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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CITY OF HARLAN and EMCASCO INSURANCE COMPANY, **Petitioners,** **vs.** **STEVE KENKEL,** **Respondent.**	**Case No. CVCV058600** **RULING ON PETITION FOR JUDICIAL REVIEW**

This matter came before the court on December 13, 2019, for hearing on Petitioners' petition for judicial review. The City of Harlan and EMCASCO Insurance Company ("Petitioners") appeared through attorney D. Brian Scieszinski. Steve Kenkel ("Respondent") appeared through attorney Jason Neifert. Having entertained the arguments of the parties, having reviewed the court file, having reviewed the applicable case law, and being otherwise fully advised in the premises, the Court now enters the following ruling.

INTRODUCTION

A. Factual Background

Steve Kenkel ("Kenkel") has worked for the City of Harlan since 1977. Kenkel started working at Harlan's new wastewater treatment plant in 1978. He has worked at the wastewater treatment plant full-time in various capacities ever since. From 1978 and 1993, Kenkel worked as a wastewater operator and technician at the plant. After a promotion, Kenkel served as the assistant superintendent of the plant from 1993 to 2010. Kenkel has been the plant superintendent since 2010. The wastewater treatment plant can be a noisy place. Kenkel testified to a number of noise-sources in and around the plant. In the plant there is an office, restroom, breakroom, and a laboratory. From 1987 to 1993 the office was not enclosed. Of note, there are three sludge pumps in the lower level of the plant. The pumps are in a concrete room and only a metal grate separates them from the main level of the plant where the office is located. The sludge pumps

were originally installed in 1978. Since then, the City of Harlan replaced one pump in 1998 and another in 2014. There is always a minimum of one pump running at any given time. A shop nearby houses an air compressor and generator for the plant.

In May 2015, a representative of the sludge pump manufacturer estimated that based on the models in use from 1978 to 1998 the total decibel level produced by the pumps was 98 db. The representative estimated that from 1998 to 2014 their decibel level was 89 db and that from 2014 and on the pumps ran at 81 db. In November 2014, the City of Harlan's safety director took noise readings at the plant for the first time. The readings revealed that eleven places measured decibel levels of 80 dB and greater. This included where the three sludge pumps were housed, the boiler room, the shop air compressor and the shop generator. Kenkel noted this was when he first learned the pumps had such a high decibel level. In his capacity as plant superintendent, Kenkel took several steps to mitigate noise levels and noise exposure, such as moving the shop generator outside, closing off the office area and laboratory from the plant, rebuilding the third sludge pump so it ran quieter, posting decibel levels in the building, and requiring that hearing protection be worn in areas with dB readings of 85 dB and higher. Kenkel testified that, prior to 2014, his use of hearing protection was limited and that he only wore protection when he was exposed to loud noises that were out of the ordinary. He indicated that he did not wear hearing protection during normal plant operation.

Kenkel testified that he started experiencing hearing difficulties somewhere between 2005 and 2007. He noted the onset of ringing and whistling in his ears and having to ask people to repeat themselves. Kenkel was advised about hearing aids at various points in time. Kenkel noted that an audiologist told him that his hearing was getting worse and that he might look into getting hearing aids sometime between 2010 and 2012. Also, one of Kenkel's July, 2013 audiograms noted that the clinician spoke with Kenkel about hearing aids. However, Kenkel did not investigate hearing aids because concerns about costs outweighed any apparent burden at the time. The City of Harlan provided hearing tests on a near annual basis since 1992. Still, Kenkel was not provided with a copy of the results until he requested them in 2014.

Kenkel explained that he recognized that his hearing loss was getting to the point where he needed to address it in August of 2014. At the time, he was spending more time with his daughter, and according

to him, she "talks a lot quieter and faster than his wife did. And she was getting very agitated at me of asking her to repeat things all the time. And so that's when I started looking into [getting hearing aids]." Kenkel reported contacting his health insurance provider to see if they would cover hearing aids. They indicated they would not and directed Kenkel to one of their vendors to see if he could get a better rate. The individual he spoke with told Kenkel that he should talk with his human resources person at the City of Harlan because the hearing aids might be covered due to occupational hearing loss. Soon after, Kenkel spoke with the City Administrator about how to proceed and who would pay for his hearing aids.

Kenkel testified that it was August, 2014, when he connected his hearing issues to his work for the City of Harlan. On August 19, 2014, Kenkel had his annual hearing test with the City of Harlan. Per the technician's notes, Kenkel discussed hearing aids and further testing at the appointment. The report generated from this visit indicated that Kenkel had mild hearing loss at normal speech frequencies and more severe hearing loss at high pitched frequencies. On August 22, 2014, Kenkel went to Hearing Healthcare Centers to look into getting hearing aids. On his patient form, Kenkel reported his hearing loss was gradual, that he first noticed his hearing loss in the past five years, that the cause was work, and that he has the most difficulty hearing soft voices, people talking fast, and in crowds.

Multiple individuals examined whether there was a causal relationship between Kenkel's noise exposure at work and his hearing loss and tinnitus. Some of them questioned whether the noise exposure he experienced at work could have caused his hearing injuries. A City of Harlan-retained audiologist, Abby Couse, M.S. found it was difficult to confirm whether Kenkel's employment with the City of Harlan was the sole cause of his hearing impairment. Couse's review was based on a representation that hearing protection was worn at all times, with the exception of when employees were in the office. Couse also did not have the manufacturer's estimates of the sludge pump decibel levels. Dr. Dean Wampler, relying on Kenkel having used hearing protection in the plant and pump areas, contended that with such hearing protection, the degree of Kenkel's hearing loss could not have been caused by the noise exposure that he experienced working for the City of Harlan. The audiologist retained by Kenkel's counsel, Richard Tyler, Ph.D., interviewed Kenkel and reviewed his audiogram records. Kenkel explained to Dr. Tyler that he first

noticed his tinnitus fifteen or twenty years earlier and described experiencing the condition constantly. Kenkel related the noise levels he experienced at work and the recreational noise exposure he experienced during target shooting, hunting, and using chainsaws. Dr. Tyler opined that Kenkel's hearing loss and tinnitus were most probably the result of the noise exposure he experienced at work. He also explained that Kenkel's audiogram results were consistent with noise-induced hearing loss. Ultimately, Dr. Tyler found that Kenkel had a permanent impairment of nine percent stemming from his tinnitus and a high frequency hearing loss of 18.3 percent in both ears. Dr. Tyler recommended permanent work restrictions, which included that Kenkel should not work (1) around loud or unpredictable noise, (2) dangerous situations requiring accurate concentration, or (3) stressful situations that require auditory localization skills.

Kenkel also saw Dr. Mark Zlab for an independent medical examination. Kenkel reported the noise exposure he experienced at work since 1977, his hunting, and that his hearing issues began in the early to mid-90s. Dr. Zlab tested Kenkel's hearing with an audiogram and tympanometry. His assessment was that Kenkel had a five percent impairment from his tinnitus and age-corrected hearing loss of 14.65 percent in both ears. Dr. Zlab reviewed Kenkel's audiograms dating back to 1992 and observed that Kenkel's hearing loss worsened over the years, which he found to be consistent with noise damage. Dr. Zlab stated "we can conclude that the loss is from his noise exposure in the work environment." and that there is no treatment other than hearing aids. R. 39.

Kenkel reported receiving hearing aids on August 22, 2014, and testified that with his hearing aids he is able to perform all the elements of his job without difficulty. He also related that the hearing aids mask his tinnitus to some degree when he is wearing them, but he continues to experience symptoms when he takes them out.

B. Procedural History

On July 27, 2016, Kenkel filed an original notice and petition for benefits. Kenkel alleged that he suffered hearing loss and tinnitus arising out of and in the course of his employment with the City of Harlan and as a result, experienced a permanent industrial disability. The City of Harlan contested both of these claims and asserted, in any event, that Kenkel failed to provide timely notice of his alleged work-place

injuries pursuant to Iowa Code section 85.23 and failed to bring his claim within the two-year statute of limitations pursuant to Iowa Code section 85.26.

On September 11, 2017, Iowa Deputy Workers' Compensation Commissioner Erica Fitch ("Deputy Commissioner Fitch") arbitrated this case and ruled on these matters. As an initial matter, Deputy Commissioner Fitch found Kenkel to be credible and found no reason to doubt the veracity of what he said. In her arbitration decision. Deputy Commissioner Fitch gave the greatest weight to the consistent opinions of Dr. Ztlab and Dr. Tyler who identified a causal connection between Kenkel's hearing injuries and his work for the City of Harlan. She found that Kenkel regularly worked without hearing protection. Moreover, she found that Couse's and Dr. Womback's reports relied on inaccurate and incomplete understandings of Kenkel's noise exposure, particularly the frequency with which Kenkel wore hearing protection. Deputy Commissioner Fitch also noted that Couse opined on whether Kenkel's hearing loss was solely caused by his work, a stricter causation standard than required by law. As such, Deputy Commissioner Fitch found that Kenkel proved his claim by a preponderance of the evidence.

Deputy Commissioner Fitch further found that Kenkel's work injury caused him permanent disability. She highlighted that both Dr. Zlab and Dr. Tyler opined that Kenkel sustained a permanent impairment due to his hearing loss and tinnitus, and that Dr. Tyler recommended certain permanent work restrictions. Deputy Commissioner Fitch concluded that Kenkel had an industrial disability of fifteen percent, noting the following factors: (1) that Dr. Zlab and Dr. Tyler arrived at similar impairment ratings; (2) that Kenkel's conditions warranted permanent work restrictions; (3) that Kenkel must use hearing aids because of his significant hearing loss; (4) that the hearing aids reduce the impact of the tinnitus and assist his hearing; (5) that Kenkel admits he is capable of performing his work duties with the use of hearing aids; (6) that he is 58 years old, graduated from high school and received a certification in wastewater treatment; (7) that he worked his whole career for the City of Harlan; (8) that he would not be working for a different employer if his hearing were better; (9) that his earnings have not currently been impacted; and (10) that he sustained significant hearing loss and impaired hearing function and tinnitus.

She further determined that Kenkel's injury manifested on August 19, 2014– the date of Kenkel's 2014 hearing test with the City. Deputy Commissioner Fitch acknowledged that Kenkel "suffered hearing loss and tinnitus symptoms long before 2014" but noted that Kenkel "was not provided with copies of his audiograms [until this test]" and found that "it was not until August, 2014, that [Kenkel's] symptoms had reached a level which interfered with his activities at home and work." Deputy Commissioner Fitch also noted that it was at this time when Kenkel contacted his personal health insurance company regarding coverage for hearing aids and was instructed to look into a possible relationship between his work environment and his hearing issues. Deputy Commissioner Fitch highlighted that when Kenkel received this information, he reported his claim to the City of Harlan which then further investigated the noise levels in the plant.

Based upon this determination, Deputy Commissioner Fitch found that the City of Harlan failed to meet its burden to prove the affirmative defenses of lack of timely notice and the statute of limitations. With respect to the City of Harlan's Iowa Code section 85.23 defense, Deputy Commissioner Fitch found that Kenkel provided timely notice because the City of Harlan acknowledged receiving Kenkel's claim for benefits on October 29, 2014, well within 90 days of the August 19, 2014. Similarly, Deputy Commissioner Fitch found that Kenkel filed his petition within the two-year statute of limitations in Iowa Code section 85.26.

The City of Harlan appealed this decision. Upon a de novo review, the Commissioner reached the same conclusions as Deputy Commissioner Fitch and adopted Deputy Commissioner Fitch's findings of fact and conclusions of law as the agency's final decision.

STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law by 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 one of the enumerated criteria contained in section 17A.19 (10) (a) through (n)." *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom*

Sys., Inc. v. Iowa Utilities Bd., 805 N.W.2d 758, 762 (Iowa 2011)). Where an agency has been "clearly vested" with fact-finding authority, the appropriate "standard of review [on appeal] depends on the aspect of the agency's decision that forms the basis of the petition for judicial review"—that is, whether it involves an issue of (1) findings of fact, (2) interpretations of law, or (3) application of law to fact. *Burton*, 813 N.W.2d at 256.

The Court must also grant appropriate relief from agency action if such action was "[b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(c). With respect to such provisions of law, the Court is not required to defer to the agency's interpretation. Iowa Code § 17A.19(11)(b). Additionally, the Court must grant relief from agency action that is "[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law," based upon a misapplication of law to the facts, or "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion." Iowa Code § 17A.19(1)(l–n).

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 by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." *Meyer*, 710 N.W.2d at 219. In other words, the Court will only reverse the Commissioner's application of law to the facts if "it is 'irrational, illogical, or wholly unjustifiable.'" *Neal*, 814 N.W.2d at 518 (quoting *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007); *see also Burton*, 813 N.W.2d at 256 ("When application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency's application of the law to the facts of a particular case if that application is 'irrational, illogical, or wholly unjustifiable.'").

If the alleged error is one of fact, the standard of review is whether the findings are supported by substantial evidence. *Harris*, 778 N.W.2d at 196; *Schutjer v. Algona Manor Care Ctr.,* 780 N.W.2d 549, 557 (Iowa 2010). "[A] reviewing court can only disturb those factual findings if they are 'not supported by substantial evidence in the record before the court when that record is reviewed as a whole.'" *Burton*, 813

N.W.2d at 256 (quoting Iowa Code § 17A.19(10)(f)). The Court "is limited to the findings that were actually made by the agency and not other findings the agency could have made." *Id.* "Evidence is substantial if a reasonable person would find the evidence adequate to reach the same conclusion." *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002) (citing *Ehteshamfar v. UTA Engineered Sys. Div.,* 555 N.W.2d 450, 452 (Iowa 1996)).

ANALYSIS

Petitioners make three arguments on appeal. First, Petitioners argue that the Commissioner erred in determining that Kenkel sustained an industrial disability. Second, Petitioners argue that Kenkel's claim was barred for lack of timely notice under Iowa Code §85.23. Last, Petitioners argue that Kenkel's claim was barred by the statute of limitations set forth in Iowa Code §85.26. Petitioners' arguments regarding timely notice and the statute of limitations are discussed first as they are dispositive. Moreover, Petitioners' arguments regarding timely notice and the statute of limitations will be discussed together because both arguments rest on Petitioners' claim that the Commissioner erred in determining that Kenkel's injuries manifested on August 19, 2014.

A. Notice and Statute of Limitations

The issue is whether the Commissioner erred in determining that Kenkel's injuries manifested on August 19, 2014. "The Commissioner is entitled to a substantial amount of latitude in making a determination regarding the date of manifestation since this is an inherently fact-based determination." *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992). Accordingly, the Court will only disturb the Commissioner's finding that Kenkel's injuries manifested on August 19, 2014, if it is not supported by substantial evidence in the record.

Iowa Code section 85.23 essentially states that a workers' compensation claim is barred if the employee does not provide notice of the injury within ninety days of the occurrence of the injury, unless the employer has actual knowledge of the occurrence of the injury.

Iowa Code section 85.26 states in relevant part, "An original proceeding for benefits under this chapter or chapter 85A, 85B, or 86, shall not be maintained in any contested case unless the proceeding is

commenced within two years from the date of the occurrence of the injury for which benefits are claimed…" Iowa Code §85.26.

For cumulative injuries such as Kenkel's bilateral hearing loss and tinnitus injuries in this case, the cumulative injury rule and the discovery rule are the applicable legal standards for determining when time begins to run for the purposes of sections 85.23 and 85.26. See generally *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 287 (Iowa 2001). In *Herrera v. IBP, Inc.*, the Iowa Supreme Court stated:

> [A] cumulative injury is manifested when the claimant, as a reasonable person, would be plainly aware (1) that he or she suffers from a condition or injury, and (2) that this condition or injury was caused by the claimant's employment. Upon the occurrence of these two circumstances, the injury is deemed to have occurred. Nonetheless, by virtue of the discovery rule, the statute of limitations will not begin to run until the employee also knows that the physical condition is serious enough to have a permanent adverse impact on the claimant's employment or employability, i.e., the claimant knows or should know the "nature, seriousness, and probable compensable character" of his injury or condition.

633 N.W.2d at 288.

Here, the Commissioner found that Kenkel's bilateral hearing loss and tinnitus injuries manifested on August 19, 2014. The Commissioner was not required to make a finding under the discovery rule in this case because (1) Petitioners received Kenkel's claim for benefits and had notice of his injuries on October 29, 2014, within the 90 days required by Iowa Code section 85.23 and (2) Kenkel filed his petition with the Iowa Workers' Compensation Commissioner on July 27, 2016, which was within the two-year statute of limitations in Iowa Code section 85.26.

Petitioners' arguments that Kenkel's claim is barred for lack of timely notice and by the statute of limitations are essentially the same. Petitioners argue that the Commissioner erred in determining that Kenkel's injuries manifested on August 19, 2014. Petitioners argue that, under the discovery rule, Kenkel knew or should have known about his injuries years before August 19, 2014. In support of their arguments, Petitioners claim that Kenkel admitted to knowing that his hearing problems were serious and work-related years before August 19, 2014, citing Ex. 2, p. 5 and a portion of his cross examination on pages 51-55 multiple times to support this proposition. Petitioners rely primarily on *Chapa v. John Deere Ottumwa*

Works, 652 N.W.2d 187 (Iowa 2002) to support the proposition that Kenkel should have known that his injuries were serious and work related years before August 19, 2014.

Ex. 2, p. 5 is Kenkel's patient analysis chart dated August 22, 2014 from Hearing Healthcare Centers where an audiogram was performed on him. In part, Kenkel reported his hearing loss was gradual, that he first noticed his hearing loss in the past five years, that the cause was work, and that he has the most difficulty hearing soft voices, people talking fast, and in crowds. The date of this document is August 22, 2014, which is three days after August 19, 2014, when the Commissioner found that Kenkel's injuries manifested.

Petitioners point to their cross-examination of Kenkel during arbitration, where Petitioners counsel asked Kenkel to elaborate on his answers in the patient analysis chart dated August 22, 2014. Despite Petitioners' contentions, Kenkel did not admit that he knew he had an injury five years prior nor did he admit that he was aware that work was the cause of his injuries five years prior. At most, Kenkel's testimony was inconclusive towards these points. Petitioners had the burden of proof for their affirmative defenses. On the other hand, Kenkel's testimony on direct examination was clear that he did not connect his hearing loss to work until "this whole claim came up." [Arbitration Hr'g Tr.at 38:9-12].

More importantly, the Commissioner was present during Kenkel's testimony and stated, "Claimant's testimony was clear and consistent as compared to the evidentiary record, deposition testimony, and recorded statements. His demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible." [Arbitration Decision at 2]. Viewing the record as a whole, substantial evidence supports the Commissioner's finding that Kenkel did not know both that he had an injury and whether it was connected to his work until August 19, 2014.

In *Chapa*, the Supreme Court of Iowa affirmed the Workers' Compensation Commissioner's dismissal of Chapa's claim. *Chapa v. John Deere Ottumwa Works*, 652 N.W.2d 187, 188 (Iowa 2002). The Supreme Court affirmed the commissioner's decision and found that Chapa knew or should have known about the seriousness of his injury and its relation to his work in 1983. *Id*. at 189-190. In that case, Chapa worked at John Deere and was regularly exposed to factory noise. Chapa retired from John Deere on

December 31, 1995, and brought his claim for compensation in 1997. *Chapa*, 652 N.W.2d at 188. The Supreme Court found that the record supported the commissioner's finding, noting that Chapa first noticed "a 'very strange' ringing in his ears in 1983...The sound awakened him from sleep, affecting his concentration at work." *Id.* at 189. Chapa felt less alert at work. *Id*.

Kenkel's case differs from Chapa's in two important ways. First and most important, the record in this case shows that Kenkel was not affected by his hearing loss to the extent that Chapa was affected. Although Kenkel was aware that his hearing was worsening over the years, Kenkel was not affected to the point where his hearing problems were "serious enough to have a permanent adverse impact on the [his] employment or employability." *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 288 (Iowa 2001). To the contrary, Kenkel did not seem to have any problems at work. Second, unlike Chapa who brought his claim nearly two years after he retired, Kenkel brought his claim while still employed at the City of Harlan.

In sum, substantial evidence supports the Commissioner's finding that Kenkel's injuries manifested on August 19, 2014. It is inconsequential exactly when the discovery rule started the clock on sections 85.23 and 85.26 after August 19, 2014, because Petitioners had notice within 90 days pursuant to Iowa Code section 85.23 and Kenkel brought filed his petition within the two-year statute of limitations provided in Iowa Code section 85.26. *Herrera*, 633 N.W.2d at 288.

B. Industrial Disability

Petitioners claim that the Commissioner erred in determining that Kenkel sustained an industrial disability. They contend that the Commissioner "incorrectly assumes that an injured worker who has sustained a functional impairment which results in no loss of earning capacity is entitled to an industrial disability award." Petitioners are correct that "industrial disability measures an employee's lost earning capacity." *Keystone Nursing Care Ctr. v. Craddock*, 705 N.W.2d 299, 306 (Iowa 2005) (citing *Second Injury Fund v. Nelson*, 544 N.W.2d 258, 265 (Iowa 1995)). However, Petitioners are incorrect insofar as they argue that the Commissioner erred in determining that Kenkel's earning capacity is diminished because Kenkel maintains his current job with City, is able to perform his current job duties with hearing aids, and makes the same income.

Substantial evidence supports the Commissioner's finding. The commissioner must consider many factors when determining whether a worker experienced a loss in earning capacity, some of which include: "functional impairment, age, education, intelligence, work experience, qualifications, ability to engage in similar employment, and adaptability to retraining." *Keystone*, 705 N.W.2d at 306 citing *Myers v. F.C.A. Servs., Inc.*, 592 N.W.2d 354, 356 (Iowa 1999). While actual loss of earnings may be considered, "compensable disabilities [are] often present despite the fact that the employee has not, as of yet, suffered any actual diminution in earnings." *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 831 (Iowa 1992). Furthermore, a reduction in earning capacity may be found even where the worker's actual earnings have increased. *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 653 (Iowa 2000). As such, Kenkel "[was] not required to prove an actual reduction in earnings to establish a loss of earning capacity." *Polaris Indus. v. Sharar*, 2015 Iowa App. LEXIS 382 (Iowa Ct. App. Apr. 22, 2015).

In finding that Kenkel sustained an industrial disability, Deputy Commissioner Fitch not only weighed Kenkel's impairment rating but she also considered that Kenkel's conditions warranted permanent work restrictions. In assigning an industrial disability of fifteen percent, she addressed the factors that influenced her award, considering Kenkel's age, education, work experience, qualifications, and workplace restrictions, in addition to the other factors noted above. While Petitioners identify factors that could have lowered Kenkel's industrial disability assessment, the Court finds ample evidence in the record to support the Commissioner's ultimate findings. Because the Commissioner vis a vis Deputy Commissioner Fitch considered the proper factors in assessing the claimant's industrial disability and because those findings are supported by substantial evidence, this Court finds no basis to reverse the Commissioner's determination that Kenkel sustained an industrial disability of fifteen percent. *See Keystone Nursing Care Ctr. v. Craddock*, 705 N.W.2d 299, 307 (Iowa 2005).

CONCLUSION

IT IS THEREFORE ORDERED, the decision of Deputy Commissioner Fitch, as affirmed by the Iowa Workers' Compensation Commissioner, is hereby AFFIRMED.

IT IS FURTHER ORDERED that the Petition for Judicial Review is hereby DENIED and DISMISSED.

IT IS FURTHER ORDERED that costs shall be assessed to Petitioners.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV058600	CITY OF HARLAN AND EMCASCO VS STEVE KENKEL

So Ordered

Robert B. Hanson

Robert B. Hanson, District Court Judge,
Fifth Judicial District of Iowa