

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY****AMVC EMPLOYEE SERVICES, LLC,  
ACCIDENT FUND INSURANCE  
COMPANY OF AMERICA, and JOSE  
GARRIDO****Petitioners/Cross-Respondents,**

v.

**AMVC EMPLOYEE SERVICES, LLC,  
BERSHIRE HATHAWAY HOME STATE  
INSURANCE COMPANY, and JOSE  
GARRIDO,****Respondents/Cross-Petitioners.****Case No. CVCV061528****RULING ON  
PETITION FOR  
JUDICIAL REVIEW**

A Combined Petition for Judicial Review came before the Court from a final decision of the Iowa Workers' Compensation Commission.<sup>1</sup> The Court held a hearing on this matter on August 20, 2021. James Byrne represented Petitioner Jose Garrido and Andrew Portis represented Petitioners AMVC Employee Services, LLC (AMVC) and Accident Fund Insurance Company of America (Accident Fund)(referred to collectively as "AMVC-Accident Fund"). Robert Gainer represented Respondent Berkshire Hathaway Home State Insurance Company (Berkshire). Petitioner Garrido requests that this Court vacate the Appeal Decision of the Iowa Workers' Compensation Commissioner against the date of injury and remand this matter to determine that Garrido's injury occurred sooner and determine the appropriate amount of industrial disability. Petitioners AMVC-Accident Fund join in Garrido's request and additionally request the full reimbursement of benefits paid to Garrido for the shoulder injury and expenses for Dr. Bansal's

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<sup>1</sup> Garrido filed a Petition for Judicial Review against AMVC and Berkshire on March 18, 2021, in Polk County case CVCV061530. AMVC-Accident Fund filed a Petition for Judicial Review against Berkshire and Garrido also on March 18, 2021, in Polk County case CVCV061528. Upon AMVC-Accident Fund's Motion, the Court consolidated the cases on May 21, 2021, under CVCV061528. As such, the issues raised by all parties in their respective Petitions will all be addressed in this consolidated ruling.

IME report split equally between Accident Fund and Berkshire. After considering the arguments of the parties and having reviewed the file and the applicable case law, the Court now enters the following ruling.

**I. INTRODUCTION**

**A. Factual Background**

Garrido is a 62 year-old man from Mexico who primarily speaks Spanish. (Br. for Garrido at 4). Garrido claims that on October 10, 2016, he suffered a left elbow and shoulder injury while working for AMVC. *Id.* at 5. At that time he was working in a hog confinement facility. Garrido testified at the agency hearing that he was corralling and moving sows when one of the sows got its head between his legs and threw him in the air. (Tr. 38-40). Garrido's co-worker, Chaz, testified that he did not witness Garrido fall or know anything about the injury. (Hr. Tr., p. 42, 86-87).

Garrido further testified that soon after the injury, he left the hog confinement area and told Dan Chargo, an assistant manager, that he had an accident and hurt his left arm and shoulder. (Br. for Garrido at 5). Garrido and Chargo went to the office area in the barn. *Id.* Garrido informed Greg Jensen, general manager, about his injury. *Id.* Jensen gave Garrido ice to use on his left arm. (Tr. 43-45). On cross-examination at the agency hearing, Chargo and Jensen stated that it is possible Garrido communicated with them about his injury but they do not remember. (Tr. 116-118, 136-138). Garrido returned to work at AMVC the day after the claimed injury date and worked his regular hours. (Br. for Berkshire at 6).

On October 14, 2016, Garrido was evaluated by Melanie Tolle, CMA, at Mercy Family Care in Perry for a personal illness. (Br. for Garrido at 7). There is no mention of an arm or shoulder injury in Garrido's medical records from this visit. (Ex. JE 3, p. 30). Garrido testified he attempted to speak to Chargo regarding authorizing treatment for his shoulder after the appointment but

Chargo dismissed his complaints. (Hr. Tr., p. 51-55). However, Chargo disputes this statement. *Id.* at 112.

On January 12, 2017, Garrido was evaluated by his regular family practitioner, Jason Noble, PA, at Mercy Family Care in Perry. (Br. for Garrido at 8). Garrido spoke with Noble in Spanish, Garrido's primary language, during the visit. *Id.* Noble reported that Garrido injured his left shoulder eight days before the visit. *Id.* Noble incorrectly reported Garrido injured himself while working at the Tyson meat processing plant. *Id.* Noble determined Garrido had rotator cuff tendinitis and prescribed Naproxen 500 mg. *Id.* at 9.

On October 11, 2017, Chargo provided Garrido with a blank AMVC Incident/Injury Report form in Spanish. *Id.* at 9. Garrido completed and signed the form on "11/10/17," which in Spanish means October 11, 2017. *Id.* at 10. Garrido listed the date of the left shoulder injury as 10/10/16. *Id.* Accident Fund has paid Garrido over \$62,000 in medical and indemnity benefits based on the understanding the injury occurred when Accident Fund was the Insurer for AMVC. (Br. for Berkshire at 1).

On October 13, 2017, Garrido injured his right hand at work. *Id.* at 8. Chargo directed Garrido to the hospital. *Id.* David Huante, M.D. evaluated Garrido when he arrived at the hospital. (Jt. Ex. 5, p. 63-66). Dr. Huante noted a displaced fourth proximal metacarpal and referred Garrido to a hand surgeon. *Id.* On October 16, 2017, Garrido was seen by Dr. Gregory Yanish. (Arb. Dec., p. 6). Garrido's right hand was put in a cast and he was restricted to left hand work only. *Id.*

On November 6, 2017, Garrido was seen by Noble again for ongoing left shoulder pain. (Br. for Garrido at 11). Noble diagnosed Garrido with Tendinitis. *Id.* at 12. The medical records from this date state repeated attempts to explain to Garrido that he could not be evaluated for a workmen's compensation claim without proper documentation. (Ex. JE 3, p. 45).

On November 20, 2017, Dr. Yanish stated Garrido is able to use his right hand for light activities only. (Jt. Ex. 5, p. 71-72). On December 11, 2017, Garrido's right hand fracture had healed but was stiff and had a limited range of motion with manual manipulation. *Id.* at 75-80. On March 14, 2018, Dr. Yanish determined Garrido's right hand had reached maximum medical improvement (MMI) and released Garrido to full duty for his right hand. *Id.* at 101-105. On March 30, 2018, Dr. Yanish determined that Garrido sustained a 4% permanent impairment to his right hand stemming from the work injury. *Id.* at 106.

Regarding the left shoulder injury, on December 28, 2017, Garrido was evaluated by Dr. Todd Peterson. (Arb. Dec., p. 6). Dr. Peterson assessed left shoulder pain, strain, and impingement syndrome and ordered a left shoulder MRI as well as restrictions of no overhead lifting. (Jt. Ex. 5, p. 81-85). Through the assistance of an interpreter, Dr. Peterson noted the injury occurred over a year ago when Garrido fell while working at a pig farm. *Id.* On January 15, 2018, Garrido underwent an MRI of his left shoulder. (Arb. Dec., p. 6). Dr. Peterson determined the MRI showed a full thickness tear with mild retraction and some labral fraying of the rotator cuff. *Id.* Dr. Peterson recommended surgery. *Id.* at 7.

On March 28, 2018, Garrido underwent left shoulder surgery by Dr. Peterson, which was authorized by AMVC-Accident Fund. (Jt. Ex. 8, p. 164; Jt. Ex. 5, p. 81). During the four months between surgery and returning to work, Garrido wore a sling and started physical therapy. (Arb. Dec., p. 7). On July 26, 2018, Garrido returned for a follow-up appointment with Dr. Peterson. *Id.* Dr. Peterson noted that Garrido had difficulties with certain activities at work causing increased amount of pain in his left shoulder. *Id.* Dr. Peterson recommended Garrido change his job to one that had minimal overhead activity and does not require heavy pushing and pulling. *Id.* Garrido was returned to work with certain restrictions. *Id.* Approximately two months later, Garrido was

seen by Jordan Reiner, PA, who had been working with Garrido in physical therapy. *Id.* Reiner gave Garrido a steroid shot in his left shoulder, gave him restrictions for another six weeks that included no overhead activities; no lifting, pushing or pulling over 40 pounds; no working over 8-hour shifts; and no working around animals if there is a possibility of injury from the animal. (Jt. Ex. 5, p. 127-129). On November 8, 2018, Garrido was returned to full duty. *Id.* at 135-138. Dr. Peterson found that Garrido was at MMI for the shoulder. *Id.* Dr. Peterson issued a 5% permanent impairment to Garrido's left upper extremity. *Id.* at 138.

On December 13, 2018, Garrido underwent an Independent Medical Evaluation (IME) with Dr. Sunil Bansal. (Ex. 1, p. 11-14). Dr. Bansal's report, dated December 17, 2018, stated that Garrido injured his left shoulder when he landed on his shoulder after being tossed by a pig at work. *Id.* at 12. Dr. Bansal assigned a 15% permanent impairment to his left upper extremity, which converts to a 9% impairment to the body as a whole. *Id.* at 13. Dr. Bansal assigned an 8% permanent impairment to Garrido's right hand stemming from the workplace injury. *Id.*

Garrido returned to work for AMVC in November of 2018. (Ex. F, p. 37). Garrido left AMVC approximately three months later because he had difficulty doing work due to shoulder pain. (Hr. Tr., p. 77). Garrido obtained employment with Maya Landscaping but was fired after he was asked to load and unload pickup trucks, which he was not able to do. (Arb. Dec., p. 8).

On July 9, 2019, Dr. David Huante examined Garrido for left shoulder pain and stiffness and right hand pain and stiffness. *Id.* Dr. Huante recommended Garrido be treated with prescription medication and physical therapy. *Id.*

On September 19, 2019, Dr. Charles Mooney evaluated Garrido pursuant to an IME. (Ex. A, p. 1). Dr. Mooney determined that Garrido did not sustain an acute rotator cuff tear or permanent aggravation of an underlying condition due to the alleged October 10, 2016 date of injury. *Id.* at

1-7. Dr. Mooney found that Garrido had a 14% permanent impairment to the left upper extremity. (Arb. Dec., p. 9).

On October 1, 2019, Dr. Bansal performed a second evaluation of Garrido and issued a follow-up report. *Id.* Dr. Bansal stated he reviewed both Dr. Huante's and Dr. Mooney's reports and disagreed with Dr. Mooney's opinions regarding causation and lifting restrictions. (Ex. 1, p. 15A-15E).

In an affidavit dated September 16, 2019, a claims representative for Third Coast Underwriters (Third Coast), a subsidiary of Accident Fund, indicated that Accident Fund had a workers' compensation policy covering AMVC from November 21, 2016 through November 21, 2017. (Ex. AA). The affidavit further indicates that on or about November 10, 2017, AMVC reported a claim to Third Coast involving an injury sustained by Garrido to his left shoulder. *Id.* Additionally, due to an oversight and "communication barriers" the claim was mistakenly set for a date of injury of November 10, 2017. *Id.* Third Coast discovered that the alleged date of injury occurred before the Accident Fund policy was effective, October 10, 2016. *Id.* Accident Fund's attorney demanded Berkshire reimburse them for benefits paid on or about March 5, 2019. *Id.* Berkshire refused. *Id.* As of September 16, 2019, Accident Fund has paid \$62,627.09 in indemnity and medical benefits to Garrido for the injury. *Id.*

#### **B. Procedural History**

Garrido filed a petition in arbitration seeking workers' compensation benefits from AMVC and Accident Fund for a left shoulder injury on October 3, 2018. (Petition). Garrido filed a Motion to Amend the Petition to identify Berkshire as the insurance carrier on December 10, 2018. (Motion to Amend). On March 8, 2019, AMVC-Accident Fund filed a petition for contribution against AMVC-Berkshire seeking reimbursement for medical and indemnity benefits it paid to

Garrido for the October 10, 2016 date of injury to the left shoulder. (Petition for Contribution). The three cases were consolidated and set for hearing. (Arb. Dec., p. 1). The agency hearing occurred on October 15, 2019, by Deputy Commissioner Benjamin Humphrey and a decision was issued on July 24, 2020, by Deputy Commissioner James Christenson. *Id.* Garrido did not receive a result in his favor. *Id.* The Deputy concluded that Garrido failed to carry his burden of proof that he sustained a left should injury arising out of and in the course of his employment with AMVC on October 10, 2016. *Id.* at 13. Deputy Christenson concluded that all other issues for the October 10, 2016 date of injury except for IME reimbursement were moot. *Id.* Lastly, Deputy Christenson assessed the cost of Dr. Bansal's IME report against AMVC-Accident Fund. *Id.* at 16.

On August 11, 2020, Garrido and AMVC-Accident Fund appealed Deputy Christenson's Arbitration Decision. (Br. for Berkshire at 3). On February 19, 2021, an Appeal Decision was rendered. (Ex. A-1, Appeal Decision). The Commissioner's Appeal Decision denied Garrido's claim for benefits against Berkshire Hathaway and AMVC related to an injury he sustained on October 10, 2016. (Ex. A-2, Appeal Decision). The Commissioner denied Accident Fund's claim for reimbursement from Berkshire and AMVC of benefits paid to Garrido for the injury claim. *Id.*

On March 18, 2021, Garrido appealed to this Court claiming that Garrido's October 10, 2016 shoulder injury was work-related and the agency's application of the facts to the law was erroneous. (Br. for Garrido at 2). He seeks reversal of the Commissioner's Appeal Decision concerning the issue of the left shoulder injury date. *Id.* AMVC-Accident Fund petitioned this Court claiming that substantial evidence does not support the Commissioner's findings affirming the Deputy's decision with regard to reimbursement and IME costs. (Pet. for AMVC-Accident Fund at 1). AMVC-Accident Fund joins in Garrido's assertion of the 2016 injury date and seeks

entitlement to reimbursement from Berkshire. *Id.* at 2. The two petitions have been consolidated for this proceeding.

## II. STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the Court's review in workers' compensation cases. Iowa Code § 86.26 (2019); *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See id.* § 17A.19(10). The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002).

"If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the commissioner's discretion, so the Court is bound by the commissioner's findings of fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004). Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1); *Mycogen*, 686 N.W.2d at 464.

“When reviewing a finding of fact for substantial evidence, we judge the finding ‘in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it.’” *Cedar Rapids Comm. Sch. Dist. v. Pease*, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Iowa Code § 17A.19(10)(f)(3)). “Evidence is not insubstantial merely because different conclusions may be drawn from the evidence.” *Pease*, 807 N.W.2d at 845. “To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder.” *Id.* “Judicial review of a decision of the [Commission] is not de novo, and the commissioner's findings have the force of a jury verdict.” *Holmes v. Bruce Motor Freight*, 215 N.W.2d 296, 297-98 (Iowa 1974).

The application of the law to the facts is also an enterprise vested in the commissioner. *Mycogen*, 686 N.W.2d at 465. Accordingly, the Court will reverse only if the commissioner's application was “irrational, illogical, or wholly unjustifiable.” *Id.*; Iowa Code § 17A.19(10)(l). “A decision is “irrational” when it is not governed by or according to reason.” *Christensen v. Iowa Dep't. of Revenue*, 944 N.W.2d 895 at 905 (Iowa 2020). A decision is “illogical” when it is “contrary to or devoid of logic.” *Id.* “A decision is “unjustifiable” when it has no foundation in fact or reason” or is “lacking in justice.” *Id.* This standard requires the Court to allocate some deference to the commissioner's application of law to the facts, but less than it gives to the agency's findings of fact. *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 850 (Iowa 2009).

### III. MERITS

#### A. Garrido’s Petition: Whether the Commission’s finding that Garrido failed to meet his burden that the shoulder injury arose out of and in the course of employment is supported by substantial evidence.

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. *Quaker*

*Oats Co. v. Ciha*, 552 N.W.2d 143, 150 (Iowa 1996). An injury arises “out of” the employment when there is a casual relationship between the employment and the injury. *Id.* “In the course of” the employment concerns the time, place, and circumstances of the injury. *Id.* The question of causal connection is within the domain of expert testimony. *St. Luke’s Hosp. v. Gray*, 604 N.W.2d 646, 652 (Iowa 2000). 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. *Id.* Accordingly, this Court will reverse the Commission’s finding of failure to meet the burden of proof based on expert testimony if it is not supported by substantial evidence. Iowa Code § 17A.19(10).

The Commission found:

There are a number of inconsistencies with the record regarding claimant’s alleged October 10, 2016 injury. Neither Mr. Chargo nor Mr. Jensen recalls claimant reporting a shoulder injury of October 10, 2016. Mr. Chargo did testify, in deposition, it was possible claimant could have reported the injury to him. However, Mr. Chargo also testified that this was “unlikely.” Mr. Jensen testified that he did not know claimant injured his left shoulder at the time of injury.

Claimant testified he told the medical provider, CMA Tolle, that he had a left shoulder problem caused by work. He said that CMA Tolle refused to treat his injury or document it, as AMVC did not authorize treatment. This rationale, as to why the alleged left shoulder condition was not documented in the October 14, 2016 visit, does not make sense. The left shoulder injury was documented in a Mercy Family Care record on January 12, 2017 and care was not authorized at that time by AMVC.

Arb. Dec. at 10-12.

Garrido first contends that the Deputy’s “rationale” as to why the left shoulder condition was not documented in the October 14, 2016 visit “does not make sense” and did not take into account or even consider the clinic’s notes on November 6, 2017, which is a part of the record. (Br. for Garrido at 20). Garrido points to testimony stating that Tolle told Garrido that she would not treat him for the left shoulder pain because she did not receive authorization from the Employer

to treat it. *Id.* Garrido points to statements by Dr. Noble in the record, which state that “great lengths were taken . . . to explain to him that we cannot evaluate him for a workmen’s comp claim without proper documentation.” (Jt. Ex. 3, p. 45). Garrido contends that the evidence shows he did discuss his left shoulder injury with the clinic on October 14, 2016, in that the employer had not given him document providing authorization for his primary care provider to treat his work injury. (Br. for Garrido at 21).

The Commission stated that AMVC did immediately report and authorize treatment for Garrido’s right hand injury of 2017. (Arb. Dec. at 12). Further, “there is no explanation offered why defendant employer would timely report claimant’s right hand injury, but fail to report or authorize treatment for claimant’s left shoulder injury.” *Id.* As stated above, in order to determine whether there is substantial evidence, the Court may look at any relevant evidence cited by either party. *Pease*, 807 N.W.2d at 845. Therefore, while it is not completely accurate that the Deputy did not take into account or even consider the clinic’s notes on November 6, 2017, the Deputy did consider the clinic’s notes from both the October 14, 2016 and January 12, 2017 visits. Furthermore, the Commission took notice that PA Noble stated Garrido had suffered the shoulder injury eight days prior to the visit and that Garrido worked at Tyson. The Commission took into consideration the clear language barrier between Garrido and his doctors but also the fact that Garrido still had not reported his injury to AMVC.

Additionally, Garrido asserts that the Agency failed to mention or consider that Dr. Mooney appears to have accepted and/or concluded that the October 10, 2016 work injury to Garrido’s left shoulder indeed occurred. (Br. for Garrido at 21). They argue that fact cannot alone support the finding that the final Agency decision is not supported by substantial evidence when the record is viewed as a whole. *Id.* The agency, as the fact finder, determines the weight to be

given to any expert testimony. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998); *Dodd v. Fleetguard, Inc.*, 759 N.W.2d 133, 138 (Iowa Ct. App. 2008). Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. *Id.* The commissioner may accept or reject the expert opinion in whole or in part. *Sherman*, 576 N.W.2d at 321.

Making a determination as to whether evidence “trumps” other evidence or whether one piece of evidence is “qualitatively weaker” than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision.

*Arndt*, 728 N.W.2d at 394.

This Court need not decide whether Dr. Mooney or Dr. Bansal’s testimony “trumps” other evidence in the record, due to the fact it is not the sole factor in the Commission’s findings. However, the record as a whole shows that Dr. Bansal did not review any medical records from 2016 nor any deposition transcripts or discovery responses, although he did review Dr. Mooney’s IME report. (Br. for AMVC-Accident Fund at 16). Furthermore, this Court views the record *as a whole* to determine whether there was substantial evidence to support the findings. Additionally, this Court need not decide whose lay testimony (*Garrido v. Chargo and Jensen*) is “qualitatively weaker” than the other. The Commission is in the position to weigh the evidence presented and will be affirmed if there is substantial evidence in support of the Commission’s findings. The record does reflect that Garrido mentioned his shoulder injury to his medical provider for the first time on January 12, 2017. (Arb. Dec. at 12). The individual pieces discussed above are but parts of the whole, that alone, may or may not be sufficient but together they are. Evidence in support of the Commissioner’s decision is not insubstantial merely because it would have supported contrary inferences; nor is evidence insubstantial because of the possibility of drawing two inconsistent

conclusions from it. *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996).

Furthermore, when the Court reviews factual questions such as the one here, the question before the Court is not whether the evidence might support different findings than those made by the Commissioner, but whether the evidence supports the findings actually made. *St. Luke's Hosp.*, 604 N.W.2d at 649. Thus, although there may be evidence here to support a different finding, there clearly is substantial evidence in the record to support the findings made by the Commissioner that Garrido failed to carry his burden of proof he sustained a shoulder injury arising out of and in the course of employment on October 10, 2016. (Arb. Dec. at 13).

The Court can see that there is also evidence provided that supports Petitioner's position that is described in the briefs. In reviewing this conflicting evidence, there remains substantial evidence in the record to support the findings made by the Commissioner that Garrido failed to carry his burden of proof. Therefore, due to the inconsistent testimony regarding AMVC's notice of the injury, inconsistent evidence regarding when Garrido mentioned the injury to his medical provider, and inconsistent expert testimony as to when, not how, the injury occurred, the Court concludes there is substantial evidence in the record to support the Commission's conclusion that the claimant failed to meet his burden to prove that his left shoulder injury arose out of his employment on October 10, 2016.

**B. AMVC-Accident Fund's Petition: Whether the Commission assessing the cost of Dr. Bansal's report to AMVC-Accident Fund is an abuse of discretion.**

AMVC-Accident Fund contends that the Commission assessing the full cost, \$2,282.00, of Dr. Bansal's report to AMVC-Accident Fund was an abuse of discretion and warrants remand or reversal to be reduced to reflect the portion of the report pertaining to the hand injury only. The "allocation of costs clearly falls within the realm of the commissioner's discretion," and is

therefore reviewed for an abuse of discretion. *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 262 (Iowa 1996).

Iowa Code section 85.39 permits an employee to be reimbursed for subsequent examination by a physical of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The Commission found that Garrido was entitled to reimbursement for the preparation of Dr. Bansal's IME under rule 876 IAC 4.33(6). (Arb. Dec. at 15). Dr. Bansal's report did address both Garrido's shoulder injury claimed to occur on October 10, 2016 and his October 13, 2017 right hand injury. *Id.* Dr. Bansal indicated that he charged \$2,282.00 for preparation of the report. (Ex. 1 at 15). The Commission found that Garrido was not entitled to reimbursement for a second supplemental report from Dr. Bansal. *Id.* The Commissioner's cost assessment of Dr. Bansal's report to AMVC-Accident Fund was not clearly erroneous and was not an abuse of discretion.

Therefore, the Court concludes the Commission did not abuse its discretion warranting a reversal.

#### **IV. CONCLUSIONS AND DISPOSITIONS**

For all the reasons set forth above, the Court concludes the Commission's finding that Garrido did not meet his burden to prove that the left shoulder injury occurred on October 10, 2016 nor did the injury arise out of his employment is supported by substantial evidence. The Court further concludes that the Commission's assessment of the IME report costs fully to AMVC-Accident Fund was not an abuse of discretion.

**IT IS THE ORDER OF THE COURT** that the Iowa Workers' Compensation Commission's decision is **AFFIRMED in all regards.**

Costs are assessed in full to Petitioners to be split equally by the Petitioners.



State of Iowa Courts

**Case Number**  
CVCV061528

**Case Title**  
AMVC EMPLOYEE SERVICES ET AL V BERKSHIRE  
HATHAWAY HOME ET AL  
ORDER FOR JUDGMENT

**Type:**

So Ordered

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William P. Kelly, District Court Judge,  
Fifth Judicial District of Iowa

Electronically signed on 2021-09-20 14:19:04