IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MEDPLAST and CONTINENTAL INDEMNITY CO., Petitioner, vs. **TIMOTHY PRUIS,** Respondent.	**Case No. CVCV061870** **RULING ON PETITION FOR JUDICIAL REVIEW**

INTRODUCTION

Before the court is a petition for judicial review filed by petitioners Medplast and Continental Indemnity Company on May 18, 2021. Petitioners filed their brief on July 3, 2021 and respondent Timothy Pruis filed his brief on August 4, 2021. Petitioners filed their reply brief on August 19, 2021. A hearing was held on August 27, 2021.

After hearing the arguments of counsel and reviewing the court file, including the briefs filed by both parties and the administrative record, the court now enters the following ruling on the petition for judicial review.

FACTUAL BACKGROUND

This matter comes before the court as an administrative appeal by Medplast and Continental Indemnity Co. from the Iowa Workers' Compensation Commission's final agency action. Both parties have provided thorough and detailed factual backgrounds in their respective briefs. Rather than repeat the facts once more, the court refers to these filings and the facts as set forth in the November 23, 2020 arbitration decision by the Deputy Commissioner and adopted by

the Workers' Compensation Commissioner. This ruling starts with a summary of the procedural background leading to the present petition for judicial review.

Timothy Pruis began working at Medplast in March of 2006, where he supervised twenty to twenty-five employees and was responsible for keeping the production line moving and fixing any machines that stopped working. Arbitration Decision p. 3. On August 11, 2016, Pruis sustained an injury at Medplast after hitting the right side of his head on a solid steel bar. Agency R. Part 1, p. 202 (Hr'g Tr. 59:1–19). In the following years, Pruis saw a variety of doctors and medical professionals, as well as vocational rehabilitation counselors. Pruis's weekly workers' compensation benefits stopped in mid-November of 2018. Arbitration Decision p. 8. On or about June 20, 2019, Pruis filed an arbitration petition and petition for medical benefits with the Iowa Workers' Compensation Commission. The case proceeded to hearing on July 22, 2020 before Deputy Iowa Workers' Compensation Commissioner Erin Pals (hereinafter referred to as "the Deputy"). Id. at pp. 144–326.

The expert opinions put forth by the parties and relied on by the Deputy in her arbitration decision include the following:

> Dr. Kunal Patra, psychiatrist (Agency R. Part 1, pp. 439–86);
> Dr. Mark Taylor, occupational physician (Agency R. Part 1, pp. 490–505);
> Barbara Laughlin, vocational expert (Agency R. Part 1, pp. 507–33);
> Dr. Deanne Fitzgerald, optometrist (Agency R. Part 1, pp. 534–62; Agency R. Part 2, pp. 91–138);
> Dr. Daniel Tranel, psychologist (Agency R. Part 1, pp. 563–75; Agency R. Part 3, pp. 82–112, 229–36, 270–75);
> Dr. Robert Broghammer, occupational physician (Agency R. Part 3, pp. 44–80, 202–21);
> Dr. Irena Charysz-Briski, physician at Neurology Consultants, P.C. (Agency R. Part 2, pp. 78–90; Agency R. Part 3, pp. 283–86);
> Dr. Todd Harbach, orthopaedic surgeon (Agency R. Part 2, pp. 210–23);
> Dr. J. Austin Williamson, Psychology Health Group (Agency R. Part 2, pp. 224–45)
> Rene Haigh, disability/vocational case manager at Paradigm Complex Care Solutions (Agency R. Part 3, pp. 114–37);

Lana Sellner, disability/vocational case manager at Paradigm (Agency R. Part 3, pp. 138–46).

Additionally, Pruis, his wife Marlene, and his son Brian testified at the hearing. See Agency R. Part 1, pp. 169–91, 192–288, 289–305.

On November 23, 2020, the Deputy filed a proposed arbitration decision finding in relevant part that Pruis sustained injuries to his neck, head, vision, and mental health as a result of the work injury and that Pruis is permanently and totally disabled. Agency R. Part 1, pp. 14–39. Petitioners timely filed an intra-agency appeal on December 1, 2020. Id. at p. 327. On April 28, 2021, the Commissioner affirmed the arbitration decision in its entirety and adopted it as the final agency decision. Id. at pp. 11–13.

On May 18, 2021, petitioners filed a petition for judicial review, which is presently before the court. Additional facts are set forth below as necessary.

LEGAL STANDARD

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 power to "affirm the agency action or remand to the agency for further proceedings." Iowa Code § 17A.19(10). 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 subsection ten, paragraphs "a" through "n." Id.

"District courts exercise appellate jurisdiction over agency actions on petitions for judicial review." Christiansen v. Iowa Bd. of Educ. Exam'rs, 831 N.W.2d 179, 186 (Iowa 2013) (citation omitted). Furthermore, the court's "decision is controlled in large part by the deference we afford to decisions of administrative agencies." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d

839, 844 (Iowa 2011). 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." IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632 (Iowa 2000) (citation omitted).

"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." Jacobsen Transp. Co. v. Harris, 778 N.W.2d 192, 196 (Iowa 2010) (citation and internal quotations omitted). If the agency's alleged "error is one of fact, [the court] must determine if the [agency's] findings are supported by substantial evidence." Id. (citing Iowa Code § 17A.19(10)(f)). "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. Id. (citing Iowa Code § 17A.19(10)(c)). "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.'" Id. (quoting Iowa Code § 17A.19(10)(m)).

Regarding section 17A.19(10)(f), "[e]vidence is not insubstantial merely because different conclusions may be drawn from the evidence." 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."). "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." Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 263–64 (Iowa 2012). Furthermore, the Iowa Supreme Court has found that a "district court exceed[s] the

scope of permissible judicial review of agency decisions by making findings" the agency never made. Id. at 264 (citation and internal quotations omitted).

ANALYSIS

Petitioners allege that the Commissioner and Deputy Commissioner erred in two ways: (1) finding that Pruis sustained injuries to his head, neck, vision, and mental health as a result of his August 11, 2016 work injury and (2) determining that Pruis is permanently and totally disabled because of his work injury. 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), (i), (l), (m), and (n).[1] Pet ¶ 5 (providing a list of eight reasons that the agency's action should be reversed or modified, but neglecting to cite specific grounds of section 17A.19(10)).

However, in the "Standard of Review" section of petitioners' brief, petitioners only cite sections 17A.19(10)(f) and (l). Pet'rs' Br. on Judicial Review p. 20 (hereinafter, "Pet'rs' Br."). Furthermore, the language petitioners provide for subsection (l) is the language found in subsections (m) and (n).[2] Therefore, the best the court can deduce is that petitioners seek reversal of the agency's decision under Iowa Code sections 17A.19(10)(f), (m), and (n).

A. Whether the Agency Erred in Holding that Pruis Sustained Injuries as a Result of August 11, 2016 Work Injury

[1] The petition also asserted that "the agency action is affected by one or more errors of law which require reversal." Pet. ¶ 5(h). However, it is unclear which subsection of 17A.19(10) this statement refers to or even whether petitioners cite these eight grounds under section 17A.19(10)(l) or 17A.19(1).

[2] See Pet'rs' Br. p. 19 ("Under Iowa Code 17A.19[(10)](l) a reviewing court may also reverse the agency's decision if it is *based upon an irrational, illogical, or wholly unjustifiable application of law to fact*, or otherwise characterized by an *abuse of discretion*." (emphases added)).

See also Iowa Code §§ 17A.19(10)(l) (stating "[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency"), (m) (stating "[b]ased upon an *irrational, illogical, or wholly unjustifiable application of law to fact* that has clearly been vested by a provision of law in the discretion of the agency"), and (n) (stating "[o]therwise unreasonable, arbitrary, capricious, or *an abuse of discretion*") (emphases added).

Petitioners assert that the record lacks substantial evidence supporting the agency's holding that Pruis sustained permanent disability to his head, neck, vision, and mental health as a result of the work injury he suffered on August 11, 2016. Pet'rs' Br. p. 20. Rather, petitioners argue that the evidence establishes Pruis had significant pre-existing medical conditions that were not aggravated, accelerated, or lit up by the work injury. Id. Specifically, petitioners point to evidence in the record demonstrating that Pruis had a significant hearing deficit before the work injury,[3] prior issues with his neck,[4] and a history of severe headaches dating back to 2011.[5] Id. at pp. 20–21 (citing Agency R. Part 2, pp. 248, 256–58). Petitioners also point to evidence establishing that by 2011, Pruis had a history of anxiety, depression, and some change in personality.[6] Id. at p. 257. The court reviewed petitioners' brief and provides a summary here of their arguments regarding how the Deputy erred in finding that Pruis sustained permanent injuries as a result of the work accident.

First, petitioners emphasize that twenty-four hours after his work injury, Pruis's "confusion resolved" and "[h]e was back to normal baseline level with no significant headaches and neck pain had shown improvement." Agency R. Part 2, p. 57. Pruis was discharged on August 12, with a note stating Pruis's condition on discharge was "clinically improved from [his] admitting

[3] In support, petitioners refer to an audiometric evaluation of Pruis from April 26, 2007, as well as a letter from the audiologist summarizing the results of the evaluation and Pruis's reported history of surgery in his right ear for otosclerosis in 1993 and some tinnitus, bilaterally, and decreased hearing sensitivity for the last two years. Agency R. Part 2, p. 246–48.

[4] Petitioners reference a radiology report from July 15, 2009 noting certain disk abnormalities, specifically "[d]isk osteophyte complexes at C4-5 and C5-6" vertebrae. Agency R. Part 2, p. 255.

[5] Petitioners refer to a March 2, 2011 letter from physicians at Neurology Consultants, P.C. describing Pruis's visit for daily headaches since November of 2010. Agency R. Part 2, p. 256–58. See also id. at p. 259 (March 18, 2011 radiology report indicating MRI brain scan was normal), p. 260 (March 29, 2011 follow up letter from Neurology Consultants regarding Pruis's chronic headaches).

[6] Petitioners refer to a line in the March 2, 2011 letter from Neurology Consultants discussing Pruis's medical history. Agency R. Part 2, p. 257.

condition." Id. at p. 58. Petitioners additionally argue that medical records reveal Pruis continued to improve in the short term, emphasizing that when Pruis saw Dr. Fowler at DeWitt Family Healthcare on August 24, he reported his balance was slightly off but that he had not had any escalation in his symptoms. Id. at p. 76.

After the August 24 visit, Dr. Fowler referred Pruis to the Concussion Clinic and recommended Pruis taper and then discontinue his current antidepressant medication. Id. at p. 76. Petitioners argue that "[t]he discontinuation of [Pruis's] antidepressant medication more likely than not contributed to [Pruis's] evolving symptomology after that point." Pet'rs' Br. p. 22. The court notes that in their brief, petitioners do not cite to the record or otherwise indicate how the record supports this assertion. Then, a report from Pruis's October 6 visit to Dr. Briski at Neurology Consultants indicates that Pruis informed Dr. Briski he had been diagnosed with chronic headaches years ago and still intermittently experienced headaches prior to the August 11 work injury. Agency R. Part 2, p. 79.

Next, petitioners stress that Pruis has been examined by several neurologists over the course of this workers' compensation claim, but has never been diagnosed with any neurological deficit. Pet'rs' Br. p. 23. According to petitioners, "[t]his fact in and of itself establishes that there is not substantial evidence to support a permanent neurological injury causally related to the" work injury. Id. Furthermore, petitioners assert that a "key flaw" in the Deputy's conclusions was relying on Dr. Patra's opinion that Pruis had neurocognitive impairment because Dr. Patra is a psychiatrist, not a neurologist or neuropsychologist. Id. at 24 (citing Arbitration Decision p. 16 and Agency R. Part 1, p. 485).

Petitioners also question the merit of Dr. Fitzgerald's opinions and contend that the Deputy ignored key information that would not support a work-related vision problem. Pet'rs' Br. pp. 24–

25. For example, petitioners contend that Dr. Fitzgerald did not have a full understanding of the conditions of Pruis's vision pre and post-injury because she did not know Pruis's baseline condition. Id. (citing Agency R. Part 1, p. 485). Additionally, petitioners assert that the Deputy did not properly consider evidence of Pruis's age-related vision changes. Id. at pp. 24–25.

By contrast, petitioners rely on Dr. Tranel's visits with Pruis and resulting conclusions demonstrating "that there is no substantial supporting evidence for the finding of a permanent neurocognitive injury." Id. at p. 25. Dr. Tranel's report opines that at the first visit on August 30, 2017, Pruis's "performances on direct and embedded measures of cognitive performance validity were within normal limits." Id. (citing Agency R. Part 3, p. 84). At the subsequent October 2018 visit, Dr. Tranel reported that Pruis "showed exaggeration and over-reporting of physical and cognitive symptoms." Id. (citing Agency R. Part 3, p. 92). Overall, Dr. Tranel opined that Pruis had no objective neurological abnormality, stating this was consistent with Pruis's negative brain imaging. Id. (citing Agency R. Part 3, p. 93). Dr. Tranel ultimately concluded that the work accident did not cause a permanent neurological or mental health injury in Pruis. Id.

Furthermore, petitioners assert that Pruis's additional treatment with Dr. Williamson indicated diagnoses of depression and anger, which predated the work injury. Id. at p. 26 (citing Agency R. Part 2, p. 234). According to petitioners, the existence of this psychological condition prior to the injury is also supported by Pruis's previous use of antidepressants. Id. Petitioners also contend that although Pruis informed Dr. Williamson in March of 2018 that "he had an update from his doctors saying that they had identified an additional problem with his brain," Pruis was never diagnosed with a neurological condition. Id.; Agency R. Part 2, p. 241.

Finally, according to petitioners, the Deputy erred in concluding "the opinion of a lesser qualified Dr. Patra" constituted substantial evidence of a permanent, work-related mental

health/cognitive injury condition. Pet'rs' Br. p. 27. Petitioners assert that without corroboration from any other medical evidence, Dr. Patra's opinion by itself cannot rise to the level of substantial evidence of a mental or cognitive injury. Id. at p. 26. In support, petitioners first point to their findings that in all cases in which Dr. Patra represented the claimant in the last three years, Dr. Patra opined the claimants' diagnoses were causally related to the work injury. Id. at p. 26 (citing Agency R. Part 3, p. 155). The Deputy already addressed this point in the arbitration decision, finding this argument on Dr. Patra's "believability" unpersuasive. Arbitration Decision p. 16. Petitioners also question Dr. Patra's credentials, asserting he is not a qualified neurologist or neuropsychologist and thus "his opinion cannot be used as the basis for rebutting the opinions of highly qualified neurologists and neuropsychologists." Pet'rs' Br. p. 26. As discussed further below, the Deputy also acknowledged this argument in the arbitration decision. In finding that Dr. Patra is well qualified and that his opinions were persuasive, the Deputy noted that Dr. Patra is a board-certified psychiatrist and a diplomat of the American Board of Psychology and Neurology. Arbitration Decision p. 17.

In its arbitration decision, the Deputy Commissioner authored a 20-page "findings of fact" section, setting forth the facts, medical opinions, and hearing testimony. Arbitration Decision pp. 2–22. Ultimately, the Deputy concluded that based on these findings, Pruis sustained permanent injury to his head, vision, neck, and mental health as a result of the work injury. Id. at p. 22.

On the alleged neck injury, the Deputy concluded that Pruis sustained an injury to his cervical spine as a result of his August 11, 2016 work injury. Arbitration Decision p. 14. Summarizing the competing testimonies of Dr. Taylor and Dr. Harbach (relied on by Pruis) and Dr. Broghammer (relied on by petitioners), the Deputy found that regarding Pruis's neck, the opinions of Dr. Taylor and Dr. Harbach were more persuasive than those of Dr. Broghammer. *Id.*

Dr. Taylor stated the work injury did cause permanent injury to Pruis's cervical spine,[7] and Dr. Harbach opined Pruis had pre-existing degenerative changes in his cervical spine that were asymptomatic until "lit up" by the work injury.[8] Id. See Agency R. Part 1, p. 500; Agency R. Part 2, p. 221. By contrast, Dr. Broghammer opined that Pruis had a preexisting condition[9] that was not related to the work injury, but the Deputy noted that "Dr. Broghammer did not provide any convincing rationale to support this opinion." Arbitration Decision p. 14. See Agency R. Part 3, p. 58.

The Deputy then turned to Pruis's allegation that he also sustained head and vision injuries as a result of the work injury, beginning with Dr. Briski of Neurology Consultants, P.C., who testified that since the injury, Pruis experienced the following symptoms:

> daily headaches, nausea, dizziness, particularly with eye movements and body movements, unable to drive due to nausea and vomiting, unable to work, has intermittent right facial numbness, blurry vision, states he was diagnosed with double vision by [his] most recent eye evaluation, he has had problems with concentration and memory.

Arbitration Decision p. 14 (quoting Agency R. Part 2, pp. 78–79). According to Pruis's testimony, Dr. Briski then referred Pruis to Dr. Fitzgerald, an optometrist who also treats "specialty patients"

---

[7] In his May 7, 2019 report, Dr. Taylor agreed with Dr. Harbach's conclusion that "Pruis likely had pre-existing degenerative changes in the cervical spine but he was asymptomatic" and the work injury "lit-up" this condition. Agency R. Part 1, p. 500. According to Dr. Taylor, Pruis has been unable to return to his asymptomatic baseline. Id. Additionally, Dr. Taylor's diagnoses of Pruis included persistent cervicalgia with right greater than left pain, paresthesias into the upper extremities and abnormal cervical spine MRI, traumatic brain injury with post-concussive syndrome and mild neurocognitive disorder, persistent headaches, and dizziness related to post-concussive syndrome. Arbitration Decision p. 8; Agency R. Part 1, p. 500.

[8] In his report, Dr. Harbach opined with a reasonable degree of medical certainty that Pruis's injury to his head, also involving his cervical spine, "lit up" his pre-existing chronic degenerative changes resulting in stenosis of the cervical spine. Agency R. Part 2, p. 221. Dr. Harbach also noted that ever since the work injury, Pruis reported pains in his neck and arm. Id.

[9] Specifically, Dr. Broghammer's report diagnoses Pruis with "multilevel cervical spondylosis with multilevel central canal and neural foraminal stenosis due to degenerative changes of the cervical spine." Agency R. Part 3, p. 58. Dr. Broghammer's report states "this condition is preexisting and is unrelated to the alleged injury," and that "none of [Pruis's] current cervical symptoms can be related to the injury." Id.

for traumatic brain injuries, strokes, and concussions. Id. at pp. 4, 14. The Deputy noted that since the August 11, 2016 incident, Dr. Fitzgerald saw Pruis approximately 23 times at her general practice and Pruis was seen at Dr. Fitzgerald's Vision in Motion Clinic over 70 times. Id. at p. 15. The Deputy then summarized Dr. Broghammer's opinions on the head and vision injuries, first stating that Dr. Broghammer opined Pruis did not have any current head condition that was related to the work injury. Id. at p. 16; Agency R. Part 3, p. 58. Additionally, regarding Pruis's vision, Dr. Broghammer stated that Pruis had myopia due to hardening of the lens, which was entirely related to the aging process and not a result of the work injury. Arbitration Decision p. 16; Agency R. Part 3, p. 58.

Turning to the mental health injury, the Deputy noted that Pruis primarily relied on the opinions of Dr. Patra and petitioners relied on the opinions of Dr. Tranel. Arbitration Decision p. 16. Pruis saw Dr. Tranel on several occasions, and Dr. Tranel ultimately opined that Pruis did not have any diagnosable mental health condition, did not have post-concussion syndrome, and that the work accident might have *temporarily* aggravated Pruis's prior problems with depression. Id. (citing Agency R. Part 3, pp. 82–112). The Deputy acknowledged that Dr. Tranel incorrectly stated in his initial report that Pruis did not seek medical care for several months after going to the emergency room on the day of the accident. Id. at pp. 16–17. The Deputy also noted that it was not clear from Dr. Tranel's report if he was aware of Pruis's pre-injury level of functioning: "Dr. Tranel does not explain how some of the low test results fit with Mr. Pruis' ability to perform his job prior to the injury." Id. at p. 17. Finally, the Deputy highlighted the contradiction between Dr. Tranel's initial statements that Dr. Fitzgerald's treatment worsened Pruis's conditions and testimony of Pruis's son, Brian. Id. The Deputy found that Brian "credibly testified at the hearing" and stated that based on his observations of his father, Brian felt Dr. Fitzgerald's treatment "was

the most helpful of any treatment." Id. See Agency R. Part 1, pp. 300, 301 (Hr'g Tr. 157:9–17, 158:8–18).

Dr. Broghammer also opined on the condition of Pruis's mental health, relying on Dr. Tranel's reports and the medical records in his assessment that Pruis has subjective/proven history of major depressive disorder, functional overlay, and possible somatization disorder. Agency R. Part 3, pp. 58–59. According to Dr. Broghammer, "none of these conditions are referable to the . . . work injury." Id. at p. 59.

The Deputy specifically noted that Dr. Williamson did not issue a formal opinion regarding causation. Arbitration Decision p. 15 (citing Agency R. Part 2, pp. 224–45). Dr. Patra, on the other hand, opined Pruis sustained a number of permanent mental health injuries or impairments and causally related these conditions to the workplace injury. Id. at p. 16. Dr. Patra concluded that as a result of the work injury, Pruis was experiencing major depressive disorder and generalized anxiety disorder, as well as mild neurocognitive disorder and a personality change due to a traumatic brain injury. Id.

The Deputy also included Dr. Taylor's mental health diagnoses of traumatic brain injury with post-concussive syndrome, mild neurocognitive disorder, major depressive disorder, generalized anxiety disorder, and a persistent personality disturbance. Id. In terms of physical conditions, the Deputy mentioned Dr. Taylor's findings of persistent headaches, dizziness related to post-concussive syndrome, and persistent visual complaints. Id. In his report, Dr. Taylor acknowledged that Dr. Tranel and Dr. Broghammer concluded there was no long-term cognitive or psychological sequela from the head injury. Agency R. Part 1, p. 500. However, Dr. Taylor agreed with Dr. Patra's differing opinion that "the post-concussive syndrome and mild neurocognitive disorder are more than likely related to the work injury." Id. Dr. Taylor stated that

Pruis continued to experience difficulties with his cognitive functioning, as well as personality changes. Id.

As previously mentioned, the Deputy stated the opinions of Dr. Taylor (as well as Dr. Harbach) were more persuasive than those of Dr. Broghammer regarding the condition of Pruis's neck. Arbitration Decision p. 14. The Deputy also found Dr. Taylor's opinions (along with Dr. Patra's) more persuasive than De. Broghammer's regarding Pruis's "physical-mental" injury (*i.e.*, a traumatic brain injury). Id. at pp. 9, 17. The court notes that in their brief on judicial review, petitioners do not attempt to criticize, negate, or discredit Dr. Taylor's opinions, but rather merely mention that Dr. Broghammer did not agree with Dr. Taylor's and Dr. Patra's diagnoses of a traumatic brain injury. See Pet'rs' Br. p. 17.

Ultimately, the Deputy concluded and found it persuasive that "[b]y all accounts, prior to the work injury Mr. Pruis was able to perform his job without any difficulties and he did not have absence from work[,] [but] [s]ince the injury, Mr. Pruis has not been the same." Arbitration Decision p. 17. In support, the Deputy recalls the testimony of Brian Pruis[10] and Marlene Franden, Pruis's significant other,[11] who spoke to the differences in Pruis's abilities and personality since his work injury. Id. Additionally, upon viewing the evidentiary record in its entirety, the Deputy found the opinions of Dr. Patra and Dr. Taylor more persuasive than those of Dr. Tranel and Dr. Broghammer. Id. In the arbitration decision, the Deputy also already addressed the skepticism regarding Dr. Patra's credentials and authority. Id. Specifically, noting that Dr. Patra is a board-certified psychiatrist and a diplomat of the American Board of Psychology and Neurology, the

[10] See Agency R. Part 1, pp. 294–99 (testifying as to how his father had changed after the injury).

[11] When asked in what ways she observed Pruis's life had changed since the injury, Franden stated that he is frustrated easily, he experiences severe headaches, nausea, and dizziness, and he does not drive more than just in the local area. Agency R. Part 1, p. 173 (Hr'g Tr. 30:13–18). Franden also testified that Pruis now has trouble recalling who people are and that he is no longer able to engage in the activities and hobbies he used to enjoy. Id. at pp. 172–75.

Deputy found "that Dr. Patra is well-qualified." Id. Therefore, the Deputy concluded that Pruis sustained a physical-mental injury as a result of the August 11, 2016 work injury as set forth by Dr. Patra. Id.

"Causal connection is essentially within the domain of expert testimony." Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 16 (Iowa 2007) (citing Bradshaw v. Iowa Methodist Hosp., 101 N.W.2d 167, 171 (1960)). See also Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) ("Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed."); Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002) (same); 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 . . . ."); Dunlavey v. Econ. Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995) (same); Sherman v. Pella Corp., 576 N.W.2d 312, 321 (Iowa 1998) ("Generally, expert testimony is essential to establish causal connection."). As provided in the arbitration decision, the rules surrounding expert testimony are well established:

> The commissioner must consider the expert testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. The commissioner, as the fact finder, determines the weight to be given to any expert testimony. Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. The commissioner may accept or reject the expert opinion in whole or in part.

Sherman, 576 N.W.2d at 321 (internal citations omitted).

The Iowa Supreme Court has explained "the legal analysis a district court . . . should use when reviewing an agency decision for substantial evidence when the credibility of the evidence is involved." Gits Mfg. Co. v. Frank, 855 N.W.2d 195, 197–98 (Iowa 2014). "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 . .

. ." Arndt v. City of Le Claire, 728 N.W.2d 389, 394 (Iowa 2007) (citation omitted). Rather, "[i]t is the commissioner's duty as the trier of fact to determine the credibility of witnesses, weigh the evidence, and decide the facts in issue." Id. at 394–95 (citation omitted). "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." 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 v. Bd. of Nursing, 495 N.W.2d 698, 699 (Iowa 1993)).

"The reviewing court only determines whether substantial evidence supports a finding '*according to those witnesses whom the [commissioner] believed.*'" 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)). "Where 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." Armstrong v. State of Iowa Bldgs. and Grounds, 382 N.W.2d 161, 166 (Iowa 1986). Furthermore, "[e]vidence is not insubstantial merely because different conclusions may be drawn from the evidence." Pease, 807 N.W.2d at 845. "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." Burton, 813 N.W.2d at 263–64.

Based on the preceding discussion and a thorough review of the record, the court concludes the agency's finding that Pruis sustained permanent injury to his head, vision, neck, and mental health as a result of the August 11, 2016 work injury is supported by substantial evidence. Iowa Code § 17A.19(10)(f). Furthermore, the court concludes it cannot be said that the agency's

decision was irrational, illogical, wholly unjustifiable, or otherwise an abuse of discretion. Id. at §§ 17A.19(10)(m), (n).

B. Whether the Agency's Decision that Pruis is Permanently and Totally Disabled is Irrational, Illogical, Wholly Unjustifiable, and Not Supported by the Evidence

Petitioners argue that the agency's determination that Pruis is permanently and totally disabled is irrational, illogical, and wholly unjustifiable, as well as not supported by the evidence in the record. Contrary to the Deputy's conclusion, petitioners assert that Pruis is not permanently and totally disabled because "[t]he credible physicians' opinions regarding permanent impairment/restrictions as well as the other industrial disability factors demonstrate [Pruis] remains capable of working . . . ." Pet'rs' Br. p. 29. Petitioners do concede that Pruis's ability to work is in a more limited capacity as compared to his pre-injury capabilities. Id.

The relevant question in determining a claimant's industrial disability is "the extent to which the injury reduced [the claimant's] earning capacity." Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995) (alteration in original) (quotation omitted). See also Second Injury Fund v. Shank, 516 N.W.2d 808, 813 (Iowa 1994) ("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."). As observed by the Iowa Supreme Court, "[b]odily impairment is merely one factor in gauging industrial disability." Guyton, 373 N.W.2d at 103. "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." Id.[12]

[12] See also IBP, Inc. v. 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).

Furthermore, "[a] total disability is not a state of absolute helplessness." Am. Nat'l Can Co. v. Gilleland, 674 N.W.2d 684 (Table), 2003 WL 2282763, at *2 (Iowa Ct. App. Nov. 26, 2003) (citing IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Rather, permanent and total disability "occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform. Al-Gharib, 604 N.W.2d at 633 (citing Diederich v. Tri–City R.R Co., 258 N.W. 899, 902 (1935)). "When the combination of factors [previously noted] precludes the worker from obtaining regular employment to earn a living, the worker with only a partial functional disability has a total industrial disability." Guyton, 373 N.W.2d at 103.

"The issue of industrial disability is a mixed question of law and fact." 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)). "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.'" 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). As noted in the preceding section, however, "[e]vidence is not insubstantial merely because different conclusions may be drawn from the evidence." Pease, 807 N.W.2d at 845. "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." Burton, 813 N.W.2d at 263–64.

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

First, petitioners contend that Pruis has demonstrated his ability to return to gainful employment in the competitive labor market, a factor which petitioners argue "in and of itself clearly establishes that [Pruis] is not permanently and totally disabled." *Id.* at p. 30. In support, petitioners point out that Pruis quickly secured employment at Home Depot in December 2018 and assert that although Home Depot terminated Pruis for excessive absences, these absences were not wholly attributable to his work injury. Agency R. Part 1, pp. 265–66 (Hr'g Tr. 122:17–25, 123:1–13) (cross examination of Pruis demonstrating that absences were due to combination of illness, weather, job interviews, and other meetings). Pruis then started working at Harbor Freight Tool in April 2019, where he worked for over a year. Agency R. Part 3, p. 179; Agency R. Part 1, p. 264 (Hr'g Tr. 121:7–12). According to petitioners, this is significant because it demonstrates that Pruis is capable of obtaining and maintaining subsequent employment, yet the Deputy failed to adequately consider the duration of Pruis's subsequent employments. Pet'rs' Br. p. 31.

Additionally, petitioners contend it is important to note that Pruis voluntarily resigned from employment with Harbor Freight in May 2020, rather than being terminated for reasons related to the work injury. Agency R. Part 1, pp. 264 – 65 (Hr'g Tr. 121:23–25, 122:1–10). But see Agency R. Part 1, p. 304 (Hr'g Tr. 161: 2–6) (Brian Pruis testifying that Pruis quit before he was fired because the work "was killing him"); id. at p. 243 (Hr'g Tr. 100:5–8). According to petitioners,

this constitutes a voluntary withdrawal from the workforce, as Pruis "was not taken off work for medical reasons by a medical provider, nor was his employment terminated." Pet'rs' Br. p. 32. Citing an appeal decision, petitioners point out that the agency has considered voluntary retirement or other withdrawal from the workforce unrelated to the injury, and loss of earning capacity due to voluntary choice or lack of motivation is not compensable. Id. (citing Copeland v. Boones Book and Bible Store, File No. 1059319 (App. Nov. 1997)).

Furthermore, petitioners assert that the job description for Pruis's position at Harbor Freight (as a logistics supervisor) was substantially similar to his pre-injury employment. See Agency R. Part 2, pp. 37–38. Although Pruis testified the job description was incorrect and he was a logistics team member or team lead,[13] petitioners state Pruis worked approximately thirty-eight hours a week and earned $15 per hour. See Agency R. Part 3, p. 179; Agency R. Part 1, pp. 241 (Hr'g Tr. 98:12–24). According to petitioners, this was also still a leadership position rather than working as a regular employee.[14] Pet'rs' Br. p. 32. Petitioners argue that the Deputy failed to review this job description and did not acknowledge the similarities between Pruis's job duties at Harbor Freight and at his pre-injury employment. Pet'rs' Br. pp. 31–32. Finally, petitioners acknowledge the Deputy's finding that Pruis's cash register drawer was often short of money at the end of his shift, but argue that based on Pruis's testimony, he was only written up once for a shortage. Agency R. Part 1, pp. 271–72 (Hr'g Tr. 128:21–25, 129:1–22).

---

[13] Pruis testified that the job description for Harbor Freight included in the record as "Claimant's Exhibit 11" is someone else's position and the closest he could find to his position. Agency R. Part 1, pp. 240–41 (Hr'g Tr. 97:21–25, 98:1–6); Agency R. Part 2, pp. 37–38. Pruis clarified that he was a team member in logistics, not a supervisor. Agency R. Part 1, p. 241 (Hr'g Tr. 98:9–11).

[14] The court notes that petitioners' only evidence in support of this statement is the job description provided as "Claimant's Exhibit 11." See Agency R. Part 2, pp. 37–38. However, as discussed in footnote 14, there is some debate over whether this job description corresponds to the position Pruis held at Harbor Freight. On cross-examination, petitioners' counsel asked Pruis about his title as a "team lead" rather than a "team member" and whether this meant he had additional authority or responsibilities. Agency R. Part 1, pp. 270–271 (Hr'g Tr. 127:10–25, 128:1–11). Pruis testified that this was simply a title and he had no leadership responsibilities or authority. Id.

Therefore, petitioners argue that the Deputy's failure to acknowledge these facts is irrational, illogical, and wholly unjustifiable, and that the Deputy's resulting decision is not supported by substantial evidence. The Deputy ultimately concluded that based on all of the relevant disability factors as set forth in the findings of fact, Pruis "is physically and mentally unable to perform work that his experience, training, education, and intelligence would otherwise have allowed him to perform." Arbitration Decision p. 23. The Deputy also acknowledged that "[a] finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability." Id.

First, the Deputy noted that Pruis was 59 years old at the time of the hearing, graduated from high school, has one semester of post-high school education in business management from St. Louis University, and is certified in production supervision, leadership skills, and training. Arbitration Decision p. 2 (citing testimony and Agency R. Part 3, p. 171). Regarding Pruis's previous work history and experience, the Deputy stated that Pruis has worked in the plastics industry for most of his adult life and provided a summary of the various employment and responsibilities Pruis has held. Id. However, the Deputy noted that Pruis testified he now has difficulty remembering or trying to describe most of what he learned in his experience in the plastics business. Id. at p. 18. According to Pruis, even if Medplast had not closed their plant in late 2018, he would not have been able to return to his prior job because it is too complex and fast-paced for him since his injury. Id. At the time of the hearing, Pruis was not employed. Id.

The Deputy included the experts' opinions on Pruis's ability to return to work. Dr. Broghammer opined that Pruis did not sustain any permanent impairment and did not require any work restrictions as a result of the injury. Id. at p. 9 (citing Agency R. Part 3, pp. 44–65). In his August 30, 2017 report, "Dr. Tranel felt Mr. Pruis was capable of full-time, gainful employment

at the same level he was prior to the August 2016 accident." Id. at p. 10 (citing Agency R. Part 3, pp. 82–87). Dr. Patra's December 6, 2018 report indicated that Pruis's major depressive disorder and personality disorder due to traumatic brain injury limited his vocational capabilities, among other things. Id. at p. 11 (citing Agency R. Part 1, p. 478). Dr. Patra opined that Pruis's permanent mental health injuries fell within the mild and moderate levels of impairment when viewed in the context of his ability to function in activities such as concentration, persistence/pace, and adaption to workplace demands. Id. at p. 12 (citing Agency R. Part 1, pp. 479–81). Dr. Fitzgerald testified in her deposition that Pruis has poor short-term and long-term memory, as well as poor focus and attention to the point where he has difficulty staying on task. Id. (citing Agency R. Part 1, 35:8–10). Dr. Fitzgerald also opined that Pruis would not be able to complete an eight-hour day due to his high fatigability. Id. at 35:11–12.

Furthermore, the Deputy took Pruis's own testimony into account, summarizing it in detail in the arbitration decision. Pruis testified that he unfortunately does not remember information regarding the complex processes he has learned over the years he spent in the plastics manufacturing business. Id. at p. 13. Pruis does not believe he can handle a production supervision position anymore, as this work is now too fast-paced for him. Id. Regarding his physical capabilities, Pruis testified he now has trouble with overhead lifting due to his neck and he struggles with bending, stooping, kneeling, and crawling because these activities increase his headaches and dizziness. Id. at p. 14. According to Pruis, he has to hold onto the wall when he first stands up, but once he gets moving, he is able to walk a quarter to a half mile. Id. Additionally, the Deputy addressed Pruis's son Brian's testimony regarding his observations of his father at work before and after the work injury:

> Prior to the injury, [Brian] worked at Berry Plastics at the same time as his dad. He said his dad was the go-to-guy who could fix any machine. A couple of years after

> the work injury, [Brian] observed his dad at work at Harbor Freight. [Brian] spoke with a couple of his dad's co-workers. It was clear that they liked Mr. Pruis, but they said they had to watch him very closely and follow him around. [Brian] felt as though they were speaking about a "special needs" adult.

Id. (citing Agency R. Part 1, 299–300 (Hr'g Tr. 156:14–25, 157:1–8); id. at pp. 302–03 (Hr'g Tr. 159:15–16, 24–25, 160:1–18)).

Regarding Pruis's work history after the injury, the Deputy noted that following the August 11, 2016 accident, Pruis was unemployed for approximately two and a half years. Id. at p. 18. The Deputy stated, however, that Pruis's "desire to return to the workforce is obvious" and discussed the positions Pruis has held since the injury. Id. From December 5, 2018 through January 30, 2019, Pruis worked at Home Depot doing part-time merchandising work, attaching labels and pricing information on the merchandise. Id.; Agency R. Part 1, p. 239 (Hr'g Tr. 96:9–13). However, Pruis only worked eight shifts there, and was mentally and physically exhausted by the end of each day. Arbitration Decision p. 18; Agency R. Part 1, p. 239 (Hr'g Tr. 96:14–25; 97:1–3). Pruis was then unemployed "until April 15, 2019 when he began working a similar job for Harbor Freight Tool." Id. From Pruis's testimony, the Deputy noted that at Harbor Freight, Pruis worked in logistics about thirty to thirty-six hours per week and his duties included stocking shelves and changing prices. Id.; Agency R. Part 1, pp. 241–42 (Hr'g Tr. 98: 12–21, 99:3–12).

At times, Pruis also helped set up displays and worked on inventory, and he sometimes worked as a cashier. Arbitration Decision p. 18. However, the Deputy noted that based on testimony, Pruis had difficulty handling money[15] and "oftentimes his drawer was short of money

[15] Additional testimony indicates this is another difference in Pruis, as prior to his injury, Pruis managed the household finances by handling the checkbook and paying the bills. Agency R. Part 1, p. 186 (Hr'g Tr. 43:10–13). After the work injury, his significant other, Marlene, took over this duty because Pruis is no longer capable. Id. at p. 186 (Hr'g Tr. 43:14–18). See also Agency R. Part 1, pp. 298–99 (Hr'g Tr. 155:22–25, 156:1–7) (Brian's testimony that Pruis was a "good financial person" who handled the household finances "like a champ" before the work injury, but now he is not capable of doing that).

at the end of the shift." Id.; Agency R. Part 1, pp. 183–84 (Hr'g Tr. 40:24–25, 41:1–7), p. 242 (Hr'g Tr. 99:10–22). For example, Pruis testified that he sometimes gave people money who were supposed to give him money. Agency R. Part 1, p. 242 (Hr'g Tr. 17–19). See also Agency R. Part 1, p. 184 (Hr'g Tr. 41:1–4) (Marlene Franden's testimony that Pruis did not do well with the cash register and a couple times, he gave someone a refund when he should have been taking money in). The Deputy noted in the arbitration decision that Pruis was written up for these problems with the cash register. Arbitration Decision p. 18.

In their brief on judicial review, petitioners point out that based on Pruis's testimony, he was only formally written up once, even though he worked the cash register a couple times each week during the year he was employed there and Harbor Freight had a "zero tolerance" policy for cash register mistakes. Pet'rs' Br. p. 31 (citing Agency R. Part 1, pp. 271–72 (Hr'g Tr. 128:16–25, 129:1–19)). However, Pruis's full testimony indicates that he was also "verbally consulted probably half a dozen times" because Harbor Freight's policy was that anything missing from the cash register over a certain dollar amount requires a write-up but anything under that amount meant "they would just verbally talk to you." Agency R. Part 1, p. 272 (Hr'g Tr. 129:1–8, 19–22). Thus, Pruis's cash register drawer did come up short multiple times (more precisely, at least seven times). Id. at pp. 272–73 (Hr'g Tr. 129:23–25, 130:1–4).

Contrary to petitioners' assertion that Pruis voluntarily withdrew from the workforce and had no trouble finding employment, the Deputy ultimately concluded that "Pruis credibly testified that he would prefer to be working, especially as a production supervisor" and found Pruis "demonstrated that he is motivated to return to the workforce." Id. at p. 20. Pruis testified that prior to his injury, he enjoyed his work, but he is no longer capable of returning to his previous work. Id. The Deputy found that Pruis's testimony is in part "supported by the fact that from the

time of the 2016 injury until the [Medplast] plant closed in late 2018 the employer did not return him to work." Id. Additionally, the Deputy noted that since the accident, Pruis applied and interviewed for numerous jobs and was able to secure employment with the two previously mentioned employers, but those periods of employment were unfortunately unsuccessful. Id. The Deputy also acknowledged that even when Pruis was working, he struggled to perform his duties and would end his shift physically and mentally exhausted. Id. See Agency R. Part 1, pp. 239–40 (Hr'g Tr. 96:14 –25, 97:1–6).

Finally, the Deputy summarized Pruis's physical and mental limitations following the work injury. As previously mentioned, Dr. Patra noted that "Pruis is significantly impaired and restricted by his poor mental functioning," experiencing difficulty with his memory and being unable to concentrate or read like he did prior to the injury. Id. at p. 18. Additionally, due to continuing neck symptoms, Pruis is limited to lifting no more than twenty to twenty-five pounds on an occasional basis and preferably only between knee and chest level. Id. Further restrictions include avoiding ladders and not working at heights due to his dizziness, having the ability to change his head position on an as-needed basis, and limiting physical activities such as bending, stooping, kneeling, or crawling due to headaches and dizziness. Id. Overall, Pruis requires "regular breaks built into his [work] schedule to allow for flexibility for neurocognitive impairment." Id. at pp. 18–19.

Petitioners argue that none of Pruis's treating physicians has prescribed permanent restrictions that would impact Pruis's ability to work, and that the only physicians in the record who have were Pruis's experts, Dr. Taylor and Dr. Patra. Pet'rs' Br. p. 32. However, as previously noted, the Deputy directly stated that she found the opinions of Dr. Taylor and Dr. Patra more persuasive. Arbitration Decision pp. 14, 17. Petitioners assert that nevertheless, Pruis's activities

prove he is not physically precluded from maintaining employment and that he is capable of working outside restrictions, which the Deputy failed to adequately consider or acknowledge in rendering her conclusions. Pet'rs' Br. pp. 32–33. In support, Petitioners point to Pruis's employment at Harbor Freight, where no special accommodations were provided for him, and surveillance video of Pruis moving furniture beyond the lifting limits recommended by Dr. Taylor. Id. at p. 32. See Agency R. Part 3, pp. 181–82 (photo stills of surveillance footage).

First, as noted in the arbitration decision, Pruis's duties at Harbor Freight constituted stocking shelves and changing prices, as well as sometimes setting up displays, working on inventory, and working as a cashier. Arbitration Decision p. 18; Agency R. Part 1, pp. 241–42 (Hr'g Tr. 98:25, 99:1–12). This is not the kind of work that Pruis used to perform, nor is it what he is trained and experienced in. Furthermore, the Deputy considered Pruis's son's testimony that the other workers at Harbor Freight had to watch Pruis very closely and follow him around "to make sure everything is where it needs to be." Arbitration Decision p. 14; Agency R. Part 1, p. 303 (Hr'g Tr. 160:4–18). Additionally, the Deputy noted Pruis's testimony that he struggled to perform his duties and would end his shifts at Harbor Freight physically and mentally exhausted. Arbitration Decision p. 20. Brian Pruis also testified to this difficulty his father experiences when working after the injury, even in positions that are not full time. Agency R. Part 1, pp. 302, 304 (Hr'g Tr. 159:4–14, 161:2–9). Second, the Deputy clearly stated in the arbitration decision that surveillance footage is often not helpful in determining a claimant's ability to work eight hours a day for five days a week. Arbitration Decision p. 8. The Deputy found the footage in this case no different and stated she did "not find the video to be terribly helpful." Id.

Finally, the Deputy turned to the expert opinions of each party's vocational rehabilitation counselors. After meeting with Pruis at the request of his attorney, Barbara Laughlin issued an

employment assessment report, conducted a transferrable skills analysis, and searched for potential employment options for Pruis. Id. at p. 19. Based on the restrictions set forth by Dr. Taylor and Dr. Patra, Laughlin concluded that Pruis sustained 100 percent occupational loss of all semi-skilled and skilled occupations in the closest match occupations, 98.4 percent loss in the good match occupations, and 79.4 percent loss of unskilled occupations. Id. (citing Agency R. Part 1, p. 519). Laughlin also cautioned that there are restrictions that cannot be input into a transferrable skills analysis, set forth on page fourteen of her report. Agency R. Part 1, pp. 519–20. For example, Laughlin noted that as demonstrated by his time in the Home Depot job, Pruis cannot be depended on to be at work as scheduled. Arbitration Decision p. 19.

At the request of petitioners, two case managers from Paradigm conducted vocational rehabilitation evaluations of Pruis and performed labor market research, as well as authored employability reports. Id.; Agency R. Part 3, pp. 114–46. The first report was authored by Rene Haigh and dated May 1, 2019, which the Deputy noted was nearly three years after the work injury. Arbitration Decision p. 19; Agency R. Part 3, pp. 114–37. The report listed ten jobs as a sampling of the jobs currently available to Pruis. Id. However, the Deputy pointed out that although Pruis contacted all of these employers, he did not receive a single job offer. Arbitration Decision p. 19. The Deputy also noted that although its purported purpose was to "provide a professional opinion regarding Mr. Pruis's vocational outlook given that Mr. Pruis was provided *recommendations regarding permanent restrictions*," the report further stated that based on the opinions of Dr. Tranel and Dr. Broghammer, Pruis sustained zero percent loss of access to his pre-injury employment opportunities. Id. (quoting Agency R. Part 3, pp. 114, 119).

Pruis's vocational expert, Laughlin, also reviewed the report prepared by Haigh and the jobs Haigh recommended for Pruis. Arbitration Decision p. 19. In her own report, Laughlin set

forth the reasons for why she did not feel the jobs Haigh recommended were appropriate for Pruis. Id. Overall, Laughlin opined that Pruis is unable to perform the jobs found by Haigh, or any jobs in the labor market as a whole. Id. (citing Agency R. Part 1, pp. 520–27).

Paradigm issued a second report on June 22, 2020, authored by Lana Sellner as a supplement to the May 2019 report. Agency R. Part 3, pp. 138–46. This report concluded that based on the restrictions set forth by Dr. Broghammer, Pruis did not sustain a loss of access to pre-injury employment opportunities and he has no vocational impact. Id. at p. 143. However, based on the recommendations from Dr. Taylor, Sneller's report provided a sampling of appropriate vocational options for Pruis currently available in his labor market. Id. at pp. 143–45. The Deputy stated that based on Pruis's testimony, he contacted all of these listed employers as well and was told either that they were not hiring, that he was under qualified, or that he was over qualified. Arbitration Decision p. 19.

In their brief on judicial review, petitioners point out that when Laughlin based her report on Dr. Tranel and Dr. Broghammer's opinions, she concluded Pruis had no vocational loss. Pet'rs' Br. p. 33 (citing Agency R. Part 1, p. 519). When basing her report on the opinions of Dr. Taylor and Dr. Patra, however, Laughlin concluded that Pruis is unemployable. Id. (citing Agency R. Part 1, p. 520). All this demonstrates is that Dr. Tranel and Dr. Broghammer's opinions are different from those of Dr. Patra and Dr. Taylor's, and it has already been established multiple times that the Deputy found the opinions of Dr. Patra and Dr. Taylor more persuasive than those of Dr. Tranel and Dr. Broghammer. Arbitration Decision p. 17.

But petitioners also question Laughlin's credibility and accuracy, producing a prepared compendium of cases involving Laughlin over the past three years that "demonstrates the significant bias that Ms. Laughlin presents in her reports for" Pruis. Pet'rs' Br. p. 34. Specifically,

petitioners state that in the twenty-two cases Laughlin was involved with before the Iowa Workers' Compensation Commission from 2018 to 2020, Laughlin was always retained by the claimants and did not serve as an expert for the defense during that time period. Id. (citing Agency R. Part 3, p. 152). Furthermore, petitioners emphasize that according to their compendium, of the cases mentioning Laughlin's assessment of the claimant's earning capacity, she concluded in every case that the claimant had severe, significant, or occupational loss of sixty percent or greater. Id. Laughlin also opined in "nearly half of those cases" that the claimant was not employable. Id.

Based on the arbitration decision, the court concludes that the Deputy considered the vocational experts of both parties and found Laughlin's report more persuasive and credible. Before discussing the contents of Haigh's and Sneller's reports, the Deputy first noted that "no one from Paradigm ever contacted Mr. Pruis, spoke to him, or offered him any assistance in updating his resume or obtaining employment." Arbitration Decision p. 19. The Deputy then clearly stated that "[g]iven Mr. Pruis's difficulty with work finding and poor performances in interviews, [she found] Paradigm's failure to even speak with Mr. Pruis disturbing. [She did] not find the opinions of Paradigm to be very persuasive in this matter." Id. Furthermore, the Deputy was provided and aware of this compendium produced by petitioners that casts doubt on Laughlin's reliability. Agency R. Part 3, pp. 148–52. The Deputy did not note any concerns regarding Laughlin's credibility in the arbitration decision, but rather took Laughlin's report into account regarding Pruis's industrial disability.

With respect to her finding that Pruis is permanently and totally disabled, the Deputy ultimately found that Pruis "made a reasonable, but unsuccessful effort to find steady employment" since the work injury. Id. at p. 20. Based on the findings of fact laid out in the arbitration decision, the Deputy concluded the following:

> Considering Mr. [Pruis's] age, educational background, employment history, inability to retrain, motivation to return to the workforce, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has proven he is permanently and totally disabled as a result of the August 11, 2016 work injury.

Id.

Based on the preceding and a review of the record, the court concludes that the Deputy sufficiently considered Pruis's age, intelligence, education, qualifications, experience, and the effect of the injury on his ability to obtain suitable work in determining the level of Pruis's industrial disability. Furthermore, it cannot be said that the Deputy's decision that Pruis is permanently and totally disabled is irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(m). As the fact finder, it is the agency's role to "determine[] the weight to be given to any expert testimony" and "the credibility of witnesses . . . ." Sherman, 576 N.W.2d at 321; Arndt, 728 N.W.2d at 394–95 (citation omitted). "The reviewing court only determines whether substantial evidence supports a finding '*according to those witnesses whom the [commissioner] believed.*'" Arndt, 728 N.W.2d at 395 (alteration and emphasis in original) (quoting *Tim O'Neill Chevrolet, Inc.*, 551 N.W.2d at 614). Iowa courts "will not interfere with an agency's decision when reasonable minds might disagree or there is a conflict in the evidence." 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)).

Furthermore, the court concludes that the agency's finding that Pruis is permanently and totally disabled is supported by substantial evidence. Iowa Code § 17A.19(10)(f). Once again, "[e]vidence is not insubstantial merely because different conclusions may be drawn from the evidence." Pease, 807 N.W.2d at 845. The reviewing court's task is simply "to determine whether

the evidence supports the finding made." Burton, 813 N.W.2d 263–64. "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." Cargill Meat Sols. Corp., 2014 WL 1496091, at *4 (citing Burns, 495 N.W.2d at 699). Here, the court concludes that the evidence in the record does support the finding made by the agency.

CONCLUSION

Based on the foregoing, the court concludes the petition for judicial review must be **DENIED** and the agency's action is affirmed in its entirety. The stay previously ordered is lifted. The costs of this proceeding are assessed to the petitioners.

In addition to all other persons entitled to a copy of this order, the Clerk shall provide a copy to the following:

Workers' Compensation Commissioner
1000 E. Grand Ave.
Des Moines, IA 50319-0209
Re: File No. 5058256

State of Iowa Courts

Case Number	**Case Title**
CVCV061870	MEDPLAST AND CONTINENTAL INDEMNITY V TIMOTHY PRUIS
Type:	OTHER ORDER

So Ordered

Michael D. Huppert, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2021-10-14 10:48:39