

JAN 16 2018

IN THE IOWA DISTRICT COURT FOR POLK COUNTY WORKERS COMPENSATION

SAIDE BOTELLO-DESILVA,

Petitioner,

vs.

**IAC IOWA CITY LLC and
AMERICAN ZURICH INSURANCE
COMPANY,**

Respondents.

Case No. CVCV054703

**RULING ON PETITION FOR
JUDICIAL REVIEW**

On January 5, 2018, the court heard oral argument on this Petition for Judicial Review. Attorney Andrew Bribriesco appeared by telephone on behalf of the Petitioner. Attorney James Ballard appeared on behalf of the Respondents. The court, having reviewed the file herein, the administrative record and the briefs of the parties, enters the following ruling.

The Petitioner, Saide Botello-DeSilva, seeks judicial review of a decision of the Workers' Compensation Commissioner finding she sustained only a permanent right knee injury and was entitled to 4.4 weeks of permanent partial disability benefits. The court notes that the 19 page Arbitration Decision was affirmed without further analysis in a three-page Appeal Decision. The Petitioner asserts the Commissioner erred in failing to properly consider and weigh the expert opinion of treating doctor Cory G. Christiansen, M.D. The Deputy's review of the various medical records in her Findings of Fact mentions Dr. Christiansen's records. However, Dr. Christiansen's letter dated 10/22/2012, which relates Petitioner's right hip pain to the initial work injury, is not discussed in the portion of the Decision analyzing the evidence and concluding that the Petitioner did not carry her burden to prove "any permanent injury beyond her right lower

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extremity.” Arbitration Decision, p. 12. The Deputy nor the commissioner made any findings either accepting or rejecting the opinion of this treating doctor.

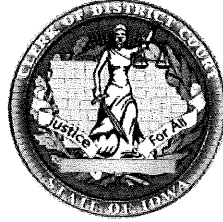
The law is clear that the commissioner “may not arbitrarily or totally reject [expert] testimony, but must weigh the evidence and assess the credibility of the witness.” *Poula v. Siouxland Wall & Ceiling, Inc.*, 516 N.W.2d 910, 911 (Iowa Ct. App. 1994) (citing *Catalfo v. Firestone Tire & Rubber Co.*, 213 N.W.2d 506, 509 (Iowa 1973)). It appears the Deputy rejected the expert opinion of Dr. Christiansen in light of her ultimate conclusion that the Petitioner did not suffer an injury beyond the lower right extremity. However, the law is clear that if uncontroverted expert testimony is rejected, the commissioner must state why with sufficient specificity for a reviewing court to determine if the Commissioner acted arbitrarily or misapplied the law. *Estate of Herman v. Overhead Door Co. of Des Moines*, No. 12-0892, 2013 WL 2107402, (Iowa Ct. App. May 15, 2013).

Here the Deputy spends almost a page of her ruling explaining why she did not find the opinion of Dr. Sassman, the IME doctor, persuasive; but makes no mention of the expert opinion of Dr. Christiansen relating the hip injury to the work incident, and whether she did or did not find it to be persuasive. The agency is entitled to reconcile competing evidence but it is not free to ignore evidence. *See JBS Swift & Co. v. Hedberg*, 873 N.W.2d 276, 281 (Iowa Ct. App. 2015). The Arbitration and Appeal Decisions in this case do not reflect that the agency weighed or made any credibility findings of Dr. Christiansen’s expert opinion at all. Ignoring relevant and important evidence is an abuse of discretion. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The court must

return this matter to the agency to consider *all* of the evidence in accordance with the law.

IT IS THEREFORE ORDERED that the Decision of the Iowa Workers' Compensation Commissioner is reversed and this matter is REMANDED back to the agency to be decided in conformity with this ruling and *Poula v. Siouxland Wall & Ceiling*, 516 N.W.2d 910 (Iowa Ct. App. 1994).

Copies to:
Parties and the Iowa Workers' Compensation Commissioner



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV054703
Case Title SAIDE BOTELLO DESILVA VS IAC IOWA CITY ET AL

So Ordered

A handwritten signature in black ink that reads "Karen A. Romano".

Karen A. Romano, District Court Judge,
Fifth Judicial District of Iowa