

IN THE IOWA DISTRICT COURT FOR POLK COUNTY**SAIDE BOTELLO-DESILVA,****Petitioner,****v.****IAC IOWA CITY LLC, and
AMERICAN ZURICH INS. CO.,****Respondents.****Case No. CVCV056464****RULING ON PETITION
FOR JUDICIAL REVIEW**

On September 21, 2018, the court heard oral argument on this Petition for Judicial Review. Attorney Andrew Bribriesco appeared by telephone on behalf of the Petitioner, Saide Botello-Desilva. Attorney James Ballard appeared on behalf of the Respondents, IAC Iowa City LLC and American Zurich Insurance Co. The court, after considering the administrative record and arguments of both parties in their briefs and at the hearing, enters the following ruling on the Petition.

Petitioner seeks judicial review of an Arbitration Decision of the Workers' Compensation Commissioner finding that she sustained a permanent right knee injury which entitled her to only 4.4 weeks of permanent partial disability ("PPD") benefits. In the Arbitration Decision, the Commissioner appeared to reject Dr. Christiansen's opinion in light of the ultimate conclusion, but did not state specifically why the expert testimony was rejected. The Commissioner issued remand and rehearing decisions after this court issued a ruling on January 10, 2018, which reversed and remanded the matter to the Agency to address the expert opinion of Dr. Cory G. Christiansen, M.D and "consider all of the evidence in accordance with the law." Judicial Review p. 2-3.

In the Remand Decision, the Commissioner did address Dr. Christiansen's opinion with specificity as required by law. However, the Remand Decision by the Commissioner appears to misinterpret the scope of the remand order by the court. The Remand Decision correctly states: "[t]his agency's discretion is limited to the purposed of the remand order from the Iowa District Court." Remand Decision p. 1. But the Remand Decision continues: "[p]ursuant to the Remand Decision, the sole purpose for the remand is to demonstrate that the agency weighed or made credibility findings of Dr. Christiansen's expert opinion..." Remand Decision p. 1-2. The Remand Decision misstates the court's order. The court remanded to the Agency to consider all of the evidence and to "reconcile competing evidence." Judicial Review p. 2-3; *See also JBS Swift & Co. v. Hedberg*, 873 N.W.2d 276, 281 (Iowa Ct. App. 2015).

Following the Remand Decision, the Agency denied the Petitioner's request for a rehearing to consider additional expert opinions, including those of Dr. Robin Sassman, M.D. In its Rehearing Decision, the Commissioner again states that "the district court only ordered the agency to make findings regarding the opinions of Dr. Christiansen, not Dr. Sassman." Rehearing Decision p. 2. The Commissioner concluded that the Petitioner's request for a rehearing was untimely and beyond the scope of the remand decision.

By only including the opinion of Dr. Christiansen, the Remand Decision fails to demonstrate "the path she has taken through conflicting evidence." *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621 (Iowa 2000)(citing *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 510 (Iowa 1973)). A losing party is "entitled to a detailed statement of the commissioner's legal conclusions and the application of those conclusions upon the facts thus found." *Ward v. Iowa Dept. of Transp.*, 304 N.W.2d 236, 238 (Iowa 1981). A "losing party is plainly entitled to know

precisely what facts have been found.” *Id.* The court must return this matter to the agency to issue such a decision.

IT IS THEREFORE THE ORDER OF THIS COURT that the Decision of the Iowa Workers’ Compensation Commissioner is reversed and this matter is **REMANDED** back to the agency.



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
CVCV056464	SAIDE BOTELLO DESILVA VS IAC IOWA CITY LLC ET AL

So Ordered

A handwritten signature in black ink, appearing to read "Paul D. Scott", written over a horizontal line.

Paul D. Scott, District Court Judge,
Fifth Judicial District of Iowa