# IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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| **TERRY TILTON,**<br><br>**Petitioner/Claimant**<br>**v.**<br><br>**HEINZ, Employer, and LIBERTY MUTUAL INSURANCE, Insurance Carrier,**<br><br>**Respondents/Defendants.** | **CVCV061396**<br><br>**RULING ON PETITION FOR JUDICIAL REVIEW** |

The above-captioned matter came before this Court for hearing on August 9, 2021. Petitioner, Terry Tilton, was represented by attorney Thomas Wertz. Nathan McConkey appeared for Respondents Heinz and Liberty Mutual Insurance (collectively referred to as Heinz). After hearing the arguments of counsel and reviewing the Court file, including the briefs provided by the parties and the Certified Administrative Record, the Court now enters the following ruling.

## I. BACKGROUND FACTS AND PROCEEDINGS.

Tilton began working at Respondent Heinz, a soup business, in 1999. Transcript (Tr.) p. 44. She has worked in various positions since that time. *Id.* at 45. Tilton began experiencing back problems early on in her time at Heinz, starting in 2000. In 2001, Tilton realized her back pain was job related. *Id.* at 91. In or about 2010, Tilton began working in the "clean as you go" position. *Id.* at 45. This was a physically demanding position, wherein she had to be on her feet most of the day and lift and push significant amounts of weight. *Id.* at 47-57; Ex. 11. Although Tilton's back-pain symptoms increased when she began working in the clean as you go position, she has consistently and extensively sought treatment for her back pain since 2000. *Tilton v. H.J. Heinz Co.*, 938 N.W.2d 720 (Table), 2019 WL 3317393, *1 (Iowa Ct. App. July 24, 2019).

From 2002 through 2010, Tilton treated routinely with Chiropractor Dennis Bradley for lower back pain. Ex. J. Over the years, Tilton has been given various work restrictions relative to

her back issues. Dr. Bradley kept her off work from February 16 through March 27, 2006 due to a lumbar disc bulge/herniation. *Id.* at 22. In 2004 Tilton began to treat with Matthew Gray, M.D., for lower back pain. Exs. L & M. In medical notes from Dr. Gray dated August 27, 2007, it states she was off work at that time and the last day she worked was seven weeks ago. Ex. M, p. 9. The record also discloses Tilton was on disability for a period of time in the summer of 2008, but does not affirmatively state the length of time this period of disability lasted. Ex. L, p. 9.

On February 4, 2010, Dr. Bradley completed a form labeled "Part A: Medical Facts" and "Part B: Amount of Leave Needed." One question asked whether Tilton's condition made her "unable to perform any of his/her job functions" and Dr. Bradley responded, "No." Ex. J, p. 43. He further indicated her disc bulge and bone spur conditions were "permanent (barring any surgeries)." *Id.* Dr. Bradley went on to opine that these conditions would cause "flare ups in the future – some of those flare ups will cause her to miss work" as "they have in the past." *Id.* at 43-44. Part B of the form asked, in part, if Tilton would be "incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery." Dr. Bradley replied, "No." He expounded by noting, "Not currently but it is possible/probable over the course of the year." *Id.* at 44. Dr. Bradley stated her condition would cause episodic flare ups periodically preventing her from performing her job. He stated it would be "nearly impossible" to determine the frequency and duration of the flare ups. *Id.* However, he estimated she "may" have one every two to four months, lasting one to three days. *Id.* Tilton was not taken off work or give any specific work restrictions by Dr. Bradley at that time. He did note that the "probable duration of the condition" would be two to four weeks. *Id.* at 43.

A medical note from Dr. Bradley dated March 11, 2010, states that Tilton had seen Dr. Gray, who took her off work. Ex. J, p. 35. On March 22, 2010, Tilton began seeing Stanley

Mathew, M.D., relative to her chronic back pain. Ex. 1. Dr. Mathew's notes state Tilton was "still out of work due to low back pain" in April 2010. *Id.* at 11. Tilton engaged in physical therapy over the next few months and in June 2010 underwent a joint injection. *Id.* at 13. Dr. Mathew cleared Tilton to return to work "without any restriction," effective July 12, 2010. *Id.* at 14-16. However, Tilton was unable to return to work on that date due to the severity of her back pain. *Id.* at 17. She returned to Mathew the following day and was ultimately scheduled to undergo another epidural steroid injection. That procedure took place in late July. *Id.* at 18-19.

On August 10, 2010, Tilton reported to Dr. Mathew that she had been "pain free" for roughly two weeks and wanted to do two weeks of physical therapy before returning to work. *Id.* at 19. On September 1, 2010, Tilton returned to see Dr. Mathew and stated she was "doing well", "feels very good", and his exam revealed that her range of motion in her lumbar spine was "full and pain free." *Id.* at 21. Dr. Mathew cleared Tilton to return to work "full duty" and "without any restriction," effective September 8, 2010. *Id.* at 21-22. On October 6, 2010, Tilton complained of aches and pains but was "overall doing well" and "tolerating it." *Id.* at 23. In December 2010 she reported to Mr. Mathew that she had some "aggravating pain" but was still back at work full time and "overall doing much better." *Id.* at 25.

In early February 2011, Tilton's symptoms returned and she again discontinued working. *Id.* at 27. The record indicates she did not return to work until early April 2011. Tilton continued to treat with Dr. Mathew, receiving additional steroid injections in May and November 2011. *Id.* at 14-22. In April 2012 Tilton fell while walking a dog, which exacerbated her lower back pain. Ex. 1, p. 48. In June 2012 she underwent radiofrequency lesioning of the lateral braches of S1-S4. Ex. S, pp. 3-5. On January 11, 2013, Tilton saw Dr. Mathew for lower back pain exacerbated with a slip and fall. Ex. R, pp. 4-5. Ultimately, on April 15, 2013, being unable to tolerate her back

pain, Tilton decided to go on disability. Tr. p. 75. She has not worked since. On May 5, 2013, Tilton gave Heinz notice of a work injury that occurred on or about April 15, 2013. Ex. 13, p. 1.

In March 2015, Tilton filed a petition for arbitration and medical benefits with the Iowa Workers' Compensation Commission alleging a cumulative-trauma injury manifesting on or about April 15, 2013. Following a hearing, a Deputy Commissioner entered an Arbitration Decision. The Deputy concluded Tilton was aware "by 2011 that her condition was work related, serious, and potentially compensable" and, because "she did not provide notice to her employer until May of 2013 . . . and did not file a petition for benefits until 2015" her claim for benefits was barred by Iowa Code sections 85.23 and 85.26(1) (2015). Tilton appealed the decision to the Commissioner. The Commissioner delegated authority to render the final agency decision to Deputy Commissioner Christenson pursuant to Iowa Code section 86.3. In his Appeal Decision, the Commissioner's Designee concluded Tilton's work injury manifested sometime in 2001. He further found Tilton knew or should have known her physical condition was serious enough to have a permanent adverse impact on her employment on September 8, 2010. Thus, the discovery rule was satisfied and the tolling of the limitations period ended on September 8, 2010.[1] Tilton did not give Heinz notice of her injury until May 3, 2013. Thus, the Appeal Deputy concluded because notice was not given within 90 days of the injury, Tilton's claim for benefits was barred by Iowa Code section 85.23.

In 2018, Tilton filed a Petition for Judicial Review of the final agency decision in district court. Tilton argued the agency decision was irrational, illogical or wholly unjustifiable and

[1] The Court notes the Appeal Deputy stated the "manifestation date" was September 8, 2010. However, it is clear by the other language he used that he meant the tolling of the limitations period ended on this date because Tilton became aware at that time that her physical condition was serious enough to have a permanent impact on her employment. The Iowa Court of Appeals agreed this was simply a misstatement and thus concluded such was not reversible error. *Tilton v. H.J. Heinz Co.*, 2019 WL 3317393, at *4.

unsupported by substantial evidence in the record. The district court concluded the agency applied an incorrect legal standard, substantial evidence did not support the agency decision, and the decision was irrational, illogical, and wholly unjustifiable. The district court remanded the matter to the agency for the proper application for the discovery rule and further proceedings.

Heinz appealed the district court's decision. On July 24, 2019, the Iowa Court of Appeals affirmed in part, reversed in part, and remanded the case back to the district court "for an entry of an order to reverse the agency and remand for further proceedings consistent with" its opinion. *Tilton v. H.J. Heinz Co.*, 2019 WL 3317393, at *5. The court of appeals reversed the district court's conclusion that the agency failed to apply the appropriate legal standard regarding cumulative trauma injuries. *Id.* at *3. It concluded that although the agency did "blur" some terminology with regard to manifestation date and the tolling of the discovery rule, this did not prejudice Tilton because the court was able to "deduce the deputy's ultimate conclusion." *Id.* The court of appeals affirmed the district court's determination that substantial evidence did not support the Appeal Decision's conclusion that Tilton "knew her back condition was serious enough to have a permanent adverse impact on her employment or employability, i.e. that she knew or should have known the nature, seriousness, and probable compensable character of her injury or condition" as of September 8, 2010. *Id.* at *4. The court of appeals made this conclusion because as of September 8, 2010, "no doctor had ever given [Tilton] permanent work restrictions." *Id.*

On February 4, 2021, a Remand Decision was entered by Deputy Christenson.[2] He stated the only issue on remand was to determine when Tilton knew or should have known her physical condition was serious enough to have a permanent adverse impact on her employment or employability, and as such when the tolling of the limitations period ended because the discovery

[2] Deputy Christenson was again delegated authority by the Commissioner to render the final agency decision in this matter pursuant to Iowa Code section 86.3.

rule was satisfied.[3] The Commissioner's Designee found Tilton saw Dr. Bradley on February 4, 2010. She had treated with him approximately 140 times for back pain between 2002 and 2010. Deputy Christenson found that on February 4, 2010, Dr. Bradley took Tilton off of work for two to four weeks for back pain. He further found Dr. Bradley told Tilton at that time that her condition was permanent and that she would continue to miss work in the future due to back pain. Thus, he concluded Tilton "knew or should have known, of the seriousness of her disability on or before February 4, 2010." Remand Dec., p. 5. Tilton did not give notice to Heinz until May 3, 2013. Thus, the Remand Deputy concluded she did not give the employer notice within 90 days of when she knew the seriousness of the injury and as such her benefits were barred by Iowa Code section 85.23.

Tilton filed the present Petition for Judicial Review of this final agency action on February 23, 2021. Heinz filed an Answer on March 3, 2021. Tilton filed a brief in support of her Petition on June 23, Heinz filed its brief on July 23, and Tilton filed a reply brief on August 2, 2021. As set forth above, hearing on this matter was held before this Court on August 13, 2021. Tilton contends the agency's factual determinations are unsupported by substantial evidence in the record, its application of the law to the facts was irrational, illogical and wholly unjustifiable, and its actions were otherwise unreasonable, arbitrary, capricious, or an abuse of discretion under Iowa Code section 17A.19(10)(f), (m), and (n), respectively.

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[3] The Court notes that both the district court and the court of appeals found Deputy Christenson had "blurred" the concept of the manifestation date and the separate analysis regarding the discovery rule by referring to the second as the "manifestation date" in his Appeal Decision. Despite this, Deputy Christenson again used what can at the least be call imprecise if not incorrect legal terms in discussing these concepts in the Remand Decision. However, the Court concludes, as did the court of appeals, such is not prejudicial to Tilton because the Court can deduce the Appeal Deputy's ultimate conclusions and findings. Reversal is only required where the "substantial rights of the person seeking judicial relief have been prejudiced." Iowa Code § 17A.19(10). *See IBP, Inc., v. Al-Gharib,* 604 N.W.2d 621, 634 (Iowa 2000) ("[A]n agency's decision is sufficient if it is possible to work backward from the agency's written decision and to deduce what must have been the agency's legal conclusions and its findings.") (internal citations omitted)).

## II. SCOPE AND STANDARDS OF REVIEW.

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of this Court's review in workers' compensation cases. Iowa Code § 86.26 (2021); *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)(2021).[4] 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. If the findings of fact are not challenged, but 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 (citations omitted).

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), *superseded by statute on other grounds*, 2004 Iowa Acts 1st Extraordinary Sess. ch. 1001, §§ 12, 20, *as recognized in JBS Swift & Co. v. Ochoa*, 888 N.W.2d 887, 890, 898–900 (Iowa

[4] References in this ruling to Iowa Code chapters 17A and 86 are to the version of the code in force when the Petition for Judicial Review was filed, 2021. References to chapter 85 are to the version of the code in force when the claim for benefits was filed with the Commission, 2015.

2016). 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. 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 the Commissioner's application of law to the facts only if it was "irrational, illogical, or wholly unjustifiable." *Id.*; Iowa Code § 17A.19(10)(l). 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).

On judicial review the question is not whether the evidence supports a finding different from the Commissioners, but whether the evidence supports the findings the commission actually made. *Ward v. Iowa Dept. of Trans.,* 304 N.W.2d 236, 237-38 (Iowa 1981). The adequacy of the evidence in the record to support a particular finding of fact must be judged in light of all relevant evidence in the record. This includes any determinations of veracity and credibility by the presiding officer who personally observed the demeanor of the witnesses. Iowa Code §17A.19(10)(f)(3). The workers' compensation law should be liberally construed to accomplish the object and purpose of the legislation: to benefit the worker and his dependents. *Dillinger v. City of Sioux City*, 368 N.W.2d 176, 180 (Iowa 1985).

## III. MERITS.

Iowa Code section 85.23 provides:

> 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.[5]

Our supreme court has adopted a "manifestation test," which fixes "the date of injury as of the time at which the disability manifests itself." *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 287 (Iowa 2001) (internal quotations omitted) (quoting *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992)). "[A]n injury manifests itself when both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Id.* (internal quotations omitted) (quoting *Tasler*, 633 N.W.2d at 287). The discovery rule delays the commencement of [the] limitation period . . . for giving notice, until the injured person has in fact discovered his injury or by exercise of reasonable diligence should have discovered it." *Dillinger v. City of Sioux City*, 368 N.W.2d 176, 179 (Iowa 1985).

> [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 [limitations period for giving notice] 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.

*Herrera*, 633 N.W.2d at 288 (quoting *Orr v. Lewis Cent. Sch. Dist.*, 298 N.W.2d 256, 257 (Iowa 1980)); *see Dillinger*, 368 N.W.2d at 179 (indicating discovery rule also applies to toll limitations period for notice requirement contained in section 85.23). "Although the date of injury is relevant to notice and statute-of-limitations issues, the cumulative injury rule is not to be applied in lieu of the discovery rule . . . . [A]lthough "[t]hese two rules are closely related . . . they are not the same." *Id.* at 287.

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[5] The Iowa Legislature has since amended this statute to include the following language: "For the purpose 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." 2017 Iowa Acts Ch. 23 § 3.

The only question before the agency on remand from the Iowa Court of Appeals was when the discovery rule would be satisfied to discontinue the tolling of the limitations period. As set forth above, this would occur when Tilton knew her physical condition was serious enough to have a permanent adverse impact on her employment or employability, i.e. when she knew or should have known the nature, seriousness, and probable compensable character of her injury or condition. *Herrera,* 633 N.W.2d at 288. The court of appeals concluded there was not substantial evidence in the record to find that this was on September 8, 2010, because, "As of that date, no doctor has ever given her permanent work restrictions." *Tilton v. H.J. Heinz Co.*, 2019 WL 3317393, at *4. The court concluded it could not make its own independent finding of the correct discovery date and thus had to remand to the agency to make this determination. *Id.*

Based on the determination by the court of appeals that Tilton could not have known her condition was serious enough to have a permanent impact on her employability as of September 8, 2010, because no doctor had ever given her permanent work restrictions at that time, it was irrational, illogical, and wholly unjustifiable for the Remand Deputy to the conclude Tilton somehow could have known this *seven months earlier* on February 4, 2010. As she had not ever had a doctor's note giving her permanent restrictions as of September 8, 2010, she clearly could not have had a doctor's note giving her permanent restrictions seven months prior to that.

Moreover, the Remand Deputy relied heavily on the fact Dr. Bradley took Tilton off work for two to four weeks on February 4, 2010, as he referred to this fact three times in his determination. As discussed above, the questionnaire filled out by Dr. Bradley on this date nowhere states he was taking Tilton off work. To the contrary, the questionnaire clearly and expressly asked if Tilton would be "incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery" and Dr. Bradley replied,

"No." Ex. J, p. 44. It is unclear to the Court where in the record the Remand Deputy found any evidence Dr. Bradley took Tilton off work as of February 4 or how he made such a finding, as the Court finds none. The only place in the February 4 medical questionnaires that states anything about such a time frame is when Dr. Bradley answered the question asking the "probable duration of the condition" as "2-4 weeks". *Id.* at 43. This in no way indicates he was taking her off of work for that period of time. In fact it is reiterated that Dr. Bradley found to the contrary when he stated she would *not* be incapacitated. *Id.* at 44. Therefore, the Court is not able to work backward from the agency's written decision and deduce where or how it reached its findings. *See IBP, Inc., v. Al-Gharib,* 604 N.W.2d 621, 634 (Iowa 2000) ("[A]n agency's decision is sufficient if it is possible to work backward from the agency's written decision and to deduce what must have been the agency's legal conclusions and its findings.") (citations and internal alternations omitted)).

Accordingly, the Court concludes the Remand Decision was based upon an irrational, illogical, and wholly unjustifiable application of the discovery rule to the facts in the record. This conclusion prejudiced Tilton's substantial rights because it meant she was barred from receiving any benefits by the application of Iowa Code section 85.23.

Finally, no additional evidence appeared in the record between when the court of appeals concluded there was not substantial evidence to show Tilton had the requisite knowledge of the seriousness of the impact of her injury on her employability in September 2010, and when the Remand Deputy conclude that she did somehow have this knowledge seven months earlier in February 2010. No doctor could have given Tilton permanent restrictions on February 4, 2010, none had given her any such restrictions as of September 8, 2010. Accordingly, for the same reasons the Iowa Court of Appeals concluded there was not substantial evidence in the record to support the agency's conclusion that the tolling of the limitations period should end as of

September 8, 2010, this Court concludes there is not substantial evidence in the record to support the Remand Deputy's concludes that Tilton's discovery date was February 4, 2010.

On appeal, this Court may not make an independent finding of the correct date when Tilton did know that her physical condition was serious enough to have a permanent impact on her employment or employability. *Tilton v. H.J. Heinz Co.*, 2019 WL 3317393, at *4. However, the Court concludes it must have been after September 8, 2010, because as of that date she had no such knowledge as no doctor had given her any permanent restrictions. *Id.* The Court cannot determine the correct date of when the tolling of the limitations period should end. *Id.* Accordingly, this case must be remanded to the Workers' Compensation Commissioner to make this determination by the proper application of the discovery rule to the facts of this case as set forth in the record as discussed herein.

## IV. CONCLUSION AND DISPOSITION.

For all of the reasons set forth above, the Court concludes the Remand Deputy's determination that as of February 4, 2010, Tilton knew her back condition was serious enough to have a permanent adverse impact on her employment or employability, i.e. that she knew or should have known the nature, seriousness, and probable compensable character of her injury or condition, is (1) an irrational, illogical, and wholly unjustifiable application of the discovery rule to the facts, and (2) not supported by substantial evidence in the record. Accordingly, this matter is **REMANDED** to the Workers' Compensation Commission for further proceedings consistent with this Ruling.

State of Iowa Courts

| **Case Number** | **Case Title** |
|---|---|
| CVCV061396 | TERRY TILTON VS HEINZ AND LIBERTY MUTUAL INSURANCE |
| **Type:** | OTHER ORDER |

So Ordered

Scott D. Rosenberg

**Scott D. Rosenberg, District Court Judge, Fifth Judicial District of Iowa**

Electronically signed on 2021-11-06 11:39:39