BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MANDY TRIPP, Claimant, vs. SCOTT EMERGENCY COMMUNICATION CENTER, Employer, and IMWCA, Insurance Carrier, Defendants.	:	File No. 5066673 A R B I T R A T I O N D E C I S I O N Head Note No.: 1402.30

STATEMENT OF THE CASE

Claimant, Mandy Tripp, filed a petition in arbitration seeking workers' compensation benefits from Scott Emergency Communication Center (SECC), employer and IMWCA, insurer, both as defendants. This matter was heard in Davenport, Iowa on October 21, 2019 with a final submission date of November 18, 2019.

The record in this case consists of Joint Exhibits 1-6, Claimant's Exhibits 1-14, Defendants' Exhibits A through H, and the testimony of claimant, Dennis Tripp, Jill Cawiezell, Denise Pavlik, and Tracey Sanders.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.
2. Whether the injury is a cause of temporary disability.

3. Whether the injury is a cause of a permanent disability; and if so
4. The extent of claimant's entitlement to permanent partial disability benefits.
5. Whether there is a causal connection between the injury and the claimed medical expenses.
6. Whether claimant is entitled to alternate medical care under Iowa Code section 85.27.
7. Costs.
8. Whether Iowa Code section 85.39(2)(x) violates claimant's rights under the United States Constitution.

FINDINGS OF FACT

Claimant was 40 years old at the time of hearing. Claimant graduated from high school. Claimant has a BA in criminal justice.

Claimant worked for United Parcel Service (UPS) from 1998 through 2002. Claimant began with the Davenport Police Department as a 9-1-1 operator in 2002. When the SECC was created to consolidate all Scott County dispatchers, claimant began working with SECC.

Claimant has undergone continued training as an emergency dispatcher since 2002. In 2003 claimant was certified to be a communicative training officer. Claimant has also received numerous certifications to work as an emergency dispatcher. (Exhibit 7, page 42)

A description of claimant's job as a public safety dispatcher for SECC is found at Exhibit B, pages 2-4. Claimant testified the job as an emergency dispatcher requires her to handle all emergency and non-emergency incoming calls. Claimant said dispatchers dispatch fire and police for Scott County. She also transfers emergency medical calls to MEDCOM. (Transcript pages 42-43) Claimant testified she believes she takes between 50-200 calls per day on a shift. (Tr. p. 44)

On September 30, 2018 claimant took a phone call while at work. The recording of the call is approximately two minutes and 15 seconds long. The recording details a woman screaming and repeatedly saying, "help me, help me, my baby is dead," and "my baby is gone." During the call claimant can be heard trying to calm down the caller and attempting to get information regarding the 9-1-1 call. (Joint Exhibit 1; Jt. Ex. 2; Ex. 13; Deposition page 60; Tr. pp. 45-48)

Claimant said she transferred the call. She testified that after she transferred the call, she continued to hear radio traffic about the call from other responders at the scene of the accident. Claimant said she heard a medic give instructions on how to give CPR. She also said she heard information that the wound the infant suffered may have been consistent with a claw hammer. (Tr. pp. 46-47; Ex. C, p. 7)

Claimant testified her supervisor, Cathy Schwartz, asked claimant if she needed a break following the call. Claimant said she needed to take another call to get the sound of the woman screaming out of her head. Claimant testified her shift continued and she continued to take calls. (Tr. p. 48)

Dennis Tripp testified he is claimant's husband. He has known claimant for about five years. Mr. Tripp has been in the police department for Bettendorf, Iowa for approximately 23 years. He said claimant texted him after the call and said she had a bad call. Mr. Tripp said he ended up calling claimant so she could hear another voice. He said that had not happened before with claimant. (Tr. pp. 15-18)

Claimant said approximately a week after the call, she was supposed to sit in with a trainee on the phone for about half the day. Claimant said she told her supervisor, Ms. Schwartz, she did not feel she was able to sit with the trainee, and she was still dealing with the dead infant call. (Tr. p. 51)

In emails dated October 8, 2018, claimant wrote Denise Pavlik, Director of SECC, she was having a difficult time, following the dead infant call, and was planning on seeing her own counselor. Claimant indicated in the emails the September 30, 2018 call was the third dead infant call she had taken, and she was having a difficult time getting over the call. (Ex. D, pp. 20-24)

On October 16, 2018 claimant was seen by Lisa Beecher, MS, LMHC. Claimant was complaining of symptoms of post-traumatic stress disorder (PTSD). Claimant had a history of sleep disorder. Claimant was assessed as having PTSD and adjustment disorder with anxiety. (Jt. Ex. 3, pp. 5-7)

On October 18, 2018 claimant filed an injury report regarding the September 30, 2018 phone call. (Jt. Ex. 2) On the same day Ms. Beecher completed an FMLA form for claimant indicating claimant was unable to respond to calls when the calls concern trauma or crisis. Ms. Beecher indicated claimant would be incapacitated from work from October 16, 2018 through November 30, 2018. (Jt. Ex. 3, pp. 8-14)

Claimant saw Ms. Beecher for counseling on October 22, 2018, October 25, 2018 and October 27, 2018. In an October 26, 2018 email to claimant's supervisors, Ms. Beecher requested claimant return to work at an eight hours a day shift only. (Jt. Ex. 3, pp. 18-24)

Claimant saw Ms. Beecher for counseling on November 5, 2018. Claimant was noted as having difficulty with noises, restaurants and with children playing. (Jt. Ex. 3, p. 27)

On November 19, 2018 claimant was seen at Psychology Health Group. Based on other documents in evidence, it is assumed claimant was evaluated by Robert Gillespie, Ph.D. (Ex. 1, p. 1) Claimant indicated since the September 30, 2018 call she was unable to get the mother's screaming voice out of her head. She indicated that,

since the call, she had increased feelings of dysphoria, or a state of unease, anxiety and nightmares. Claimant reported feeling depressed and having crying spells. Claimant also reported symptoms of anxiety. Claimant had sensitivity to sound and was wearing noise-cancelling headphones. Claimant was taking Klonopin for preexisting REM sleep disorder. (Jt. Ex. 4, p. 59)

Dr. Gillespie assessed claimant as having a symptom presentation consistent with PTSD secondary to a work-related trauma. He recommended continue treatment with a therapist. He also recommended claimant see a doctor to prescribe an antidepressant and to perhaps increase use of the Klonopin. (Jt. Ex. 4, pp. 59-60)

On November 21, 2018 claimant was evaluated by Stephen Thompson, D.O. based on a referral from Dr. Gillespie. Claimant began taking Effexor. Claimant was diagnosed as having PTSD and prescribed Effexor. (Jt. Ex. 5, pp. 101-103)

Claimant continued to see Ms. Beecher for counseling in December of 2018. In a December 13, 2018 letter Ms. Beecher indicated claimant should not work overtime and that claimant may have PTSD flare-ups until her medications were regulated. (Jt. Ex. 3, p. 37)

Claimant returned to Dr. Gillespie for psychotherapy. Claimant noted an improved condition. Claimant still had heightened sensitivity to noise. Claimant was recommended to get noise-reducing earplugs. Claimant was evaluated as being improved psychologically and emotionally. (Jt. Ex. 4, pp. 60-69)

In November or December of 2018 claimant started a business with Rodan and Fields. Claimant described her work with Rodan and Fields as a direct sales position selling skincare products. Claimant also began to organize wine tasting events with another company. (Tr. pp. 28-29, 36, 58; Ex. G)

On January 8, 2019 claimant was evaluated at Audiology Consultants. Notes appear to indicate claimant was experiencing hyperacusis, or a sensitivity to certain frequencies and volume ranges of sound. Claimant was recommended to continue PTSD treatment and limit use of noise-cancellation headphones. (Jt. Ex. 6)

Claimant returned to Dr. Gillespie for another psychotherapy session on January 8, 2019. Claimant reported a significant decrease in symptoms. Claimant had returned to work and was tolerating the return. Claimant said she had seen an audiologist and was diagnosed with hyperacusis. Claimant was taking Zoloft and Klonopin. (Jt. Ex. 4, p. 73)

In a January 18, 2019 report, written by claimant's counsel, Dr. Gillespie opined claimant's diagnosis was PTSD and that the PTSD was secondary to her work trauma on September 30, 2018. Dr. Gillespie indicated that, in the DSM IV, the diagnostic criteria to traumatic exposure, for PTSD, ". . . explicitly contemplates the exposure risk for first responders, such as 9-1-1 operators." (Ex. 1, pp. 1-3)

Dr. Gillespie indicated claimant was not at maximum medical improvement (MMI) as of November 18, 2019. He noted claimant continued to experience ongoing emotional distress but that the intensity and frequency of symptoms had decreased. He noted claimant may require continued psychotherapy medications for her PTSD symptoms. (Ex. 1, p. 4)

In a January 29, 2019 letter, written by claimant's counsel, Ms. Beecher agreed claimant had a diagnosis of PTSD secondary to the work trauma of September 30, 2018. Ms. Beecher believed claimant's PTSD was caused by the September 30, 2018 incident, but also opined that forced overtime and alleged understaffing might have contributed to the PTSD. She agreed claimant was not yet at MMI and would require ongoing medical care in the future. (Ex. 2)

Claimant returned to Dr. Gillespie on February 15, 2019 and March 1, 2019. Claimant had improved function and her PTSD symptoms were slowly reducing. (Jt. Ex. 4, pp. 80-81)

Claimant saw Stephen Thompson, D.O., on March 1, 2019. Claimant indicated changes in medication to Cymbalta seemed to be helping. Claimant indicated, "I feel like a normal person again." (Jt. Ex. 5, p. 106)

Claimant returned to Dr. Gillespie on April 2, 2019. Claimant indicated she had suicidal feelings at work but was able to work through them. Claimant continued to struggle with, "heightened levels of emotional responsivity" triggered by certain sounds, particularly high-pitched voices. Claimant continued to experience episodic recurrence of traumatic stress, but the frequency and intensity of the episodes was decreasing. (Jt. Ex. 4, p. 85)

In a June 18, 2019 letter, written by claimant's counsel, Dr. Gillespie indicated he had reviewed additional records, included, but not limited to, an audio file of the September 30, 2018 call, FMLA paperwork and emails from claimant to SECC. Dr. Gillespie continued to opine claimant's diagnosis was PTSD and that the September 30, 2018 call was a significant contributing factor to development of claimant's PTSD. (Ex. 3)

Claimant had a counseling session with Ms. Beecher on July 1, 2019. Claimant indicated she had taken a 9-1-1 call from a father regarding a 14-year-old who had hung herself. Claimant was allowed to leave work. Coping skills were discussed regarding the incident. (Jt. Ex. 3, p. 42)

Dr. Gillespie saw claimant for a psychotherapy session on July 8, 2019. Claimant had taken a call regarding a young girl who had hung herself. Claimant indicated taking the call triggered claimant hearing, in her head, the voice of the mother from the September 30, 2018 call. Claimant indicated the call had caused her to cry and overwhelmed her. (Jt. Ex. 4, p. 97)

In a September 4, 2019 report, Martin Carpenter, M.D., gave his opinions of claimant's condition following an independent psychiatric evaluation. Dr. Carpenter is a board-certified psychiatrist. Dr. Carpenter agreed with claimant that the September 30, 2018 phone call exceeded the routine 9-1-1 phone calls by a substantial degree. He noted some calls 9-1-1 operators take are more severe than others. (Ex. 5, pp. 26-35)

Dr. Carpenter opined the only diagnosis of claimant's condition was PTSD. He found claimant met the DSM V criteria for a diagnosis of PTSD, as she ". . . witnessed the actual event of a mother discovering her deceased child." (Ex. 5, p. 32) He found claimant was at MMI. He opined claimant still required treatment and would probably require ongoing pharmacological management as well as psychotherapy. Dr. Carpenter recommended claimant be allowed to continue treatment with Dr. Gillespie and Ms. Beecher. (Ex. 5, p. 34)

Dr. Carpenter noted the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition did not provide specific percentages of impairment for mental health disorders. Using federal guidelines, that Dr. Carpenter cited at 38 CFR, book C, he believed claimant had a 30 percent permanent impairment. (Ex. 5, p. 36)

Claimant testified that in September of 2019 she attended a convention in Nashville, Tennessee for Rodan and Fields. She said the convention occurred in a large convention center with approximately 10,000 people in attendance. She said she used noise-cancelling headphones and earplugs during the convention. (Tr. pp. 77-79)

Mr. Tripp said before the September 30, 2018 call, claimant was very outgoing and social. He testified that after taking the September 30, 2018 call claimant has been more withdrawn. He said he and his wife used to have a game night once a month with friends before the call. He said they tried to have a game night once since the call. He said claimant was unable to take the noise and ended up sitting in a closet. (Tr. pp. 16, 18-19)

Mr. Tripp said because of claimant's sensitivity to sound, they have had to leave restaurants due to claimant's reaction, at times to people's voices. (Tr. p. 28)

Mr. Tripp testified that, as a police officer, he believed it was unusual to have to deal with a dead infant call. (Tr. p. 20)

Claimant testified that since the September 30, 2018 call she applied to the public library, as she was seeking a job in a quieter environment. (Tr. p. 58)

Claimant said since the September 30, 2018 call, she has given up training new hires. She said she is anxious when she goes to work. She said she doubts she could get a job as a 9-1-1 dispatcher given her PTSD symptoms. (Tr. pp. 66-67)

Claimant testified that taking calls from distraught people is not unexpected as a 9-1-1 dispatcher. She said she has had other dead infant calls. Claimant said she has handled a call regarding the suicide of a teenager. (Tr. pp. 71-75)

At the time of hearing claimant was working full time. Claimant testified she plans to continue as a 9-1-1 operator. (Tr. pp. 83, 142)

Jill Cawiezell testified she is a 9-1-1- dispatcher for MEDIC EMS. Her employee is MEDIC Ambulance. She said she and claimant have different employers, but they work side by side. (Tr. pp. 93-94)

Ms. Cawiezell said she was involved in the September 30, 2018 call. She said she deals with calls, like the September 30, 2018 call, daily and is trained to handle these types of calls. (Tr. p. 95) Ms. Cawiezell said the September 30, 2018 call was not unusual or unexpected. She said it was not unusual to take such a call. Ms. Cawiezell said she had handled approximately 12 dead infant cases in her tenure. She says she has worked 24 years at her current job. (Tr. pp. 93-94, 98-99)

Ms. Cawiezell said she handles death and traumatic injury calls every day. She said she deals with distraught people daily on the phone. (Tr. pp. 100, 113)

Denise Pavlik testified that at the time of the September 30, 2018 call, she was the director of SECC. She testified she left that job on December 7, 2018. She said she supervised claimant for approximately five years. (Tr. pp. 119-120) Ms. Pavlik testified that prior to her supervisor position, she was a 9-1-1 operator from approximately 1998 through 2010. (Tr. p. 120)

Ms. Pavlik testified she has heard the September 30, 2018 call and did not consider it unusual. She said the 9-1-1 operators daily deal with people who are extremely upset. (Tr. pp. 121-122)

Ms. Pavlik testified that she estimated approximately ten people total were involved in the September 30, 2018 call, including claimant. (Tr. p. 124)

Ms. Pavlik testified she has taken approximately 15 calls during her career as a dispatcher, where children have died. She said it is part of the job to take life and death calls every day. She said approximately half of the calls she has taken involve distraught callers. (Tr. pp. 131, 135)

Tracey Sanders testified she is the deputy director for SECC. She said she has been in that job for two and a half years. She said she was trained to be a dispatcher by claimant. She said she has worked as a dispatcher for approximately twelve and a half years. (Tr. pp. 137-139)

Ms. Sanders said she has heard the September 30, 2018 call and did not consider the call unusual, unexpected or sudden. (Tr. pp. 139-140)

Ms. Sanders testified that based on tracking data, 9-1-1 dispatchers at SECC take about 20 calls a day and approximately 150-300 calls per month. (Tr. pp. 140-141) Ms. Sanders said SECC has provided accommodations to claimant given her mental health considerations. (Tr. p. 147)

CONCLUSIONS OF LAW

The first issue to be determined is if claimant sustained an injury that arose out of and in the course of employment. Claimant alleges she sustained a mental/mental injury caused by the work-related incident

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Nontraumatically caused mental injuries are compensable under Iowa Code section 85.3(1). Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995).

Mental injury cases that do not include a physical injury are referred to as "mental/mental" injuries. "Mental /mental" injuries require a somewhat higher standard to show causation than physical injury or a "physical/mental" injury. The Iowa Supreme Court has held this difference does not violate equal protection. Asmus v. Waterloo Community School Dist., 722 N.W.2d 653 (Iowa, 2006).

Under Dunlavey, mental injuries caused by work-related stress are compensable if, after demonstrating medical causation, the employee shows that the mental injury was caused by work place stress of greater magnitude than the day to day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer. Id. at 857.

Both medical and legal causation must be resolved in claimant's favor before an injury arising out of and in the course of employment can be established. To establish medical causation, the employee must show that the stresses and tensions arising from the work environment are a proximate cause of the employee's mental difficulties. If the medical causation issue is resolved in favor of the employee, legal causation is examined. Legal causation involves a determination of whether the work stresses and tensions the employee experienced, when viewed objectively and not as the employee perceived them, were of greater magnitude than the day to day mental stresses workers employed in the same or similar jobs experience routinely regardless of their employer.

The employee has the burden to establish the requisite legal causation. Evidence of stresses experienced by workers with similar jobs employed by a different employer is relevant; evidence of the stresses of other workers employed by the same employer in the same or similar jobs will usually be most persuasive and determinative on the issue. Id. at 858.

In Brown v. Quik Trip Corp., 641 N.W.2d 725 (Iowa 2002), a Quik Trip employee claimed a work-related mental injury after witnessing a shooting, and being involved in a robbery. The court in Brown held that if a mental injury was caused by an event of a sudden, traumatic nature, and was an unexpected cause or unusual stress, the legal test detailed in Dunlavey was not required, and the injury is considered to be compensable. The court noted that unlike Dunlavey, there was a readily identifiable stress factor, i.e., the robbery. Id. at 729. The court, in citing a Wyoming Supreme Court case regarding mental injuries, noted:

> Where a mental injury occurs rapidly and can be readily traced to a specific event,… there is a sufficient badge of reliability to assuage the Court's apprehension. Where, however, a mental injury develops gradually and is linked to no particular incident, the risk of groundless claims looms large indeed.

Brown at 728 (citation omitted)

The court in Brown found a claimant may satisfy the requirement of establishing legal causation by showing the claimant was subject to an event that was sudden, traumatic and unexpected. Id. at 729

See Village Credit v. Bryant, No. 11-1499, filed May 23, 2012 (Iowa Ct. App) Unpublished, 819 N.W. 2d 427 (Table) (Teller at credit union found to have mental/mental injury after being held up on two occasions by same suspect); Schuchmann v. Department of Transportation, File No 5035676 (App May 20, 2013) (Claimant found to have mental/mental injury after viewing charred body of driver killed in burning car wreck); Valdez v. Tass Enterprises, File No. 5027740 (App. May 25, 2011) (Claimant found to have mental/mental injury after being held up at gunpoint and bound by tape). See also Mills v. Walmart, File No. 5033095 (Arb. September 27,

2011) (Claimant vomited on by customer and some vomit got into claimant's mouth. Claimant feared contracting infectious disease. Claimant found to have physical injury, the vomiting, and mental injury, PTSD); Everhart v. Clarinda Correctional Facility, File No. 5007651 (App. September 30, 2005) (Claimant spat on by prisoner who claimant reasonably believed had HIV. Claimant found to have physical injury, spitting, and mental injury, PTSD).

A number of states have compensated PTSD as an accidental injury. Generally, these cases involve PTSD that resulted in proximity to one or two traumatic events. *See, e.g.,* Belcher v. T. Rowe Price Found, Inc., 77 N.Y. 2d 79, 564 N.Y.S. 2d 704, 565 N.E.2d 1255 (1990) (overruling appellate decision that denied benefits for secretary suffering from PTSD after witnessing construction accident); Wood v. Laidlaw Transit, Inc., 77 *N.Y.*2d 79, 564 *N.Y.S.*2d 704, 565 *N.E.*2d 1255 (1990) (awarding accident benefits to school bus driver who suffered PTSD after witnessing gruesome car accident); Jordan v. Cent. Piedmont Cmty. Coll., 124 *N.C. App.* 112, 476 *S.E.*2d 410 (N.C. Ct. App. 1996) (permitting prison instructor to bring accidental injury claim for PTSD arising from witnessing prison brawl); Bailey v. American Gen. Ins. Co., 154 *Tex.* 430, 279 *S.W.*2d 315 (1955) (permitting compensation for claimant who witnessed co-worker plummet eight stories off scaffolding to his death); Daniel Const. Co. v. Tolley, 24 *Va. App.* 70, 480 *S.E.*2d 145 (1997) (permitting accident recovery in case in which claimant suffered PTSD following large explosion at work).

Claimant contends her alleged injury resulted from the September 30, 2018 phone call regarding a dead infant. For this reason, the Brown standard is the test to be used in this case.

There are a number of problems with claimant's contentions she sustained a mental/mental injury under Iowa law using the framework provided by Brown v. Quik Trip.

As noted, under Brown, claimant carries the burden of proof of establishing legal causation by showing she was subjected to an event that was sudden, traumatic, and unexpected. Id. At 729.

In this case, there is considerable evidence in the record that 9-1-1 dispatchers, like claimant, routinely take calls involving death and traumatic injury.

Ms. Pavlik testified she was claimant's supervisor for approximately five years. She also testified she worked as a 9-1-1 dispatcher for approximately 12 years. She testified she has dealt with approximately 15 calls where children have died. (Tr. p. 131) She said it is part of the job "to take life-and-death calls every day. . ." (Tr. p. 131) She also indicated half the calls she has taken have involved distraught people and that as a 9-1-1 operator you deal with people daily who are extremely upset. (Tr. pp. 122, 135)

Ms. Cawiezell testified she has worked as a dispatcher for MEDIC EMC for 24 years. She said she has handled approximately 12 infant death calls during her tenure. (Tr. pp. 93-94, 98) She testified such calls are not unusual to take. (Tr. pp. 93-94, 98) Ms. Cawiezell said she handles death and traumatic injury calls every day. (Tr. pp. 100, 113)

Ms. Sanders testified she was trained by claimant, worked with claimant, and at the time of hearing was claimant's supervisor. She worked twelve and a half years as a dispatcher. She heard the September 30, 2018 call and opined it was not unusual, unexpected or sudden. (Tr. pp. 137-140)

Claimant herself testified that prior to taking the September 30, 2018 call, she handled three other infant death calls. (Tr. p. 49; Ex. D, p. 20)

Given this record, a 9-1-1 dispatcher could reasonably expect to take calls involving death, including calls involving dying or dead infants. Given the nature of the job of a 9-1-1 dispatcher, taking a call regarding a dying or dead infant cannot be said to be an unexpected cause or an unusual strain.

Claimant seems to argue that the September 30, 2018 call is somewhat different, as she has never taken a dead infant call from the mother, or when a caller said a child was dead. (Tr. pp. 49-50) Claimant's counsel also suggests that screaming heard on the call somehow makes the call more unusual or unexpected. (Tr. pp. 12, 154) This argument may make a factual distinction. However, under Brown, it does not make a legal distinction. As the evidence in this case indicates, given the nature of the job of a 9-1-1 dispatcher, taking a call regarding a dying or a dead infant cannot be said to be unexpected or unusual.

Second, there is a factual difference between this case, involving the September 30, 2018 call, and other cases in Iowa using the Brown standard. Is Ms. Tripp's incident similar to an employee being held up at gunpoint? (Village Credit v. Bryant; Valdez) Is the phone call Ms. Tripp heard similar to an employee viewing a charred body after a car fire? (Schuchmann) Is the phone call Ms. Tripp heard similar to a situation involving a store clerk cleaning up blood after a gun fight and later being held up? (Brown v. Quik Trip)

Factually, this does not appear to be the case. Iowa cases where a claimant has been found to have a mental/mental injury under the Brown standard appear to be situations where a claimant has feared for their own life, sees a gruesome injury, or the death of another. That is not the fact pattern in this case.

The incident that allegedly triggered claimant's mental health condition cannot be said to be an unexpected cause or an unusual strain, given the record in this case concerning the work of 9-1-1 dispatchers. Iowa case law finding a mental/mental injury under the Brown standard, involve instances where an employee is personally threatened, or sees a gruesome injury or the death of another. That is not the fact

pattern in this case. Claimant has failed to carry her burden of proof she sustained a mental/mental injury using analysis in Brown v. Quik Trip. As a result, claimant has failed to carry her burden of proof she sustained an injury that arose out of and in the course of employment.

This is a difficult case. I do believe claimant has some sort of mental health condition that was triggered, in part, by the phone call. I have listened to the recording of the call at issue in this case several times, and it is not a pleasant recording to hear. However, for the reasons detailed above, claimant has failed to carry her burden of proof she sustained an injury that arose out of and in the course of employment.

As claimant has failed to carry her burden of proof she sustained an injury that arose out of and in the course of employment, all other issues, other than the constitutional challenge, are moot.

The final issue to be determined is whether Iowa Code section 85.34(2)(x) is a violation of claimant's protections under the United States Constitution.

The Iowa Supreme Court has ruled that agencies cannot decide issues of statutory validity or the constitutional validity of a statute. Salsbury Laboratories v. Iowa, Etc., 276 N.W.2d 830, 836 (Iowa 1979). Based on this precedent, this agency cannot rule on the claim that the statutory provisions of Iowa Code section 85.34(2)(x) is unconstitutional and legally invalid.

ORDER

Therefore, it is ordered:

That claimant shall take nothing from these proceedings.

That both parties shall pay their own costs.

Signed and filed this 28th day of February, 2020.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jane Lorentzen (via WCES)
Andrew Bribriesco (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.