IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LANDUS COOPERATIVE & NATIONWIDE AGRIBUSINESS INS, Petitioners, **v.** **AUSTIN HEILMAN,** **Respondent**	**Case No. CVCV060826** **RULING ON PETITION FOR JUDICIAL REVIEW**

A Petition for Judicial Review came before the Court from a final decision of the Iowa Workers' Compensation Commission. The Court held a hearing on this matter on January 22, 2021. Jeffery Lenz represented Petitioners and Janece Valentine represented Respondent. Petitioners request that this Court reverse the Alternate Medical Care Decision on Remand and the Ruling on Rehearing of Alternate Medical Care Remand of the Workers' Compensation Commissioner, determine that Respondent is not entitled to alternate medical care, and dismiss the Petition before the Agency. After considering the arguments of the parties and having reviewed the file and the applicable case law, the Court now enters the following ruling.

I. INTRODUCTION

A. Factual Background

On June 1, 2018, Respondent Austin Heilman (Heilman) suffered a back injury while working for Petitioner Landus Cooperative (Landus). Br. for Resp. at 5. Landus accepted the June 1, 2018 work injury and the current condition for which Heilman seeks medical treatment. Alternate Medical Care Decision, p. 2. Neither party disputes that that injuries are compensable by Landus and so the exact details of the injury are not relevant to this ruling. *See* Hearing Transcript (Tr.). Originally, Heilman saw Vitritto-Khan M.D. on June 5, 2018, complaining of lower back pain. *Landus Coop. v. Heilman*, CVCV058918, Ruling on Petition for Judicial Review

at 1 (Polk Cnty. Dist. Ct., Apr. 9, 2020). Dr. Vitritto-Khan recommended physical therapy and work restrictions. *Id.* Later, Petitioners authorized Respondent to treat with Steven Meyer M.D. Ruling on Rehearing of Alternate Medical Care Remand, p. 2. Dr. Meyer directed Heilman to undergo a Functional Capacity Evaluation (FCE) on December 5, 2018. Br. for Resp. at 5. The FCE was completed and placed Heilman in the heavy work category. Pet. Ex. A. On the following day, December 6, 2018, Heilman re-aggravated his injury at work. Brief for Resp. at 5. Heilman again added to his back injury when he slipped and fell at home on December 8, 2018. *Landus Coop. v. Heilman*, CVCV058918, Ruling on Petition for Judicial Review at 2 (Polk Cnty. Dist. Ct., Apr. 9, 2020). Over the next few months, Heilman continued to see and be treated by Dr. Meyer, who opined that after Heilman received injections, he would no longer have any work restrictions. Resp. Ex. 2. However the work restrictions were not lifted, because on May 1, 2019, Heilman saw Dr. Meyer, complaining of "unremitting, excruciating" back pain. Pet. Ex. D. During this visit, Dr. Meyer noted that Heilman was concerned about his ability to "fulfill his employment obligations." *Id.* Consequently, Dr. Meyer recommended Heilman to undergo another FCE to reevaluate his ability to work. *Id.* In his report, Dr. Meyer said that he did not think that Heilman could "function" under the guidelines suggested by the original FCE. *Id.*

Landus declined to allow the second FCE, so at their behest, Heilman saw William Boulden M.D. on June 10, 2019, for an independent medical examination (IME). Br. for Resp at 6. Dr. Boulden opined that the original FCE sufficiently captured Heilman's ability to work and thus the subsequent FCE ordered by Dr. Meyer was unnecessary. *See* Pet. Ex. E. Instead, Dr. Boulden recommended German ball exercises (GBE) in order to make up a deficiency in core exercises in past physical therapy and to develop Heilman's core strength. *Id.* at 8. The Agency found there is

nothing in the record to describe the German ball stabilization exercise program. Ruling on Rehearing, p. 2.

B. Procedural History

Heilman filed an Application for Alternate Medical Care (AMC) before the Iowa Workers' Compensation Commission (Commission) on July 1, 2019. Br. for Pet. at 2. Heilman requested an order compelling Landus to cover the FCE recommended by Dr. Meyer. The hearing occurred on July 12, 2019, and a decision was issued on July 15, 2019. Br. for Pet. at 3. Heilman received a result in his favor, which ordered Landus to authorize and pay for the FCE. *Id.* On July 21, 2019, Landus filed an application for rehearing. *Id.* The agency did not grant the application within 20 days so by statute it was presumed denied. Iowa Code § 17A.16(2).

On September 13, 2019, Landus appealed to this Court claiming that the FCE was not a medical treatment for the purposes of AMC and the agency's application of the facts to the law was erroneous. Br. for Pet. at 2. On April 9, 2019, this Court held that a FCE is a medical treatment for the purposes of AMC and remanded to the Commission to decide the question of whether the FCE was unreasonable, due to the Commission employing the wrong legal standard. *Landus Coop. v. Heilman*, CVCV058918, Ruling on Petition for Judicial Review at 12 (Polk Cnty. Dist. Ct., Apr. 9, 2020). On August 6, 2020, the Commission, on remand, again found in favor of Heilman, finding the GBE inferior and ordering Landus to pay for the FCE. *See* Alternate Medical Care Decision on Remand. Landus filed for rehearing on August 25, 2020. Br. for Pet. at 2-3. On September 15, 2020, the Commission issued a Ruling on Rehearing, affirming the previous decision. From that decision, Petitioners appealed to this Court on October 15, 2020. *Id.* at 3.

II. STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2019); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id*. § 17A.19(10). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co*., 649 N.W.2d 744, 748 (Iowa 2002).

"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" when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the commissioner's discretion, so the Court is bound by the commissioner's findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). Substantial evidence is defined as evidence of the quality and quantity "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); *Mycogen*, 686 N.W.2d at 464. "When reviewing a finding of fact for substantial evidence, we judge the finding 'in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of

the relevant evidence in the record cited by any party that supports it.'" *Cedar Rapids Comm. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Iowa Code § 17A.19(10)(f)(3)). "Evidence is not insubstantial merely because different conclusions may be drawn from the evidence." *Pease*, 807 N.W.2d at 845. "To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder." *Id.* "Judicial review of a decision of the [Commission] is not de novo, and the commissioner's findings have the force of a jury verdict." *Holmes v. Bruce Motor Freight*, 215 N.W.2d 296, 297-98 (Iowa 1974).

The application of the law to the facts is also an enterprise vested in the commissioner. *Mycogen*, 686 N.W.2d at 465. Accordingly, the Court will reverse only if the commissioner's application was "irrational, illogical, or wholly unjustifiable." *Id*.; Iowa Code § 17A.19(10)(l). "A decision is "irrational" when it is not governed by or according to reason." *Christensen v. Iowa Dep't. of Revenue*, 944 N.W.2d 895 at 905 (Iowa 2020). A decision is "illogical" when it is "contrary to or devoid of logic." *Id*. "A decision is "unjustifiable" when it has no foundation in fact or reason" or is "lacking in justice." *Id*. This standard requires the Court to allocate some deference to the commissioner's application of law to the facts, but less than it gives to the agency's findings of fact. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

III. MERITS in Landus v. Heilman

A. Whether the Commission's finding that the GBE is inferior to the FCE is supported by substantial evidence.

In seeking AMC, Claimant bears the burden of proving to the Commission that the authorized care is unreasonable or inferior to the desired medical treatment. *Long v. Roberts Dairy Co.*, 528 N.W.2d 122, 123 (Iowa 1995). "The question is one of reasonable necessity not desirability." *Id.* at 124. "Determining what care is reasonable under the statute is a question of fact." *Id.* at 123 (Iowa 1995). "The commissioner—not the court—weighs the evidence, and we

are obliged to broadly and liberally apply those findings to uphold rather than defeat the commissioner's decision." *Id.* Accordingly, this Court will only reverse the Commission's finding of unreasonableness or inferiority if it is not supported by substantial evidence. Iowa Code § 17A.19(10).

The Commission found:

> It is clear from the record what the FCE is meant to accomplish. There is no evidence in the record what the "German ball" is or what it is meant to accomplish. Given this record, the employer authorized care is found to be inferior to the care recommended by the authorized treating physician, Dr. Meyer.
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> Defendants' attempts to interfere with the medical judgment of a treating physician they chose is found to be unreasonable, in this case. The employer authorized care, the "German ball" program, is found to be inferior to testing meant to determine if claimant can return to work.

Ruling on Rehearing at 2.

Landus first contends that the Commission's statement that there is "no evidence in the record" providing the details of the GBE is untrue, and therefore the ultimate conclusion of inferiority of the GBE is not supported by substantial evidence. Brief for Pet. at 7-8; Ruling on Rehearing at 2. Landus points to statements by Dr. Boulden in the record, which give both the reasoning for and goal of the exercises. Pet. Ex. E-8. Specifically, Dr. Boulden states the GBE is supposed to make up for a deficiency in core exercises in past physical therapy and strengthen Heilman's core. *Id.*

The Commission stated that there was "no evidence in the record" describing the GBE. Ruling on Rehearing at 2. Although Dr. Boulden did describe the goal of the GBE, he did not detail what Heilman would be doing during the GBE, nor did he explain how it would help alleviate Heilman's back pain resulting from his injury or the impact to his work functionality. As stated above, in order to determine whether there is substantial evidence, the Court may look at any

relevant evidence cited by either party. Therefore, while it is not completely accurate that there is "no evidence," there is "little evidence" as to what GBE is for. Alternate Med. Care Decision on Remand at 3. Furthermore, the Commission took notice that the goals of the FCE and the GBE differed.[1] The Commission found that the purpose of the FCE was to "evaluate a person's capacity to perform work," but it did not know the purpose of the GBE. Ruling on Rehearing at 2. As stated in more detail below, the Commission's logic seems to be that since the GBE contained no plans for an FCE, it is inferior. If the goal of the FCE is to evaluate Heilman's ability to work, and the GBE's is to build core strength, the logic follows that the GBE is an inferior method to evaluate Heilman's ability to work because it in fact fails to do so in any way.

Additionally, Landus asserts that the Commission prefers the treating doctor, Dr. Meyer, over the IME doctor, Dr. Boulden due to the larger number of visits Heilman made to Dr. Meyer. They argue that fact cannot alone support the finding of unreasonableness or inferiority and therefore is an error of law. The agency, as the fact finder, determines the weight to be given to any expert testimony. *Sherman v. Pella Corp*., 576 N.W.2d 312, 321 (Iowa 1998); *Dodd v. Fleetguard, Inc.,* 759 N.W.2d 133, 138 (Iowa Ct. App. 2008). Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. *Id*. The commissioner may accept or reject the expert opinion in whole or in part. *Sherman,* 576 N.W.2d at 321.

> 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 or the court of appeals to make when it conducts a substantial evidence review of an agency decision.
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> *Arndt*, 728 N.W.2d at 394.

[1] Landus avers once more that the FCE is not "care." Brief for Pet. at 8. However, that issue has already been settled in this case that an FCE is considered a medical treatment for the purposes of AMC. *See Landus Coop. v. Heilman*, CVCV058918, Ruling on Petition for Judicial Review (Polk Cnty. Dist. Ct., Apr. 9, 2020).

This Court need not decide whether Dr. Meyer's greater experience in treating Heilman is sufficient alone to support a finding of inferiority or unreasonableness, due to the fact it is not the sole factor in the Commission's findings. Furthermore, this Court views the record *as a whole* to determine whether there was substantial evidence to support the findings. The individual pieces discussed above are but parts of the whole, that alone, may or may not be sufficient but together they are. Evidence in support of the Commissioner's decision is not insubstantial merely because it would have supported contrary inferences; nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996). Furthermore, when the Court reviews factual questions delegated by the legislature to the Commissioner such as the one here, the question before the Court is not whether the evidence might support different findings than those made by the Commissioner, but whether the evidence supports the findings actually made. *St. Luke's Hosp.,* 604 N.W.2d at 649. Thus, although there may be evidence here to support a different finding, there clearly is substantial evidence in the record to support the findings made by the Commissioner that the GBE is "inferior to the testing meant to determine if [Heilman] can return to work." Ruling on Rehearing at 2.

Therefore, due to the lack of information about the GBE, the different goals of the treatments, and the greater experience Dr. Meyer had with Heilman, the Court holds that there is substantial evidence in the record to support the Commission's conclusion that the GBE is inferior to the FCE.

B. Whether the Commission finding that "Defendant's attempt to interfere with the medical judgement of a treating physician they chose" is unreasonable is an error of law.

Landus contends that the Commission finding that Landus's attempt to circumnavigate the judgement of the physician it chose was unreasonable is an error of law and warrants remand or reversal. This issue was addressed in the last Petition for Judicial Review presented to the Court in this case. *Landus Coop. v. Heilman*, CVCV058918, Ruling on Petition for Judicial Review (Polk Cnty. Dist. Ct., Apr. 9, 2020). The Court finds its own reasoning persuasive and applicable to the current review. In the Ruling on Petition for Judicial Review, Judge Robert B. Hanson of the Fifth Judicial District of Iowa stated:

> On this point the court disagrees. While the Deputy Commissioner's ultimate finding was not stated with perfect clarity, by finding Petitioners' failure to authorize the FCE was unreasonable, the logical complement of that proposition is that the care the Petitioners offered, which did not include provisions for an FCE was unreasonable. The court finds this case is distinguishable from *Bursell* where the Iowa Court of Appeals found fault with the application of the law to fact of the agency's alternate care decision because "[n]owhere in the decision did the Deputy Commissioner conclude that the care being offered by the employer was unreasonable, had not been effective, or was inferior of less extensive." [*Lynch Livestick, Inc, v. Bursell*, 870 N.W.2d 274 (Table) 2015 WL 2394143 at *3 (Iowa Ct. App. May 20, 2015)].
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> *Id.*

Judge Hanson went on to remand the case back to the Commission because the Commission expressly stated their conclusions were based on the agency decisions of *Assmann v. Blue Star Foods*, File No. 866389 (Declaratory Ruling May 19, 1988), and *Pote v. Mickow Corp.*, File No. 694639 (Review-Reopening Decision June 17, 1986). *Landus Coop. v. Heilman*, CVCV058918, Ruling on Petition for Judicial Review (Polk Cnty. Dist. Ct., Apr. 9, 2020). The Court sufficiently explained why this was incorrect in the past ruling and therefore there is no need to go into great detail here. *Id.* Suffice it to say, courts are only bound by court precedent and not agency decisions, so the conclusions in *Assmann* and *Pote,* namely that it is *per se* unreasonable for a defendant to deny treatment by the physician they chose, is not binding on the Court. *Id.*

However, in the Ruling on Rehearing, the Commission made no such statement. The Commission concluded:

> Defendants' attempts to interfere with the medical judgement of a treating physician they chose is found unreasonable, in this case. The employer authorized care, the "German ball" program, is found to be inferior to the testing meant to determine if claimant can return to work. Given this record, the application is denied. Ruling on Remand at 2.

Landus makes a fair point that, though the Commission did not mention *Assmann* or *Pote* by name, they still relied on the law therein to come to their conclusion. However, what made the court in *Bursell* and Judge Hanson in this case conclude the Commission's opinion was erroneous, was that it did not determine the alternate care was unreasonable or inferior and the Commission's "over-reliance" on prior agency decisions to reach their conclusion. *Lynch Livestick, Inc, v. Bursell*, 870 N.W.2d 274 (Table) 2015 WL 2394143 at *3 (Iowa Ct. App. May 20, 2015); *Landus Coop. v. Heilman*, CVCV058918, Ruling on Petition for Judicial Review at 11 (Polk Cnty. Dist. Ct., Apr. 9, 2020). Specifically in *Bursell*, the court stated that the Commission merely concluded claimant's choice of care was reasonable and that is not sufficient alone to warrant a decision in claimant's favor. *Lynch Livestick, Inc, v. Bursell*, 870 N.W.2d 274 (Table) 2015 WL 2394143 at *3 (Iowa Ct. App. May 20, 2015). *Bursell* is distinguishable from this case. Here, the Commission did conclude that Landus interfering with the judgement of a physician they chose was unreasonable, which is similar to *Bursell* but, unlike *Bursell*, they also concluded that the employer approved treatment, the GBE, was inferior. Ruling on Rehearing at 2.

As for the ruling by Judge Hanson in this case, he stated, "this Court finds the [Commission's] over-reliance on *Assmann* and *Pote* in reaching its ultimate conclusion to be misplaced." *Landus Coop. v. Heilman*, CVCV058918, Ruling on Petition for Judicial Review at 11-12 (Polk Cnty. Dist. Ct., Apr. 9, 2020). The Court remanded the case back to the Commission

due to their "over-reliance" being an error of law. *Id.* at 12. It cannot be said the Commission "over-relied" on previous agency decisions to find for Heilman. As discussed in the previous section, there is substantial evidence in the record to support the finding that GBE is inferior treatment to a FCE. Finally, the Commission only has to find the alternate care to be unreasonable *or* inferior to find for the claimant. *Long,* 528 N.W.2d at 123. The Commission did so and thus followed the law in finding for Heilman.

Therefore, the Court concludes the Commission did not commit an error of law warranting reversal.

C. Whether the Commission's application of the law to the facts was irrational, illogical, and wholly unjustifiable.

Petitioner raises this contention supported by their arguments in the above sections. Consequently, there is no need to repeat the discussion of the issues here. For the reasons stated above, namely the existence of substantial evidence to support the finding that the GBE is inferior, the Court concludes the Commission's application of the law to the facts was not irrational, illogical, or wholly unjustifiable.

IV. CONCLUSIONS AND DISPOSITIONS

For all the reasons set forth above, the Court concludes the Commission's finding the GBE is inferior to a FCE is supported by substantial evidence and was not irrational, illogical, or wholly unjustifiable.

IT IS THE ORDER OF THE COURT that the Iowa Workers' Compensation Commission's decision is **AFFIRMED**.

Costs are assessed in full to the Petitioner.

State of Iowa Courts

Case Number	**Case Title**
CVCV060826	LANDUS COOP AND NATIONWIDE AG V AUSTIN HEILMAN
Type:	ORDER FOR JUDGMENT

So Ordered

William P. Kelly, District Court Judge,
Fifth Judicial District of Iowa

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