

## IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CHARLES COLLINS,

Petitioner,

vs.

DES MOINES AREA REGIONAL  
TRANSIT AUTHORITY (DART) and  
WEST BEND MUTUAL INSURANCE,

Respondents.

Case No. CVCV064978

RULING ON PETITION FOR JUDICIAL  
REVIEW

This Petition for Judicial Review was filed on January 23, 2023 and came before the Court on July 18, 2023. At the hearing, Petitioner Charles Collins (“Petitioner”) was represented by Attorney Richard Schmidt. The Respondents were represented by Attorney Rachael Neff. After hearing the arguments of counsel and following review of the court file, including the briefs filed by both parties, the Court now enters the following ruling.

**I. BACKGROUND FACTS AND PROCEEDINGS***A. Background*

Petitioner was hired by Des Moines Area Regional Transit Authority (“DART”) in September 2018 as a full-time fixed operator driving buses. In approximately June 2020, Petitioner’s role with DART changed. Petitioner worked with three to four people in the money room, which was approximately 75 square feet in size. He would count money for an hour or two each morning and then he would have other tasks assigned, such as sanitizing the lounge, collecting and sorting trip sheets, putting together training manuals, and performing various filing and office-related tasks.

Petitioner was also assigned to customer service, where he worked in an air-conditioned booth outside the main DART terminal that was approximately 40 inches by 40 inches and had a sliding window and door. Customers would walk up to the window to request a ticket or ask for

directions. Petitioner always worked with one other employee in the booth. Petitioner wore a mask as was required for DART employees. Petitioner estimated he would work 35 out of his 40 hours per week in this booth in September, October, and November 2020.

Petitioner was “hyper concerned” about getting COVID-19 because he was 68 years old. He took significant precautions, including wearing leather gloves and washing his hands numerous times throughout the day. Petitioner’s partner of six years, Pamela Gerleman, testified at the hearing. She lived with Petitioner during 2020. They took COVID-19 seriously by wearing masks, having groceries delivered, and avoiding social interactions.

Petitioner tested positive for COVID-19 on November 6, 2020. Petitioner quarantined for 10 days, during which he missed work. He began to experience symptoms on November 7, 2020. He assumed he contracted COVID-19 at work because his colleague, who he refers to as “Preacher,” tested positive on November 5, 2020. Petitioner asserted at the hearing that he was sure he talked to Preacher for multiple minutes; however, at his deposition, Petitioner stated his only exposure to Preacher was walking down the hallway. Thus, Petitioner could make guesses as to where he contracted COVID-19, but he cannot point to a specific incident or activity causing his infection.

Petitioner had been treated at the Mayo Clinic in mid-October 2020. He was there for three or four days, and he and Gerleman stayed at the Hilton Hotel at Mayo. They interacted with people and staff, would order food from the hotel or local restaurants for delivery, and, while driving from Des Moines to Rochester and back, Petitioner put in gas at the pumps.

DART implemented a mask mandate in April 2020 that remained in place until April 2022. DART implemented distancing requirements, screening of employees’ temperatures, and increased cleaning and air flow. DART also took steps to limit the number of employees utilizing

the lobby, break room, and lounge. Contact tracing was completed by the HR manager and notice was provided to employees who had potentially been exposed. A spreadsheet was compiled listing all employees who tested positive for COVID-19 between August 15, 2020, and December 31, 2020. No customer service employees tested positive during that time. No employee in the marketing department tested positive until after Petitioner tested positive. In early November, 2020, there was an increase in positivity rates among employees that mirrored the positivity rate that was happening locally. Their positivity rate was about 15%, which mimicked the community-wide percentages.

*B. Expert Medical Opinions*

Dr. Charles Mooney completed an independent medical examination of Petitioner. Dr. Mooney opined there is no specific occupational relationship between Petitioner's contraction of COVID-19 and his employment at DART, citing to Petitioner's denial of any known coworker contact with COVID-19 symptoms or a known person with a positive COVID-19 test. Dr. Mooney concluded there is no evidence that the work environment caused Petitioner's infection or was an occupational hazard. Dr. Mooney further stated that Petitioner's risk of contracting COVID-19 in November 2020 due to his employment was not greater than the risk to the general public of contracting the disease without similar employment. Dr. Mooney could only state that it was medically possible that Petitioner contracted COVID-19 prior to his positive test, but that it cannot be said with any medical certainty where or when he acquired it.

Dr. John Kuhnlein performed an independent medical examination of Petitioner. Dr. Kuhnlein opined that it is more probable than not that Petitioner was exposed to COVID-19 through his work at DART. However, he noted that it was unknown whether other co-workers who tested positive around the same timeframe were around Petitioner before he was tested or

developed symptoms. Dr. Kuhnlein acknowledged that it is difficult to sort out which symptoms are related to COVID-19 versus what is related to other medical conditions, and that many of Petitioner's symptoms may be related to his other medical conditions.

### *C. Procedural History*

Petitioner filed a workers' compensation claim against DART and West Bend Mutual Insurance. He alleged that in total he missed 24 days of work because he acquired COVID-19 as a result of exposure at work. The case proceeded to hearing on May 16, 2022 before Deputy Workers' Compensation Commissioner Ben Humphrey. An arbitration decision was entered on October 24, 2022, where Deputy Humphrey concluded Petitioner failed to meet his burden of proof to establish causation between his work activities and his contraction of COVID-19. Petitioner timely appealed from the arbitration decision to the Iowa Workers' Compensation Commissioner. On January 9, 2023, Iowa Workers' Compensation Commissioner Joseph S. Cortese II entered an appeal decision affirming Deputy Humphrey's decision in its entirety.

## **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 (2011); *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. *Id.* at §

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.

### III. ANALYSIS

In contention here is whether it can be proven that an individual became infected with COVID-19 as a result of his employment. Petitioner here argues the Workers’ Compensation Commission erroneously held that Petitioner did not produce sufficient evidence to establish that his COVID-19 infection arose out of the course of his employment with DART. Thus, the issue here on appeal involves medical causation.

“Medical causation presents a question of fact that is vested in the discretion of the workers’ compensation commission.” *Cedar Rapids Community School Dist. v. Pease*, 807 N.W.2d 839, 844 (Iowa 2011). *See also Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995). Thus, courts will “only disturb the commissioner’s finding of medical causation if it is not supported by substantial evidence.” *Pease*, 807 N.W.2d at 845. Medical causation is “essentially within the domain of expert testimony.” *Dunlavey*, 526 N.W.2d at 853. The

commissioner has the responsibility of determining the credibility of expert witnesses and whether to accept or reject their testimony. *Deaver v. Armstrong Rubber Co.*, 170 N.W.2d 455, 464 (Iowa 1969).

An “occupational disease” is limited to “only those diseases which arise out of and in the course of the employee’s employment.” Iowa Code § 85A.8. Further, the diseases “shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment.” *Id.* In sum, the injury cannot be simply one that occurred while an individual was at work, it must “in some way be caused by or related to the working environment or the conditions of [the] employment.” *Lakeside Casino v. Blue*, 743 N.W.2d 169, 174 (Iowa 2007) (citing *Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996)).

Here, the parties dispute whether Petitioner’s contraction of COVID-19 arose out of his employment with DART. As stated above, the determination of medical causation will only be disturbed if it is not supported by substantial evidence. As the arbitration decision correctly concluded, there is insufficient evidence to support a finding that it is more likely than not Petitioner’s contraction of COVID-19 arose out of Petitioner’s employment. Petitioner alleges the exposure resulted from interaction with specific co-workers, but there is no evidence supporting that it is more probable than not that Petitioner’s COVID-19 infection came specifically from these interactions. Further, it cannot be clearly proven that it is more likely than not that Petitioner contracted COVID-19 at work because Petitioner also interacted with others unrelated to the workplace wherein he could have been exposed to COVID-19. Because of the extreme difficulty in determining exactly where and when an individual contracts COVID-19, it is just as difficult to determine whether the infection arose out of an individual’s employment.

In Deputy Workers' Compensation Commissioner Humphrey's arbitration decision, he stated that there was an insufficient basis from which to conclude that it is "more likely than not" Petitioner's contraction of COVID-19 arose out of and in the course of his employment. Commissioner Humphrey found that Dr. Kuhnlein's report failed to address how COVID-19 is transmitted or the course the virus typically takes between contraction and symptoms, both of which are of particular importance to this case. In order for Petitioner to succeed on this claim, there must be proof of causation, which the Commissioner correctly determined was lacking here. Based on this determination, the Workers' Compensation Commissioner was correct in denying Petitioner's request for workers' compensation benefits.

#### **IV. CONCLUSION AND DISPOSITION**

For the reasons set forth above, and based on this Court's review of the evidence as a whole, the Court concludes there is substantial evidence in the record to support the Commissioner's determination that Petitioner failed to meet his burden of proving his COVID-19 infection was causally connected to his employment at DART. Thus, the Court further concludes there is substantial evidence to support the Commissioner's decision to deny Petitioner's request for workers' compensation benefits.

**IT IS THE ORDER OF THE COURT** that the Workers' Compensation Commissioner's Decision is **AFFIRMED**.



State of Iowa Courts

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**Case Title**  
CHARLES COLLINS VS DART ET AL  
ORDER FOR JUDGMENT

So Ordered

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

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