IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

KATHY IRWIN, Petitioner, vs. CATHOLIC HEALTH INITIATIVES IOWA CORP. d/b/a MERCY MEDICAL CENTER DES MOINES, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Respondent.	**Case No. CVCV056923** **RULING ON PETITION FOR JUDICIAL REVIEW**

This matter came before the court on March 29th, 2019 for a hearing before the District Court on review of the Workers Compensation Commission decision. Petitioner Kathy Irwin was represented by attorney Steve Hamilton. Respondents Catholic Health Initiatives Iowa Corp. and Indemnity Insurance Company of North America were represented by attorneys Valerie Foote and Brittany Steele. Upon review of the court file and the applicable law, the court enters the following order.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

Petitioner, a seventy-two (72) year old former nurse, was born and raised in Des Moines. She received her nursing license from the Des Moines School of Practical Nursing (precursor to DMACC) in 1964. Petitioner worked full-time for CHI while earning her degree. After graduation, Petitioner transitioned into a full-time job as a nurse at Mercy Medical Center's neurology department, where she worked until 1969. Petitioner stood and walked seven- (7) to eight- (8) hours per day. Her work also included a substantial amount of lifting and moving patients. After Petitioner's shift completed, she would stay after-hours to complete her charting.

At the birth of her second child in 1969, Petitioner left the neurology department. Due to complications with the birth, Petitioner was required to take extra time off of work. She had to quit working for CHI and was required to re-apply. She was re-hired in 1970 and began working full-time as a general or circulation nurse. Her duties here consisted of general nursing services, serving as a 'fill-in'. She would be assigned to whatever department needed help and to perform a variety of duties. She was on her feet approximately seven (7) to eight (8) hours per day and worked five (5) days per week.

In 1975, Petitioner transferred to the Mercy Medical Center neonatal intensive care unit ('NICU'). She worked in the NICU until 1999. While in the NICU, she spent six (6) hours a day (out of an eight (8) hour shift), five (5) days a week standing and walking on hard floors and carpet. She also was occasionally assigned to the normal nursery, where she could sit and rock the infants as opposed to being on her feet.

In 1991, Petitioner suffered a work injury at CHI when she was struck by a falling monitor. She underwent surgery for a left rotator cuff repair, carpal tunnel release, and an ulnar tunnel release. Petitioner received worker's compensation benefits for this procedure.

During her time in the NICU, Petitioner suffered a torn meniscus from a non-work related injury while doing CPR education. She underwent an arthroscopic procedure in March 1995. She returned to work in July 1995. She underwent a follow-up procedure in September, 1995. During her visit with Dr. Blessman on September 26, 1995, Petitioner requested a referral to Iowa Ortho. Employee Health authorized one visit with Dr. Boulden to try to help with a flare-up of the pre-existing knee injury. On October 3, 1995, Dr. Boulden sent the following letter to Dr. Blessman.

> When I last saw Kathy Irwin, she had aggravated her arthritis in her knee, and we treated her with another shot of cortisone. She says the knee has not

> responded as well this time because she has had to be a lot more active and on her feet more often.
>
> We discussed this with her. I told her standing and being on her feet more, gives her more of a chance to have problems with her knee. I told her if there are ways for her to stay away from weight bearing, then this will be [sic] probably be to her advantage. I have told her to watch the progressive squatting, kneeling, stairs, and prolonged standing. If they can find her a different type of nursing that will alleviate some of this, then she probably will be better off on a long-term basis.
>
> I have recommended to see her back as clinically indicated. I have also discussed the fact that she will need a total knee replacement someday in the future but not at this point.

Irwin denied speaking with Dr. Blessman about her knees. Irwin requested a follow-up appointment with Mercy Iowa Occupational Medicine Clinic on November 7, 1995. Petitioner did not pursue workers' compensation benefits after this incident.

Over time Petitioner was switched from eight-hour (8) days to twelve-hour (12) days in the NICU. Petitioner determined these shifts kept her from her family too frequently and began to transition from working in a hospital to a clinic setting. She eventually took a job at a Mercy Clinic known as "Hilltop" in 1998, where she remained until 2004. She worked approximately six (6) hours per day, though she did regularly stay after hours to complete her charting. She was also occasionally required to stay late to work at the clinic's urgent care clinic. Her regular working hours were from about 8 a.m. to about 4:30 p.m., but she would typically stay until about 6 p.m. to complete her charting or until about 7 or 8 p.m. when working in the urgent care clinic. While working at Hilltop, Petitioner regularly engaged in standing, stooping, bending, and kneeling.

Petitioner was employed at Hilltop until approximately 2004 or 2005, when Mercy moved all of their employees from the Hilltop location to Mercy East. At Mercy East, Petitioner worked a minimum of ten (10) hours per day, four (4) days per week. She spent time sitting at a desk throughout the course of the day. She worked at this job until 2012.

From 1995 to 2012, Petitioner suffered progressively worse knee pain. She reported to knee condition to HR but not to employee health. She had successive knee arthroplasties on August 20 and October 8, 2012. She was released to return to work on February 1, 2013, when she was informed there was no job for her.

On June 9, 2015, Petitioner filed a petition in arbitration alleging she sustained injuries to her knees and lower extremities while working for Respondent, Catholic Health Initiatives d/b/a Mercy Medical Center Des Moines ("CHI"). Respondent Indemnity Insurance Company of North America ("Indemnity Insurance") filed an answer on July 15, 2015. Respondent Indemnity Insurance filed an amended answer on March 22, 2016.

On March 23, 2016, Petitioner saw Dr. Matthes, who stated that he was familiar with Petitioner's job duties as a triage nurse and LPN. Dr. Matthes did not believe that Petitioner's job duties were a substantial and material factor leading to Petitioner's bilateral total knee arthroplasties.

Petitioner saw Dr. Charles Mooney on April 20, 2016. He diagnosed Petitioner with longstanding arthroplasty of the bilateral knees and degenerative changes of the metatarsophalangeal joints of the bilateral feet. He indicated Petitioner's injuries were either caused or exacerbated by Petitioner's working conditions, and indicated she sustained a permanent partial impairment of 37% to the right lower extremity and 50% to the left lower extremity.

Petitioner underwent a final examination with Dr. Sunil Bansal on June 3, 2016. He indicated Petitioner's job duties over the duration of her employment with Mercy were a significant contributing factor to the aggravation of her bilateral knee degenerative joint disease.

An arbitration hearing was held before Deputy Workers' Compensation Commissioner Heather Palmer ("Deputy Palmer") on August 16, 2016. An Arbitration Decision was filed on December 20, 2016, determining that while Petitioner had sustained a compensable injury to her bilateral knees on February 1, 2012, from her employment with CHI, she failed to file her petition within the two-year (2) statute of limitations. Her claim was dismissed.

She appealed the Arbitration Decision to the Iowa Workers' Compensation Commissioner Joseph S. Cortese II ("the Commissioner") on January 3, 2017, claiming that Deputy Palmer erred in finding Petitioner failed to timely file her Petition within the statute of limitations. Respondents cross appealed on January 12, 2017, claiming Petitioner failed to prove a compensable work injury. The Appeal Decision filed August 1, 2018, affirmed Deputy Palmer's findings and conclusions.

Petitioner filed her Petition for Judicial Review with the Polk County District Court on August 29, 2018. She argued that the Commission's finding that her claim was barred by the statute of limitations was in error. Respondents answered the petition on September 18, 2018, while simultaneously filing a Cross-Appeal regarding whether Petitioner sustained a compensable work injury.

II. STANDARD OF REVIEW

Iowa Code Chapter 17A, the Iowa Administrative Procedure Act, governs judicial review of final agency action. "Under the Act, [the court] may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). In exercising the power of judicial review, the district court acts in an appellate capacity. Nance

v. Iowa Dept. of Revenue, 908 N.W.2d 261 (Iowa 2018) (quoting Mycogen Seeds v. Sands, 686 N.W.2d 457, 463 (Iowa 2004)).

Under Iowa Code section 17A.19 (10), [the] standard of review may change on a case-by-case basis depending on the basis for the administrative agency's decision. See Burton v. Hilltop Care Center, 813 N.W.2d 250, 256 (Iowa 2012) (citing Mycogen Seeds v. Sands, 686 N.W.2d 457, 465 (Iowa 2004)). "If an agency has been clearly vested with the authority to make factual findings on a particular issue, then a reviewing court can only disturb those factual findings if they are 'not supported by substantial evidence in the record before the court when that record is reviewed as a whole'." Iowa Code § 17A.19 (10) (f) (2018); see also *Meyer,* 710 N.W.2d at 218. "This review is limited to the findings that were actually made by the agency and not other findings that the agency could have made." *Meyer,* 710 N.W.2d at 218.

Where an agency has been clearly tasked with the power to make determinations of fact, "it follows that application of the law to those facts is likewise 'vested by a provision of law in the discretion of the agency'." Burton, 813 N.W.2d at 256. Where the agency has been clearly vested with the authority to make factual determinations and apply fact to law, "…a reviewing court may only disturb the agency's application of the law to the facts of the particular case if that application is 'irrational, illogical, or wholly unjustifiable'." See Iowa Code §17A.19 (m) (2018).

Where the reviewing court is asked to review an agency's interpretation of law, the court affords the agency a level of deference dependent on whether the authority to interpret that law has "clearly been vested by a provision of law in the discretion of the agency." Burton at 256. "If the agency has NOT been clearly vested with the authority to interpret a provision of law…then the reviewing court must reverse the agency's interpretation if it is erroneous." Id.

III. MERITS

1. Did Petitioner suffer an injury arising out of and in the course of her employment with Respondent?

Respondent argues that the injury claim is not supported by substantial evidence in the record. Specifically, Respondent claims that while Petitioner did complain of knee injuries, the knee pain was not related to her work at Respondent-Employer. They further argue that as of 2004, Petitioner transitioned into a less strenuous role with Mercy East, where they allege Petitioner spent most of her time sitting at a desk engaged in non-strenuous activities. Petitioner argues that the injury occurred over the course of Petitioner's nearly fifty (50) year tenure with Respondent. The Commissioner affirmed the Deputy Palmer's finding that Petitioner's injury arose out of and in the course of her employment with Respondent.

A cumulative injury (as in this case) is deemed to have occurred when it manifests – and manifestation is that point in time when "both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person". See Baker v. Bridgestone/Firestone, 872 N.W.2d 672 at 680-681 (Iowa 2015); see also Herrera v. IBP, Inc., 633 N.W. 284, 288 (Iowa 2001). A cumulative injury results from repetitive trauma in the workplace. Larson Mfg. Co. Inc. v. Thorson, 763 N.W.2d 842, 851 (Iowa 2009). As this is an issue of fact, the court gives substantial deference to the agency's findings of fact if the agency is empowered to make factual determinations. Iowa Code §17A.19 (10) (f) (2018). "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." Meyer, 710 N.W.2d at 219. "This review is limited to the findings that were actually made by the agency and not other findings that the agency could have made." Id at 218. Substantial evidence is defined as "…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 (f) (1) (2018).

Here, Deputy Palmer found, and the Commissioner independently confirmed on de novo review, that Petitioner's injury occurred arose out of their duties with Respondent. Deputy Palmer gave particular weight to findings by Dr. Bansal, finding that some of the activities Petitioner engaged in during work (pushing wheelchairs, lifting patients, etc.) caused Petitioner's injuries. Respondent argues that the Commission erred in finding Dr. Bansal's testimony credible. Deputy Palmer specifically noted that Dr. Mooney recognized Petitioner's forty-plus years of walking, standing, lifting, and other strenuous activities. The Commission was entitled to believe Dr. Bansal's testimony concerning the nature of Petitioner's work as it is similar to Petitioner's own description of her job duties. They were also entitled to discount Dr. Mooney's finding that forty years of standing, walking, lifting, and other strenuous activities at work does not equal sufficient evidence of occupational standing, walking, and lifting. Deputy Palmer was entitled to give more weight to Dr. Bansal's testimony that, over the course of Petitioner's fifty (50) year employment with Respondent, the wear and tear of employment could give rise to Petitioner's injuries. The Commission is empowered to consider expert testimony when determining whether there is a direct causal connection with the employment and injury, or whether the injury arose independent of the employment. See Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 464-465 (Iowa 1969). The weight to be given such an opinion is for the finder of fact, in this case the commissioner, and that may be affected by the completeness of the premise given the expert and other surrounding circumstances. Id. Deputy Palmer was unclear

what information Dr. Mooney received regarding Petitioner's employment but found it counter to the record.

Further, Petitioner testified as to the strenuous activities she was required to engage in. The record indicates that for the overwhelming majority of her career, Petitioner was on her feet for at least six (6) to eight (8) hours per day during which she was regularly engaged in strenuous activities such as lifting, stooping, standing, and walking. The commission was empowered to find substantial evidence that Petitioner's injury arose out of and in the course of her employment. Based on the record as presented, a neutral, detached, and reasonable person could find that Petitioner's injuries arose out of and as a result of her employment. As such, the commission's decision is AFFIRMED.

2. Is Petitioner's Claim Blocked by the Statute of Limitations?

The parties agree that there are two potential limitations periods but that only one applies here. If weekly benefits are paid, the limitation period is three years from the last payment of a weekly benefit. Iowa Code §85.26 (1) (2017). Where no weekly benefits are paid, the applicable statute of limitations is two years from the occurrence of the injury. Id. Here, no weekly benefits were paid in this claim, so the two-year statute of limitations applies.

Statute of limitations issues are reviewed for correction of errors at law. Larson Mfg. Co. Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009). In Iowa workers' compensation cases, cumulative injuries are determined to have manifested when the claimant would be plainly aware (1) that he or she suffers from a condition or injury, and (2) that this condition or injury was caused by the claimant's employment. Herrera at 288. The statute of limitations does not begin until claimant knows or should recognize the "nature, seriousness, and probable compensable character of their injury." See Baker, 872 N.W.2d at 680-681. As noted earlier, a cumulative injury occurs when it

manifests – and manifestation is that point in time when "both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person". See Baker at 680-681; see also Herrera, 633 N.W. at 288. "[T]he preferred analysis is to first determine the date the injury is deemed to have occurred ..., and then to examine whether the statutory [limitations] period commenced on that date or whether it commenced upon a later date based upon application of the discovery rule." Baker, at 681 (citing Herrera at 288).

The discovery rule mandates that "…the injury occurs when it is discovered". Swartzendruber v. Schimmel, 613 N.W.2d 646, 649 (Iowa 2000). Under the discovery rule, the two-year limitation period "does not begin to run until the employee discovers, or should discover in the exercise of diligence, the nature, seriousness, and probable compensable character of the injury or disease. Id at 650. The claimant's actual or imputed knowledge of all three injury characteristics must occur before the statute begins to run. Id. The claimant's knowledge is tested under a standard of reasonableness. Id. "The need to investigate arises when a reasonable person has knowledge of the *possible* compensability of the condition." Id. Substantial evidence is the standard required to support a finding that claimant knew the nature, seriousness, and probable compensable character of her injury. Herrera at 288. Claimant's exact knowledge of the seriousness of the injury is not a requirement. Swartzendruber at 651. "[I]f it is reasonably possible and injury is serious enough to be compensable as a disability, the seriousness component of the test is satisfied." Id. The court "…refrain[s] from pinpointing any specific event to establish the seriousness of an injury, such as going to a physician or missing work. Id. Although these events are relevant, [the court] consider[s] all facts and circumstances in resolving the issue. Id.

The question here is when the injury discovery occurred, as the date of discovery determines when the statute of limitations period begins to run. The Deputy Palmer found that the injury to the Petitioner's bilateral knees occurred on February 1, 2012. The Commissioner affirmed this determination. They further determined that the Petitioner knew or should have known of the seriousness of her injury on October 8, 2012, at the time she underwent her second arthroplasty.

Under these facts, Petitioner's petition would have been due on or before October 8, 2014. Petitioner filed her petition for arbitration June 9, 2015, well after the statute of limitations closed. The record indicates Petitioner knew of her knee issues all the way back in 1995. She underwent a number of procedures specifically related to mitigating and managing the pain in her knees. She received bilateral knee replacement in 2012. On at least one occasion, Petitioner indicated she needed to get her treatments approved by workers' compensation. She has had multiple surgical procedures on her right knee. She was informed her knee was arthritic all the way back in 1995. She was complaining of knee pain from 1995 all the way through her double arthroplasty. By the time her second knee deteriorated to the point of needing a total replacement, Petitioner should have become aware that something certainly was not right in her knees. The Commission was entitled to find that Petitioner should have known about the nature and seriousness of her injuries.

Given that the record gives substantial evidence sufficient to warrant the decision Deputy Palmer made (and the Commissioner affirmed), this Court AFFIRMS the Commissioner's decision.

IV. CONCLUSION

The Commissioner's determination of an injury arising out of and in the course of employment is AFFIRMED. The Commissioner's determination of the passing of the statute of limitations is also AFFIRMED. Petitioner's appeal is DISMISSED.

Costs are taxed to Petitioner.

State of Iowa Courts

Type: OTHER ORDER

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CVCV056923	KATHY IRWIN VS CATHOLIC HEALTH INITIATIVES ET AL

So Ordered

Robert B. Hanson

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