IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

SOUTHERN IOWA ECONOMIC DEVELOPMENT ASSOCIATION, AND UNITED WISCONSIN INSURANCE COMPANY ***Petitioners*,** **v.** **CHRISTINA GARR-KIME,** ***Respondent*.**	**Case No. CVCV058097** **RULING ON PETITION FOR JUDICIAL REVIEW**

The Respondent ("Ms. Garr"), a social worker for the Petitioner ("SIEDA")[1], learned of the deaths of two clients and the toddler child of a third over the span of one week. The child's death, from injuries inflicted by her mother, led to a series of events involving Ms. Garr at work, culminating in SIEDA placing her on administrative leave pending an investigation of her involvement with the family, and resulting in a reprimand for not reporting suspected child abuse. Her successful claim for worker's compensation benefits for a mental injury stemming from these events is the subject of this administrative review action. In seeking a reversal, SIEDA challenges the Deputy Iowa Worker's Compensation Commissioner's determination that Ms. Garr: reported her injury in a timely manner; suffered a compensable mental-mental injury caused by her employment with SIEDA; which resulted in a fifty percent loss of future earning capacity.

I. FINDINGS

A. Ms. Garr and the Events.

[1] The Petitioners, Southern Iowa Economic Development Association and United Wisconsin Insurance Company, will be collectively referred to as "SEIDA".

Ms. Garr is 45 years old. She holds a bachelor's degree in Sociology and Human Services. At the time of these events, she had been employed fulltime by SIEDA as a Family Development and Self-Sufficiency Specialist ("FaDSS") since 2007, "provid[ing] services in a manner that promotes, empowers, and nurtures the family to self-sufficiency and healthy reintegration into the community." Hearing Ex. 11, p. 165. She was paid $12.00 per hour.

On January 20, 2014, Ms. Garr learned that a former SIEDA client who she saw regularly had died from a heart attack. Three days later she learned that another client had died at age thirty due to diabetic complications. The day after that, she learned via Facebook that a nineteen-month-old child, with whom she had visited along with her client-mother two days earlier, had died of child abuse.

The following Monday, January 27, 2014, Ms. Garr informed her supervisor at SIEDA, Ms. Falck, of the child-abuse death. The mother had been leaving messages on Ms. Garr's work cell-phone wanting to talk to her. Ms. Falck instructed her to continue working with the mother, so Ms. Garr met with her that day. Upon returning to the office, however, Ms. Falck advised her that the mother had been terminated from the program, and instructed her to terminate all communications with the mother. That same day, officers from the Oskaloosa Police Department and Iowa Department of Criminal Investigation entered Ms. Garr's office and asked for her file regarding her work with the mother. She was also informed that the county attorney had opened a criminal investigation into the baby's death. [2] Ms. Garr stated that Ms. Falck told her over the phone and in person that if she had made a child abuse report to DHS, the baby would still be alive. Ms. Falck denied making such a statement to her. As a FaDSS, Ms. Garr was a mandatory reporter of suspected child abuse.

[2] The mother was ultimately tried and convicted for the death of the baby.

Ms. Garr was advised to obtain her own legal counsel, and told to sit for a deposition to take place on February 12, 2014. On February 4, 2014, she was placed on administrative leave pending an investigation into her failure to report suspected child abuse to DHS. Ms. Falck gave her a memorandum that included:

> Based on the review of the documentation found in the FaDSS file for [the baby] you failed to report a visible injury to [the baby's] eye on January 22, 2014. The injury may have been caused by child abuse and warranted further investigation by the Department of Human Services. Failure to report indicators of child abuse to DHS is a violation of your obligations as a mandatory reporter and a violation of FaDSS Code of Ethics. Therefore, if during the course of the investigation there are indications that disciplinary action is warranted, we reserve the right to take further action, up to and including termination.

Hearing Ex. 11, p. 180. Ms. Garr was reinstated to her previous position on February 10, 2014, receiving a memorandum of reprimand with the subject line, "Serious Misconduct," which included:

> In consideration of the documentation contained in the case file and the legal requirements as a mandatory reporter as outlined in Iowa Coded 216A.107, a report of suspected child abuse should have been made to the Department of Human Services in August 2013 and again on January 22, 2014.While we cannot draw a definitive conclusion as to whether the violence against [the baby] could have been prevented; there may have been the possibility that assistance could have been provided to the child.

Hearing Ex. 11, p. 181. She returned to work on February 13.

Ms. Garr testified that during the above events, she began questioning her own judgment, and became increasingly distressed, depressed and anxious. She stated she was unable to sleep, and saw her primary care provider regarding that on February 12, 2014. She also testified that during this time she developed panic attacks. Ms. Falck acknowledged that Ms.Garr "kind of shut down" at work. Hearing Ex. 15 p. 254.

Ms. Garr resigned from her position at SIEDA on February 18, 2014. At that time she provided a four-page resignation letter that detailed her version of the above events. In that letter, she also advised that:

> Do (*sic*) to the treatment I have received by Rebecca Falck with the support of her Supervisors, I've had to seek medical treatment for my inability to sleep and emotional issues. I also had to begin mental health counseling in order to deal with the fact that I have been told on more than one occasion from her that I am a contributor in the death of a child. I suffer from stomach aches and nausea that were not present prior to the fore mentioned circumstances.

Hearing Ex. 11, p.185. She concluded her letter with: "it would be in the best interest of my mental and physical health to leave my current position with SIEDA..." Hearing Ex. 11, p.186.

Ms. Garr had a prior history of depression and anxiety for which she was on medication. Nevertheless, she was able to perform her job as expected prior to the events of January – February, 2014.

B. Ms. Garr and her Injuries.

Ms. Garr did not seek further mental health treatment until April, 2015, stating she did not seek treatment before then because she thought she "could handle it" and "fix herself." Hearing Tr. p. 47. She began treating with Mahaska Health Partnership in April, 2015, where she was seen by several mental health providers. A report provided by Christine Hartman, LMHC of Mahaska Health Partnership on February 14, 2017, provided that Ms. Garr suffered from posttraumatic stress disorder; generalized anxiety; depression – recurrent, moderate; and panic disorder with panic attacks. She went on to state that:

> The trigger for [Ms. Garr's] PTSD was the death of a client's child, which occurred in January 2014, and her employer or supervisor's allegations that she had not taken enough actions to ensure the child's safety. While she had pre-existing depression, the events in January 2014 contributed to and caused her depression to worsen. Her anxiety and panic disorder are also causally related to the events in January 2014…

> [Ms. Garr] worked with clients in situations where she knew that the children were not always safe and that there were limits on her ability to protect them. However, in this situation, the close proximity between the last time she saw the child and the child's death, combined with the employer's actions in assigning blame to [her] magnified the degree of mental stress that would normally be associated with the death of a client or a client's child. As a result, [Ms. Garr] experienced an unusual stress that was of a greater magnitude than would be experienced by other workers in the same or similar jobs.

Hearing Ex. 4, pp. 99-100.

Ms. Garr also obtained an independent psychological evaluation from Eva Christiansen, PhD, on December 21, 2016. Hearing Ex. 6. Dr. Christiansen diagnosed Ms. Garr with recurrent, moderately severe major depressive disorder, generalized anxiety disorder, panic disorder with panic attacks, and posttraumatic stress disorder. *Id*, p.112. While acknowledging Ms. Garr's long-standing depression and possible anxiety, she noted that after January, 2014, she withdrew from competitive employment; became a dependent upon others to drive her to appointments; and developed the symptoms of PTSD. *Id*, p. 113. Dr. Christiansen also noted that "the kind of trauma Ms. Garr experienced with the death of a child on her caseload, has been rare in the SIEDA situation, three occurrences in the previous 17 years. This level of trauma is not routinely experienced or expectable for FaDSS workers." *Id*.

Dr. Christiansen attributed Ms. Garr's current mental health difficulties to the events beginning on January 24, 2014, and opined that she will have difficulties with understanding and remembering instructions, maintaining attention, concentration and pace, and interactions with the public, coworkers and peers, and may not be able to tolerate a full normal workday or work week. *Id*, p. 114. She further stated that Ms. Garr will not be able to accept criticism or demonstrate resilience and appropriate responses to changes in the workplace. She concluded that Ms. Garr's mental health condition is likely permanent because it has persisted and also

because treatment of PTSD has the best outcome when interventions begin quickly after a traumatic event. *Id*, p. 115.

SIEDA also obtained an independent psychological evaluation of Ms. Garr from Philip L Ascheman, PhD, on August 2, 2016. Following his testing and interview, Dr. Ascheman stated that Ms. Garr meets the diagnosis for major depressive disorder in partial remission and generalized anxiety disorder. Hearing Ex. 5, p. 109. He did not believe that she meets the criteria of posttraumatic stress disorder. *Id*, p. 110. He noted that Ms. Garr was not entirely forthcoming with information during the interview, and that she previously provided relatively "normal" results on an MMPI before submitting to a bariatric surgery which occurred after January, 2014. Dr. Ascheman opined that:

> the patient's mental health condition was present prior to the incident at work on 1-24-14. Her symptoms increased while she was on administrative leave and being investigated for failing to report an injury to DHS. She believed that she was mistreated and she disliked being told that she needed to change her interactions with clients in her report writing, so she resigned from the position. While that situation likely resulted in some minimal increased anxiety and depression, it is my opinion that the workplace stress was not of a greater magnitude than the stress experienced by other workers employed in the same or similar occupations. In regard to the situation involving the death of clients, the same situation is true, regarding expected stressors in the workplace, and additionally, the patient was a trained EMT.

Id, p. 111. He concluded that Ms. Garr experienced a temporary exacerbation of her mental health symptoms and has now returned to her preinjury status. He does not recommend any temporary or permanent work restrictions due to her mental health issues. *Id*.

C. The Proceedings before the Commission.

On May 2, 2015, Ms. Garr's attorney sent a letter to SIEDA claiming Ms. Garr was entitled to workers' compensation benefits for her injury. SIEDA disagreeing, the matter proceeded to an arbitration action before the Workers' Compensation Commission, and a hearing

was held on May 16, 2017 before Deputy Workers' Compensation Commissioner William H. Grell.

The Deputy Commissioner issued an arbitration decision on November 16, 2017, determining that Ms. Garr suffered a mental-mental injury as a result of the "work-related events immediately preceding, occurring on January 24, 2014 and immediately succeeding January 24, 2014." Arbitration Decision p. 8. He also found that SIEDA had actual knowledge and therefore notice of Ms. Garr's claimed injury shortly after its occurrence and within 90 days of the injury. *Id*, p. 4. He concluded that Ms. Garr had sustained a fifty percent industrial disability, and awarded 250 weeks of permanent partial disability benefits, past medical expenses, fees and costs. *Id,* p. 14-16. The Deputy Commissioner also determined that SIEDA's denial of the claim did not warrant an award of penalty benefits. *Id,* p. 15.

SIEDA appealed the Deputy Commissioner's Arbitration Decision to the Worker's Compensation Commissioner. Ms. Garr filed a cross-appeal on the issue of penalty damages. The Commissioner delegated his authority to Deputy Commissioner Erin Pals due to a conflict. On April 25, 2019, Deputy Pals issued an Appeal Decision affirming the findings of the Deputy Commissioner without further analysis. Appeal Decision p. 1. SIEDA filed a timely Petition for Judicial Review to this court. Ms. Garr did not appeal on the issue of penalty damages.

II. STANDARD OF REVIEW

Iowa Code Chapter 17A governs the standard for judicial review of final decisions by the Iowa Workers' Compensation Commission. *Ramirez-Trujillo v. Quality Egg, L.L.C.,* 878 N.W.2d 759, 768 (Iowa 2016), *reh'g denied* (May 27, 2016); *see Iowa Code* § 86.26. The district court acts in an appellate capacity having the ability to correct errors of law made by the Workers' Compensation Commission. *Meyer v. IBP, Inc.,* 710 N.W.2d 213, 219 (Iowa 2006).

The standard of review varies depending on whether the alleged error involves an issue of (1) findings of fact, (2) interpretation of law, or (3) an application of the law to facts. *Burton v. Hilltop Care Center*, 813 N.W.2d 250, 256 (Iowa 2012).

If the alleged error regards findings 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.* "In reviewing an agency's findings of fact for substantial evidence, courts must engage in a 'fairly intensive review of the record to ensure the fact finding is itself reasonable.'" *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012) (quoting *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)).

"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)). The job of the Court is "not to determine whether the evidence supports a different finding; rather our task is to determine whether substantial evidence, viewing the record as a whole, supports the findings actually made." *Cedar Rapids Community School District v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (internal citations and quotations omitted).

When the claim of error lies with the agency's interpretation of the law, the question on review is whether the agency's interpretation was erroneous, and the court may substitute its interpretation for the agency's. *Meyer,* 710 N.W.2d at 219 (citing *Clark v. Vicorp Rests., Inc.*,

696 N.W.2d 596, 604 (Iowa 2005)). When "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." *Id*. 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 v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012) (quoting *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007)).

III. CONCLUSIONS OF LAW

A. Notice.

As a threshold matter, SIEDA contends that the Deputy Commissioner erred in finding that Ms. Garr provided notice of her injury in a timely manner. Iowa Code Section 85.23 requires an injured employee to provide notice to an employer:

> Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

Iowa Code § 85.23 (2019). SIEDA claims the first notice they received of Ms. Garr's injury was in a May 2, 2015 letter from her attorney, well-outside the 90 day requirement. The Deputy Commissioner disagreed, finding that SIEDA had "actual knowledge" of the event "shortly after its occurrence and certainly within 90 days of its occurrence." Arbitration Decision p. 4.

"[F]or the employer to be charged with actual knowledge, the employee must prove that the employer had some knowledge of facts which connect the claimant's injury with [her]

employment." *Dillinger v. City of Sioux City*, 368 N.W.2d 176, 181 (Iowa 1985). An employer has actual knowledge if its knowledge of the situation "should put a 'reasonably conscientious' manager on notice 'that the case might involve a potential compensation claim.'" *Farmers Elevator Co., Kingsley v. Manning*, 286 N.W.2d 174, 180 (Iowa 1979). Whether an employer has notice is an issue of fact. *Taylor v. Horning*, 240 Iowa 888, 894, 38 N.W.2d 105, 109 (1949).

The Deputy Commissioner focused on Ms. Falck's testimony that she knew of all of the facts of the deaths and that she personally witnessed the claimant "kind of shut down" after the events. Arbitration Decision p. 14. He found that, "[t]he employer had actual knowledge of the stressful events as they transpired. The employer's representative made specific observations of the effects of those stressful events on the claimant" (Arbitration Decision p. 14), and that "SIEDA certainly knew about the facts of the case, conducted a specific investigation, interacted with claimant, and management was clearly aware that claimant was kind of mentally shutting down after the events." Arbitration Decision p. 4. The Deputy Commissioner went on to find that, "[e]ven if the employer were determined not to have actual knowledge, [Ms. Garr] provided an explanation of her mental stress in her resignation letter." Arbitration Decision p. 5. All of these findings are supported by substantial evidence in the record. SIEDA had timely notice of Ms. Garr's claimed injury.

B. Compensable Injury.

The burden is on Ms. Garr to prove her injury "arose out of" and "in the course of" her employment. *Koehler Elec. v. Wills*, 608 N.W.2d 1, 3 (Iowa 2000). An injury "arises out of" employment when there is a causal relationship between the employment and the injury, and the injury must be a "rational consequence of the hazard connected with the employment." *2800 Corp. v. Fernandez*, 528 N.W.2d 124, 128 (Iowa 1995) (citations omitted).

Here, Ms. Garr claims an injury that is often referred to as a "mental-mental injury," which is defined as "a mental injury caused merely by psychological stress or trauma without an accompanying physical injury." *Brown v. Quik Trip Corp.*, 641 N.W.2d 725, 727 (Iowa 2002). The Iowa Supreme Court has established that a mental-mental injury is compensable under Iowa worker's compensation law as long as the claimant is able to show both factual and legal causation. *Dunlavey v. Economy Fire & Casualty Company*, 526 N.W.2d 845, 853-58 (Iowa 1995).

"[F]actual causation means medical causation, that is whether the employee's injury is causally connected to the employee's employment." *Id.* at 853. Medical causation presents an issue of fact *Id,* and "[w]hether an injury has a direct causal connection with the employment or arose independently thereof is essentially within the domain of expert testimony." *Id.*

If medical causation is proved, a mental-mental injury is compensable if an employee establishes that the mental injury "was caused by workplace stress of greater magnitude than the day-to-day mental stress experienced by other workers employed in the same or similar jobs," regardless of their employer. *Id*, at 855 (quoting *Graves v. Utah Power & Light Co.*, 713 P.2d 187, 193 (Wyo. 1986)). Although the standard of this legal causation involves an issue of law, the application of that standard to a particular setting requires the commissioner to render an outcome determinative finding of fact. A court on judicial review is bound by that fact-finding if it is supported by substantial evidence. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006).

The Iowa Supreme Court has also created a caveat to the *Dunlavey* test for legal causation in cases where a mental injury is caused by an event of a sudden, traumatic nature, and was an unexpected cause or unusual stress. *Brown,* 641 N.W.2d at 729. In such cases, the legal

test detailed in *Dunlavey* is not required, and the injury is considered to be compensable irrespective of the absence of similar stress on other employees. *Id*.

i. Factual Causation

The Deputy Commissioner considered the expert opinions of Dr. Christiansen, Ms. Hartman, and Dr. Ascheman as to whether Ms. Garr's injury is causally connected to her employment with SIEDA. He found that "the explanation of [Ms. Garr]'s treating mental health counselor [,Ms. Hartman,] and Dr. Christiansen to be most persuasive in this record," Arbitration Decision p. 8. The question of causal connection is within the domain of expert testimony. *Lithcote Co. v. Ballenger*, 471 N.W.2d 64, 66 (Iowa App. 1991). The weight to be given expert opinions is for the Agency to decide. *Id*. It is "the commissioner who weighs the evidence, not the courts. They only examine it to determine whether it is sufficient to sustain the factual conclusion of the commissioner." *Ziegler v. U.S. Gypsum Co.*, 252 Iowa 613, 616, 106 N.W.2d 591, 593 (1960). Two of the three medical professionals' opinions are consistent with the Deputy Commissioner's conclusions. His factual determination that Ms. Garr's injury is causally connected to her employment with SIEDA is supported by substantial evidence.

ii. Legal Causation

Having determined that Ms. Garr's injury is causally connected to her employment with SIEDA, the Deputy Commissioner moved on to the issue of legal causation. In applying the legal standard and caveat set forth in *Dunleavy* and *Brown* to the facts surrounding Ms. Garr's injury, he found that she had experienced a sudden, traumatic, and unexpected event, satisfying the *Brown* test. This finding is not supported by substantial evidence.

The standard set forth in *Brown* is "for those situations in which the mental injury can be readily traced to a specific event." *Asmus*, 722 N.W.2d at 657 n.1 (Iowa 2006). The weight of the

evidence clearly demonstrates that Ms. Garr's injury did not stem from such an event. The cause of Ms. Garr's injury was *a series* of events *spread out* over four weeks' time, beginning on January 20 and continuing until she resigned on February 18. Neither Ms. Garr nor her experts could point to one event that caused her injury. It began with her learning of the death of a client; continued with the death of another; went on to include her learning of the death of another client's child; and moved to the developments in the aftermath of that death, including her communications from and meeting with the mother, the investigations, administrative leave, and reprimand. As no specific event caused Ms. Garr's injury, she cannot satisfy the *Brown* standard.

The Deputy Commissioner nevertheless went on to also find that Ms. Garr met the standard in *Dunlavey*, finding that her mental injury was caused by workplace 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. In his analysis under *Dunlavey*, the Deputy Commissioner found:

> [I]t is not typical, or common, for a caseworker to experience the deaths of three clients within a week's span. It is uncommon for a caseworker to experience the death of a child within 48 hours of their interaction with that child. It is uncommon for a caseworker to experience criminal investigation and disciplinary investigation.
>
> As Ms. Falck testified that the death of a client that is a child is among the most stressful situations that a caseworker can face. As the employer has now acknowledged, such a situation causes significant stress beyond what is typically experienced by caseworker such that additional psychological support is needed. In fact, this employer has now set up an informal process by which a caseworker faced with the situation [Ms. Garr] experienced could and would be provided with a mental health counselor's services.
>
> Although caseworkers do expect to deal with and experience child abuse situations and potential deaths of their clients, the whirlwind of events experienced by [Ms. Garr] in this situation is not a typical situation or a level of stress that is faced on a day-to-day basis by caseworkers at SIEDA or elsewhere.

Arbitration Decision pp. 8-9.

Substantial evidence supports these findings. Ms. Garr, a bachelor's degree-level social worker making $12.00 an hour, learned of the deaths of a former client of a heart attack, a current client from diabetes, and the 19-month-old child of another client, from child abuse, within the span of a week.[3] She had just met with the child and mother two days before learning of the child's death. The suspect mother of the child sent several messages to Ms. Garr after the child's death wanting to talk to her. She was told by her supervisor to respond and meet with the mother as a continuing client. After she did so, she was then told to terminate contact with the mother. Police officers and DCI agents came to her office wanting her file regarding the mother. She was told the county attorney was also conducting a criminal investigation which might include her actions. She was advised of being placed on administrative leave due to her failure to report a visible injury to the child's eye shortly before the child was killed. She was advised to obtain a lawyer and had to sit for her deposition. She was reinstated to her position upon receiving a letter regarding "serious misconduct" which also stated that "while we cannot draw a definitive conclusion as to whether the violence against [the child] could have been prevented; there may have been the possibility that assistance could have been provided to the child." Ms. Garr's supervisor noticed that she had "shut down" over these events and was not responsive to her questions.

It is also true that Ms. Garr acknowledged that she was a mandatory reporter while working for SIEDA and had to take classes discussing types of child abuse and the possibility that a child could die as a result of abuse. She also admitted she knew she would encounter child

[3] SIEDA places much emphasis on the fact that Ms. Garr did not learn of the child's death at work, but at home on Facebook. The court is at a loss for what difference this makes. If she didn't learn of the child's death before going to work that Monday, she certainly would have soon enough, given the events that soon enveloped her there on that day.

abuse as an employee of SIEDA and that she received special training to respond to child abuse she may witness. She conceded that she had reported child abuse to DHS previously on multiple occasions, and she stated DHS confirmed abuse in several cases where she reported her observations.

The evidence also showed that there had been three deaths from abuse of children involved with SIEDA over the prior seventeen years, with an internal investigation following each. The expert opinions from Christine Hartman, LMHC, and Eva Christiansen, PhD both provided to the effect that Ms. Garr suffered an unusual stress that was of a greater magnitude than would be experienced by other workers in the same or similar jobs.

This is not an easy case. In keeping to its duties, however, the court limits its review to the findings that were actually made by the Deputy Commissioner, and not other findings that he could have made. Those findings that led him to the conclusion that the workplace stress that Ms. Garr experienced went beyond the day-to-day mental stresses experienced by other workers employed in the same or similar jobs are supported by substantial evidence.

SIEDA asserts that the entire foundation of Ms. Garr's mental injury claim is her resentment regarding how her employer treated her after the death of the child, and that the basis of her mental injury claim is her unproven allegation that her supervisor told her the child would not have died if she had reported the child's injury to DHS. Petitioners' Appeal Brief, pp. 14-15. They argue, therefore, that the Deputy Commissioner should have stated that his causation decision was based entirely upon whether Ms. Garr's supervisor actually made the statements alleged. *Id*, p. 15. This argument ignores the substantial evidence, specifically relied upon by the Deputy Commissioner in his decision, of the cumulative effect of the events occurring from

January 20 through February 18, including, *but not limited to* how her employer treated her after the death of the child.

This evidence includes that of mental injury from Ms. Garr's perception that she was blamed by her employer for the child's death. Such a perception is understandable regardless of whether the Deputy Commissioner made a finding that Ms. Garr's supervisor told her directly. It certainly could have been inferred from the memo of February 4, 2014, placing her on administrative leave which said:

> You are being notified of your placement on paid administrative leave effective February 4, 2014, while the investigation into the death of the child continues… We are continuing in investigation of serious misconduct by not reporting a possible child abuse allegation …
>
> Based on the review of the documentation found in the FaDSS file for [the child] you failed to report a visible injury to [the child's] eye on January 22, 2014. The injury may have been caused by child abuse and warranted further investigation by the Department of Human Services (DHS).

(Hearing Ex. 11, p. 180), and from the February 10, 2014, memo of reprimand with the subject line, "Serious Misconduct," which included:

> In consideration of the documentation contained in the case file and the legal requirements as a mandatory reporter as outlined in Iowa Coded 216A.107, a report of suspected child abuse should have been made to the Department of Human Services in August 2013 and again on January 22, 2014.While we cannot draw a definitive conclusion as to whether the violence against [the baby] could have been prevented; there may have been the possibility that assistance could have been provided to the child.

Hearing Ex. 11, p. 181. Regardless, this issue does not turn on whether Ms. Garr failed to report child abuse or on whether her employer had the right to investigate or discipline her. It turns on whether the mental injury suffered by Ms. Garr was caused by workplace stress of greater magnitude than the day-to-day mental stress experienced by other workers employed in the same

or similar jobs. The Deputy Commissioner found that it was, and this finding was supported by substantial evidence.

The court, having found that substantial evidence supports the Deputy Commissioner's findings of factual and legal causation, will not disturb his conclusion that Ms. Garr met her burden of proving her injury arose out of and in the course of her employment.

C. Industrial Disability Award.

SIEDA also challenges the Deputy Commissioner's award of a fifty-percent industrial disability for Ms. Garr's injury. Industrial disability measures an employee's lost earning capacity. *Keystone Nursing Care Ctr. v. Craddock*, 705 N.W.2d 299, 306 (Iowa 2005). Several factors are considered in determining such a loss. These considerations include the employee's functional impairment, age, education, intelligence, work experience, qualifications, ability to engage in similar employment, and adaptability to retraining. *Id*. Although the employee's functional impairment is important, industrial disability does not rest solely on this factor. *Id*. The focus is "on the ability of the worker to be gainfully employed." *Id* (quoting *Myers v. F.C.A. Servs., Inc.*, 592 N.W.2d 354, 356 (Iowa 1999)). While a comparison of actual earnings before and after the injury is also significant, as with functional impairment, an employee's post-injury earnings are not determinative. *Id*. A reduction in earning capacity can be shown even though the employee's actual earnings have increased. *Id* (citing *St. Luke's Hosp. v. Gray*, 604 N.W.2d 646, 653 (Iowa 2000)).

The Deputy Commissioner found that Ms. Garr, "is capable of finding alternative employment, though she may have to accept work at a lower rate given her educational and employment background. While working two part-time positions at the time of the arbitration hearing, [Ms. Garr] was earning more in wages than she earned while employed at SIEDA. She

is capable of continued and future employment, but has lost options for employment that were previously available to her." Arbitration Decision p. 9. He went on to find: "considering [Ms. Garr's] work history, educational background, and inability to return to her job as a caseworker, as well as her age, ability to retrain, and limitations that will be caused by her mental health conditions, as well as all other factors of industrial disability outlined by the Iowa Supreme Court, I find that [Ms. Garr] has proven she sustained a 50 per cent loss of future earning capacity as a result of the January 24, 2014 work injury." *Id*.

As SIEDA points out, there certainly are facts in the record that weigh against the award of industrial disability made here, including her age, education, training, work experience, offer of employment in her same position from the employer, and her current earnings equaling or exceeding her prior earnings. Nevertheless, the decision made by the Deputy Commissioner is supported by substantial evidence in the record, and "[t]he extent of industrial disability is a question of fact for the [commissioner]." *Bearce v. FMC Corp.,* 465 N.W.2d 531, 537 (Iowa 1991). These facts include: her mental impairments and the restrictions that they place on her ability to work as described in expert testimony accepted by the Deputy Commissioner; her description of her fears which render her unable to return to social work, the profession for which she has the most training; her inability to work outside the accommodating and protective environment of her family; and the finding of the Iowa Workforce Unemployment Insurance Division that she was entitled to unemployment benefits even though she resigned because her "working conditions were detrimental to [her]."

The decision being supported by substantial evidence in the record, the court will not disturb the Deputy Commissioner's award of a fifty percent industrial disability.

RULING

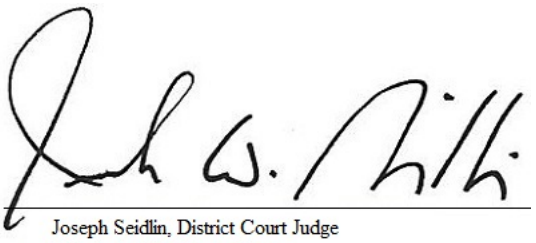
The Commissioner's Decision that Respondent suffered a compensable mental-mental injury caused by her employment with the Petitioner, Southern Iowa Economic Development Association, and a fifty percent industrial disability is AFFIRMED. Costs are assessed to the Petitioners.

IT IS SO ORDERED.

State of Iowa Courts

Case Number	**Case Title**
CVCV058097	SOUTHERN IOWA ECONOMIC DEVELOP ET AL VS CHRISTINA GARR KIME
Type:	OTHER ORDER

So Ordered



Joseph Seidlin, District Court Judge
Fifth Judicial District of Iowa

Electronically signed on 2019-11-15 15:02:06