IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

MANDY TRIPP,	)	
	)	**Case No. CVCV300684**
Petitioner,	)	
	)	
v.	)	
	)	
SCOTT EMERGENCY COMMUNICATION CENTER and **IMWCA,**	)	**ORDER ON JUDICIAL REVIEW**
	)	
	)	
Respondents.	)	

On April 16, 2021, the petition for judicial review of final administrative action came before the Court for argument. Petitioner was represented by Attorneys Andrew Bribriesco and Gabriela Navarro. Respondents were represented by Attorneys Joshua Duden and Chandler Surrency. After having considered the evidence presented, the written and oral arguments of counsel, and the applicable law, the Court enters the following ruling on the petition.

FACTUAL BACKGROUND

Petitioner Mandy Tripp is an employee of Respondent Scott Emergency Communication Center ("SECC"). She has been employed as a 9-1-1 dispatcher since 2002, working first for the Davenport Police Department and later, when all Scott County dispatchers were combined into one department, for the SECC. In her capacity as a dispatcher, Mrs. Tripp takes calls which come in to the emergency and non-emergency phone lines and coordinates with police and fire departments throughout Scott County to properly respond to the needs of the caller. For medical emergencies, Mrs. Tripp accepts the initial call and, after a preliminary investigation, transfers it to MEDCOM when it becomes apparent that the call concerns a medical emergency. Mrs. Tripp has estimated that she accepts roughly 50 to 200 calls each day.

On September 30, 2018, Mrs. Tripp received one such emergency call. The call lasted about two minutes and 15 seconds. Throughout the call, a woman was screaming and repeating "help me, help me, me baby is dead" and "my baby is gone." Mrs. Tripp attempted to calm the woman down and get the information she needed to dispatch the appropriate entity. In the end, Mrs. Tripp transferred the call. But, that was not the end of it. Mrs. Tripp continued to overhear radio reports from the units who responded to the scene of the accident, including a medic providing instructions on how to perform CPR and a statement that the infant's would may have been caused by a claw hammer. Mrs. Tripp's supervisor, Cathy Schwartz, gave Mrs. Tripp the opportunity to take a break following the call. Mrs. Tripp refused the offer, stating that she needed a distraction to forget the sound of the woman's screaming. Mrs. Tripp continued working until the end of her shift. In the meantime, Mrs. Tripp had sent a message to her husband, Dennis Tripp, a 23-year veteran of the Bettendorf Police Department, informing him that she had taken a particularly distressing call, and later called him just so that she could hear another voice. Mr. Tripp stated that this was the first time Petitioner had ever done this. This was the third dead infant call Mrs. Tripp had ever taken.

The call continued to affect Mrs. Tripp as time went on. About a week later, she had to back out of a scheduled work responsibility where she was supposed to sit in with a trainee taking calls for about a half-day. In an October 8, 2018, email chain with Denise Pavlik, director of the SECC, Mrs. Tripp stated that she was still having trouble getting over the call and intended to begin seeing a counselor about it. On October 16, 2018, Mrs. Tripp saw Lisa Beecher, MS, LMHC, and was diagnosed with post-traumatic stress disorder ("PTSD") and adjustment disorder with anxiety. Two days later, Mrs. Tripp filed an injury report and Ms.

Beecher completed an FMLA form stating that Mrs. Tripp was unable to respond to emergency calls concerning trauma or crisis and would be incapacitated until November 30, 2018.

Mrs. Tripp continued counseling with Ms. Beecher, but her symptoms worsened. Mrs. Tripp began having difficulties with noises, and experiencing unease, anxiety, and depression. She started having nightmares. She was evaluated by two other doctors who concurred in the PTSD diagnosis and proposed treatment plans. In November and December of 2018, Mrs. Tripp's symptoms began improving. She was able to return to work—though the doctors informed SECC she would not be able to work overtime—and took on two other part-time jobs selling skincare products and organizing wine-tasting events. Mrs. Tripp continued to improve, and was able to return to work full-time, until an incident in the middle of 2019, when she took an emergency call from a father whose 14-year-old daughter had committed suicide. Mrs. Tripp engaged in additional therapy to cope with this call, which had triggered flashbacks to the first call and caused her to hear the woman's screaming in her head again.

In the meantime, Mrs. Tripp had filed a petition for worker's compensation arising out of this incident. Hearing was held before the Iowa Deputy Worker's Compensation Commissioner on October 21, 2019. Multiple doctors testified at the hearing that Mrs. Tripp was suffering from PTSD and that it was directly caused by the dead infant call she took on September 30, 2018. Mr. Tripp testified as to the severity of her symptoms, and how her PTSD has reduced her quality of life. Mrs. Tripp testified about her struggles after the call and how she has had trouble working, and believed it would no longer be feasible in the long term for her to remain an emergency dispatcher.

Three other individuals also testified in the matter. Jill Cawiezell, a 9-1-1 dispatcher who works for MEDIC EMS but whose workspace is located near Mrs. Tripp's in the same building,

testified that she was also involved in the dead infant call which caused Mrs. Tripp's PTSD. Ms. Cawiezel testified that she handles calls similar to the September 30 call every day, that there was nothing unexpected or unusual about the call, and that she had taken about 12 dead infant calls in her 24 years as a dispatcher. Director Pavlik testified that, in a 20-year career including 12 years of experience as a dispatcher, she took about 15 calls involving dead children. Ms. Pavlik further testified that emergency dispatchers take calls involving matters of life and death, including calls with incredibly distraught callers, every day; and that she heard the particular call and did not consider it unusual. Finally, Tracey Sanders, deputy director of SECC, testified that she did not consider the call unusual, unexpected, or sudden and that SECC had made accommodations for Mrs. Tripp due to her mental health concerns.

The Deputy Commissioner ruled against Mrs. Tripp's claim on February 28, 2020. In the ruling, he noted that Mrs. Tripp had presented a claim for a purely mental ("mental-mental") injury arising from a specific incident, but found that Mrs. Tripp's PTSD was not a compensable injury under the Iowa Worker's Compensation framework. This, he reasoned, was because the incident which triggered Mrs. Tripp's issues was not an unexpected or unusual, and so Mrs. Tripp could not prove legal causation under the framework established in *Brown v. Quik Trip Corp*.[1] In reaching this decision, the Deputy Commissioner gave great weight to the testimony from the three other experienced dispatchers who opined that this call was within the norm for what an emergency dispatcher should expect in this job. Mrs. Tripp filed an application for rehearing which was denied March 24, 2020. Mrs. Tripp appealed these decisions to the

[1] The Deputy Commissioner's treatment of the issue appears to consider only whether the dead infant call was unexpected or unusual for an emergency dispatcher to take. It does not separately evaluate the nature of the strain which the call placed on Mrs. Tripp. Whether the "unusual strain" language in the *Brown* test constitutes a separate element which demands an independent analysis of the type and severity of the strain placed on a claimant, or is simply a continuation of the "unexpected cause" analysis which is focused on the nature of the incident itself, is an interesting unresolved question. However, as the issue was not briefed or argued by the parties in this case, the Court does not decide the matter here.

Worker's Compensation Commissioner, who affirmed the decision of the Deputy Commissioner on November 17, 2020. This petition for judicial review followed on November 23, 2020.

ANALYSIS

I. Standard of Review and Claims of Error

Judicial review of a decision of the Worker's Compensation Commissioner is controlled by Chapter 17A of the Iowa Code. Iowa Code § 86.26(1) (2021). Under Chapter 17A, reversal of an agency decision is only appropriate in select circumstances. Iowa Code § 17A.19(10) (2021). This case concerns the Commissioner's decision that Petitioner had not met her burden to prove legal causation in this case. "Although the standard of legal causation involves an issue of law, … the application of that standard to a particular setting requires the commissioner to render an outcome determinative finding of fact." *Asmus v. Waterloo Community School District*, 722 N.W.2d 653, 657 (Iowa 2006). "A court on judicial review is bound by that fact-finding if it is supported by substantial evidence." *Id.* "Evidence is substantial for purposes of reviewing the decision of an administrative agency when a reasonable person could accept it as adequate to reach the same finding." *Id.* "The fact that two inconsistent conclusions may be drawn from the same evidence does not prevent the agency's findings from being supported by substantial evidence." *Id.* "In situations in which the workers' compensation commissioner has rendered a finding that the claimant's evidence is insufficient to support the claim under applicable law, that negative finding may only be overturned if the contrary appears as a matter of law." *Id.*

Petitioner presents four claims of error for the Court to evaluate—that the Commissioner erred (1) by finding that the alternative compensability standard for mental-mental injuries attributable to a particular event which was articulated in *Brown v. Quik Trip Corp.* is a subjective standard which requires consideration of the employee's job responsibilities, (2) by

not overruling or amending the *Brown* standard to allow for automatic compensability of PTSD injuries factually caused by a workplace incident, (3) by rejecting the testimony of medical experts which had not been rebutted, and (4) by rendering a decision unsupported by substantial evidence. Petitioner's second claim of error states no error at all. Like the Iowa Court of Appeals and this Court, the Commissioner was "not at liberty to overrule controlling supreme court precedent." *State v. Beck*, 854 N.W.2d 56, 64 (Iowa Ct. App. 2014). The logic of this rule extends to amending controlling precedent as well. Because overruling or amending Iowa Supreme Court precedent was not within the Commissioner's power, the Commissioner could not err by refusing to do so. Accordingly, this Court rejects Petitioner's second claim of error. The Court now moves to address the remaining three in turn.

II. Whether the Commissioner Applied the Correct Legal Standard

Petitioner's first claim of error is that the Commissioner misinterpreted the rule of *Brown v. Quik Trip Corp.*, 641 N.W.2d 725 (Iowa 2002). Petitioner argues that the *Brown* standard—which articulated a test where, when met, the worker's compensation claimant alleging a mental-mental injury would no longer have to prove legal causation to support their claim—is an objective standard and evaluating the standard involves no consideration of the claimant's regular job responsibilities and experiences. Respondents argue that the standard is subjective, that the Commissioner acted properly in evaluating the realities of Petitioner's everyday work experiences in coming to the conclusion that Petitioner's injury resulted from an event which was not unexpected or unusual and so was not a compensable injury.

Under Iowa Code § 85.3(1): "Every employer, not specifically excepted by the provisions of this chapter, shall provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the

course of the employment … .” Iowa Code § 85.3(1) (2021). Thus, in any worker’s compensation case, there are two threshold questions: (1) whether the complained-of harm is a “personal injury,” and (2) whether that harm “ar[ose] out of and in the course of the employment.” *Id.*; *Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d 845, 850 (Iowa 1995). This second inquiry involves “two separate determinations: (1) factual or medical causation and (2) legal causation.” *Dunlavey*, 526 N.W.2d at 853. However, the Court in *Brown* decided that “[w]hen a claim is based on a manifest happening of a sudden traumatic nature from an unexpected cause or unusual strain, the legal-causation test is met irrespective of the absence of similar stress on other employees.” *Brown*, 641 N.W.2d at 729. This is the test which Petitioner argues the Commissioner misapplied.

Petitioner’s argument focuses on whether the “unexpected cause or unusual strain” element of the *Brown* test allowed the Commissioner to consider Petitioner’s work activities and experiences. The Iowa Supreme Court, in adopting the standard in *Brown*, did not address this point. After adopting the test, the Court’s analysis of its applicability to the facts of *Brown*, in its entirety, is as follows: “However, the two violent events occurring in Brown’s employment with Quik Trip satisfied the test as outlined above. These events were sudden, traumatic, and unexpected.” *Id.*

Nor does any subsequent binding precedent guide the answer to this question. There are only three binding cases which cite to *Brown*.[2] The first case, *Grimm v. US West Communications, Inc.*, only cites *Brown* for the simple proposition that, for a mental-mental injury to be compensable under Iowa’s worker’s compensation scheme, there must be “a showing of both legal and medical causation.” *Grimm v. US West Communications, Inc.*, 644

[2] Unpublished decisions do not constitute binding precedent. Iowa R. App. P. 6.904(2)(c) (2021).

N.W.2d 8, 18 (Iowa 2002). The second is *Asmus v. Waterloo Community School District*, 722 N.W.2d 653 (Iowa 2006). The *Asmus* Court cites *Brown* only twice: once to note that the *Brown* standard applies to cases where "the mental injury can be readily traced to a specific event" before moving on to apply *Dunlavey* to the case at hand and a second time as support for the position that the *Dunlavey* standard is well-grounded in policy. *Id.* at 657 n.1, 658. In the third case, *Heartland Specialty Foods v. Johnson*, the Iowa Court of Appeals referenced *Brown* only in listing the arguments presented by the petitioner at the district court level. *Heartland Specialty Foods v. Johnson*, 731 N.W.2d 397, 400 (Iowa Ct. App. 2007). There was no question on appeal that the case dealt with a physical/mental injury, so the *Brown* test had no relevance to the Court of Appeals opinion. *Id.* at 400 *et seq.* Therefore, in the absence of any binding precedent on the point, the Court looks to persuasive precedent.

There are only three unpublished Iowa Court of Appeals cases where the Court substantively evaluated whether the claimant met the *Brown* test. Two of these cases are not helpful in resolving this matter because they do not address the element of the *Brown* test at issue in this case.[3] The third case, *Village Credit Union v. Bryant*, is unhelpful because of its similarity to the fact pattern in *Brown*. In this case, the Court of Appeals found that the *Brown* test was satisfied when the claimant bank employee was the victim of two robberies at her workplace in under three months. *Village Credit Union v. Bryant*, No. 11-1499, 819 N.W.2d 427, 2012 WL 1860861, at *1, *4 (Iowa Ct. App. May 23, 2012). Because a bank robbery is outside of the day-

[3] In the first, the Court of Appeals found the *Brown* test was not satisfied because the incident in question was not "sudden." *Cavanaugh v. Iowa Dept. of Human Services*, No. 01-0594, 2002 WL 31425210, at *2 (Iowa Ct. App. Oct. 30, 2002). In the second, the commissioner found that the *Brown* test was not satisfied because "[a]ll Iowa cases finding a mental/mental injury, under the *Brown v. Quik Trip* analysis, involve instances where an employee personally physically threatened, witnessed a gruesome injury or death of another." *Dubinovic v. Des Moines Public Schools*, No. 18-0194, 928 N.W.2d 871, 2019 WL 2152896, at *2 (Iowa Ct. App. May 15, 2019) (Table opinion). The Court of Appeals found this logic "was not irrational, illogical, or wholly unjustifiable" and affirmed. *Id.* Presumably, this decision would be based on the "traumatic" element of the *Brown* test. Neither of these cases dealt with the "unexpected cause or unusual strain" element of the *Brown* test.

to-day routine for a bank employee, there was no occasion for the Court of Appeals to decide whether consideration of the employee's regular responsibilities and experiences ought to be part of the Commissioner's consideration in deciding whether the claimant's harm arose from an unexpected cause or unusual strain.

However, there is other persuasive precedent which does shed light on the matter. When the Court in *Brown* adopted the alternative causation test, the Court drew from an old Montana statute, specifically citing a Montana case interpreting this statute. *Brown*, 641 N.W.2d at 729. This statute provided the general definition for injuries in the Montana worker's compensation framework as follows: "a tangible happening of a traumatic nature from an unexpected cause or unusual strain resulting in either external or internal physical harm and such physical condition as a result herefrom and excluding disease not traceable to injury, except as provided in subsection (2) of this section." *Tocco v. City of Great Falls*, 714 P.2d 160, 163-64 (Mont. 1986) (quoting MCA 39-71-119 (1986)). Thus, Montana case law from the relevant period interpreting this statute may be persuasive as to the meaning of the *Brown* test.

The most appropriate place to begin seems to be *Tocco v. City of Great Falls*, the case cited by the Court in *Brown* in adopting the Montana standard. In *Tocco*, the employee held a temporary position as a sanitation worker assisting on a refuse collection route. *Id.* at 161. On March 7, 1984, the employee was informed that his temporary position would be terminated in two weeks. *Id.* at 162. On March 8, the employee was given the lead refuse collector position for one of the most difficult routes the following day. *Id.* The employee felt that this was a test to determine whether he should be given a permanent position. *Id.* On March 9, the employee and his helper pushed themselves to overperform. *Id.* By the time they broke for lunch, they were 56 stops ahead of schedule. *Id.* In the afternoon, they made a stop with an exceptionally heavy box

that required both collectors to carry it. *Id.* A couple minutes after this stop, the employee suddenly died. *Id.*

The Court ultimately found that the employee suffered a compensable injury under the *Brown*-precursor test. *Id.* at 163. In so deciding, the Court stressed that, while the employee was performing his ordinary job responsibilities, he was performing them in an extraordinarily stressful manner—rushing through his responsibilities, dealing with a particularly heavy load, and operating under the stress of potentially losing his job in less than two weeks. *Id.* at 164-65. This pattern of finding compensable injuries when an employee performs ordinary work activities under particularly stressful conditions holds throughout the relevant case law. *See, e.g.*, *Wise v. Perkins*, 656 P.2d 816, 817-18 (Mont. 1983) (bar employee suffered a compensable injury when she developed thrombophlebitis after she was forced to work excessive hours following the unexpected deaths of two of her co-workers); *Robins v. Ogle*, 485 P.2d 692, 693-94 (Mont. 1971) (cook who lifted full bucket of water incorrectly and sprained her back suffered a compensable injury); *Jones v. Bair's Cafes*, 445 P.2d 923, 924, 26 (Mont. 1968) (dishwasher who threw out her back lifting a particularly heavy tray of dishes on an especially busy night suffered a compensable injury). The inverse is also true—when the Montana courts found that an employee was merely engaged in their ordinary work activities and aggravating factors were not present, the employee's harm was not found to be an injury within the worker's compensation framework. *Stamatis v. Bechtel Power Corp.*, 601 P.2d 403, 404-06 (Mont. 1979) (employee who suddenly passed away while performing ordinary job responsibilities under ordinary working conditions did not suffer compensable injury).

This result makes sense as a matter of policy, as well. In determining whether a particular event is unexpected or unusual, the Commissioner must first establish a baseline of what is

expected or usual. As every individual's day-to-day life is unique, this baseline seems to be most appropriately drawn by looking to the unique features of each particular claimant's experiences—including their ordinary workplace activities. Accordingly, the Court finds that it was not error for the Commissioner to consider the regular job responsibilities of Petitioner in evaluating whether her harm was the result of an unexpected cause or unusual strain. The Court therefore affirms the Commissioner's decision on Petitioner's first claim of error.

III. Whether the Commissioner Improperly Rejected Medical Expert Testimony

Petitioner's third claim of error asserts that the Commissioner acted arbitrarily and unreasonably by refusing to accept unrebutted medical expert testimony. Specifically, Petitioner argues that (1) her medical experts testified that the call which triggered her PTSD was sudden, traumatic, and unexpected, (2) the medical expert testimony was unrebutted, and therefore (3) the Commissioner should have found that the three elements of the *Brown* test were satisfied.

In making this argument, Petitioner relies on the rule of *Poula v. Siouxland Wall & Ceiling, Inc.* 516 N.W.2d 910 (Iowa Ct. App. 1994). In *Poula*, the Court of Appeals decided that the Commissioner acted arbitrarily and unreasonably by finding a doctor's initial opinion more credible than the doctor's amended opinion for the sole reason that there was a financial motivation for the doctor to amend his opinion. *Id.* at 912. Petitioner's argument suggests that this case, and the line of decisions relying on it, mean that the Commissioner can never reject a medical expert's testimony unless there is countervailing testimony from another medical expert—regardless of the content of that opinion. However, this is not the case. When a medical expert testifies to something which is not a medical conclusion, the expert is no longer testifying as an expert. In those circumstances, the expert's conclusions are afforded no greater deference than those of any other witness.

For the purposes of Petitioner's argument, the medical expert testimony which Petitioner claims the Commissioner inappropriately ignored does not actually state a medical conclusion. The testimony that Petitioner developed PTSD, and that the PTSD is a result of the dead infant call, state medical conclusions which are afforded deference under the *Poula* rule. However, the conclusions Petitioner wishes to give conclusive weight to—that the dead infant call was sudden, traumatic, and unexpected—state legal conclusions, not medical conclusions. Petitioner's argument seeks to allow a medical expert to usurp the entirety of the Commissioner's fact-finding role. Such a result would be clearly inappropriate. The Court therefore affirms the Commissioner's actions on Petitioner's third claim of error.

IV. Whether the Commissioner's Decision was Supported by Substantial Evidence

Petitioner's final claim of error asserts that the Commissioner's decision was not supported by substantial evidence. Specifically, Petitioner argues that the testimony in this case highlights the extreme rarity of dead infant calls, and thus the Commissioner's decision was contrary to the entirety of the evidence. But, Petitioner's argument overlooks the testimony that emergency calls dealing with matters of life and death in general are relatively common, and the testimony stating that there was nothing particularly abnormal about the call at issue here. The Commissioner was free to accept this broader testimony. The Court cannot say, based on the record before it, that the Commissioner's decision was unsupported by substantial evidence. The Court therefore affirms the Commissioner on the Petitioner's fourth claim of error.

RULING

For all of the above-stated reasons, it is the ruling of the Court that the decision of the Commissioner is AFFIRMED in its entirety.

State of Iowa Courts

Case Number	**Case Title**
CVCV300684	MANDY TRIPP V. SCOTT EMERGENCY COMMUNICATIONS
Type:	ORDER FOR JUDGMENT

So Ordered

Mark D. Cleve, District Court Judge,
Seventh Judicial District of Iowa

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