IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

BRIAN SORENSON, Petitioner, vs. T.A. BAUER, INC., Respondent, and PROTECTIVE INSURANCE COMPANY, Respondent.	FILE NO. CVCV193081 AGENCY FILE NO. 5059588 RULING ON PETITION FOR JUDICIAL REVIEW

Petitioner Brian Sorenson ("Sorenson" herein) filed a Petition in arbitration on September 11, 2017, seeking workers' compensation benefits against Respondents T.A. Bauer, Inc. and Protective Insurance Company ("Respondents" herein) for work-related injuries Sorenson suffered on July 25, 2017. On that date, Sorenson was involved in a high-speed automobile collision while driving during the course of his employment.

Prior to hearing on the Petition, the parties stipulated to a number of issues: (1) That Sorenson sustained an injury on July 25, 2017, which arose out of and in the course of his employment and which was the cause of some temporary and permanent disability, the nature and extent of which remained in dispute; (2) That Sorenson sustained some amount of permanent disability and that the commencement date for permanent payments was December 5, 2014, although the extent of such disability remained in dispute; (3) That at the time of Sorenson's injury, his gross earnings were $678.46 per

week, that he was single and entitled to one exemption, and that therefore the applicable weekly benefit rate was $418.56; and (4) That prior to the hearing, Sorenson was paid 46.857 weeks of compensation at the rate of $418.56 per week and Respondents were entitled to a credit of that amount against any award of permanent partial disability payments.

On August 26, 2019, a contested arbitration hearing was held on the disputed issues. The hearing was held before Deputy Workers' Compensation Commissioner Jennifer Gerrish-Lampe. At hearing, the parties agreed that Sorenson had sustained injuries to his right elbow and left knee as a result of the automobile accident. However, Sorenson contended that he was entitled to ongoing temporary disability benefits ("healing period" benefits) for the injury to his knee, and also that he had suffered a severe and debilitating brain injury as a result of the accident. Both of these contentions were disputed by Respondents.

On December 23, 2019, Deputy Gerrish-Lampe issued an "Arbitration Decision." Gerrish-Lampe found that Sorenson had reached maximum medical improvement ("MMI") for the injury to his left knee, and therefore was not entitled to further healing period benefits for this injury. Deputy Gerrish-Lampe also found that Sorenson had failed to meet his burden of proof that he had sustained a mental trauma and/or brain injury as a result of the automobile accident. Of note, Gerrish-Lampe specifically found that Sorenson's testimony at the hearing was inconsistent with other evidence, including Sorenson's own prior sworn testimony, and stated that "his testimony is given low weight."

Deputy Gerrish-Lampe ordered that Sorenson was entitled to 55 weeks of permanent partial disability payments at the rate of $418.56 per week from February 23, 2018; that

accrued benefits were to be paid in a lump sum; that Respondents were required to pay interest on unpaid weekly benefits; that Respondents were given credit for indemnity benefits previously paid; that Sorenson was entitled to reimbursement for certain medical expenses; and that costs of the proceeding were to be borne equally by the parties.

Sorenson appealed the ruling of Deputy Gerrish-Lampe to the Workers' Compensation Commissioner. On appeal, Sorenson argued that Gerrish-Lampe had erred in various respects. Sorenson's arguments on appeal that are germane here included: (1) That Deputy Gerrish-Lampe erred in finding that Sorenson had attained MMI for the injury to his knee; and (2) In the alternative, if the commissioner were to find that Sorenson had attained MMI, the Commissioner should find that Sorenson is permanently and totally disable due to a permanent brain injury. Respondents, on appeal, urged affirmation of the Deputy's findings with regard to the issues raised by Sorenson, but also argued that the award for scheduled member functional disability for Sorenson's left lower extremity should be reduced from 25 percent to 10 percent pursuant to Iowa Code §85.34(2)(x).

On August 4, 2020, Workers' Compensation Commissioner Joseph Cortese II issued an "Appeal Decision" in which he affirmed the findings of Deputy Gerrrish-Lampe in all respects except for the issue raised by Respondents. The Commissioner found and ordered that the Arbitration Decision should be modified to reflect a 10 percent impairment rating for Sorenson's left lower extremity, resulting in a reduction of benefits from 55 weeks to 22 weeks.

On August 10, 2022, Sorenson timely filed the instant Petition for Judicial Review of the Appeal Decision. Sorenson raises two issues for judicial review: (1) That the

Commission erred in finding that Sorenson had reached MMI for his knee injury and therefore erred in denying him a running award for healing period benefits; and (2) That the Commission erred in finding that Sorenson had failed to meet his burden of proof that he had sustained a permanent brain injury.

The Court, having reviewed the entire record of the commission in this matter, as well as the briefs and other filings of the parties herein, finds that the Appeal Decision of the Commissioner should be affirmed in all respects. Each of Sorenson's contentions are addressed in the Court's analysis set forth below.

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 Sorenson's injury to his left knee had reached Maximum Medical Improvement, and he was therefore not entitled to a running award of further healing period benefits:

It is undisputed in this case that Sorenson suffered an injury to his left knee and that such injury arose out of and in the course of his employment. The Deputy Commissioner, as affirmed by the Commissioner, found that Sorenson had reached MMI with regard to his knee injury and therefore was not entitled to a running award of further healing period benefits.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. *Ellingson v. Fleetguard, Inc.*, 599 N.W.2d 440 (Iowa 1999). Iowa Code §85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. *Armstrong Tire & Rubber Co. v. Kubli*, Iowa Ap., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

The commission's finding that Sorenson's knee injury had reached Maximum Medical Improvement is a finding of fact. As noted above, upon review of a commissioner's findings 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. "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." 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, and the Court must not reassess the weight to be accorded various items of evidence, which remains within the agency's exclusive domain. Additionally, the adequacy of the evidence to support a 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.".

Sorenson's primary contention in assigning error to the commission's finding of MMI is based upon his allegation that his initial treating specialist, Dr. Aaron Althaus, recommended that Sorenson be referred to "a sports medicine specialist" for a second opinion, and his further allegation that such a referral was never provided by Respondents.

Dr. Althaus, following his last office visit with Sorenson, documented the following:

> He has attempted physical therapy for some time. He continues to have problems with his knee. His FCE was not really diagnostic. He is not at this point willing to accept permanent restrictions. I think in this setting, having previous ACL reconstruction, it is reasonable to obtain a second opinion regarding his ACL. He is quite difficult to

> examine, but I do not really have expertise in revision ACL. The MRI did not show any obvious disruption of the ACL although sometimes subtle instability is noted. I think a referral to a sports medicine specialist is very reasonable. We will plan on setting him back p.r.n.

Sorenson contends that the referral recommended by Dr. Althaus was never made, thereby denying him the second opinion his treating physician deemed appropriate. Sorenson argues, "[b]efore sending Claimant to the sports specialists as referred by Dr. Althaus, the Defendants instead sent Claimant to an independent medical examination with Dr. Michael Morrison from Omaha." (Petitioner's Brief, p. 8).

Sorenson also alleges that "Deputy Gerrish-Lampe ruled that the referral was not necessary and that an independent medical exam by Dr. Sunil Bansal indicated [Sorenson] had reached MMI" (Petitioner's Brief, p. 2).

Sorenson further argues that Deputy Gerrish-Lampe, in finding that Sorenson had reached MMI and noting little evidence that additional medical care would improve his condition, "had no business substituting her lay opinion for that of the treating orthopedic doctor who made the referral. The Deputy relying on her own unsubstantial medical opinion does not constitute substantial evidence." (Petitioner's Brief, pp. 15-16).

The Court, having examined the record, finds no merit in these contentions. Rather, the Court finds that Sorenson grossly misstates the record.

First, in claiming that Respondents failed to follow the recommendation of Dr. Althaus that Sorenson be referred to a sports medicine specialist for a second opinion, Sorenson ignores the evident fact that the physician he was referred to, Dr. Michael Morrison, is a "Sports Medicine and Adult Reconstruction" specialist who practices at Omaha Orthopedic & Sports Medicine, P.C. Sorenson seems to contend, without

explicitly saying so, that because Dr. Morrison was also tasked with conducting an Independent Medical Examination, the referral to Dr. Morrison did not satisfy Dr. Althaus' recommendation that Sorenson be seen by a sports medicine specialist for a second opinion. Sorenson goes so far as to characterize the referral to Dr. Morrison as inappropriate "interference" by Respondents in the treatment recommendations of Dr. Althaus. The Court disagrees. The record is clear that Sorenson was referred to Dr. Morrison, a sports medicine specialist, for evaluation of his ACL condition as well as for an Independent Medical Examination (EMI), and the fact that Dr. Morrison conducted an EMI does not negate the fact that he evaluated Sorenson's ACL condition, as recommended by Dr. Althaus, and provided a second opinion, also as recommended by Dr. Althaus.

Second, Sorenson again misses the mark with his claim that "Deputy Gerrish-Lampe ruled that the referral was not necessary and that an independent medical exam by Dr. Sunil Bansal indicated [Sorenson] had reached MMI." Nowhere in the Arbitration Decision does the Deputy Commissioner "rule that the referral was not necessary," nor does the Deputy Commissioner base her decision solely upon the opinion of Dr. Bansal. The Arbitration Decision states, in pertinent part, as follows:

> … Dr. Althaus concluded that there was no further medical treatment he could provide for claimant's left knee and offered a second opinion. Claimant was eventually sent for an IME with Dr. Morrison, an orthopedic surgeon, who did not believe that additional care was necessary. Dr. Bansal recommended intermittent viscosupplementation and steroid injections but noted that the need for a knee replacement had been accelerated. Dr. Bansal did not opine the clamant was not at MMI. Instead, he recommended maintenance medical care and offered an impairment rating.
>
> Prolonged or ongoing symptoms do not prolong the healing period.

> There is little evidence that additional medical care would improve claimant's condition. If there is a change in the claimant's circumstances, a review-opening might be appropriate. (Arbitration Decision, p. 13),

Nor does the Court find any merit in Sorenson's contention that Deputy Gerrish-Lampe substituted her lay opinion "for that of the treating orthopedic doctor who made the referral" when she stated that "[t]here is little evidence that additional medical care would improve claimant's condition." To the contrary, this statement reveals that the Deputy Commissioner offered no opinion of her own but rather commented on and relied upon the evidence in the record, including Dr. Althaus' conclusion that he could provide no further treatment, Dr. Morrison's belief that no additional care was necessary, and Dr. Bansal's recommendation of maintenance medical care and his offer of an impairment rating. And this evidence included the evidence that the recommendation of "the treating orthopedic doctor who made the referral" had, in fact, been followed by referring Sorenson to Dr. Morrison, a sports medicine orthopedic specialist. Perhaps most illuminating to both the issue of the Deputy Commissioner's alleged "ruling that the referral was not necessary" and her alleged substitution of her opinion "for that of the treating orthopedic doctor," Deputy Gerrish-Lampe specifically found that "[w]hile late, Dr. Morrison fulfilled the authorized treating doctor's recommendation" and noted, "[t]here is no outstanding medical care recommended by any authorized treating physicians." (Arbitration Decision, p. 16).

This Court, having engaged in a fairly intensive review of the record, finds that the evidence in the record as a whole supports the findings that were made by Deputy Commissioner Gerrish-Lampe and subsequently affirmed by Commissioner Cortese, with

regard to Sorenson's knee injury. This includes judging the adequacy of the evidence in light of all the relevant evidence in the record, including the presiding officer's determinations of veracity and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. Deputy Gerrish-Lampe had the opportunity to personally observe Sorenson's demeanor during his testimony and found that his testimony merited "low weight." On appeal, the Commissioner found "nothing in the record of this matter which would cause me to reverse the deputy commissioner's credibility findings," and this Court, upon independent review, agrees.

2. Whether the agency committed an error of law when it determined that Sorenson had failed to meet his burden of proof that he sustained a permanent brain injury.

Sorenson pleads that "Commissioner Cortese's decision should be reversed and the matter remanded to the Commissioner's office for consideration of the extent of his industrial disability," and avers that "Deputy Lampe's ruling that Claimant does not suffer from a brain injury is in error and should be reversed." (Petitioner's Brief, p. 25, emphasis added). Sorenson further alleges that "[i]n Deputy Lampe's arbitration decision, she ruled that Claimant does not have a brain injury." (Petitioner's Brief, p. 18, emphasis added).

Again, and not for the last time, the Court finds that Sorenson misstates the record. At no point in the Arbitration Decision does the Deputy Commissioner rule that Sorenson does not have a brain injury. What Deputy Gerrish-Lampe did find, and the distinction is important, is that Sorenson "did not meet his burden of proof that he sustained a mental trauma and/or brain injury arising out of and in the course of his employment due to the July, 2017 motor vehicle collision." (Arbitration Decision, p. 12). This Court, upon independent review, agrees.

A claimant bears the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. *Quaker Oats Co. v. Ciha*, 552 N.W.2d 143 (Iowa 1996). A claimant further bears the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. *George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148 (Iowa 1997).

Sorenson again accuses Depute Gerrish-Lampe of substituting her own judgment, this time in two separate respects, and again Sorenson mischaracterizes the record. Sorenson asserts that "Lampe simply dismisses Patra's findings and labels his report as 'disturbing.' What is disturbing is how Deputy Lampe substitutes her own subjective findings for that of the only credible expert and without substantial evidence to support it." (Plaintiff's Brief, p. 21). Sorenson also asserts, with regard to the issue of Sorenson's previous diagnoses for depression, that "[i]n her arbitration decision, Lampe simply declares, substituting her own judgment, that 'Claimant suffers from depression.'" (Petitioner's Brief, p. 24).

As to the second allegation, related to depression, Sorenson offers no citation to the record for this assertion and the Court finds that fact unsurprising, as the Court is unable to find any place in the Arbitration Decision where the Deputy Commissioner "declares" that "Claimant suffers from depression." No such finding is made. Rather, what the Court finds in the Arbitration Decision is a detailed and thoughtful discussion of the evidence in the record regarding Sorensen's previous diagnoses of depression.

As for the first allegation, related to Dr. Patra's reports, Deputy Gerrish-Lampe did not refer to Dr. Patra's reports as "disturbing." She stated that they were "troubling."

(Arbitration Decision, p. 11). Neither did she "simply dismiss" Dr. Patra's findings. She explained in detail, supported by evidence from the record, why Dr. Patra's reports were troubling to her, including Dr. Patra's disregard of previous medical history; the inconsistency between Dr. Patra's reports and the medical history, the summary of events, and what treatment Sorenson received after the accident; and other factors. And again, more importantly, the Court finds that Deputy Gerrish-Lampe did not "substitute her own subjective findings" for those of Dr. Patra, as she did not make any finding at all as to whether Sorenson had sustained a brain injury. What she found was that he had failed to meet his burden of proving it by a preponderance of the evidence.

Sorenson further grossly mischaracterizes the record in his allegations leveled against Dr. Gutnik and his findings.

Sorenson contends that "it does not appear as though Gutnik even read all of the relevant medical history." (Petitioner's Brief, p. 21). But Dr. Gutnik's report explicitly states that "past medical records were reviewed in detail," and it includes a list of all relevant records reviewed, including a separate recitation of relevant findings from each of them.

Sorenson asserts that Dr. Gutnik "does not mention that he reviewed the four hours of testing performed by Dr. Patra." (Petitioner's Brief, p. 21). But Dr. Gutnik's report demonstrates otherwise, specifically addressing the results and findings of Dr. Patra on the two separate occasions he saw Sorenson.

Sorenson asserts that "[a]ccording to Dr. Gutnik's own testing Claimant was clearly cognitively impaired" and that Dr. Gutnik "simply ignores his own test results and never explains why." (Petitioner's Brief, p. 22). To the contrary, Dr. Gutnik's report details Sorenson's lack of cooperation with the test administered and explains in detail why he

reached the conclusions he reached, specifically explaining why he believed Sorenson's symptoms and diagnoses were not causally related to the automobile accident.

Sorenson asserts that Dr. Gutnik "never asked Claimant about his depression" and "never asked claimant the standard questions that any provider asks if they believe someone is suffering from depression," listing a number symptoms that Sorenson claims Dr. Gutnik never asked about. (Petitioner's Brief, p. 23). But Dr. Gutnik's report expressly and specifically chronicles Sorenson's responses to many of the exact questions that Sorenson claims he was never asked about, including his ability to sleep, whether he feels tired, how often he eats, whether he has gained weight, his energy level, crying spells, suicidal/homicidal ideations, and his libido (specifically stating, "[w]hen asked about his libido, he indicated...).

To quote Sorenson's own recitation of applicable authority: Medical causation "is essentially within the domain of expert testimony." The Commissioner has the duty to weigh the evidence and measure the credibility of witnesses. The weight given to expert testimony depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. An expert's opinion is not necessarily binding upon the Commissioner if the opinion is based on an incomplete history. (Petitioner's Brief, pp. 12-13, citing *Dunlavey v. Economy Fire and Cas. Co*., 526 N.W.2d 845 (Iowa 1995) and *Schutjer v. Algona Manor Care Ctr.*, 780 N.W.2d 549, 558 (Iowa 2010).

Deputy Gerrish-Lampe adds the following authority in her Arbitration Decision: The expert medical evidence must be considered within the domain of all other evidence introduced on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant

and material to the causation question. The weight given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646 (Iowa 2000); *IBP v. Harpole*, 621 N.W.2d 410 (Iowa 2001); *Dunlavey v. Economy Fire and Cas. Co*., 526 N.W.2d 845 (Iowa 1995); *Miller v. Lauridsen Foods, Inc*., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. *Poula v. Siouxland Wall & Ceiling, Inc.,* 516 N.W.2d 910 (Iowa App. 1994).

This Court finds that it is clear that Deputy Commissioner Gerrish-Lampe engaged in just such a weighing of the evidence and just such a weighing of credibility, and that she specifically found Dr. Patra's expert opinion to be flawed for a number of reasons, including her finding, supported by evidence, that it was based on an incomplete history. Dr. Patra's expert opinions were neither unrebutted nor summarily rejected, and Deputy Gerrish-Lampe appropriately considered the question within the domain of all of the other evidence and appropriately rejected Dr. Patra's opinions, which this Court, on independent review, also finds "troubling" for the same reasons expressed by Deputy Gerrish-Lampe as well as for other reasons advanced by Respondents, such as the troubling dichotomy present in Dr. Patra's two sets of opinions, one espoused when he was an authorized, treating physician and the other espoused after he was retained by Sorenson as a hired expert witness.

This Court, upon independent review of all of the evidence presented in this matter, agrees with Deputy Gerrish-Lampe's finding that Sorenson failed to meet his burden of proof that he sustained a mental trauma and/or brain injury arising out of and in the course

of his employment due to the July 2017 motor vehicle collision.

Finally, perhaps more important than this Court's actual agreement with the Deputy Commissioners findings, this Court finds that both of Gerrish-Lampe's findings at issue herein – regarding MMI for Sorenson's knee injury and regarding his failure to prove brain injury caused by the automobile accident -- were based upon substantial evidence in the record viewed as a whole; were not beyond the authority delegated to the agency; were not inconsistent with a rule of the agency or the agency's prior practice or precedents; were not the product of reasoning so illogical as to render them wholly irrational; were not the product of a decision-making process in which the agency did not consider a relevant and important matter; did not have negative impact on private rights grossly disproportionate to the benefits accruing to the public interest; were not based upon an irrational, illogical, or wholly unjustifiable interpretation of law; and were not otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. All of the forgoing may equally be said for Commissioner Cortese's affirmance of the Arbitration Decision.

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**
CVCV193081	SORENSON, BRIAN VS. T A BAUER INC & PROTECTIVE INS
Type:	ORDER OF DISPOSITION

So Ordered

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

Electronically signed on 2022-10-29 11:26:26