

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY****TRAVIS JAY,  
Petitioner,****vs.****ARCHER SKID LOADER SERVICE,  
LLC, and GRINNELL MUTUAL.  
Respondents.****Case No. CVCV064318****RULING ON PETITION FOR JUDICIAL  
REVIEW OF AGENCY DECISION**

On April 14, 2023, the above-captioned matter came before this Court for hearing. Petitioner Travis Jay was represented by attorney Brian Keit. Petitioner's employer, Respondent Archer Skid Loader Service, LLC (Archer), and its employer's workers' compensation carrier, Respondent Grinnell Mutual (Grinnell), were represented by attorney Aaron T. Oliver. After hearing the arguments of Counsel, and reviewing the court file, including the Certified Administrative Record ("Cert. Rec."), the Court enters this Order.

**I. BACKGROUND FACTS.**

The review sought by this Petition is a reversal of the Appeal Decision (Decision) issued by Iowa Workers' Compensation Commissioner Joseph S. Cortese II (the Commissioner) on August 23, 2022. The dispute was first heard by the Iowa Workers' Compensation Commission on July 15, 2021. Deputy Commissioner Benjamin G. Humphrey entered an Arbitration Decision in the matter on March 17, 2022. Cert. Rec. pp. 45-57. Therein, the Deputy Commissioner awarded Petitioner a 15% partial permanent disability (PPD) rating for impairment to Petitioner's left shoulder resulting from a workplace injury which occurred on September 19, 2019. *Id.* p. 56.

The Commissioner's Decision generally affirmed the Deputy Commissioner's factual findings but made an alteration to the impairment rating chosen. The Deputy Commissioner's rating of 15% was the sum of 5% attributable to permanent range of motion damage and 10%

attributable to the operation performed on Petitioner. *Id.* pp. 50-51. Respondents appealed the Arbitration Decision arguing the 15% impairment rating was not supported. Petitioner argued before the Commissioner to uphold the Arbitration Decision.

The Commissioner's task in deciding the impairment rating on appeal was one of parsing expert credibility. Though both parties' experts made similar medical findings, they differed in their impairment rating attributable to the distal clavicle procedure that Petitioner underwent to repair the injury. On one hand, the Respondent's expert witness Dr. Vincent offered a rating of 0% for the distal clavicle excision. *Id.* pp. 7-9. Dr. Vincent's opinion was quoted at length in the Decision:

During a distal clavicle excision, one is removing a portion of diseased or pathological bone. Consider the procedure, subacromial decompression, which results in a small portion of the body. The bone is that is excised, however, is an abnormality. Similarly, the patient undergoing an appendectomy for a diseased infected tissue does not get a base impairment for the removal of the appendix. This is because *removal of this defective diseased tissue results in improved function, not diminished function*. Excision of an inferiorly spur from the distal clavicle should approve function. Because removal of this liability is beneficial, it should result in no and even perhaps negative impairment.

*Id.* p. 8 (emphasis added). Thus, the expert opinion offered by Dr. Vincent did not assign a rating attributable to Petitioner's distal clavicle excision. Dr. Vincent viewed the operation as one with the potential to increase a patient's use of their shoulder rather than one deserving a rating for a PPD. *Id.*

Opposing Dr. Vincent's opinion that "no impairment rating should be awarded based solely on the distal clavicle procedures being performed" is the opinion and rating of Dr. Taylor. Dr. Taylor's expert opinion and rating of 15% was adopted by the Deputy Commissioner, because it was in line with the Fifth Edition of the American Medical Association's (AMA) guidelines. *Id.* p. 12. Without dismissing the medical expertise held by Dr. Vincent, the Deputy Commissioner

commented that Dr. Vincent's medical opinion "does not govern determinations of functional impairment under Iowa law. The Fifth Edition of the [AMA] Guides does." *Id.* p. 55. The Deputy Commissioner used Dr. Taylor's expert opinion in the form of Petitioner's PPD rating, because his rating was more credible in that it did include a rating for the operation performed on Petitioner. In the Deputy Commissioner's words,

Table 16-27 on page 506 of the [AMA] Guides provides that a ten percent impairment is used for distal clavicle resection . . . Dr. Vincent's impairment rating is given less weight because he intentionally did not follow the Guides. For this reason, Dr. Taylor's Opinion is more credible and is adopted.

*Id.* Between one expert opinion that accounted for a required rating and one that did not, the Deputy Commissioner chose the former: Dr. Taylor's 15% rating.

Under Iowa's workers' compensation laws, benefits for PPD are paid in monthly amounts for a duration dependent upon the impairment rating. Iowa Code § 85.34(2). For an injury to the shoulder, Iowa law establishes a starting schedule for the calculation of monthly obligations at 400 weeks. *Id.* § 85.34(2)(n). That number is multiplied by the PPD rating to arrive at the number of weeks an amount will be owed. *Id.* § 85.34(2). Applying this process, the Deputy Commissioner arrived at a calculation of 60 weeks of entitlement to benefits for PPD. Cert. Rec. p. 56.

The Commissioner upheld an award of stand-alone reimbursements to Petitioner in the amounts of \$103.00, \$14.00, \$285.00 and \$88.15 for administrative costs incurred in the litigation, "[w]ithout further analysis." *Id.* The Commissioner additionally affirmed the Deputy Commissioner's factual finding that Petitioner suffered from PPD caused by the work injury, but "modif[ied] in part" and "reverse[d] in part" the 15% PPD rating decided by the Deputy Commissioner. *Id.* Respondents' chief argument before the Commissioner was that the five percent rating should not have been considered by the Deputy Commissioner due to a non-workplace reagravation or reinjury of the same shoulder:

On appeal, defendants assert the deputy erred in finding claimant sustained a five percent impairment rating for loss of motion. As noted by Dr. Taylor in his report, the range of motion findings are similar. Defendants argue the difference is due to a reinjury. I find the deputy commissioner properly found claimant's reinjury was temporary and did not result in any additional disability.

*Id.* pp. 10-11. Respondents do not argue before this Court that the Commissioner erred in affirming the Deputy Commissioner's finding that Petitioner did not suffer a re-injury of the shoulder that would lessen Respondents' liabilities on a contribution theory. Instead, Petitioner seeks judicial review of the Commissioner's reduction of the 15% rating found by the Deputy Commissioner. Respondents desire that the Decision be affirmed in full. Resp'ts' Br. 13.

The portion of the Deputy Commissioner's Arbitration Decision that was reversed was his calculation of the rating to be attributed to Petitioner's distal clavicle excision. Having ruled out Dr. Vincent's rating because it did not include any rating for the procedure, the Deputy Commissioner was left with the 15% rating offered by Dr. Taylor. However, Dr. Taylor's rating was also flawed for its failure to apply a modification coefficient to the rating. Cert. Rec. p. 12. The Deputy Commissioner did not notice the error in Dr. Taylor's calculation and issued the 15% impairment rating without acknowledging its failure to apply a modification. The effect of not applying the modifier was beneficial to Petitioner because the modifier reduces the impairment rating.

The Commissioner's Decision sums up the errors in both experts' ratings and his decision to set the disputed PPD rating at 7.5 percent:

Claimant underwent a distal clavicle excision. The AMA Guides direct the physician to assign a rating for [the procedure] contrary to Dr. Vincent's opinion. The AMA Guides also require application of a 25 percent multiplier. This results in a 2.5 percent impairment for a distal clavicle excision under the plain text of the AMA Guides. I find claimant sustained a five percent permanent impairment for loss of range of motion and additional 2.5 percent impairment for the distal clavicle excision. Using . . . the AMA Guides, claimant has sustained seven percent

impairment and is entitled to 28 weeks of permanent partial disability benefits . . . at the stipulated weekly rate of \$950.24.

*Id.* Applying the modifier demanded by the AMA guides, the Commissioner began with an impairment rating of 10%, accepting the Deputy Commissioner’s finding that Dr. Taylor’s rating and opinion were more credible. *Id.* Then because the applicable modifier was 25%, the impairment rating was reduced to one-fourth its original amount, 2.5%. *Id.* This was then added to the 5% impairment rating to arrive at a PPD rating of 7.5%.

## II. STANDARD OF REVIEW.

A party to a workers’ compensation action may seek judicial review under Iowa Code §17A.19(1) if they are “aggrieved or adversely affected by any final agency decision.” *See Des Moines Area Reg’l Transit Auth. v. Young*, 867 N.W.2d 839, 841-42 (Iowa 2015). The standard of review is controlled by the existence of a statute delegating the authority to exercise discretion to decide an issue. “When discretion has been vested in the commissioner,” the Court should “reverse only if the commissioner’s application was ‘irrational, illogical, or wholly unjustifiable.’” *Id.* at 842 (quoting *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009)); *see also* Iowa Code § 17A.19(10)(l). Where the commissioner has not been given authority to exercise discretion by the legislature, the review is for errors at law. Iowa Code § 17A.19(10)(c).

“Application of workers’ compensation laws to facts as found by the commissioner is clearly vested in the commissioner.” *Midwest Ambulance Service v. Ruud*, 754 N.W.2d 860, 864 (Iowa 2008) (citing *Mycogen Seeds v. Sands*, 700 N.W.2d 328, 330 (Iowa 2005)). The commissioner’s findings are only reversed when they are not supported by substantial evidence when the record is viewed as a whole. Iowa Code § 17A.19(10)(f). A finding of substantial evidence occurs when a “neutral, detached, and reasonable person” determines that the evidence is sufficient to establish a fact that has serious and important consequences. *Id.* § 17A.19(10)(f)(1).

Where the application of facts to law is vested in the commissioner's discretion, an "irrational, illogical, or wholly unjustifiable" application of law to fact is required for reversal. *Id.* § 17A.19(10)(m).

### III. ANALYSIS.

The Decision producing the decreased rating is challenged by Petitioner for two reasons. First, Petitioner argues that the Commissioner acted outside his scope of authority by issuing his own impairment rating rather than adopting one offered by a physician. Second, Petitioner alleges that even if this was within the Commissioner's authority, he nonetheless committed an error of law when calculating the duration of Petitioner's entitlements to PPD benefits from Respondents.

Petitioner's argument that the PPD rating selected by the Commissioner must be one offered by an expert witness is not persuasive. Iowa Code § 85.34(2)(x) provides:

In all cases of permanent partial disability . . . when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commission by rule pursuant to chapter 17A.

Petitioner would have the Commissioner adopt a medical rating that would be in direct violation of the AMA guidelines. Both expert opinions were flawed and adopting either in whole would have been in violation of the Commissioner's duty to calculate ratings in conformance with the AMA's guidelines.

The record indicates that the Commissioner avoided accepting an impairment rating that controverts the plain meaning of Iowa Code § 85.34(2)(x). The Commissioner did so by correcting the flaw in Dr. Taylor's rating so that it was calculated correctly under the AMA guidelines. The Court concludes the Commissioner did not act in excess of his authority when he issued his own impairment rating. The Commissioner did not violate Iowa Code § 85.34(2)(x). To the contrary,

he promoted it by not accepting ratings that did not follow the provision's demands of conformance with the AMA. Given Dr. Taylor's error, if the Commissioner had been required to accept one of the doctor's ratings, his only option would be Dr. Vincent's rating of 0%. Such a decision would have been worse for the Petitioner. The Commissioner did not exceed his authority.

Turning to the Petitioner's second argument, the Court affirms the formula used by the Commissioner to reach the 7.5% rating but finds error with the award of 28 weeks of benefits. Weeks of benefits for a scheduled shoulder injury are calculated by multiplying the impairment rating percent by 400. *See* Iowa Code § 85.34(2)(n). Petitioner points to the 5th Edition of AMA Guidelines which states, "The final calculated whole person impairment rating, whether it is based on the evaluation of one organ system or several organ systems, should be rounded to the nearest whole number." Ex. 3, p. 2. The AMA Guidelines offer direct corroboration that the 7.5% impairment rating must be a whole number. There is no question the whole number used by the Commissioner to calculate PPD benefits was the number seven rather than eight.

Respondents argue that the proper impairment rating is 7% because "the Commissioner was not 'rounding;' he was making a disability determination." Resp'ts' Br. p. 9. Contrary to Respondents' assertion that the resulting 28 weeks awarded in the Decision was intentional, the Commissioner made clear he assigned "a 2.5 percent impairment [rating] for the distal clavicle excision under the plain text of the AMA Guidelines." Cert. Rec. p. 12. The AMA guidelines clearly establish that an impairment rating needs to be rounded to a whole number. Using standard principles of mathematics, when 7.5 is rounded to the nearest whole number, the result is eight.

The Court concludes that the Commissioner's award of 28 weeks of PPD benefits was an error of law. When the 7.5 percent rating is rounded to the nearest whole number of 8 percent and

multiplied by the value over which the scheduled injury is to be compensated for, the resulting period of benefits is 32 weeks.

#### **IV. DISPOSITION.**

For all reasons set forth above, the Petitioner is awarded 32 weeks of benefits, payable in the manner as if they had been awarded by the Iowa Workers' Compensation Commission.





State of Iowa Courts

**Case Number**  
CVCV064318  
**Type:**

**Case Title**  
TRAVIS JAY V ARCHER SKID LOADER SERVICE LLC  
ORDER FOR JUDGMENT

So Ordered

A handwritten signature in blue ink that reads "David Nelmark".

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David Nelmark, District Judge  
Fifth Judicial District of Iowa

Electronically signed on 2023-05-22 10:56:53