IN THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY

STREIT CONSTRUCTION, INC., and EMC INSURANCE COMPANIES, Petitioners, vs. KENNETH STREIT, Respondent.	Case No.: CVCV062277 **ORDER**: Ruling on Petition for Judicial Review

On February 18, 2022, this matter came before the Court on Streit Construction, Inc. and EMC Insurance Companies' Petition for Judicial Review. After reviewing the court file, including the parties' briefs and the administrative record, the Court now enters the following Order.

I. FACTUAL & PROCEDURAL BACKGROUND

Respondent Kenneth Streit ("Streit") filed a petition against his employer, Streit Construction, Inc., and its insurance carrier, EMC Insurance Companies, (collectively, "Petitioners") seeking workers' compensation benefits for an injury that occurred on October 13, 2012. That petition came before Deputy Commissioner Jon Heitland on January 30, 2015.[1] On May 7, 2015, Deputy Commissioner Heitland filed a proposed Arbitration Decision finding that Streit carried his burden of proof that he sustained an infection caused by septicemia caused by methicillin-resistant staphylococcus aureus (MRSA) that arose out of and in the course of his employment.[2] The Deputy awarded Streit healing period benefits and three hundred weeks of permanent partial disability.[3]

On May 19, 2015, Petitioners appealed to the Workers' Compensation Commissioner.[4] On December 7, 2016, the Commissioner issued an Appeal Decision reversing the Deputy and finding that Streit failed to prove he sustained an injury arising out of and in the course of his employment.[5]

[1] Agency R. Part 1, pp. 42–147 (Jan. 30, 2015 Hr'g Tr.). Petitioners' exhibits are available at pages 278–89 of part 1 of the agency record. Streit's exhibits are available at pages 161–277 of part 1 of the agency record.

[2] Agency R. Part 2, pp. 134–48.

[3] *Id.* at p. 147.

[4] Agency R. Part 2, p. 129.

[5] *Id.* at pp. 58–72.

On January 5, 2017, Streit filed a Petition for Judicial Review[6] and on November 20, 2017, the Iowa District Court for Webster County remanded the matter to the agency with instructions to evaluate the case under an injury analysis pursuant to Iowa Code Chapter 85 rather than an occupational disease standard pursuant to Chapter 85A.[7] In a June 1, 2018 Remand Decision, the Commissioner concluded Streit failed to carry his burden of proof that his alleged MRSA infection arose out of and in the course of his employment.[8]

On June 26, 2018, Streit filed a second Petition for Judicial Review.[9] The District Court for Webster County affirmed the Commissioner's decision and Streit appealed.[10] On November 4, 2020, the Iowa Court of Appeals reversed and remanded with instructions that the Commissioner determine whether Streit proved (1) he suffered cuts or scrapes at work and (2) the MRSA infection is a sequela of cuts or scrapes he suffered at work.[11]

On June 8, 2021, the Commissioner entered his Remand Decision finding that Streit carried his burden of proof that he suffered cuts and scrapes at work and that the MRSA infection was a sequela to these injuries sustained at work.[12] Therefore, the Commissioner held that Streit was entitled to workers' compensation benefits. On August 4, 2021, Petitioners filed the present Petition for Judicial Review seeking reversal of the agency's decision.

Additional facts are set forth below.

II. LEGAL STANDARDS

The Iowa Administrative Procedure Act codifies a court's judicial review of agency action in Iowa Code section 17A.19. Pursuant to this section, a district court has the authority to "affirm the agency action or remand to the agency for further proceedings."[13] Additionally, "[t]he court shall reverse, modify, or grant other appropriate relief from agency action . . . if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action" falls within any of the categories enumerated in

[6] *Id.* at pp. 55–56.
[7] *Id.* at pp. 44–52.
[8] *Id.* at pp. 35–43.
[9] *Id.* at pp. 32–34.
[10] *Id.* at pp. 4–9.
[11] Agency R. Part 1, pp. 33–41.
[12] *Id.* at pp. 21–32.
[13] Iowa Code § 17A.19(10).

subsection ten, paragraphs "a" through "n."[14] "District courts exercise appellate jurisdiction over agency actions on petitions for judicial review."[15] Furthermore, the court's "decision is controlled in large part by the deference we afford to decisions of administrative agencies."[16] For example, when an agency's findings of fact are supported by substantial evidence, "the courts should broadly and liberally apply those findings to uphold rather than to defeat the agency's decision."[17]

"Because of the widely varying standards of review, it is essential for counsel to search for and pinpoint the precise claim of error on appeal."[18] If the alleged "error is one of fact, [the court] must determine if the [agency's] findings are supported by substantial evidence."[19] "If the error is one of interpretation of law, [the court] will determine whether the [agency's] interpretation is erroneous and substitute [its] judgment for that of the" agency.[20] "If, however, the claimed error lies in the [agency's] application of the law to the facts, we will disturb the [agency's] decision if it is '[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact.'"[21]

Furthermore, the substantial rights of a person have been prejudiced when the agency action is "[b]ased upon a determination of fact . . . that is not supported by substantial evidence in the record . . . ."[22] "Evidence is not insubstantial merely because different conclusions may be drawn from the evidence."[23] "Under chapter 17A, a court's task on judicial review is not to determine whether the evidence might support a particular factual finding; rather, it is to determine whether the evidence supports the finding made."[24] Additionally, the Iowa Supreme Court has found that a "district court exceed[s] the scope of

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[14] *Id.*

[15] *Christiansen v. Iowa Bd. of Educ. Exam'rs*, 831 N.W.2d 179, 186 (Iowa 2013) (citation omitted).

[16] *Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 844 (Iowa 2011).

[17] *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000) (citation omitted).

[18] *Jacobsen Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010) (citation and internal quotations omitted).

[19] *Id.* (citing Iowa Code § 17A.19(10)(f)).

[20] *Id.* (citing Iowa Code § 17A.19(10)(c)).

[21] *Id.* (quoting Iowa Code § 17A.19(10)(m)).

[22] Iowa Code § 17A.19(10)(f).

[23] *Pease*, 807 N.W.2d at 845. *See also Arndt v. City of Le Claire*, 728 N.W.2d 389, 393 (Iowa 2007) ("Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the [agency's] decision is not supported by substantial evidence.").

[24] *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 263–64 (Iowa 2012).

permissible judicial review of agency decisions by making findings" the agency never made.[25]

Finally, subsection (h) provides that a person's substantial rights have been prejudiced when the agency action "is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency."[26] The Iowa Supreme Court has concluded that subsection (h) does not change the law, but, rather, it "was intended to amplify review under the unreasonable, arbitrary, capricious, and abuse-of-discretion standards."[27]

III. DISCUSSION

Petitioners allege the Commissioner erred in four respects: 1) Streit proved he sustained a personal injury arising out of and in the course of his employment; 2) Streit is entitled to temporary disability benefits from October 13, 2012 - April 1, 2013; 3) Streit is entitled to permanent partial disability benefits as a result of the alleged October 13, 2012 injury; and 4) Streit is entitled to medical expenses pursuant to Iowa Code section 85.27. The language of the Petition suggests Petitioners seek reversal of the agency's action pursuant to Iowa Code sections 17A.19(10)(c), (f), (h), (j), (l), (m), and (n).[28]

A. WHETHER THE COMMISSIONER ERRED IN FINDING THAT STREIT PROVED HE SUSTAINED A PERSONAL INJURY ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT ON OCTOBER 13, 2012

Petitioners assert the Commissioner erred in finding that Streit carried his burden of proof to show that Streit sustained cuts, scrapes, and sores at work and that the MRSA infection is a sequela of these injuries.[29] Petitioners request the Court reverse the Commissioner's finding that Streit suffered a personal injury on October 13, 2012, arising out of and in the course of his employment.[30]

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[25] *Id.* at 264 (citation and internal quotations omitted).

[26] Iowa Code § 17A.19(10)(h).

[27] *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 332 (Iowa 2005) (citing Arthur Earl Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions* 69 (1998)).

[28] *See* Pet ¶ 6 (providing a list of seven reasons that the agency's action should be reversed, but neglecting to cite specific grounds of section 17A.19(10)).

[29] Pet'rs' Br. pp. 14–15.

[30] *Id.* at 18.

Pursuant to Iowa Code section 85.3(1), "[e]mployers are required to compensate employees for 'personal injuries sustained by an employee arising out of and in the course of the employment.'"[31] "[A]n injured employee has the burden of proving by a preponderance of the evidence that his injuries arose out of and in the course of his employment."[32] "An injury 'arises out of' the employment if there is a causal connection between the employment and the injury, and the injury occurs 'in the course of' the employment when the injury and the employment coincide with regard to time, place, and circumstances."[33] More specifically, "[a]n injury occurs in the course of the employment when it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto."[34] Therefore, "the injury must not have coincidentally occurred while at work, but" rather "must be a rational consequence of a hazard connected with the employment."[35]

An employee-claimant "must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability."[36] "A cause is proximate if it is a substantial factor in bringing about the result" and "[i]t only needs to be one cause; it does not have to be the only cause."[37] "A preponderance of the evidence exists when the causal connection is probable rather than merely possible."[38] "Generally, expert testimony is essential to establish causal connection."[39] "The commissioner, as the fact finder, determines

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[31] *Xenia Rural Water Dist. v. Vegors*, 786 N.W.2d 250, 253–54 (Iowa 2010) (quoting Iowa Code § 85.3(1)).

[32] *Quaker Oats Co. v. Ciha*, 552 N.W.2d 143, 150 (Iowa 1996) (citing *2800 Corp. v. Fernandez*, 528 N.W.2d 124, 128 (Iowa 1995)). *See also IBP, Inc. v. Burress*, 779 N.W.2d 210, 214 (Iowa 2010) (providing the four elements a claimant must prove to qualify for compensation benefits under chapter 85); *Waterhouse Water Conditioning, Inc. v. Waterhouse*, 561 N.W.2d 55, 57 (Iowa 1997) (stating claimant in a workers' compensation case bears the burden).

[33] *Waterhouse Water Conditioning, Inc.*, 561 N.W.2d at 57 (citation omitted). *See also Xenia Rural Water Dist.*, 786 N.W.2d at 254 ("The phrase 'arising out of' refers to the cause and origin of the injury."); *Quaker Oats Co.*, 552 N.W.2d at 150 ("An injury arises 'out of' the employment when there is a causal relationship between the employment and the injury."); *Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996) (same).

[34] *Quaker Oats Co.*, 552 N.W.2d at 150 (quoting *Farmers Elevator Co. v. Manning*, 286 N.W.2d 174, 177 (Iowa 1979)).

[35] *Koehler Elec. v. Wills*, 608 N.W.2d 1, 3 (Iowa 2000) (quoting *Miedema*, 551 N.W.2d at 311).

[36] *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998) (citing *Musselman v. Central*, 154 N.W.2d 128, 132 (Iowa 1967)).

[37] *Blacksmith v. All-Am., Inc.*, 290 N.W.2d 348, 354 (Iowa 1980) (citations omitted).

[38] *Sherman*, 576 N.W.2d at 321 (citation omitted). *See also Sanchez v. Blue Bird Midwest*, 554 N.W.2d 283, 285 (Iowa Ct. App. 1996) ("A possibility of causation is not sufficient; a probability is necessary.").

[39] *Sherman*, 576 N.W.2d at 321 (citing *Bodish v. Fischer, Inc.*, 133 N.W.2d 867, 870 (Iowa 1965)). *See also*

the weight to be given to any expert testimony"[40] and courts must "give due regard to the commissioner's discretion to accept or reject testimony based on his assessment of witness credibility."[41] Additionally, "[t]he commissioner may accept or reject the expert opinion in whole or in part."[42] "Because the commissioner is charged with weighing the evidence, [courts] liberally and broadly construe the findings to uphold his decision."[43] Stated differently, "[t]he findings of the commissioner are akin to a jury verdict, and [courts] broadly apply them to uphold the commissioner's decision."[44]

In its November 4, 2020 order, the Court of Appeals reversed and remanded the case to the Commissioner to consider whether Streit proved (1) he suffered cuts or scrapes at work and (2) the MRSA infection is a sequela of cuts or scrapes he suffered at work.[45] In his June 8, 2021 Remand Decision, the Commissioner found that Streit carried his burden of proof on both counts.[46]

1. Whether Streit Sustained Cuts and Scrapes at Work

Petitioners assert that Streit has not carried his burden of proof regarding whether he sustained the cuts and scrapes at work.[47] Petitioners argue that the Commissioner's finding failed to consider all the evidence related to Streit's cuts, scrapes, and sores.[48] Specifically, Petitioners point out that "Streit had a history of breaking out with sores on his

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Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 16 (Iowa 2007) ("Causal connection is essentially within the domain of expert testimony."); *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 752 (Iowa 2002) ("Expert testimony is ordinarily necessary to establish a causal connection between the injury and the disability for which benefits are sought.").

[40] *Sherman*, 576 N.W.2d at 321 (citation omitted). *See also St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 652 (Iowa 2000) ("Whether an injury has a direct causal connection with the employment or arose independently thereof is ordinarily established by expert testimony, and the weight to be given such an opinion is for the finder of fact.") (citing *Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995)).

[41] *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 558 (Iowa 2010) (citing *Terwilliger v. Snap–On Tools Corp.*, 529 N.W.2d 267, 273 (Iowa 1995)).

[42] *Sherman*, 576 N.W.2d at 321 (citing *Sondag v. Ferris Hardware*, 220 N.W.2d 903, 907 (Iowa 1974)). *See also Sanchez*, 554 N.W.2d at 285 ("Expert opinion testimony, even if uncontroverted, may be accepted or rejected in whole or in part by the trier of fact.").

[43] *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 331 (Iowa 2005).

[44] *Quaker Oats Co.*, 552 N.W.2d at 149–50 (quoting *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994)).

[45] Agency R. Part 2, p. 20.

[46] Agency R. Part 1, pp. 15, 17.

[47] Pet'rs' Br. p. 13.

[48] *Id. See* Iowa Code § 17A.19(10)(j).

scalp, within his beard, and on his arms when he got sweaty."[49] According to Petitioners, these sores had no employment nexus and, therefore, "[a] preponderance of the evidence does not exist to prove that the cuts, scrapes, and sores were related to Streit's work."[50] As the argument goes, "[t]hough it is possible that the cuts and scrapes were work related, Streit did not meet his burden to demonstrate it was probable."[51]

In his Remand Decision, the Commissioner relied on Streit's unrebutted testimony that he had cuts and sores on his arms before the October 13, 2012 date of injury and that he sustained these cuts and sores from work during the summer of 2012.[52] Streit does construction work, which includes building houses, doing shingling, and pouring concrete.[53] In October of 2012, Streit was constructing a grain bin for a farmer, spent the last day (October 13) cleaning up the jobsite, and picking up concrete forms.[54] Specifically, the Commissioner noted Streit's testimony that he suffers cuts and scrapes from working with rerod and cement on the jobsites.[55] Streit testified, "when you're in construction work you're always bangin' something, cuttin' somethin' . . . ."[56]

Additionally, the Commissioner relied on medical records, evaluations, and expert statements. Dr. James Comstock, the staff physician at Trinity Regional Medical Center who treated Streit during his hospitalization, stated, "Mr. Streit is subjected to microabrasions on a regular basis in the course of his work as a carpenter."[57] Medical records from Iowa Methodist Medical Center ("IMMC") indicate that Streit has "a long history of picking at sores and lesions from abrasions during his work."[58] The Commissioner also noted the medical records indicating that Streit experienced occasional skin infections that seemed to worsen over two years prior to the date of injury.[59]

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[49] Pet'rs' Br. p. 13 (citing Agency R. Part 1, p. 202).
[50] *Id.* at pp. 13–14.
[51] *Id.* at p. 14.
[52] Agency R. Part 1, p. 27 (citing Hr'g Tr. pp. 19–20, 23).
[53] *Id.* at p. 22 (citing Hr'g Tr. p. 11).
[54] *Id.* (citing Hr'g Tr. p. 19–23).
[55] *Id.* at pp. 22–23 (citing Hr'g Tr. pp. 19–20).
[56] *Id.* at p. 23 (citing Hr'g Tr. p. 23).
[57] *Id.* at p. 25 (citing Ex. 7, p. 2).
[58] *Id.* at p. 27 (citing Ex. 1, p. 38).
[59] *Id.* (citing Ex. 1, p. 38).

Based on this record, the Commissioner concluded that Streit "carried his burden of proof he sustained cuts and sores at work."[60] Although Petitioners assert the Commissioner failed to consider that "Streit had a history of breaking out with sores on his scalp, within his beard, and on his arms when he got sweaty," the Commissioner's decision acknowledged this fact within the IMMC medical report.[61] Furthermore, the existence of these additional skin abrasions does not preclude or diminish the likelihood that Streit received cuts and scrapes from his construction work with concrete and rerod. "Making a determination as to whether evidence 'trumps' other evidence or whether one piece of evidence is 'qualitatively weaker' than another piece of evidence is not an assessment for the district court . . . ."[62]

"An agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence."[63] The District Court "cannot interfere with the commissioner's findings of fact" even if "there is contradictory medical evidence present . . . ."[64] "Under chapter 17A, this court's task on judicial review is not to determine whether the evidence might support a particular factual finding; rather, it is to determine whether the evidence supports the finding made."[65]

Given the foregoing, this Court concludes the Commissioner's finding that Streit met his burden to prove by a preponderance of the evidence that his cuts and scrapes were work-related was supported by substantial evidence.[66] Furthermore, the Court does not find that the Commissioner failed to consider all the evidence in reaching this conclusion.[67]

2. Whether Streit's MRSA Infection is a Sequela of the Cuts and Scrapes Sustained at Work

Petitioners also argue that the Commissioner erred in finding Streit met his burden to prove his MRSA infection is a sequela of the cuts and scrapes sustained at work.[68] Petitioners' primary assertion is that the uncontroverted evidence demonstrates Streit had

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[60] *Id.*

[61] *Id.* at p. 24 (citing Ex. 1, p. 38).

[62] *Arndt*, 728 N.W.2d at 394 (citation omitted).

[63] *Shank*, 516 N.W.2d at 812.

[64] *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 418 (Iowa 2001) (citation omitted).

[65] *Burton*, 813 N.W.2d at 263–64.

[66] Iowa Code § 17A.19(10)(f).

[67] *Id.* at § 17A.19(10)(j).

[68] Pet'rs' Br. p. 14.

skin issues from both occupational and non-occupational sources.[69] Therefore, Petitioners contend, Streit cannot possibly show by a preponderance of the evidence that the MRSA bacteria entered his body through an occupational microabrasion.[70]

"[W]here an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident."[71] This has come to be known as a "sequela" of the work injury: "An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury."[72] "The workers' compensation commission has defined 'sequela' as 'an after effect or secondary effect of an injury.'"[73]

The commission has also explained that "[t]he classic example is a leg or foot injury resulting in an altered gait that eventually causes injury to the hip or back."[74] Such a "fact pattern routinely results in a finding that the hip or back was part and parcel of the original insult."[75] "A sequela can also take the form of a later injury that is caused by the original injury."[76] "For example, where a leg injury leads to the claimant's knee giving out in a grocery store, the resulting fall is compensable as a sequela of the leg injury."[77] However, an injury

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[69] *Id.*

[70] *Id.*

[71] *Oldham v. Scofield & Welch*, 266 N.W.2d 480, 482 (Iowa 1936).

[72] *Mallory v. Mercy Med. Ctr.*, File No. 5029834, at *6 (App. Feb. 15, 2012) (citing *Oldham*, 266 N.W.2d at 482). *See Oldham*, 266 N.W.2d at 481 ("If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable. Where an employee suffers a compensable injury and thereafter returns to work and, as a result thereof, his first injury is aggravated and accelerated so that he is greater disabled than before, the entire disability may be compensated for.").

[73] *Huffey v. Second Injury Fund of Iowa*, 947 N.W.2d 414 (Table), 2020 WL 1548490, at *1 (Iowa Ct. App. Apr. 1, 2020) (quoting *Powers v. Trimark Physician's Grp.*, 2005 WL 8149431 (Iowa Workers' Comp. Comm'n) at *5 (Sept. 28, 2005)). *See also Lewis v. Dee Zee Mfg.*, File No. 797154 (Arb. Sept. 11, 1989) ("A sequela can be an after effect or secondary effect of an injury.").

[74] *Milbourne v. Second Injury Fund of Iowa*, 662 N.W.2d 374 (Table), 2003 WL 555872, at *1 (Iowa Ct. App. Feb. 28, 2003).

[75] *Id. See also Key City Transp., Inc. v. Delire*, 871 N.W.2d 704 (Table), 2015 WL 5285799, at *2 (Iowa Ct. App. Sept. 10, 2015) ("The deputy found Delire's left shoulder injury was 'a sequela from compensating for the right shoulder injury.'"); *Fridlington v. 3M Co.*, File No. 788758 (Arb. Nov. 15, 1991).

[76] *Taylor v. Oscar Mayer & Co.*, 3 Iowa Ind. Comm. Rep. 257, 258 (1982).

[77] *Id.*

is not simply a sequela of the first injury where it "developed from subsequent work-induced trauma, not merely as a consequence of the" first condition.[78]

As previously stated, "[m]edical causation presents a question of fact that is 'vested in the discretion of the workers' compensation commission.'"[79] "The commissioner must consider the expert testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability."[80] "A court may only disturb the commissioner's finding of fact if it is not supported by substantial evidence."[81] Additionally, "[w]here there is a conflict in evidence or reasonable minds might disagree about inferences to be drawn from the evidence, the reviewing court is not free to interfere with the [agency's] findings."[82] The question of whether an injury is "a new and separate injury or one aggravated by the previous injury is a judgment call."[83] "[J]udgment calls are to be left to the agency."[84]

Here, the Commissioner reiterated his finding that Streit sustained cuts and scrapes arising out of and in the course of his employment and stated that medical records demonstrated Streit had a MRSA infection.[85] The Commissioner further noted Dr. James Comstock's opinion that Streit "likely contracted his MRSA infection through cuts and abrasions on his skin."[86] The Commissioner acknowledged Dr. John Kuhnlein believed Streit failed to prove his MRSA infection was work-related because there was no evidence in the record that MRSA was found at the jobsite.[87] However, Dr. Kuhnlein also opined that it is a "reasonable presumption" that Streit contracted MRSA through the abrasions and cuts on his skin.[88]

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[78] *Second Injury Fund v. Greenman*, 725 N.W.2d 658 (Table), 2006 WL 3017955, at *2 (Iowa Ct. App. Oct. 25, 2006).

[79] *Des Moines Pub. Schs. v. Hildreth by Hildreth*, 965 N.W.2d 196 (Table), 2021 WL 2452066, at *4 (Iowa Ct. App. June 16, 2021) (quoting *Pease*, 807 N.W.2d at 844–45).

[80] *Sherman*, 576 N.W.2d at 321 (citing *Bodish*, 133 N.W.2d at 870).

[81] *Hildreth by Hildreth*, 2021 WL 2452066, at *4 (citing Iowa Code § 17A.19(10)(f)).

[82] *Armstrong v. State of Iowa Bldgs. and Grounds*, 382 N.W.2d 161, 166 (Iowa 1986).

[83] *Milbourne*, 2003 WL 555872, at *2. *See also Greenman*, 2006 WL 3017955, at *3 (same).

[84] *Harpole*, 621 N.W.2d at 418 (quoting *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993)).

[85] Agency R. Part 1, p. 28.

[86] *Id.* (citing Ex. 7, p. 2).

[87] *Id.* (citing Ex. 2).

[88] *Id.* (quoting Ex. 2, p. 17).

Regarding the other expert opinions, the Commissioner noted that Dr. Sudhir Kumar was unable to determine if Streit's MRSA infection was work-related, and Dr. Kevin Cunningham believed there was inadequate evidence to conclude MRSA was connected to Streit's work because Streit's work was not considered a high-risk occupation for MRSA.[89] Drs. Kumar and Cunningham gave no opinion on Streit contracting MRSA through his cuts and abrasions.[90]

After reviewing the record and all expert opinions, the Commissioner concluded as follows:

> It does not matter if claimant contracted MRSA at the workplace. As noted, it has been found that claimant had work-related cuts, scratches, and abrasions. Two experts opine that it was reasonable or likely that claimant contracted MRSA through the abrasions and cuts on his skin. Given this record, claimant has carried his burden of proof his MRSA infection is a sequela to the cuts and abrasions claimant sustained at work. Given this record, claimant has carried his burden of proof his MRSA infection arose out of and in the course of employment.[91]

As the fact finder, it is the Commissioner's duty to "determine[] the weight to be given to any expert testimony."[92] "It is not the role of the court to reassess the evidence or make its own determination of the weight to be given the various pieces of evidence."[93] "Evidence is not insubstantial merely because different conclusions may be drawn from the evidence."[94] "Under chapter 17A, a court's task on judicial review is not to determine whether the evidence might support a particular factual finding; rather, it is to determine whether the evidence supports the finding made."[95] "An agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence."[96]

Petitioners' secondary assertion is that the Commissioner erred in finding Streit's MRSA infection is a sequela to the cuts and scrapes he sustained at work because Streit's

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[89] *Id.* at pp. 28–29 (citing Ex. A and B).

[90] *Id.* at p. 29.

[91] *Id.*

[92] *Sherman*, 576 N.W.2d at 321.

[93] *Cargill Meat Sols. Corp. v. DeLeon*, 847 N.W.2d 612 (Table), 2014 WL 1496091, at *4 (Iowa Ct. App. Apr. 16, 2014) (citing *Burns*, 495 N.W.2d at 699).

[94] *Pease*, 807 N.W.2d at 845.

[95] *Burton*, 813 N.W.2d at 263–64.

[96] *Milbourne*, 2003 WL 555872, at *2 (citing *Harpole*, 621 N.W.2d at 418).

history of picking at sores and lesions from abrasions[97] is an intervening independent cause of the infection:

> Once a work injury has been established, an injured employee, as a general rule, may recover compensation for a new injury or an aggravation of an injury . . . if there is no intervening independent cause to break the chain of causation between the new injury or aggravation of the original injury.[98]

According to Petitioners, "[e]ven if it is assumed the cuts and scrapes themselves were work related, Streit intervened by picking at them in a way that would allow the MRSA infection to enter his body."[99] Petitioners assert the MRSA infection cannot be a sequela injury if Streit himself was an intervening cause of the infection.[100] Petitioners further contend the Commissioner's decision should be reversed because "[e]ven assuming Streit's cuts and scrapes were related to his work, they were not significant enough to alone" constitute a "compensable injury."[101] Thus, Petitioners argue there is no initial compensable injury for which Streit's MRSA infection could be a sequela.[102]

The Court finds these additional arguments are without merit. Based on the foregoing discussion and review of the record, the Court concludes the Commissioner's finding that Streit met his burden to prove by a preponderance of the evidence that his MRSA infection was a sequela of the cuts and scrapes sustained at work was supported by substantial evidence.[103]

B. Whether the Commissioner Erred in Holding that Streit is Entitled to Temporary Disability Benefits from October 13, 2012 to April 1, 2013

Petitioners contend that the Commissioner erred in finding that Streit is entitled to temporary disability benefits from October 13, 2012 to April 1, 2013.[104] Petitioners rely on their previous argument that Streit did not suffer a work-related injury.[105] As the Court concluded in Section III(A) of this Order, the Commissioner did not err in finding that Streit

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[97] *See* Agency R. Part 1, p. 202.

[98] Pet'rs' Br. p. 14 (quoting *Dunlap v. AIG, Inc.*, 927 N.W.2d 201 (Table), 2019 WL 14101 at *5 (Iowa Ct. App. Jan. 9, 2019)).

[99] *Id.* at p. 15.

[100] *Id.*

[101] *Id.* (citing *Oldham*, 266 N.W. at 482).

[102] *Id.*

[103] Iowa Code §§ 17A.19(10)(f).

[104] Pet'rs' Br. p. 18.

[105] *Id.* (citing arguments made in Part I).

met his burden to prove that he sustained an injury arising out of and in the course of his employment, the Court declines to address these arguments again.

Petitioners raise the additional argument that Streit did not prove his entitlement to temporary disability benefits because Streit was the owner and operator of Streit Construction, Inc., and "continued to reap the benefits of ownership of the company" during the time he was not working following his October 13, 2012 injury.[106] However, Petitioners provide no authority (controlling or otherwise) to support this assertion, and the Court, therefore, concludes it is without merit.

Iowa Code section 85.34(1) provides that an employer shall compensate an employee who suffers permanent partial disability "beginning on the first day of disability after the injury" until the employee: 1) has returned to work; 2) has achieved maximum medical recovery; or 3) is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury (whichever occurs first).[107] Here, the Commissioner noted that the parties stipulated in the hearing report that Streit was off work from October 13, 2012 through April 1, 2013, at which point Streit returned to work on a part-time basis.[108] Streit first sought medical treatment on October 14, 2012.[109] Given these facts, the Commissioner did not err in holding that Streit is entitled to temporary disability benefits from October 13, 2012 to April 1, 2013.

C. Whether the Commissioner Erred in Finding that Streit is Entitled to Permanent Partial Disability Benefits as a Result of the Alleged October 13, 2012 Injury

Petitioners renew their argument that Streit failed to prove by a preponderance of the evidence that he sustained an injury on October 13, 2012, arising out of and in the course of his employment, and thus assert that Streit cannot be entitled to permanent partial disability benefits.[110] As the Court concluded in Section III(A) of this Order, the Commissioner did not err in finding that Streit sustained a work injury. The Court will not address these arguments again.

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[106] Pet'rs' Br. p. 18.

[107] Iowa Code § 85.34(1).

[108] Agency R. Part 1, p. 29. *See also* Agency R. Part 2, p. 192 (hearing report).

[109] *See* Agency R. Part 1, pp. 165–68 (medical records from October 14, 2012, admittance to Trinity Regional Medical Center).

[110] Pet'rs' Br. p. 19.

Alternatively, Petitioners contend that even if Streit met his burden to demonstrate he sustained a work injury, he is still not entitled to permanent partial disability. Petitioners assert that Dr. Kumar, Dr. David Boarini, and Dr. David Hatfield did not issue any type of permanent work restrictions for Streit.[111] Petitioners further contend that although Dr. Kuhnlein recommended work restrictions, "[t]hese restrictions would be in effect regardless of whether this is determined to be a work related condition . . . ."[112] Petitioners point out that Streit continued to own and operate Streit Construction, Inc., as well as continued to perform the same types of construction work he was performing prior to October 2012.[113] According to Petitioners, Streit was paid more on an hourly basis at the time of the hearing than he was earning at the time of the October 13, 2012 injury.[114] Therefore, under Petitioners' logic, the Commissioner incorrectly interpreted and applied the law, and there was not substantial evidence in the record to support the Commissioner's decision.

The Commissioner found that since Streit "has an impairment to the body as a whole, an industrial disability has been sustained."[115] The relevant question in determining a claimant's industrial disability is "the extent to which the injury reduced [the claimant's] earning capacity."[116] As observed by the Iowa Supreme Court, "[b]odily impairment is merely one factor in gauging industrial disability."[117] "Other factors include the worker's age, intelligence, education, qualifications, experience, and the effect of the injury on the worker's ability to obtain suitable work."[118]

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[111] *Id.* (citing Agency R. Part 1, pp. 280–81, 285–89 (Ex. A, C, and D)).

[112] *Id.* (citing Agency R. Part 1, p. 259).

[113] *Id.* at pp. 19–20 (citing Agency R. Part 1, p. 129 (Hr'g Tr. 88:14–25)).

[114] *Id.* at p. 20 (citing Agency R. Part 1, pp. 131–32 (Hr'g Tr. 90:16–25, 91:1–19)).

[115] Agency R. Part 1, p. 29.

[116] *Thilges v. Snap-On Tools Corp.*, 528 N.W.2d 614, 616 (Iowa 1995) (alteration in original) (quotation omitted). *See also Shank*, 516 N.W.2d at 813 ("Industrial disability goes beyond body impairment and measures the extent to which the injury impairs the employee's earning capacity."); *Guyton v. Irving Jensen Co.*, 373 N.W.2d 101, 103 (1985) ("Industrial disability means reduced earning capacity.").

[117] *Guyton*, 373 N.W.2d at 103.

[118] *Id. See also Al-Gharib*, 604 N.W.2d 621, 632–33 (Iowa 2000) (providing a more extensive list of the factors an agency considers in determining industrial disability); *Shank*, 516 N.W.2d at 813 (stating the factors an agency should consider include "age, education, qualifications, experience, and the ability of the employee to engage in employment for which the employee is fitted"); *Doerfer Div. of CCA v. Nicol*, 359 N.W.2d 428, 438 (Iowa 1984).

"The issue of industrial disability is a mixed question of law and fact."[119] "In reviewing an agency's finding of fact for substantial evidence, courts must engage in a 'fairly intensive review of the record to ensure that the fact finding is itself reasonable.'"[120] However, "[e]vidence is not insubstantial merely because different conclusions may be drawn from the evidence."[121] "Under chapter 17A, a court's task on judicial review is not to determine whether the evidence might support a particular factual finding; rather, it is to determine whether the evidence supports the finding made."[122] Additionally, "[b]ecause the challenge to the agency's industrial disability determination challenges the agency's application of law to facts, [courts] will not disrupt the agency's decision unless it is 'irrational, illogical, or wholly unjustifiable.'"[123] In clarifying the standard under section 17A.19(10)(m), the Iowa Supreme Court has adopted the following definitions: "A decision is 'irrational' when it is 'not governed by or according to reason' . . . A decision is 'illogical' when it is 'contrary to or devoid of logic' . . . A decision is 'unjustifiable' when it has no foundation in fact or reason."[124]

In the Remand Decision, the Commissioner noted that Streit was 54 years old at the time of the hearing, has a high school education, studied construction for one year at a technical school, and spent most of his life working construction.[125] The Commissioner stated that according to the record, prior to his work injury, Streit "worked 132 hours, on average, every two weeks."[126] However, after the injury, Streit worked an average of 49 hours every two weeks in 2013 and an average of 44 hours every two weeks in 2014.[127] Based on this evidence, the Commissioner concluded, "since contracting MRSA, [Streit's] work hours have decreased over 50 percent."[128]

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[119] *Jack Cooper Transp. Co., Inc. v. Jones*, 883 N.W.2d 538 (Table), 2016 WL 1358659, at *3 (Iowa Ct. App. Apr. 6, 2016) (citing *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 525 (Iowa 2012)).

[120] *Neal*, 814 N.W.2d at 525 (quoting *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)). *See* Iowa Code § 17A.19(10)(f).

[121] *Pease*, 807 N.W.2d at 845.

[122] *Burton*, 813 N.W.2d at 263–64.

[123] *Neal*, 814 N.W.2d at 526 (citing *Larson Mfg. Co., Inc. v. Thorson*, 763 N.W.2d 842, 856 (Iowa 2009)). *See* Iowa Code § 17A.19(10)(m).

[124] *Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 432 (Iowa 2010) (citations omitted).

[125] Agency R. Part 1, p. 30.

[126] *Id.* (citing Ex. 4).

[127] *Id.*

[128] *Id.*

The Commissioner also found Dr. Kuhnlein's findings credible and persuasive. In his report, Dr. Kuhnlein opined that Streit had a seven percent permanent impairment of the body as a whole, and he limited Streit to lifting 40 pounds occasionally and only bending, crawling, squatting, or kneeling occasionally.[129] Therefore, the Commissioner adopted these expert findings and concluded, "[w]hen all relevant factors are considered, it is found that [Streit] sustained a 50 percent loss of earning capacity or industrial disability as a result of the work injury."[130]

"It is not the role of the court to reassess the evidence or make its own determination of the weight to be given the various pieces of evidence."[131] Rather, as the factfinder, it is the agency's role to "determine[] the weight to be given to any expert testimony" and "the credibility of witnesses . . . ."[132] "The reviewing court only determines whether substantial evidence supports a finding 'according to those witnesses whom the [commissioner] believed.'"[133] Iowa courts "will not interfere with an agency's decision when reasonable minds might disagree or there is a conflict in the evidence."[134]

Based on the preceding discussion and a thorough review of the record, this Court concludes that the Commissioner's conclusion that Streit is entitled to permanent partial disability benefits as a result of the October 13, 2012 work injury is supported by substantial evidence.[135] Furthermore, nothing in the Commissioner's findings were irrational, illogical, or wholly unjustifiable.[136]

D. Whether the Commissioner Erred in Holding that Streit is Entitled to Medical Expenses Pursuant to Iowa Code § 85.27

Petitioners renew their argument that Streit failed to prove by a preponderance of the evidence that he sustained an injury on October 13, 2012, arising out of and in the course

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[129] *Id.* (citing Ex. 2, pp. 19–20). *See also id.* at p. 26.

[130] *Id.* at p. 30.

[131] *Cargill Meat Sols. Corp.*, 2014 WL 1496091, at *4 (citing *Burns*, 495 N.W.2d at 699).

[132] *Sherman*, 576 N.W.2d at 321; *Arndt*, 728 N.W.2d at 394–95 (citation omitted).

[133] *Arndt*, 728 N.W.2d at 395 (alteration and emphasis in original) (quoting *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996)).

[134] *Tony's Tap, Inc. v. Dep't of Com., Alcoholic Beverages Div.*, 705 N.W.2d 105 (Table), 2005 WL 1397515, at *3 (Iowa Ct. App. June 15, 2005) (citing *Organic Techs. Corp. v. Iowa Dep't of Nat. Res.*, 609 N.W.2d 809, 815 (Iowa 2000)).

[135] Iowa Code § 17A.19(10)(f).

[136] Iowa Code § 17A.19(10)(m).

of his employment, and thus assert that Streit cannot be entitled to medical expenses.[137] As the Court concluded in Section III(A) of this Order, the Commissioner did not err in finding that Streit sustained a work injury, the Court will not address these arguments in depth.

However, Petitioners raise the additional arguments that the expert medical opinions of Dr. Kumar (Ex. A), Dr. Boarini (Ex. C, pp. 1-2), Dr. Cunningham (Ex. B), and Dr. Kuhnlein (Ex. 2) established that Streit's injury from October 13, 2012, did not arise out of and in the course of his employment.[138] Therefore, Petitioners assert there was not substantial evidence in the record to support the Commissioner's finding that Streit is entitled to medical benefits, including past medical expenses and medical mileage.[139]

Iowa Code section 85.27 provides that for all injuries compensable under chapter 85, the employer "shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services."[140] Streit sought compensation for various medical expenses included in his Exhibits 3 and 6. Exhibit 3 is a chart of costs for services, such as hospital/clinic visits and lab work from October 14, 2012 through February 13, 2014.[141] Each item includes the date, provider, summary of the service, and the amount billed.[142] Exhibit 6 is a list of travel expenses related to trips to hospitals and clinics from October 14, 2012 through January 6, 2015.[143] Each item includes the date, provider, the provider's address, roundtrip miles, mileage reimbursement, and the total cost.[144]

The Commissioner found that Streit met his burden to prove he suffered a compensable injury under chapter 85. The Commissioner also noted there was no evidence these bills were not causally connected to the work injury, nor was there any evidence that the costs related to the treatment are not fair and reasonable.[145] The Commissioner, therefore, concluded Petitioners are liable for the costs, including medical mileage, as

[137] Pet'rs' Br. p. 20.
[138] *Id.*
[139] *Id.* at pp. 20–21.
[140] Iowa Code § 85.27(1).
[141] Agency R. Part 1, pp. 262–64.
[142] *Id.*
[143] *Id.* at pp. 270–74.
[144] *Id.*
[145] Agency R. Part 1, pp. 30–31.

detailed in Streit's Exhibits 3 and 6.[146] The Commissioner's decision was supported by substantial evidence in the record.

E. Whether the Commissioner Erred in Finding that Streit is Not Entitled to Reimbursement for Dr. Kuhnlein's IME Pursuant to Iowa Code § 85.39

Lastly, Petitioners assert that the Commissioner did *not* err in finding that Streit is not entitled to reimbursement for Dr. Kuhnlein's IME pursuant to Iowa Code section 85.39.[147] The only opinion in the record regarding permanent impairment is by Dr. Kuhnlein, an expert retained by Streit. As such, Streit is not entitled to reimbursement from Petitioners for the cost of Dr. Kuhnlein's IME.[148] Streit does not challenge this finding.[149] However, Streit does argue he is entitled to the cost of Dr. Kuhnlein's written report ($1,400.00) pursuant to administrative rule 876–4.33.[150]

In the Remand Decision, the Commissioner acknowledged that the Iowa Supreme Court "noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an [IME], a claimant can still be reimbursed at hearing for the costs associated with the preparation of the written report as a cost under 876 IAC 4.33."[151] In the final order, the Commissioner merely stated that Petitioners "shall not be liable for reimbursement to claimant for the costs associated with Dr. Kuhnlein's IME."[152] Petitioners assert that Streit has never argued that he was entitled to this cost pursuant to rule 4.33. The Commissioner did not award Streit the cost of Dr. Kuhnlein's IME report. Streit did not appeal this issue.[153]

"Costs are to be assessed at the discretion of the deputy commissioner or the workers' compensation commissioner hearing the case unless otherwise required by the Iowa Rules of Civil Procedure governing discovery."[154] The Court sees no reason to disturb the findings

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[146] Agency R. Part 1, p. 31.

[147] Pet'rs' Br. p. 21.

[148] Agency R. Part 1, p. 31.

[149] Resp't's Br. p. 31.

[150] *Id.*

[151] Agency R. Part 1, p. 31 (citing *Des Moines Area Reg'l Transit Auth. v. Young*, 867 N.W.2d 839, 846–47 (Iowa 2015)).

[152] *Id.* at p. 32.

[153] Pet'rs' Reply Br. p. 7.

[154] Iowa Admin. Code r. 876-4.33.

of the Commissioner as to the cost of Dr. Kuhnlein's written IME report and, therefore, denies Streit's request for reimbursement.

ORDER

IT IS THEREFORE ORDERED, and for all the reasons stated herein, the Commissioner's decision should be and is hereby AFFIRMED.

IT IS FURTHER ORDERED Petitioners' Petition for Judicial Review should be and is hereby DENIED and DISMISSED. Costs to Petitioners.

So Ordered.

State of Iowa Courts

Case Number	**Case Title**
CVCV062277	STREIT CONSTRUCTION INC ET AL VS KENNETH STREIT
Type:	OTHER ORDER

So Ordered

David Porter, District Court Judge,
Fifth Judicial District of Iowa

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