IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

Edward A. Green,	)	
	)	
Petitioner,	)	
	)	**No. CVCV096114**
v.	)	
	)	**RULING ON JUDICIAL**
Compass Group USA d/b/a Bon Appetit, and New Hampshire Insurance Company,	)	**REVIEW**
	)	
	)	
Respondents.	)	

On this date, Petitioner Edward A. Green's (hereinafter Petitioner) Petition on Judicial Review came before the undersigned for review. The matter was submitted to the Court without oral argument. Having considered the file, relevant case law, and written arguments of the parties, the Court makes the following findings of fact and conclusions of law and enters the following ruling.

FACTUAL AND PROCEDURAL BACKGROUND

The facts in this matter have been heard by the Workers' Compensation Commission as well as the Appeal Board. The facts found by the Deputy Commissioner Joseph Walsh in his Arbitrations Decision are as follows:

> Claimant, Edward A. Green, was 65 years old at the time of hearing. He worked for Compass Group, which does business as Bon Appetit. Bon Appetit is a business that contracts with Cornell College to provide food service management. Mr. Green worked there as a dishwasher.
>
> Mr. Green testified live and under oath at hearing. His testimony was credible. I find his testimony at hearing is consistent with the medical records in evidence. There was nothing about his demeanor at hearing which caused me any concern about his truthfulness.
>
> On October 17, 2016, Mr. Green was working for the employer. He was performing routine work activities on that date and bent down to pick up a fork off the ground. At that time, he felt a pop in the outer portion of his left foot. This fact is not seriously in dispute.
>
> Mr. Green has a number of other health issues and maladies. He fractured this same foot while climbing stairs in 2012, which resulted in an acute avulsion fracture in the cuboid region. (Joint Exhibit 1, pages 1 through 6). He underwent a right hip replacement in 2013 for severe osteoarthritis (Jt. Ex. 1, pp. 7-8; Jt. Ex. 3, p. 1). At hearing, he testified he has suffered from diabetes, hypertension, restrictive lung disease, chronic kidney disease,

obesity and low back pain. (Jt. Ex. 3, pp. 1-6) He has been on significant medications over time for these conditions, including chronic pain medications. Mr. Green is a large man, who weighted approximately 320 pounds at the time of his alleged injury.

The first medical treatment documented in the file is a visit to UnityPoint Health, an urgent care clinic on October 17, 2019. (Jt. Ex. 4, p. 1) The records document that he "bent down to pick up a fork and heard a pop in his left outer foot." (Jt. Ex. 4, p. 2) X-rays were taken and he was provided an ankle immobilizer and referral to an orthopedic specialist. (Jt. Ex. 4, p. 3) He next sought treatment from Physicians' Clinic of Iowa where he was examined by Sarah Kluesner, ARNP, on October 24, 2017. The following history is recorded:

Edward is a 63-year-old right hand dominant male who presents today for evaluation and management of his left fifth metatarsal fracture sustained while at work. He reports bending over to collect a forth that had fallen on the ground when he heard a pop along the lateral aspect of his food with subsequent pain and swelling. He presented to urgent care where xrays confirmed a Jones fracture. He has been nonweightbearing in a boot with crutches. Has been working with limitations. His pain is mild with intermittent sharp discomfort.

(Jt. Ex. 1, p. 9). After reviewing radiographic films with Rodney Dempewolf, DPM, the following diagnosis was made: "Mildly displaced fracture involving proximal shaft of fifth metatarsal consistent with Jones fracture." (Jt. Ex. 1, p.11) Work restrictions and surgery was recommended. (Jt. Ex. 1, p.11)

All of the medical records, as well as claimant's discovery answers, documented that Mr. Green was bending over to pick up a fork when he felt the pop in the outer portion of his right foot as described above. (Def. Ex. C, p. 3; Cl. Ex. 1, p. 12) At hearing, claimant testified regarding the specific manner in which he bent down to pick up the fork. He leaned against a wall and squatted to reach the fork. The defendants believe this modification to his testimony is extremely significant. I find that it is not. I find he simply provided more detailed hearing testimony than was recorded by his medical providers. There is nothing inconsistent about his testimony.

In November 2017, defendants had William Boulden, M.D., provide a medical opinion for this case. Defense counsel provided Dr. Boulden with records and a history of the injury and asked if he agreed with the following statement: "Mr. Green's foot fracture, allegedly occurring on October 17, 2016, resulted from a variety of his personal factors, such as his weight, age, diabetes, narcotic medication usage, tobacco use and congenital cavus deformity, where the timing of the fracture was coincidental to his work." (Def. Ex. F, p. 3.) Dr. Boulden agreed. On December 19, 2016, defendants notified Mr. Green that his claim was denied. He wrote a separate report wherein stated that "the mechanism of injury that caused the foot to fracture; however, there are extenuating circumstances in the fact that he has a cavus deformity of his foot, which is felt by some people to put more stress on the fifth metatarsal, therefore, causing fracture." (Def. Ex. F, p. 1).

Mr. Green did not return to a physician until February 2017. On his next visit, Dr. Dempewolf also diagnosed claimant with congenital metatarsus adductus foot shape. (Jt. Ex. 1, p. 15). Dr. Dempewolf again recommended surgery, but also provided other options. (Jt. Ex. 1, p. 15). In March 2017, Mr. Green opted to pursue the surgical option. (Jt. Ex. 1, p. 19). Surgery was performed on March 31, 2017. (Jt. Ex. 2). Mr. Green was then off work from March 31, 2017, through July 10, 2017. The defendants contend that claimant would have been off work in any event for a portion of this time for summary break (approximately mid-May through early August). He had an uneventful recovery form the injury and was released from medical care on July 10, 2017, with no restrictions. (Jr. Ex. 1. p. 29).

In August, Dr. Dempewolf prepared a report for claimant indicating that the injury was acute and directly related to his work activity of bending down to pick up a fork off the floor. (Jt. Ex. 1, p. 34). He acknowledged that diabetes and elevated body mass index complicated claimant's care "but are otherwise not directly causative or indicative of fracture development." (Jt. Ex. 1, p. 34). He opined that Mr. Green needed to be off work following the surgery. He further opined that ordinarily no long term disability is associated with this type of injury. (Jt. Ex. 1, p. 35). I understand this to mean that he did not expect any permanent impairment, however, he apparently did not perform a specific evaluation for functional loss.

Dr. Dempewolf last evaluated MR. Green on November 21, 2017, and documented no pain, swelling or discomfort. (Jt. Ex. 1, p. 39), He released him fully without any restrictions on activity.

In March 2018, Sunil Bansal, M.D. Evaluated Mr. Green at the request of claimant's counsel. (Cl. Ex. 1) Dr. Bansal took a thorough history, reviewed all appropriate records and recited an accurate medical history. (Cl. Ex. 1, pp. 6-13). He also examined Mr. Green. (Cl. Ex. 1, p. 14) He documented that claimant continued to have some pain in his left foot particularly when he places weight on the foot. (J Jt. Ex. 1, p. 13). He agreed with Dr. Dempewolf's diagnosis of left fifth metatarsal Jones fracture and assigned a 5 percent lower extremity rating, which converts to 7 percent of the foot. (Cl. Ex. 1, p. 15; see also The AMA Guides to the Evaluation of permanent Impairment, 5th Ed. Table 17-33, Forefoot Deformity). I find this is a modest and reasonable assessment of claimant's relatively minor functional loss of his left foot.

Arbitration Decision, p. 2 – 4.

I. Conclusion of Law by Deputy Workers' Compensation Commissioner Joseph L. Walsh

Based on the foregoing findings of fact by the Commissioner, he came to the following conclusion and gave the following order:

All weekly benefits shall be paid at the rate of three hundred twenty-four and 54/100 dollars ($324.54).

> Defendants shall pay the claimant healing period benefits from March 31, 2017, through July 10, 2017.
>
> Defendants shall pay the claimant ten and a half (10.5) weeks of permanent partial disability benefits commencing July 11, 2017.
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> Defendants shall pay accrued weekly benefits in a lump sum.
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> Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.
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> Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).
>
> Defendants shall pay medical expenses as set forth in Claimant's Exhibits 4 and 5.
>
> Defendants shall receive a credit for medical expenses paid by the group insurance carrier.
>
> Costs are taxed to Defendants.

Arbitration Decision, Conclusion.

II. Reversed by the Iowa Workers' Compensation Board of Appeal

Following the above resolution at Arbitration, the Defendants appealed with the Workers' Compensation Agency and raise various issues with that ruling, namely that claimant sustained an injury that arose out of and in the course of his employment, and claimant failed to meet his burden to prove he was entitled to temporary and permanent disability benefits. The claimant filed a cross-appeal, asserting that the deputy commissioner erred in failing to award penalty benefits and costs.

Commissioner Joseph Cortese, II, on Appeal adopted portions of the proposed agency decision pertaining to issues not raised on appeal in his decision. The Commissioner respectfully reversed the Deputy Commissioner's arbitration decision and made the following findings and conclusions:

> Neither party disputes whether claimant's injury occurred in the course of his employment; the issue is whether claimant's injury arose out of this employment. As explained by the Iowa Supreme Court in Lakeside Casino v. Blue:
>
> > The element of "arising out of" requires proof "that a causal connection exists between the conditions of [the] employment and the injury." Miedema, 551 N.W.2d at 311. "In other words, the injury must not have coincidentally occurred while at work, but must in some way to because by or related to the working environment or the conditions of [the] employment." Id.; accord Mcllravy v. N.

> River Ins. Co., 653 N.W.2d 323, 331 (Iowa 2002) (stating injury "must be related to the working environment or the conditions of employment"); Griffith v. Norwood White coal Co., 229 Iowa 496, 502, 294 N.W. 741, 744 (1940) (stating "injury arises out of the employment if it can reasonably be said to result from a hazard of the employment").

743 N.W.2d 169, 174 (Iowa 2007).

In Lakeside, the Court declined to adopt the positional-risk doctrine, under which an injury arises out of employment "as long as the employment subjected [the] claimant to the actual risk that caused the injury" or "would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where he would be injured." Id. at 176-77 (citing 1 Arthur Laron & Lex K. Laron, *Larson's Workers' Compensation Law* § 3.04, at 3-5, § 3.05, at 3-6) (2007)).

Instead, the Court reaffirmed its acceptance of the actual-risk rule. Id. at 176-78. Under the actual-risk rule, "[i]f the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the court of employment." Id. at 174 (quoting Hanson v. Relchelt, 452 N.W.2d 164, 168 (Iowa 1990)).

Applying the actual-risk rule to the instant case, I find claimant did not sustain an injury arose out of his employment.

In his answers to defendants' interrogatories, claimant described his mechanism of injury as follows: "[Claimant] was washing dishes and bent down to pick up a fork that fell on the floor. When he bent down to pick up the fort he heard a pop in left outer foot." (Defendants' Exhibit C, p. 3).

…

Based on Claimant's descriptions of the incident, there was nothing about the nature of claimant's employment that exposed him to the risk of an injury to his foot. He presented no evidence, for example, that something about the wall or the floor caused him to slip or move awkwardly as he bent over and reached. Nor did he provide any evidence that something about the wall or the floor caused or contributed to the actual fracture of his foot. Simply put, he was bending over.

While I agree with the deputy commissioner that claimant was within his work duties when he bent over to pick up the fork, the question is whether claimant's working environment or conditions of his employment caused or contributed to the injury to his foot. I find claimant presented no such evidence. Instead, I find claimant's injury is unexplained by the nature of claimant's employment. In other words, I find claimant's injury occurred coincidentally while at work. Thus, applying the actual-risk rule, I find claimant failed to satisfy his burden to prove he sustained an injury that arose out of his employment.

In a more recent decision, the Iowa Supreme Court adopted the increased-risk rule under the limited circumstances of idiopathic falls, *i.e.*, "fall[s] due to the employee's personal condition." Bluml v. Dee Jay's Inc., 920 N.W.2d 82, 86 (Iowa 2018). Under the increased risk rule, an injury is deemed to have arisen out of employment if condition of employment increased the risk of injury. Id. at 92 (citing Koehler Elec. v. Wills, 608 N.W.2d 1, 5 (Iowa 2000)). The Court specifically noted that "[t]he actual-risk rule that we relied upon in Lakeside Casino remains appropriate for unexplained rather than idiopathic injuries." Id. at 91 n. 1.

Claimant in this case did not fall. However, even assuming the Court intended to extend the increased-risk rule to all idiopathic injuries – meaning all injuries caused by conditions purely personal to claimants – this broader application would not change my finding that claimant failed to satisfy his burden to prove his injury arose out of his employment.

As discussed above, I found there was nothing about the condition of claimant's employment that caused or contributed to claimant's injury – and as such, I likewise find there was no condition of claimant's employment that increased his risk of injury. Again, I find claimant's injury occurred coincidentally at work. As such, applying the increased-risk rule, I find failed to satisfy his burden to prove he sustained an injury that arose out of his employment.

Thus, applying either doctrine, claimant failed to prove he sustained an injury that arose out of this employment. The deputy commissioner's findings on this issue are respectfully reversed.

Having concluded claimant did not satisfy his burden to prove a work-related injury, the remaining issues on appeal pertaining to claimant's entitlement to benefits, including penalty benefits, and taxation of costs are moot.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November, 8, 2019 is respectfully reversed.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall pay subsequent reports of injury as required by this agency.

Appeal Decision, p. 2 – 4.

Petitioner filed his Petition for Judicial Review on September 3, 2020 pursuant to Iowa Administrative Procedure Act Chapter 17A.19 and Iowa Code § 86.26 requesting the Court review the final decision of the Iowa Workers' Compensation Commissioner filed on August 6, 2020. Petitioner relies on the grounds for appeal pursuant to Iowa Code § 86.26, and asserts he has exhausted all of his administrative remedies before filing in this Court.

Respondents Compass Group USA d/b/a Bon Appetit and New Hampshire Ins. Co. (collectively hereinafter Respondents) filed their Answer on September 23, 2020 denying any and all claims adverse to them and requesting the Court deny the Petitioner's Petition and affirm the Appeal Decision of the Iowa Workers' Compensation Commissioner.

The Court entered a Briefing Schedule Order for the parties on September 28, 2020.

On October 26, 2020 Petitioner filed his Brief-in-Chief requesting this Court to reverse the Commissioner's Appeal Decision and argues there are two issues presented before the Court for review: 1) Whether substantial evidence supports the Commissioner's fact finding concerning Petitioner's squatting-down injury; and 2) whether the Commissioner's conclusions are affected by erroneous interpretations of law, irrational reasoning, failures to consider relevant facts, or irrational, illogical, or wholly unjustifiable applications of the law to the facts. Petitioner argues that there is not substantial evidence to support these four fact findings by the Commissioner: 1) no aspect of Petitioner's job exposed him to the risk of injury; 2) Petitioner presented no evidence that his job contributed to his injury; 3) this is an unexplained injury case; and 4) this is an idiopathic injury case. Therefore, Petitioner requests the Court reverse the Commissioner's decision, and be remanded to the Agency.

On November 16, 2020 Respondents filed its Brief, arguing that there was substantial evidence to support the Commissioner's findings in the Appeal Decision. Respondents argues that Petitioner failed to meet his burden to show evidence that his injury arose out of and in the course of his employment, not just that he was at work when he was injured. Sufficient evidence was not provided by Petitioner to show that his job exposed him to a risk of injury, and Respondents argues that Petitioner's injury is not compensable. Additionally, the description of his injury that Petitioner provided to Dr. Dempewolf and Dr. Bansal was not the description of the injury in which Petitioner provided during deposition, therefore, Respondents argues that the Commissioner was correct in that Petitioner's injury is unexplained. Lastly, Respondents argues that the Commissioner's findings were not "erroneous interpretations of law, irrational reasoning, failures to consider relevant facts, and irrational, illogical or wholly unjustiable applications of law."

Petitioner filed his Reply Brief on December 7, 2020 arguing that Petitioner's injury of bending over to pick up a fork, resulting in injury to his foot, is compensable under the Iowa Workers' Compensation. Petitioner argues that he met his burden of providing evidence that his injury was a result that his employment increased his risk of injury, and that his injury was explained. Further, Petitioner argues that deputy commissioner found Petitioner to be credible and his injury to arose out of and in the course of employment. Petitioner argues that his injury is a compensable work injury, and the Commissioner error in his application of the law to the facts in this matter.

FINDINGS AND CONCLUSIONS

Petitioner is entitled to judicial review of this action pursuant to Iowa Code § 17A.19 (2020). "A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof under this chapter." *Iowa Code § 17A.19(1)* (2020). The district court acts in an appellate capacity to correct errors of law on the party of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The Court "may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets on of the enumerated criteria continued in section 17A.19(10)(a) through (n)." *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012).

"Iowa Code section 17A.19(8)(g) authorizes relief from agency action that is 'unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.'" *Dico, Inc. v. Emp. Appeal Bd.,* 576 N.W.2d 352, 355 (Iowa 1998). "These terms have established meanings: 'An agency's action is "arbitrary" or "capricious" when it is taken without regard to the law or facts of the case…Agency action is "unreasonable" when it is "clearly against reason and evidence."'" *Id.* (citing *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 688-89 (Iowa 1994)). "An abuse of discretion occurs when the agency action 'rests on grounds or reasons clearly untenable or unreasonable.'" *Id.* (citing *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997)). The Iowa Supreme Court has stated that an "abuse of discretion is synonymous with unreasonableness, and involves a lack of rationality, focusing on whether the agency has made a decision clearly against reason and evidence." *Id.* (citing *Schoenfeld*, 560 N.W.2d at 598).

"Section 17A.19[10] provides that a party may successfully challenge an agency decision when the party's substantial rights have been prejudiced because the agency action 'is unsupported by substantial evidence' or 'is affected by other error of law.'" *Titan Tire Corp. v. Emp. Appeal Bd.*, 641 N.W.2d 752, 754 (Iowa 2003). Factual findings are reversed "only if they are unsupported by substantial evidence in the record made before the agency when the record is viewed as a whole." *Loeb v. Emp. Appeal Bd.*, 530 N.W.2d 450, 451 (Iowa 1995). "Evidence is substantial if a reasonable mind would find it adequate to reach the same conclusion. *Id.* (citing *Dunlavey v. Economy Fire & Casualty Co.*, 526 N.W.2d 845, 849 (Iowa 1995)). "The agency's decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence." *Id.* (citing *Dunlavey*, 526 N.W.2d at 849). Therefore, our task is not to determine whether the evidence supports a different finding; rather, our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made. *Cedar Rapids Cmty. Sen. Dist. V. Pease*, 807 N.W.2d 839, 845 (Iowa 2011).

"Substantial evidence is '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.'" *University of Iowa Hospitals and Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). "'While "courts must not simply rubber stamp the agency fact finding without engaging in a fairly intensive review of the record to ensure that the fact finding is itself

reasonable… evidence is not insubstantial merely because it would have supported contrary inferences.'" *Id.*

"[T]he agency is not required to mention each item of evidence in its decision and explain why it found the evidence persuasive or not persuasive." *Keystone Nursing Care Center v. Craddock*, 705 N.W.2d 299, 305 (Iowa 2005). "While it is true that the commissioner's decision must be 'sufficiently detailed to show the path he has taken through conflicting evidence,'…the law does not require the commissioner to discuss each and every fact in the record and explain why or why not he has rejected it." *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 274 (Iowa 1995). "Such a requirement would be unnecessary and burdensome." *Id.* The Court will only reverse the Commissioner's application of law to the facts if "it is irrational, illogical, or wholly unjustifiable." *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007).

I. Whether Substantial Evidence Supports the Commissioner's Factfinding Concerning Claimant's Squatting-Down Injury

Iowa workers' compensation provides coverage for "all personal injuries sustained by an employee arising out of and in the course of employment." *Iowa Code § 85.3(1)*. "It is well settled in Iowa that for an injury to be compensable, it must occur both in the course of and arise out of employment." *Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996). An injury "arises out of" employment when there is a causal connection between the employment and the injury. *St. Luke's Hops. v. Gray*, 604 N.W.2d 646, 652 (Iowa 2000). This element requires that the injury be a natural incident of the work, meaning the injury must be rational consequent of the hazard connected with the employment. *Meyer*, 710 N.W.2d 213, 222 (Iowa 2006). "In other words, the injury must not have been coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of employment." *Id.* Under the "actual-risk" test, the employee suffered an injury that arose out of employment if "the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of employment." *Lakeside*, 743 N.W.2d 169, 174 (Iowa 2007).

Petitioner argues he presented sufficient evidence to show that as part of his job as a dishwasher, was to pick up utensils that had fallen on the floor and to wash the utensil, and such duty exposed him to the risk of injury. *Pet.'s Brief* p. 6. Petitioner argues that Deputy Commissioner found his testimony to be credible, and his injury to be a compensable injury. *Id.* Petitioner argues that he was not just "simply bending over" but that he was using the wall to slide down and bend his left knee in his effort to pick up the utensil. *Id.* Petitioner argues that he met his burden of proof providing sufficient evidence that his job exposed him to the risk of injury and his job contributed to his risk of injury. *Id*. p. 8. Based on that evidence, the Petitioner argues that his injury is not an unexplained injury as Petitioner provided evidence and testimony that his act of squatting down caused more weight to be distributed to his left side, resulting in his left foot fracture. *Id.* p. 9. Further, Petitioner argues that he provided sufficient evidence that aside from his personal characteristics, his injury was not an idiopathic injury, and his work contributed to his injury. *Id.* p. 10.

Respondent argues that substantial evidence supports Commissioner's finding and Petitioner failed to meet his burden of proof to show otherwise. *Resp.'s Brief* p. 7. Respondent argues that the testimony that Petitioner provided during trial was a more elaborate description than was provided to the treating doctors. *Id.* Based upon the medical opinions of Dr. Dempewolf and Dr. Bansal, the mechanism of squatting down put stress on the metatarsals resulted in the fracture, but Respondent argues that Petitioner did not provide the doctors with the same detailed description of using the wall to bend down to pick up the fork, instead the doctors were provided with the description of Petitioner solely bending down to pick up the fork. *Id.* Respondent argues that the Commissioner's finding the injury is unexplained and idiopathic s corrected based upon the different descriptions provided. *Id.* 14, 15.

Petitioner in his reply argues that there is clearly evidence to support that his injury arose out of and because of his employment. *Pet.'s Reply* p. 1. Petitioner argues that the very nature of his employment is to wash during dishes, such as those that fall onto the floor, and this nature of work exposed Petitioner to picking up the fork from the ground, resulting in the injury Petitioner sustained. *Id.* The Commissioner's finding that Petitioner's injury is unexplained is not accurate, and there was an increased risk in Petitioner's duties as a dishwasher. *Id.* Petitioner argues that the Commissioner's findings are baffling and the Court should reverse the Commissioner's decision. *Id.* p. 2

Upon review of the record, while Petitioner has argued that the Commissioner failed to consider important and relevant evidence, the Court finds that the thorough decisions by Commissioner established that the agency did, in fact, consider all of the evidenced presented by Petitioner, but did not find this evidence sufficient for Petitioner to meet his burden of proof on his claims. The issue before the Court is not whether the Court would have reached a different conclusion. It is whether the agency had substantial evidence to support its conclusion, or made any error of law in reaching its conclusion. There is substantial evidence in the record to support the Commissioner's conclusion that Petitioner failed to provide sufficient evidence to prove his employment caused actual risk to Petitioner's injury. Further, the Court concludes there is substantial evidence in the record to support the Commissioner's conclusion that Petitioner's injury occurred coincidentally at work, and did not arise out of his employment. Therefore, the Court finds that Petitioner's Petition for Judicial Review should be and is denied.

II. Whether the Commissioner's Conclusions are affected by Erroneous Interpretations of Law, Irrational Reasoning, Failures to Consider Relevant Facts, or Irrational, Illogical, or Wholly Unjustifiable Applications of the Law to the Facts.

If "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." *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006).

Petitioner argues that the Commissioner erroneously interpreted the law and erroneously separates Petitioner's squatting down from Green's work. *Pet.'s Brief* at p. 10. Petitioner argues that the act of squatting down to pick up a fork for washing is related to the working environment and the facts provide evidence the employment caused the Petitioner's risk and injury. *Id.* The

Commissioner failed to properly reason in finding that Petitioner's injury was unexplained, idiopathic risk, therefore Petitioner argues that the Court should reverse the Commissioner's decision. *Id.* p. 11.

Respondent reiterates that the question on appeal is not whether this Court would find for a different finding, but whether the evidence supports the finding made by the Commissioner. *Resp.'s Brief* p. 16. It is the burden of the Petitioner to show evidence that the environment at work provided an actual risk to the injury in which Petitioner sustained, and Respondent argues that Petitioner failed to meet this burned under the actual risk test. *Id.* p. 18. Respondent argues that under Iowa case law, the Commissioner's assertion that evidence of a defect on the floor or in the wall that would have provided evidence of greater hazard caused by the work environment resulting in the finding that the injury arose out of the employment, is not an erroneous interpretation of the law. *Id.* p. 19.

Petitioner in his Reply argues that Commissioner's finding there was no evidence to support causation is an error in application of the law. *Pet's Reply* p. 2. Petitioner points out that the Deputy Commissioner found Petitioner's testimony to be credible and found for a compensable injury. *Id.* The medical opinions provided by Dr. Dempewolf and Dr. Bansal, both opined that the mechanism of squatting down to pick up something from the ground and shifting the weight to the feet was consistent with Petitioner's injury. *Id.* Petitioner argues that Dr. Dempewolf further opined that if bending over to pick up something from the ground was required by work, then there was a direct casual relationship of Petitioner's injury being a work-related injury. *Id.*

Based on the above, the Court finds the Commissioner committed no error of law in reaching its conclusion. The Court concludes that Commissioner's application of the law to those findings in assessing Petitioner's injury was not irrational, illogical, or wholly unjustifiable. As provided above, the Court finds that the Commissioner's findings were supported by substantial evidence, and the Court finds there was not abuse of discretion by the Commissioner. Further, while Petitioner has argued that he presented evidence sufficient enough for the deputy commissioner to find in favor of Petitioner, the Court finds that the Commissioner did not abuse his discretion in apply the "actual risk" test to this matter in determining whether Petitioner's working environment or conditions caused or contributed to the Petitioner's injury. The Commissioner's decision should be affirmed, and Petitioner's request for relief on judicial review should be and is denied.

RULING

IT IS THEREFORE ORDERED that Petitioner's Petition for Judicial Review is **DENIED.** The Workers' Compensation Commissioner Cortese's decision is **AFFIRMED.** Costs are assessed to Petitioner.

Clerk to Notify.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV096114	EDWARD A GREEN VS COMPASS GROUP USA ET AL

So Ordered

Mitchell E. Turner, District Court Judge,
Sixth Judicial District of Iowa