

**IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY**

**ANITA GUMM,**

**Petitioner-Claimant,**

**vs.**

**EASTER SEAL SOCIETY OF IOWA,  
INC.; AMERICAN COMPENSATION  
INSURANCE CO.; AND SFM  
COMPANIES,**

**Respondent-Defendants.**

**Case No. CVCV055213**

**RULING ON PETITION  
FOR JUDICIAL REVIEW**

**I. INTRODUCTION**

Petitioner Anita Gumm (“Gumm”) filed her initial petition for judicial review on October 31, 2017. The application came before this court for hearing on March 30, 2018. Gumm was represented by Attorney Joseph Powell. Respondent–Defendant SFM Insurance Co. (“SFM”) was represented by Tyler Smith. After considering the administrative record and arguments of all 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**

Gumm worked as a janitor for Easter Seals of Iowa (“Easter Seals”) before retiring in 2014. On October 28, 2008, Gumm slipped on wet grass while working and fractured her right ankle. On January 15, 2009, Dr. Barp stated Gumm had reached maximum medical improvement (“MMI”) and returned Gumm to full work activity without restrictions. On January 19, 2009, Dr. Barp assigned Gumm a 17% extremity impairment rating for the ankle fracture. Between February of 2009 and April 2010, Gumm returned to Dr. Barp on multiple occasions reporting pain in her right ankle. Dr. Barp performed surgery on Gumm’s right ankle to remove hardware

on May 3, 2010. Gumm returned to work after surgery, and Dr. Barp stated Gumm did not suffer any additional impairment.

On March 6, 2012, Gumm again returned to Dr. Barp complaining of ankle pain. Dr. Barp performed an ankle arthroscopy on April 18, 2012. Dr. Barp released Gumm to work without restrictions beginning May 3, 2012, and Gumm returned to her normal shifts. On March 19, 2013, Dr. Barp wrote Easter Seals' insurance carrier stating Gumm was completely healed and suffered no additional impairment.

Gumm complained of right ankle pain to Dr. Barp again on May 16, 2013. She was given an injection and returned to work without restrictions. On August 19, 2013, it was determined Gumm needed arthrodesis/fusion surgery, and the surgery was performed on October 23, 2013. Following the surgery, Dr. Barp released Gumm to return to work starting January 13, 2014 for 4–5 hours per day.

Gumm complained of lower back pain and knee pain to Dr. Barp on February 14, 2014, which Dr. Barp noted was caused by gait changes due to Gumm's ankle pain. Dr. Barp recommended physical therapy and imposed a restriction of no lifting over 5 pounds and no mopping. Easter Seals could not accommodate these restrictions and allowed Gumm early retirement.

On December 16, 2014, Dr. Barp released Gumm from care. Dr. Barp issued a note stating Gumm met the definition of a handicapped person under Iowa Code section 321L.1 and that her condition was permanent.

On February 14, 2013, Gumm filed two workers' compensation petitions. One involved the October 28, 2008 acute injury, and the other asserted a cumulative injury with injury dates of March 6, 2012, May 16, 2013, and/or January 15, 2014. Gumm and Easter Seals stipulated that

Gumm's October 28, 2008 injury reached maximum medical improvement on January 15, 2009 and resulted in a 17% lower extremity impairment rating. The agency found that Gumm failed to establish a cumulative injury following the October 28, 2008 injury. 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

The sole issue before this court is whether the agency applied the proper legal standard in determining whether Gumm sustained a cumulative trauma injury. The agency applied the legal test for a cumulative trauma injury announced in *Ellingson v. Fleetguard, Inc.* and found that the evidence presented was insufficient to establish that Gumm suffered a cumulative injury.

A cumulative injury is one “that develops over time from performing work-related activities and ultimately produces some degree of industrial disability.” *Ellingson v. Fleetguard, Inc.*, 599 N.W.2d 440, 444 (Iowa 1999) (overruled on other grounds by *Waldinger Corp. v. Mettler*, 817 N.W.2d 1 (Iowa 2012)). To establish a cumulative injury, a claimant must show “that she has suffered a distinct and discreet disability attributable to post-[acute injury] work activities rather than as an aggravation of the [acute injury].” *Id.* Whether or not the evidence is sufficient to establish a cumulative injury is a factual determination to be made by the agency. *Id.*

In *Floyd v. Quaker Oats*, the Iowa Supreme Court refined the legal standard for cumulative injuries following acute injuries and found that “[a] claimant should be permitted to recover by way of a cumulative-injury claim for any increase in functional disability shown to have occurred as the result of day-to-day activities in the workplace subsequent to [the date of the acute injury.]” 646 N.W.2d 105, 108 (Iowa 2002). In reaching this decision, the court cited *Ziegler v. United States Gypsum Co.*, 106 N.W.2d 591, 595 (Iowa 1960) (holding that a claimant

may file an original arbitration petition seeking compensation for an increased degree of disability that resulted from day-to-day work activities that aggravated a prior back injury). The court stated that *Ziegler* “stands for the proposition that, when a permanent disability has been established by an adjudicated award, a later aggravation may provide an independent compensable event but only to the extent of the increased disability that flows therefrom.” *Floyd*, 646 N.W.2d at 109. The court applied *Ziegler* when deciding *Floyd* and upheld the agency’s finding that the claimant had sustained a cumulative injury to his knee, despite the fact that the claimant was unable to recover for the traumatic injury to his knee because that claim was time-barred. *Id.* at 107–09.

The language in *Floyd* provides that a claimant may establish a cumulative injury by establishing the degree of disability sustained from aggravation of a prior injury through day-to-day work activities, while the language in *Ellingson* provides that a claimant must show a discreet injury from work-related activities after the date of the acute injury, and such discreet injury must be more than an aggravation of the prior injury. In distinguishing these two cases, the Iowa Supreme Court noted that “[t]he significant factor in the *Ellingson* case was that the extent of the [acute] injury was being litigated in the same proceeding in which the separate cumulative-injury claim was being urged.” The court also provided that in *Ellingson*, “the evidence conclusively showed that the ultimate extent of industrial disability was affected by job-related activities that aggravated the 1985 neck injury,” and therefore “the compensable consequences of the aggravation of the 1985 neck injury must be adjudicated as part of the disability flowing from that injury.” *Floyd*, 646 N.W.2d at 108. The court found that *Floyd* differed because the claim related to the acute injury sustained by the claimant was time barred, and therefore claimant “should be permitted to recover by way of a cumulative-injury claim for

any increase in functional disability shown to have occurred as the result of day-to-day activities in the workplace subsequent to the [date of] injury.” *Id.*

Here, the agency found that Gumm’s day-to-day work activities may have played a role in aggravating her ankle, however it found this alone was not enough to establish a cumulative injury under *Ellingson*. The agency found that Gumm’s ankle had never fully healed, and therefore she did not show by a preponderance of the evidence that she suffered a cumulative-trauma injury. Thus, the agency ultimately determined that any disability flowing from the original ankle injury would need to be adjudicated and calculated as one injury. A plain reading of *Floyd* suggests that it is immaterial whether or not the ankle fully healed if part of the industrial disability could be attributed to the acute injury and the rest of the disability could be attributed to post-injury work-related aggravation. The court recognizes the difficulty in reconciling the seemingly incompatible holdings of *Ellingson* and *Floyd*. Regardless, the agency, as the finder of fact, found that all of Gumm’s disability stemmed from the traumatic injury that occurred on October 28, 2008 and the natural results therefrom, and therefore applied the holding from *Ellingson* to conclude that Gumm did not suffer a cumulative-trauma injury. The agency’s application of the law was not irrational, illogical, or wholly unjustifiable in finding that Gumm failed to establish a cumulative injury by a preponderance of the evidence.

## V. CONCLUSION

The agency’s conclusion that Gumm failed to establish a cumulative injury under the standards set forth by *Ellingson* and *Floyd* was not irrational, illogical, or wholly unjustifiable. Therefore, Gumm’s petition for judicial review must be denied.

## VI. ORDER

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

Court costs are taxed to the Petitioner.





State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV055213  
**Case Title** ANITA GUMM VS EASTER SEAL SOCIETY OF IOWA ET AL

So Ordered

A handwritten signature in black ink, appearing to read "Paul D. Scott", is written over a horizontal line.

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