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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MARRIOTT HOTEL & CONFERENCE CENTER AND MARRIOTT CLAIMS SERVICES, **Petitioners,** **v.** **NANCY WILCOX,** **Respondent.**	**Case No. CVCV058969** **RULING ON JUDICIAL REVIEW**

This judicial review action came on for hearing on April 10, 2020. Tyler Smith represented petitioners Marriott Hotel & Conference Center and Marriott Claims Services (Marriott). Christopher Spaulding represented respondent Nancy Wilcox (referred to as "claimant").

STATEMENT OF THE CASE

Claimant is employed as a concierge in the club lounge at the Marriott hotel in Coralville. On October 1, 2014, she was walking down a hotel hallway preparing for her shift. She fell to the hard-surface floor and hurt the area around her left knee. It is unclear why she fell. Claimant testified that it felt like her foot stuck to something and that her leg went out from under her. The incident was recorded on hotel video. The video which did not show any impediments on the floor. Other employees reported that the floor was clean and there was no corroboration to the claim that it was sticky.

Claimant was off work for a little more than a month. She engaged in conservative treatment but continued to have problems with the knee for more than a year after that. In February of 2016, claimant's doctor diagnosed her with a displaced fracture of her left patella.

By that point, the doctor found she had reached maximum medical improvement. He found a seven percent impairment to the lower extremity.

Claimant filed a workers' compensation claim regarding her knee injury, as well as other injuries not part of this appeal. The case was heard by a deputy workers' compensation commissioner on November 2, 2017. The deputy evaluated the case as an idiopathic fall. She found the case analogous to *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323 (Iowa 2002), which held that an injury occurring at work while walking on a flat surface did not arise out of the course of employment because there was no work condition that caused the injury. She found that Marriott was not liable for workers' compensation benefits.

Claimant sought an intra-agency appeal. The commissioner designated another deputy to hear the appeal. The appeal decision made two significant changes from the deputy's decision. First, the commissioner's designee found that the case should not be evaluated as an idiopathic fall, which refers to falls caused by an underlying medical or personal condition (such as a seizure). Rather, it should be evaluated as an unexplained fall, which implicates the actual risk test set forth in *Lakeside Casino v. Blue*, 743 N.W.2d 169 (Iowa 2007). Second, the commissioner's designee distinguished *McIlravy* to find that the hard floor was a work condition that caused the injury to claimant's patella. In *McIlravy*, the employee had not fallen to the floor, so the knee did not strike anything. In this case, the broken bone was caused when claimant hit the hard surface of the floor. Accordingly, she granted workers' compensation benefits.

Marriott filed this judicial review action to challenge the finding that the injury arose out of claimant's employment. There is no dispute as to the calculation of benefits that would be awarded if Marriott is liable. The only question is whether liability exists. Claimant did not file a cross-appeal. The agency found that claimant's injury was not caused by a sticky or slippery

floor or by any other impediment. There is substantial evidence to support that finding, so the court will evaluate this case solely on the issue whether Marriott is liable based on claimant's knee striking the hard-surface floor.

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.

Review of findings of fact: The courts use a substantial evidence standard when considering challenges to findings of fact in agency decisions. A reviewing court can only disturb 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 Iowa Supreme Court has outlined the court's guidelines when reviewing substantial evidence claims under the 17A.19 standard as follows:

> 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. Our review of the record is fairly intensive, and we do not simply

rubber stamp the agency finding of fact.

> Evidence is not insubstantial merely because different conclusions may be drawn from the evidence. To that end, evidence may be substantial even though we may have drawn a different conclusion as fact finder. Our task, therefore, 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 Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (internal citations and quotation marks omitted).

Review of interpretation of law: The courts traditionally have discretion to substitute their interpretations of law for that of the agency when legal challenges are made on review. *Meyer*, 710 N.W.2d at 219. However, the courts are required to give deference to an agency interpretation of law when the agency has been "clearly vested" with authority to interpret a provision of law. *Burton*, 813 N.W.2d at 256. If the legislature has not given the agency clear authority to interpret a provision of law, the courts may reverse the interpretation if erroneous. *Id*.

In *Burton*, the Iowa Supreme Court held the level of deference to the workers' compensation commissioner's interpretations will be determined on a case-to-case basis depending on the "particular phrase under consideration." *Id*. While this appears an arduous standard, the court provided the following guidance:

> When a term is not defined in a statute, but the agency must necessarily interpret the term in order to carry out its duties, we are more likely to conclude the power to interpret the term was clearly vested in the agency. This is especially true "when the statutory provision being interpreted is a substantive term within the special expertise of the agency." However, "[w]hen a term has an independent legal definition that is not uniquely within the subject matter expertise of the agency," or when the language to be interpreted is "found in a statute other than the statute the agency has been tasked with enforcing," we are less likely to conclude that the agency has been clearly vested with the authority to interpret that provision of the statute.

Id. at 256–57 (cites omitted).

Application of law to fact: When a party challenges the ultimate conclusion reached by the agency, then the challenge is to the agency's application of the law to the facts. In that event, 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. The court will only reverse the agency'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).

CONCLUSIONS OF LAW

It is well settled that for an injury to be compensable under Iowa's workers' compensation statute, the injury must occur both in the course of and arise out of employment. *Miedema v. Dial Corp.*, 551 N.W.2d 309, 310–11 (Iowa 1996) (*citing* Iowa Code § 85.3(1). The first part of the test, whether the injury occurred "in the course of" employment, refers to the time, place, and circumstances of the injury. *See Lakeside Casino v. Blue*, 743 N.W.2d 169, 174 (Iowa 2007). In the present case, there is no question that claimant's injury occurred in the course of her employment. The injury occurred while she was on duty and on the work premises.

The issue in this case concerns the second part of the test, that is, whether the injury arose out of claimant's employment. This requires a distinct and independent inquiry. *Miedema*, 551 N.W.2d at 311. Injuries that occur in the course of employment or on the employer's premises do not necessarily arise out of that employment. *Id*. The employee must show that the nature of the employment exposes the employee to the risk of such an injury. *Lakeside*, 743 N.W.2d at 174.

The commissioner's designee correctly determined that this case is governed by the actual risk standard set forth in *Lakeside*. This case does not involve an idiopathic fall, which is

a fall due to the employee's personal condition. *See Bluml v. Dee Jay's Inc.*, 920 N.W.2d 82, 86 (Iowa 2018). As *Bluml* made clear, cases involving an idiopathic fall use a different test, that is, the increased risk test.[1] There is no evidence to show that claimant's fall occurred due to a personal condition. Rather, it fits the category of an unexplained fall. Therefore, the actual risk standard applies.

The supreme court has largely chosen to define the actual risk standard by application of the facts to a case. The most analogous case is *McIlravy v. N. River Ins. Co.*, 653 N.W.2d 323 (Iowa 2002). In *McIlravy*, the employee was walking across a level cement floor when he felt a pop in his knee. *Id.* at 326. He did not fall and felt no pain at the time. *Id*. The knee began to swell later that night and was extremely sore the next day. *Id*. The court found that an injury sustained while walking, without any other evidence connecting the injury to the workplace, is not compensable.[2] *Id*. at 331-32.

Lakeside cited factual scenarios from cases to illustrate when an injury does not arise out of employment. In *Miedema*, the worker injured his back while turning to flush a toilet at the workplace. The court denied the claim because there was no indication that his injury was caused by the design of the restroom or toilet. *Id*. As stated by the court, "the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of his employment." *Id*. In *Gilbert v. USF Holland, Inc.*, 637 N.W.2d 194, 200 (Iowa 2001), the court denied a claim after an employee injured his neck as he stood up after bending over to sign a work document. In *Musselman v. Cent. Tel. Co.*, 261

[1] The deputy's decision was issued before the supreme court clarified the distinctions between these tests in *Bluml*, so she did not have the benefit of that decision.
[2] McIlravy was not a judicial review action from a workers' compensation decision, but rather, a bad faith claim against an insurer. Still, the evaluation has been cited in other cases involving the actual risk standard. *See e.g. Lakeside*, 920 N.W.2d at 175.

Iowa 352, 356, 361 (1967), the court denied a claim after an employee injured his back while putting an overshoe as he leaned against a wall. The court found that none of the injuries in these cases were caused by a condition of employment.

In *Lakeside*, the court found that the facts of its case were "decidedly different from *McIlravy*" and the other aforementioned cases. *Lakeside*, 743 N.W.2d at 177-78. The employee was hurt after she stumbled on the stairs while walking to her work assignment. 743 N.W.2d at 178. The agency found that the injury occurred from a hazard relating to her employment, that is, the act of traversing the stairs to her work station. *Id.* The court agreed, finding the stairwell to be the additional factor showing a causal connection between injury and employment. *Id*.

In this case, the commissioner's designee found the additional factor to be the hard floor. She distinguished *McIlravy*, seemingly the most analogous case, because the employee in that case did not fall. His injury occurred solely while walking across the floor, whereas the claimant in this case broke her patella while making contact with the hard floor. The commissioner's designee did not rely on *Bluml*, but seems to take a page from that decision. Although *Bluml* involved an idiopathic injury, the court held that held that the agency may consider the hardness of a floor as a factor when determining whether the fall meets the increased risk test. *Bluml*, 920 N.W.2d at 87, 90-91. The court reversed the decisions of the agency and district court, which found as a matter of law that a fall to a hard level floor was not compensable. *Id*. at 86, 90-91. The court held that the issue had to be decided by the agency as a question of fact. *Id*.

Application of the actual risk standard is likewise fact-dependent. *See Lakeside*, 743 N.W.2d at 173, 177-78 (evaluating the actual risk standard as an application of fact to law). As a result, it follows that the agency should consider the hardness of a floor as a factor when

deciding actual risk in an unexplained fall case, just as it has when deciding increased risk in idiopathic fall cases.

The appeal decision is introspective. The commissioner's designee recognized that the result could be viewed as adopting the positional risk test, which is a wholly separate test that was rejected in *Lakeside*. *See Lakeside*, 743 N.W.2d at 177. She also recognized that the legislature recently amended chapter 85 to bar recovery for workers' compensation claims resulting from injuries occurring from floors on level surfaces. *See* 2019 Iowa Acts 38, § 1. While the amendment does not apply to this case because it was adopted after the injury, it clearly would have prevented the award entered by the agency. Ultimately, the commissioner's designee focused on the holding in the *Lakeside* case, which is the controlling precedent. She determined that if the stairs in *Lakeside* can arise to an actual risk, so could the hard floor in this case.

The agency's decision is supported by substantial evidence and is not irrational. This case is distinct from *McIlravy* in the sense that claimant's injury was not caused by walking, but rather, by striking the hard floor. The employee in *McIlravy* heard a pop in his knee while walking, which was later determined to be the cause of his injury. There was no work condition that served as a cause. In this case, the claimant suffered a broken bone that was caused when she actually hit the floor. If the floor had been carpeted or had a softer surface, she may not have suffered the same injury. In that sense, the case is comparable to *Lakeside*. Accordingly, based on precedent and the applicable standard of review, the agency decision must be upheld.

RULING

The agency decision is affirmed. Marriott shall pay the costs of this action.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV058969	MARRIOTT HOTEL AND CONFERENCE CENTER ET AL VS NANCY WILCOX

So Ordered

Jeffrey Farrell, District Court Judge,
Fifth Judicial District of Iowa