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IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

INZUDIN DUBINOVIC,

Petitioner-Claimant,

vs.

DES MOINES PUBLIC SCHOOLS,

Respondent-Defendant.

Case No. CVCV054740

RULING ON PETITION FOR JUDICIAL REVIEW

I. INTRODUCTION

Petitioner Inzudin Dubinovic ("Dubinovic") filed his initial petition for judicial review on August 18, 2017. The application came before this court for hearing on December 15, 2017. Dubinovic was represented by Attorney Mark Soldat. Respondent–Defendant Des Moines Public Schools ("the District") was represented by Attorney Anne Clark. After considering the administrative record and arguments of both parties in their briefs and at the hearing, the Court makes the following ruling on the Petition for Judicial Review.

II. BACKGROUND FACTS AND PROCEDURAL HISTORY

Dubinovic filed a claim for workers' compensation benefits which was heard by Deputy Workers' Compensation Commissioner Jon Heitland on April 20, 2015, who found the following facts. Dubinovic worked for the District as a custodian for Hubbell Elementary School. His shift was from 2:30 PM to 10 PM, and his duties included cleaning every classroom, among other things. Some classrooms were carpeted which required Dubinovic to pick up items left on the ground before he could vacuum. In the fall of 2011, Dubinovic felt he did not have enough time to complete his work, as he spent a lot of time picking up items from the floors of the carpeted

classrooms. Dubinovic voiced his concerns to the Chief Custodian, Doug Witt ("Witt"), but the conditions of the classrooms did not improve nor did Dubinovic receive assistance or accommodations in completing his assigned tasks. One day, Dubinovic decided to leave pencils on the floor of the classroom to express his disdain for the students leaving items on the floor. Hubbell's Principal, Tim Schott ("Schott"), met with Dubinovic to discuss his failure to pick up the pencils soon after. At Dubinovic's request, he met with Principal Schott again to discuss the same issue. Principal Schott offered solutions, however Dubinovic felt disrespected. Dubinovic took sick leave following the meeting.

Three days in November of 2011, Witt was unable to work, so Dubinovic completed Witt's duties and a substitute custodian completed Dubinovic's duties. When Witt returned, Dubinovic noticed the substitute custodian had done a poor job, which required Dubinovic to spend extra time bringing the classrooms up to par. However, Dubinovic left without vacuuming four classrooms, leaving a note explaining he had run out of time and left the classrooms dirty. On November 11, 2011, Witt noticed Dubinovic's failure to vacuum the four classrooms and criticized Dubinovic for it in a meeting with Schott. Dubinovic had a mental breakdown in response to Schott and Witt's comments. He was hospitalized and put on medication.

Dubinovic returned to work at Hubbell, but he stopped working there in July of 2013 due to anxiety and depression. Dubinovic had been treated for anxiety and depression since 2006. Dubinovic suffered other injuries for which he received compensation and are not at issue in his current petition for judicial review. Dubinovic's disputed claim is a purely mental, or "mental-mental," injury. Deputy Commissioner Heitland applied the *Dulavey* test and found that while Dubinovic had shown that his work with the district aggravated his pre-existing mental conditions, Dubinovic could not show that his workplace presented stress greater in magnitude

than that experienced by other workers in the same or similar jobs. The Deputy Commissioner specifically found that Dubinovic's subjective perceptions of his treatment by superiors primarily contributed to his mental condition. Dubinovic did not sustain his burden to establish a mental-mental injury, and therefore was not awarded any compensation on that ground.

Dubinovic's application for rehearing was denied on December 7, 2015. The Worker's Compensation Commissioner Joseph Cortese II affirmed the denial and the arbitration decision in its entirety on May 25, 2017. Commissioner Cortese denied Dubinovic's second application for rehearing on August 3, 2017, in which he applied the *Brown v. QuickTrip* test to evaluate Dubinovic's mental-mental claim. This petition for judicial review followed.

III. 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 on the part of 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 a fact-finding function, 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) interpretation of law, or (3) application of law to fact. *Burton*, 813 N.W.2d at 256.

"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." *Meyer*, 710 N.W.2d at 219. "[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)). A district court's review "is limited to the findings that were actually made by the agency and not other findings that the agency could have made." *Id.* However, "[i]n reviewing an agency's finding of fact for substantial evidence, courts must engage in a 'fairly intensive review of the record to ensure that 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)).

"Substantial evidence means the quantity and quality of evidence 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). If "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 we may substitute our interpretation for the agency's." *Meyer*, 710 N.W.2d at 219.

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. *Id.* § 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." *Id.* § 17A.19(10)(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 the 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 the particular case if that application is 'irrational, illogical, or wholly unjustifiable.'").

IV. APPLICABLE LAW & ANALYSIS

Dubinovic claims the agency erred in multiple ways. First, Dubinovic argues that the Iowa Supreme Court did not have the authority to require medical and legal causation in mental-mental workers' compensation claims, and therefore the Iowa Workers' Compensation Commission ("the agency") erred by applying such standard to this claim. Second, Dubinovic argues that the agency erred by concluding that Dubinovic had failed to show he sustained a mental injury resulting from manifest happenings of a sudden traumatic nature from an unexpected cause or unusual stress. Lastly, Dubinovic argues that the commissioner erred by finding that Dubinovic had not proven legal causation of a mental-mental injury by showing he suffered a workplace stress of a greater magnitude than the day-to-day stresses experienced by others in the same or similar jobs, regardless of their employer.

A. Iowa Supreme Court's Authority to Interpret Iowa's Workers' Compensation Statutes

Dubinovic primarily focuses on his argument that the Iowa Supreme Court lacked the

authority to interpret the term "arising out of" from section 85.3 of the Iowa Code to require a showing of both medical and legal causation to establish mental-mental workers' compensation claims. *See Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d 845 (Iowa 1995). In *Dunlavey*, the Iowa Supreme Court held that purely mental injuries ("mental-mental injuries"—i.e., mental injuries not induced by physical trauma) are compensable under Iowa's workers' compensation laws. *Id.* at 855. However, such a claim is only compensable "if, after proving medical causation, an employee establishes that the 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." *Id.* (internal quotations omitted) (emphasis in original).

Dubinovic is now urging this court to find that the Iowa Supreme Court erroneously adopted the *Dunlavey* standard. "The interpretation of an existing statute is a judicial . . . function." *Anderson v. Hadley*, 63 N.W.2d 234, 239 (Iowa 1954). Accordingly, and as Dubinovic thoroughly discussed in his brief, Iowa courts have played a role in interpreting Chapter 85 of the Iowa Code for decades. *See, e.g., Almquist v. Shenandoah Nurseries, Inc.*, 252 N.W. 35 (Iowa 1934) (holding that a personal injury did not need to be an "accident" to be compensable under Iowa's workers' compensation laws).

> [The Iowa Supreme Court's] goal in interpreting the Workers' Compensation Act is to determine and effectuate the intent of the legislature. We look to the object to be accomplished, the mischief to be remedied, or the purpose to be served, and place on the statute a reasonable or liberal construction which will best effect, rather than defeat, the legislature's purpose. Moreover, the court interprets workers' compensation law according to the language the legislature has chosen.

United Fire & Cas. Co. v. St. Paul Fire & Marine Ins. Co., 677 N.W.2d 755, 759 (Iowa 2004) (internal quotations and citations omitted). Since the adoption of the two-part test in *Dunlavey*,

Iowa courts and the agency have applied that test when evaluating mental-mental workers' compensation claims.

This court cannot ignore prior precedent, especially precedent that has existed for over twenty years and has remained unchanged by legislative intervention. *See Bd. of Water Works Trs. of City of Des Moines v. Sac Cnty. Bd. of Supervisors*, 890 N.W.2d 50, 61 (Iowa 2017) ("The rule of stare decisis is especially applicable were the construction placed on a statute by previous decisions has been long acquiesced in by the legislature." (quoting *In re Estate of Vajgrt*, 801 N.W.2d 570, 574 (Iowa 2011) (further quotations omitted))). While "the principles of stare decisis and legislative acquiescence in combination 'are not absolute,' and [the court] may overrule prior decisions when error is manifest, including error in the interpretation of statutory enactments," Dubinovic has failed to make the "highest possible showing that a precedent should be overruled." *Id.* at 61 (quotations omitted). Hence, Dubinovic's petition for judicial review must be denied on this ground.

B. Mental Injury Arising from a Manifest Happening of a Sudden Traumatic Nature

Dubinovic next argues that that the commission erred by finding that a stressful meeting with a superior did not amount to a "manifest happening of a sudden traumatic nature" under the *Brown v. QuikTrip* test. In *Brown v. QuikTrip Corp.*, the Iowa Supreme Court held that a claimant may establish legal causation of a mental-mental claim by showing that the "claim is based on a manifest happening of a sudden traumatic nature from an unexpected or unusual strain." 641 N.W.2d 725, 729 (Iowa 2002). In *Brown*, the claimant, a QuikTrip employee, proved legal causation of his mental-mental injury by showing that while working he had (a) observed a customer getting shot in the leg and subsequently cleaned up the blood, and (b) six days after the shooting, been the victim of a robbery. *Id.* at 726. Another example of a claimant who has

satisfied this requirement is a teller at a credit union who was held up on two occasions by the same suspect. *Village Credit Union v. Bryant*, No. 11–1499, 2012 WL 1860861 (Iowa Ct. App. May 23, 2012).

On appeal from the arbitration decision, the Iowa Workers' Compensation Commissioner found that Dubinovic's experience did not amount to a "manifest happening of a sudden traumatic nature from an unexpected or unusual strain." Dubinovic argues that the commission inappropriately evaluated the severity of the "happening" Dubinovic experienced—i.e., his meetings with superiors. Dubinovic claims the *Brown* test does not require evidence of a severe trauma, only a "happening" that is "sudden" and "traumatic of some 'nature.'" Trauma, in its very definition, requires severity. *Trauma*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/trauma ("a disordered psychic or behavioral state resulting from severe mental or emotional stress or physical injury"). A meeting with a superior, despite its stressful nature, cannot reasonably be characterized as a "manifest happening of a sudden traumatic nature from an unexpected or unusual strain." The commission applied the correct standard. The agency's conclusion that the meetings between Schott, Witt, and Dubinovic to discuss Dubinovic's poor work performance did not amount to a manifest happening of a sudden traumatic nature from an unexpected or unusual strain was not irrational, illogical, or wholly unjustifiable. *See Neal*, 814 N.W.2d at 518. Dubinovic's petition for judicial review may not be granted on this ground.

C. Workplace Stress of a Greater Magnitude than Similar Jobs

Lastly, Dubinovic argues the commission erred by finding that Dubinovic was not subjected to a workplace stress of a greater magnitude than similar jobs, regardless of employer. As mentioned above, in *Dunlavey*, the Iowa Supreme Court found that a purely mental injury

may be compensable under Iowa's workers' compensation laws if, after proving medical causation, the claimant can show "that the mental injury 'was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in same or similar jobs, regardless of employer.'" 526 N.W.2d at 855 (quoting *Graves v. Utah Power & Light Co.*, 713 P.2d 187, 193 (Wyo. 1986)). This is an objective standard, and "evidence of stresses of other workers employed by the same employer with the same or similar jobs will usually be most persuasive and determinative on the issue." *Id.* at 858. The commission concluded that Dubinovic failed to meet this burden, as Dubinovic only presented evidence of the stresses placed on custodial workers of hotels and business buildings.

Dubinovic argues that the commission misapplied the law by not finding the testimony Dubinovic presented sufficient to establish that he suffered greater workplace stress than other custodial workers. The deputy commissioner noted that Dubinovic's concerns related specifically to duties imposed on him as a custodian of an elementary school, such as picking up messes and objects left by elementary school students on carpeted floors, and found the testimony presented by other custodial workers unpersuasive. Therefore, Dubinovic asserts the commission construed the term "similar" too narrowly in finding that the other custodial workers' jobs were not similar enough to establish the average workplace stresses of a school custodian. Dubinovic's claim is not supported by case law. Dubinovic did not produce testimony from any other school custodians. He presented testimony from custodial workers at hotels and business buildings, with different duties and different staff sizes. The commission applied the correct standard, and its ruling was not irrational, illogical or wholly unjustifiable. *See Neal*, 814 N.W.2d at 518. Dubinovic's petition for judicial review must also be denied on this ground.

V. CONCLUSION

Dubinovic has failed to show that the agency erred in any respect. He is not entitled to judicial review of his claim.

IT IS THEREFORE ORDERED that the Petition for Judicial Review is **DENIED**.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV054740	IZUDIN DUBINOVIC VS DES MOINES PUBLIC SCHOOLS

So Ordered

Paul D. Scott, District Court Judge,
Fifth Judicial District of Iowa