socket" of the clavicle bone). Thus, the parties agree that this injury falls squarely within the purview of §85.34(2)(n) as a "shoulder" injury and should be compensated as a scheduled injury under that subsection.

As for Deng's injury to her infraspinatus muscle, however, the parties vigorously disagree as to whether it should be classified as a scheduled injury or a whole-body injury. The Agency found below, based upon the testimony of the physicians, that the infraspinatus muscle is one of the four muscles of the rotator cuff that wrap around the [humeral] head and whose main function is to stabilize the head and the glenoid, which is the socket of the shoulder. (Appeal Decision, p. 8). The Agency further found, again based upon physician testimony, that the rotator cuff is generally proximal to the glenohumeral joint. (Appeal Decision, p. 11). There is some evidence in the record that the infraspinatus muscle attaches, on its distal end, to the humerus itself and thus extends, in part, into the space of the glenohumeral joint. There is also some evidence in the record that as the shoulder joint moves through its broad range of motion, parts of the rotator cuff are, at times, actually distal to the glenohumeral joint. However, such evidence notwithstanding, the Deputy Commissioner, the Commissioner, and the parties hereto are in agreement with the Agency's finding that the infraspinatus muscle and Deng's injury thereto are generally proximal to the glenohumeral joint itself, and the Court finds that such finding is supported by substantial evidence in the record.

The overwhelming thrust of the arguments of the parties in this matter, then, is whether the rotator cuff, and specifically the infraspinatus muscle where Deng's injury

lies, should be included in the definition of "shoulder" as used in §85.34(2)(n). The parties call for the Court to interpret this recently enacted provision in order to provide a definition for the term "shoulder," or at least to determine whether that term, as it is used in §85.34(n), includes the infraspinatus muscle. Deng argues emphatically that the term "shoulder" should be construed to mean the glenohumeral joint itself and nothing else. Respondents argue, with equal vigor, that the term "shoulder" should not be construed in such a limited fashion, but must necessarily include "the surrounding muscles, tendons, bones and surfaces" which the Commissioner found were "extremely intricate and intertwined" (Appeal Decision, p. 8).

Here the Court acknowledges with high approval the multitude of excellent arguments advanced by the parties on both sides in support of their respective positions on this question, to include its impact on important issues of public policy and the functioning of Iowa's workers' compensation statutes. However, the Court respectfully submits the possibility that the question of whether the infraspinatus muscle should be included in the definition of "shoulder" may not be the proper inquiry.

Statutory Analysis

In contemplation of this possibility, the Court begins, as all statutory inquiries should, with the language of the statute itself. The Court finds that interpretation of Iowa Code §85.34(2)(n) has not been clearly vested in the Commissioner and therefore the Court, although it gives deference to the expertise of the Agency, reserves for itself the final interpretation of the law and may substitute its own judgment and interpretation for that of the commissioner. *IBP v. Harker*, 633 N.W.2d 322, 325 (Iowa 2001), *citing Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995); *see also* the authorities cited

above under Legal Standards.

§85.34(2) provides that "[c]ompensation for permanent partial disability shall begin when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of the loss or percentage of permanent impairment can be determined…," and "[t]he compensation shall be based upon the extent of the disability…." §85.34(2). The Court notes that the statutory language plainly distinguishes the *disability* from the *injury* and further distinguishes the *injury* from the "loss or percentage of permanent *impairment*." Then, having just employed those terms in separate and distinct ways, the statute expressly specifies that it is the extent of the *disability* that shall determine the compensation.

The statute then goes on to introduce the list of "scheduled" disabilities as follows: "For all cases of permanent partial disability compensation shall be paid as follows." Each of the enumerated disabilities that follow, in §§85.34(2)(a)-(u), is described as "the loss of" a specified limb or body part, such as "[f]or the loss of a thumb," or "[f]or the loss of a foot," or "[f]or the loss of an eye."[1]

The Court here notes, before moving on with its analysis, that §85.34(2)(m) includes the terms "shoulder joint" and "elbow joint," and §85.34(2)(p) includes the terms "hip joint" and "knee joint." In contrast, §85.34(2)(n) provides for loss of a "shoulder," not of a "shoulder joint." The context in which these terms are used differs also. The terms "shoulder joint," "elbow joint," "hip joint," and "knee joint" are used in the statute to delineate the boundaries of a different body part, the loss of which is compensable. This

1 §85.34(2)(a), (o), and (q). This is true with the exception of §85.34(2)(u), which describes not "loss of" but "permanent disfigurement of" the face or head.

is distinguishable from the use of the term "shoulder," which is used to identify the body part itself which, if lost, entitles a claimant to compensation.

The Commissioner's View

Next, the Court turns to the Appeal Opinion, in which the Commissioner goes to great lengths to establish that the rotator cuff, which is the area of injury in this case, is integral to the operation of the shoulder. The Commissioner notes that "the "glenohumeral joint and its surrounding muscles, tendons, bones, and surfaces are extremely intricate and intertwined" and that "the functionality of the shoulder is dependent on these surrounding anatomical parts" (Appeal Decision, p. 8). The Commissioner also found that the rotator cuff is "essential to the function of the glenohumeral joint" (Appeal Decision, p. 11) and that the rotator cuff is part of the "muscular 'engine' that moves the shoulder joint itself" without which "the structures distal to the shoulder joint would not work as efficiently as they do to allow them to perform useful activities." (Appeal Decision, p. 10). Indeed, the Commissioner expressly rests his ultimate conclusion, that the muscles of the rotator cuff are included in the statutory definition of "shoulder," on "the entwinement of the glenohumeral joint and the muscles that make up the rotator cuff, including the infraspinatus, and the importance of the rotator cuff to the function of the joint." (Appeal Decision, p. 11).

Deng argues adamantly that the Commissioner's focus on the *function* of the infraspinatus muscle and its *effect* on the function of the shoulder is flatly incorrect under the law and that the proper approach is to determine the "anatomical situs" of the injury itself, which in turn controls the analysis.

She also argues that the Commissioner's logic, giving consideration to the effect

of the injury rather than its situs, leads to a "slippery slope" that ultimately results in chaos and an inability to determine the location of virtually any injury. Deng put the argument this way in the Agency appeal:

> For example, if "shoulder" includes the muscles and tendons of the rotator cuff, would it also include all clavicle injuries? What about all of the muscles which attach to the clavicle, such as deltoid, trapezius, subclavius, conoid ligament, trapezoid ligament and the pectoralis? Does "shoulder" include the scapula, to which eighteen muscles attach? Does it include thoracic muscles, some of which interest with rotator cuff and scapular muscles? If these other body parts are included in a definition of "shoulder" where do those body parts stop and start and more-importantly, what is the textual basis for the dichotomy?
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> (Appeal Decision, p. 10, citing Deng's Agency Appeal Brief, p.19)

Deng further asserts that "the Commissioner's analysis would have every Claimant and Defendant in every shoulder area case litigating about the resulting functional abilities a person has, rather than the much-easier datapoint, which is the location of the actual injury." (Petitioner's Judicial Review Brief, p. 19).

The Court must agree that determining the anatomical situs of the actual injury is indeed a "much easier datapoint," but cannot help but note that "litigating about the resulting functional abilities a person has," a result which Deng warns against, appears to resemble much more closely the language of §85.34(2), as discussed above.

Here the Court pauses to reflect that this issue (anatomical situs vs. function and effect) is the metaphorical fulcrum upon which rests the entire presumption that the purpose of this judicial review is for the Court to determine the definition of "shoulder" and whether it includes the infraspinatus muscle. The Court has raised the possibility, *supra*, that this presumption may be incorrect and that perhaps a different inquiry should be

made. Therefore, the Court determines that this particular issue should be examined closely.

Anatomical Situs of Actual Injury vs. Site of Disability

Deng, in support of her assertion that the anatomical situs of the injury should control, cites a number of authorities but relies most heavily upon the case of *Dailey v. Pooley Lumber Co*., 10 N.W. 569, 763-64 (Iowa 1943). Deng discusses the facts and findings of that case and asserts that the commissioner's methodology for defining an injury was explicitly rejected in that case.

Deng also cites an administrative appeal decision in which she contends the Commissioner "acknowledged that it is the situs of the injury which controls whether the injury is scheduled or unscheduled." (Judicial Review Brief, p. 18, citing *Peterson v. Parker Hannifin Corp*., File 5043257, p.2 (Appeal Dec'n, 9/24/15)). Deng points out that in *Peterson*, the Commissioner cited Iowa Supreme Court precedent including *Lauhoff Grain Co. v. McIntosh*, 395 N.W.2d 834 (Iowa 1986), *Blacksmith v. All-American, Inc*., 290 N.W.2d 348 (Iowa 1980), *Daily v. Poole Lumber Co*. (cited above), and *Soukup v. Shores Co*., 268 N.W.598 (1936). Deng also cites two other administrative decisions, *Dickess v. Heartland Inns of America, LLC*, File 5034433 (Arb. Dec'n 9/9/11) and *Cluney v. Reames Foods*, File 94566, p. 3-5 (Arb. Dec'n, 12/1/93).

The Court has reviewed these authorities and considers them here. Two of the cited Iowa Supreme Court cases are from days long past: *Dailey v. Poole Lumber* was decided in 1943 and *Soukup v. Shores* was decided in 1936. Advanced age of a decision does not *per se* call it into question. Indeed, sometimes the opposite is true. However, upon reviewing *Dailey* and *Soukup*, the Court was led to another decision of the Iowa

Supreme Court which, although of a ripe old age itself, was decided subsequent to those cases and which discusses both of them: *Barton v. Nevada Poultry Co*., 253 Iowa 285, 110 N.W.2d 660 (Iowa 1961). Although *Barton* was decided in 1961, it appears to remain good law in Iowa, the Court being unable to find any authority overturning it or even affording it negative treatment despite the existence of 5,499 citing references.

In *Barton*, a claimant sustained an injury to her right foot and ankle, which then resulted in a circulatory ailment identified as "Causalgia" or "Sudeck's Atrophy," which left her totally disabled. *Barton*, 110 N.W.2d at 661. Barton was compensated for a scheduled injury but then appealed to the Commissioner claiming total disability. *Id*. The Commissioner stated, "[t]he evidence conclusively establishes that the *actual physical injury *** was confined to the right lower extremity. Therefore, it is definitely a schedule disability and the compensation must be limited to the schedule* (Section 85.35) *despite the fact she is totally disabled because of the injury.*" *Id*. (emphasis and ellipses in original). The commissioner cited to *Dailey v. Pooley Lumber* and *Soukup v. Shores*, just as Deng has in this action. *Id*.

The case ultimately reached the Iowa Supreme Court, which examined the statutory language and stated, "the 'injury' contemplated under the Act, is 'something *** that acts extraneously to the natural processes of nature, and thereby impairs the health, overcomes, injures, interrupts, or destroys some function of the body, or otherwise damages or injures a part or all of the body." *Barton*, 110 N.W.2d at 662.

Then the *Barton* court expressly distinguished "injury" from "disability," stating:

> The injury is the producing cause. The disability, which generally determines the extent of compensation payments, is the result of the cause (injury) upon the human body as it bears upon the ability of

> the injured person to earn wages. Disability is ordinarily a fact question for the Commissioner, and the result may be any one of… three categories… dependent upon the evidence bearing thereon.
>
> *Id*. at 663.

Next, the *Barton* court specifically addressed permanent partial disability under the statute (which was at that time codified as §83.35):

> Section 85.35… in addition to providing generally that the compensation for permanent partial disability shall be determined by the **extent of the disability**, goes further and provides that, where, as the **result of an injury**, the claimant has sustained the loss of specified parts of his body, such loss shall be compensable only to the extent therein provided. Thus, by legislative edict, where the **result of an injury causes the loss** of a foot, or eye, etc., such loss, together with it ensuing natural results upon the body, is declared to be a permanent partial **disability** and entitled only to the prescribed compensation. In such a case, the ability of the injured part to earn wages is not a factor to be determined, even though such ability may be entirely gone. It might be added that **the loss of the use of a foot, eye, etc., is deemed to be loss of the unit involved.**
>
> *Id., citing Moses v. National Union Coal Mining Co*., 194 Iowa 819, 184 N.W. 746 (Iowa 1921) (emphasis added).

The *Barton* court noted that the trial court in that case based its decision on *Soukup v. Shoes* and *Dailey v. Pooley Lumber*. *Id*. The *Barton* court engaged in a discussion of the trial court's use and interpretation of those cases (as well as a reference to *Henderson v. Iles*, 248 Iowa 847, 82 N.W.2d 731 (Iowa 1957)). The Court then disapproved of the trial court's interpretation of *Soukup* and *Dailey* and clarified the law as follows:

> Are the above cited cases to be taken as authority for the proposition that the specific location of the physical injury determines the compensation? We think not.
> In [the statute], reference is made in each instance to "loss" of some unit of the body. This does not mean the injury – the cause, but the result. If, in the cases cited, the reference to injury, as used therein,

> with reference to the statute, is used in the sense of loss or result, rather than cause, we think such statements therein are correct statements of the law. Disability may be total but compensable under only the specific schedule. Under such a construction **there is nothing therein that even hints at the location of the injury, the actual physical trauma, as being determinative of the extent of compensation payable**. If the word, injury, is being used in the sense of being the cause rather than the loss, the result, we think such a construction is erroneous.
>
> Id. at 664 (emphasis supplied).

Thus, although *Barton* may not have expressly overruled *Dailey* and *Soukup*, it firmly and unequivocally rejected any interpretation of those cases to mean that the actual physical location of the injury is determinative of the compensation due for the disability. Stated otherwise, the *Barton* court explicitly held that those cases do not stand for the proposition they are cited for by Deng in this case.

The Court finds that the other authorities cited by Deng for her "situs of the injury" notion are also distinguishable, often standing for the opposite proposition. For example, in *Lauhoff Grain Co. v. McIntosh*, 395 N.W.2d 834 (Iowa 1986), claimant McIntosh fractured the femur of his leg just below the hip joint, which resulted in the installation of a prosthetic hip joint. *Lauhoff*, 395 N.W.2d at 835. McIntosh was awarded industrial disability and the employer appealed. *Id*. Although the Iowa Supreme Court did ultimately reverse the case in part and remanded, it was not, as Deng would have us believe, because the "situs of the injury" was in the leg and therefore it was only compensable as a scheduled injury. To the contrary, the *Lauhoff* court focused its analysis, as did the agency and the court of appeals in that case, entirely on the "impairment of body function," which it found to be in the hip. The employer, Lauhoff, made the rather novel argument that "because the function of the hip is to provide articulation for the leg, impairment of

the hip translates only into impairment of the leg, and is therefore governed by the leg schedule." *Id*. The Court roundly rejected this argument, stating, "the impairment of body functions in this case were in the hip, not the leg, and we will not consider these functions to be coextensive merely because the hip junction impacts on that of the leg." *Id*. Thus, although the *Lauhoff* court did decline to consider the impact of one body part upon another, which might, on its face, be seen as supportive of Deng's contention here, it did so because its focus was on the body part whose function was *impaired*, not the body part that contained the situs of the injury. In fact, the body part to which the court declined to extend the disability was the very limb that contained the situs of the injury. This cannot be said to support Deng's contention. Nor, in the Court's opinion, do any of the other authorities cited, all of which either involve a determination of effect on another body part that flows in the opposite direction, as in *Lauhoff*, or at the very least take care to refer not merely to an "injury" but to "impairment" or "disability" when determining compensation.

Statutory Construction

Now, armed with an understanding of these judicial interpretations of the workers' compensation statute for permanent partial disability, the Court returns to the amended statute in question here, §85.34(2)(n), in an attempt to interpret its meaning.

When interpreting a statute, the Court's ultimate goal is to ascertain and give effect to the intention of the legislature, seeking a reasonable interpretation that will best effect the purpose of the statute and avoid an absurd result and considering all portions of the statute together, without attributing undue importance to any single or isolated portion. *John Deere Dubuque Works v. Weyent*, 442 N.W.2d 101, 104 (Iowa 1989).

To ascertain legislative intent, the Court looks to what the legislature said and does not speculate as to the probable legislative intent apart from the words used in the statute. *State v. Adams,* 554 N.W.2d 686, 689 (Iowa 1996).

Absent legislative definition or a particular and appropriate meaning in law, the Court gives words their plain and ordinary meaning. *State v. Ahitow*, 544 N.W.2d 270, 272 (Iowa 1996). When the plain language is clear as to its meaning, courts apply the plain language and do not search for legislative intent beyond the express terms of the statute. *Denison Municipal Utilities v. Iowa Workers' Compensation Com'r*, 857 N.W.2d 230 (Iowa 2014).

The court applies the rules of statutory construction only when the terms of the statute are ambiguous. *See William C. Mitchell, Ltd. v. Brown*, 576 N.W.2d 342, 347 (Iowa 1998). A statute is only ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute. *Iowa Ins. Institute v. Core Group of Iowa Ass'n for Justice*, 867 N.W.2d 58 (Iowa 2015). "Ambiguity may arise in two ways: (1) from the meaning of particular words; or (2) from the general scope and meaning of a statute when all its provisions are examined." *William C. Mitchell, Ltd. v. Brown*, 576 N.W.2d 342, 347 (Iowa 1998), *quoting Holiday Inns Franchising, Inc. v. Branstad*, 537 N.W.2d 724, 728 (Iowa 1995).

The Court examines the statute under these standards. Considering all portions of §85.34(2) together, the Court first notes that the language of subsection (n), the most recently enacted provision at issue here, is entirely consistent with the many other similar provisions in the statute. Subsection (n) sets compensation "for the loss of a shoulder." Subsection (l) sets compensation "for the loss of a hand." Subsection (q) sets

compensation "for the loss of an eye," *et cetera*. Each of these provisions provides a period of compensation for the loss of a specific body part. Each of them identifies the body part in question in plain, ordinary, non-medical language. Only two of them define the physical parameters of the body part listed (being subsection (m) and subsection (p)). The rest have no descriptive or defining language at all as to the body part listed, only the commonly used, non-medical name of the body part.

The Commissioner, in his Appeal Decision, correctly identifies another applicable consideration in statutory interpretation, which is the presumption that the legislature is aware of the courts' prior holdings when crafting new legislation (Appeal Decision, p. 7, *citing Roberts Dairy v. Billick*, 861 N.W.2d 814, 821 (Iowa 2015) (as amended); *State v. Fluhr*, 287 N.W.2d 857, 862 (Iowa 1980)). The Court agrees with the Commissioner's conclusion that the legislature may be presumed to be aware of the various rulings of the Agency and the courts with regard to classifying various body parts under the statute, which would include the proximal rule and the fact that because of the proximal rule, shoulder disabilities were considered whole-body injuries under §85.34(2)(v) and were compensable according to industrial disability. The Court finds that it may also be presumed that the legislature was aware of the statutory interpretation in *Barton v. Nevada Poultry* as well as its progeny and similar cases holding that it is not the situs of the actual physical injury that determines compensation, but rather the resulting disability in the form of functional impairment. Likewise, the legislature may be presumed to be aware of the judicial holding that with regard to "loss" of a body part under §85.34(2), "the loss of the use of a foot, eye, etc., is deemed to be loss of the unit involved." *Barton*, 110 N.W.2d at 663, *citing Moses v. National Union Coal Mining Co*., 194 Iowa 819, 184 N.W.

746 (Iowa 1921).

Taking all of this into consideration, the Court finds that the plain language of the statute makes clear that the intent of the legislature, in enacting §85.34(2)(n), was to reclassify permanent disabilities that result from injuries which impair the function of the shoulder, changing such disabilities from whole-body industrial disabilities to scheduled disabilities and thereby limiting the compensation for such disabilities to weekly compensation during four hundred weeks. The Court finds no ambiguity from the general scope and meaning of the statute when all its provisions are examined.

Nor does the Court find ambiguity in the meaning of any particular words in §85.34(2). The Court acknowledges that if the meaning of the statue were that *injuries* to the shoulder were scheduled disabilities, then the use of the generic term "shoulder" would be ambiguous because reasonable minds could disagree whether certain injuries, such as the infraspinatus injury in this case, were within the "shoulder" or not (thereby resulting in litigation such as this). However, the Court has determined herein that it is not the situs of the actual physical injury that is addressed by the statute, but rather the disability *caused* by such injury in the form of functional impairment. The Court finds that in this context, no ambiguity exists in the term "shoulder." The plain language, assigned its ordinary meaning, is clear as to what impairment of the shoulder means: the shoulder does not work as it should, or as it would absent the disability. Besides this common understanding, it is also well defined in workers' compensation litigation that the function of the shoulder is "to provide articulation for the arm." See, e.g., *Miller v. Roadway Express*, File No. 1043276 & 1055678, p. 3 (Arb. Dec'n December 11, 1995).

Thus, the Court finds no ambiguity in the statute and therefore declines to resort to the rules of statutory construction or any other examination of legislative intent outside the text enacted by the legislature.

Review of Agency Finding Re: Deng's Disability

The Agency found that Deng sustained an eight percent impairment of the left upper extremity, which equates to a five percent impairment of the body as a whole. The finding of impairment was based upon Deputy McGovern's finding that Dr. Bansal's impairment rating was the most convincing and accurate, which finding was confirmed by the Commissioner on appeal. The Court finds that Deputy McGovern's finding is supported by substantial evidence in the record. Dr. Bansal's impairment rating, and accordingly the Agency's finding of impairment, was based upon Dr. Bansal's measurements of Deng's loss of active range of motion in her shoulder. It is the function of Deng's shoulder that is impaired, specifically her ability to articulate her arm. The site Deng's function impairment, and thus the site of her disability, is her shoulder as found by the Commissioner on appeal.

Finally, the inquiry is not yet at an end because the Court still must determine whether the Agency's finding was correct that Deng's disability did not extend beyond her shoulder. Nothing discussed above abrogates the proximal rule in any way. It remains the law that if a person's disability extends beyond the scheduled member to the unscheduled whole body, the disability is properly classified under §85.34(2)(v) as a whole-body industrial disability. Having reviewed the record in this case, the Court finds substantial evidence in the record, even when evaluated under the statutory interpretation reached herein, to support the Commissioner's finding that Deng's disability did not

extend proximally beyond her shoulder. In the event that more than a substantial evidence inquiry is necessary, the Court, having reviewed the record herein, finds independently that under the evidence, Deng's disability was a functional impairment of her shoulder, as demonstrated by Dr. Bansal's measurements of her active range of motion (Joint Ex. 6, p. 87 A-C). The Court further finds under the evidence that Deng's disability did not extend proximally beyond her shoulder. In fact, the Court finds evidence affirmatively demonstrating that it did not, including the following: (1) Negative MRI and other testing of Deng's cervical spine by Dr. Bolda, confirming no neck involvement (D.E. 1, p. 32B; DE. A1, p. 19); (2) No finding of neck or back involvement by Dr. Bansal; (3) Explanation by Dr. Bansal that pain in the scapula area and/or trapezius area was attributable to shoulder impairment (JE. 6, pp. 79, 87).

Therefore, the Court finds that the determination of the Agency on appeal, that Petitioner Mary Deng's injury to her infraspinatus muscle should be compensated as a shoulder disability pursuant to Iowa Code §85.34(2)(n), should be affirmed.

2. **Whether the agency committed an error of law by considering study bills which were not considered by the legislature:**

In light of the Court's finding above, that the decision of the Agency should be affirmed, and in light of the fact that such finding was made independently of any examination of legislative history, including study bills, the Court finds this appeal issue to be moot and therefore makes no ruling thereon.

3. **Whether the agency's finding that Deng reached Maximum Medical Improvement on 9/4/18 was supported by substantial evidence and the law:**

The Court finds that the Agency's determination of the date upon which Deng reached Maximum Medical Improvement is an application of law to fact and that therefore the

standard set forth by Deng on appeal (substantial evidence) is not the correct standard of review. For review of the Agency's application of law to fact, the Court will not disturb the Agency's decision unless it is "irrational, illogical, or wholly unjustifiable" (Iowa Code § 17A.19(10)(m)); or it is "the product of reasoning that is so illogical as to render it wholly irrational" (Iowa Code §17A.19(10)(i)); or the agency failed to consider relevant matters (Iowa Code §17A.19(10)(j)).

The Court finds that the Agency's application of law to fact in this instance was not "irrational, illogical, or wholly unjustifiable," nor was it the product of reasoning so illogical as to render it wholly irrational, nor does the Court, upon review of the record, find any relevant matter that the agency failed to consider.

In an abundance of caution, in the event that the Agency's decision in this regard is a finding of fact and not an application of law to fact, the Court also considers the question under the standard raised by Deng: whether the decision is supported by substantial evidence. Under this standard, the question is not whether the Court might have reached a different finding, but whether substantial evidence exists in the record as a whole to support the finding actually made. Substantial evidence means the quantity and quality of evidence 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.

Upon review of the record, the Court finds substantial evidence to support the Agency's finding that Deng reached Maximum Medical Improvement on September 4, 2018, being the date that Deng returned to Dr. Bolda after being seen by a subspecialist who did not recommend surgery, the date upon which Dr. Bolda assigned permanent

restrictions, and the date upon which Dr. Bolda identified as the date of Deng's Maximum Medical Improvement.

Therefore, the Court finds that the Agency's finding should be affirmed.

4. **Whether the agency's finding that Deng's impairment rating was eight percent of the upper extremity is supported by substantial evidence:**

The Court finds that the Agency's determination of Deng's impairment rating is a finding of fact. The Court finds that the Agency's finding is supported by substantial evidence in the record, such evidence primarily consisting of Dr. Bansal's measurements of Deng's active range of motion.

Therefore, the Court finds that the Agency's determination of Deng's impairment rating should be affirmed.

5. **Whether the agency correctly imposed a penalty against Respondents, and whether the amount should be increased due to the MMI date being incorrectly decided:**

The Court finds the Agency's decision to impose a penalty against Respondents is an application of law to fact. The Court finds that the Agency's application of law to fact in this instance was not "irrational, illogical, or wholly unjustifiable," nor was it the product of reasoning so illogical as to render it wholly irrational, nor does the Court, upon review of the record, find any relevant matter that the Agency failed to consider.

As to any alleged increase due to recalculation of the date of Maximum Medical Improvement, the Court, *supra*, affirmed the Agency's determination of the date of Maximum Medical Improvement, therefore no increase is called for.

Therefore, the Court finds that the Agency's imposition of a penalty against Respondents, as well as the amount of such penalty, should be affirmed.

6. Whether the agency correctly awarded mileage benefits to Deng, which have still not been paid by Respondents:

The Court finds the Agency's decision to award mileage benefits to Deng is an application of law to fact. The Court finds that the Agency's application of law to fact in this instance was not "irrational, illogical, or wholly unjustifiable," nor was it the product of reasoning so illogical as to render it wholly irrational, nor does the Court, upon review of the record, find any relevant matter that the Agency failed to consider.

Additionally, this issue is not disputed by Respondents. Therefore, the Court finds that the Agency's decision to award mileage benefits to Deng should be affirmed.

7. Whether the agency correctly awarded taxable costs to Deng, which have still not been paid by Respondents:

The Court finds the Agency's decision to award taxable costs to Deng is an application of law to fact. The Court finds that the Agency's application of law to fact in this instance was not "irrational, illogical, or wholly unjustifiable," nor was it the product of reasoning so illogical as to render it wholly irrational, nor does the Court, upon review of the record, find any relevant matter that the Agency failed to consider.

Additionally, this issue is not disputed by Respondents. Therefore, the Court finds that the Agency's decision to award taxable costs to Deng should be affirmed.

ORDER

WHEREFORE IT IS ORDERED as follows:

1. For the reasons set forth herein, the Appeal Decision of the Iowa Workers' Compensation Commissioner is AFFIRMED.
2. Costs of this Judicial Review action are assessed to Petitioner.

SO ORDERED.

State of Iowa Courts

Case Number	**Case Title**
CVCV041545	MARY DENG V. FARMLAND FOODS, INC. & SAFETY NAT'L.
Type:	ORDER FOR JUDGMENT

So Ordered

Roger L Sailer, District Court Judge
Third Judicial District of Iowa

Electronically signed on 2021-05-21 12:10:26