
IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ROBERT THOMAS,

Petitioner,

v.

ARCHER DANIELS MIDLAND, CO.,

Respondent.

Case No. CVCV063876

**RULING ON PETITION FOR JUDICIAL
REVIEW**

Before the Court is a Petition for Judicial Review filed by Petitioner Robert Thomas (Petitioner or Thomas) on June 21, 2022. Respondent Archer Daniels Midland, Co. (Respondent or ADM) filed its Answer on June 29, 2022. Both parties filed supporting briefs. The Court held a hearing on December 13, 2022. Petitioner was represented by Anthony Olson and Respondent was represented by Brandon Lobberecht. After hearing the arguments of counsel and reviewing the court file, including briefs filed by all parties and the administrative record, the Court now rules, and for the reasons stated herein, **DENIES** the Petition for Judicial Review.

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner began working for ADM in Cedar Rapids, Iowa in approximately July 2014. Arbitration Transcript (*Trans.*) p. 20.¹ On January 27, 2017, Petitioner was hit by a ball in the right eye when another employee was bouncing the ball against a wall. *Trans.* p. 21. Petitioner did not think much about being hit in the eye, but started to notice

¹ The Arbitration Transcript can be found in Part 1 of the Certified Record starting on page 143.

problems about a week or week and a half later. *Trans.* p. 22. At that time, he began seeing shapes like flies on the wall, “floaties”, and lightening bolts. *Id.* Petitioner saw Dr. Molly Camerer, at Miller Family Eyecare when began experiencing lack of vision in the right eye. *Certified Record (CR)* Part 2. p. 36, *Exhibit (Exh.)* JE9-1. Petitioner was diagnosed with a retinal detachment with multiple breaks in the right eye. *Id.* at 37, *Exh.* JE9-2. Petitioner was referred to University of Iowa Hospital & Clinics (UIHC) for a surgical evaluation. *CR* Part 1. p. 329, *Exh.* JE3-1.

Physicians at UIHC confirmed the retinal detachment and tearing and recommended surgery to Petitioner. *CR* Part 1. p. 332, *Exh.* JE3-4. Over the course of a year, Petitioner had four eye surgeries and numerous follow-up appointments. *CR* Part 1. pp. 335-53, *Exh.* JE3-7 to JE3-25. On February 23, 2018, Dr. Ian Han from UIHC issued a statement to ADM releasing Petitioner to return to work with temporary restrictions, including the full time use of eye protection, prohibition of operating heavy equipment until cleared, and no climbing ladders until cleared. *CR* Part 1. p. 354, *Exh.* JE3-26. In addition to treatment at UIHC, Petitioner consulted with Dr. Shirley Pospisil at St. Luke’s Work Well Clinic to evaluate work restrictions related to his right eye injury on March 28, 2018. *CR* Part 1. p. 417, *Exh.* JE4-1. Dr. Pospisil noted the concern for lack of depth perception and Petitioner’s nervousness about returning to work. *Id.* Dr. Pospisil further stated she would like comment by Petitioner’s ophthalmologist on his depth perception. *Id.* Dr. Pospisil later recommended Petitioner attend vocational rehabilitation. *CR* Part 1. p. 420, *Exh.* JE4-4. On April 12, 2018, Dr. Mark Wilkinson at UIHC provided Petitioner with a 79.5 percent impairment rating for his right eye only. *CR* Part 1. p. 359, *Exh.* JE3-31.

On June 30, 2018, Petitioner fell from his pontoon boat/pontoon boat trailer while unloading the boat after a day of boating on Lake McBride. *Trans.* pp. 41, 85. Petitioner believes he fell forward, struck his face on a 2 x 4 wooden bumper, was then knocked unconscious, and fell backwards off the boat on to the cement. *Trans.* p. 42. The fall was unwitnessed. *CR* Part. 1 p. 363, *Exh.* JE3-35. Petitioner's girlfriend found him unconscious lying on the ground. *CR* Part 1. p. 364, *Exh.* JE3-36. Petitioner sustained dental fractures to three teeth, maxillary sinus fractures, and a head laceration. *CR* Part 1. pp. 363-68, *Exh.* JE3-35 to JE3-40. Petitioner had no recollection of the fall. *Trans.* p. 42. It was noted Petitioner "was drinking alcohol at the time of the incident." *CR* Part 1. p. 364, *Exh.* JE3-36.

Following the accident, the nature and the alleged work connection was communicated to ADM's lawyer at the time. *Trans.* p. 116. Petitioner received various treatments from various physicians to address the injuries resulting from the June 30 fall from the boat. Petitioner continues to receive regular medical treatment. *Trans.* pp. 54-55. Respondent has accommodated Petitioner's limitations since his return to work. *Trans.* p. 66. Petitioner avoids working in areas with grating or height due to struggles with his right eye injury. *Trans.* pp. 55-56, 66.

Petitioner filed a claim for arbitration of workers' compensation benefits on November 11, 2019. The matter proceeded to an Arbitration Hearing on January 15, 2021. Petitioner argued his June 30 boat fall injuries were sequelae injuries resulting from his January 22 right eye injury. The parties stipulated to the right eye injury but disputed Petitioner's claim of sequela injuries and entitlement to payment of additional healing

period benefits, temporary partial disability benefits, permanent partial disability benefits, and medical benefits.

The Deputy Commissioner issued his Arbitration Decision on November 2, 2021 where he found Petitioner's June 30 fall resulted in sequelae injuries stemming from the original right eye injury. *CR* Part 1. p. 134, *Arbitration Decision (Arb. Dec.)* p. 13. The Petitioner was awarded accompanying benefits. *CR* Part 1. pp. 115-17. Respondent filed its timely Notice of Appeal to the Commissioner on November 2, 2021. Petitioner filed his Notice of Cross Appeal to the Commissioner on November 23, 2021. The Commissioner issued his Appeal Decision on May 10, 2022 where he reversed the Deputy Commissioner's finding that Petitioner had met the burden of proving a sequela injury. *CR* Part 1. p. 31, *Appeal Decision (App. Dec.)* p. 2. This duly eliminated any of the accompanying benefits prescribed by the Deputy Commissioner in relation to the sequela injury claim. *Id.* The Commissioner further found Respondent was entitled to a credit for overpayment of temporary/healing period benefits. *CR* Part 1. p. 42, *App. Dec.* p. 13. Petitioner filed a Petition for Judicial Review on June 21, 2022, beginning the proceedings now before the Court.

II. SCOPE AND STANDARD OF REVIEW

The Court's review of administrative proceedings are governed by Iowa Code section 17A.19 (2022). The Court may "reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced" by meeting any of the statutorily enumerated grounds. Iowa Code § 17A.19(8)(a); *Colwell v. Iowa Dep't of Hum. Servs.*, 923 N.W.2d 225, 231 (Iowa 2019). This can be shown in a number

of ways, including proof the action was legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; unconstitutional; inconsistent with a rule of the agency; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code § 17A.19(10).

The district court acts in an appellate capacity in exercising judicial review of agency action. Iowa Code § 17A.19; *Nance v. Iowa Dep't of Revenue*, 908 N.W.2d 261, 267 (Iowa 2018). The applicable standard of review depends on the issues underlying the petition for judicial review. Petitioner cites all of 17.19A in his Petition for Judicial Review and fails to further elaborate the applicable standard of review in his supporting brief. "Because of the widely varying standards of review, it is essential for counsel to search for and pinpoint the precise claim of error on appeal. *Jacobsen Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010).

The Court interprets Petitioner to first put forth a substantial evidence claim regarding the Commissioner's finding Petitioner failed to prove a sequela injury. Factual findings regarding the award of workers' compensations benefits are with 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). 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).

The Court further interprets Petitioner to put forth an error at law claim regarding the Commissioner's interpretation of Iowa Code section 85.34(4). The Court must determine whether the legislature has clearly vested the agency with the authority to interpret that statute at issue. *NextEra Energy Res. LLC v. Iowa Utilities Bd.*, 815 N.W.2d 30, 36 (Iowa 2012). If the legislature has not clearly vested the agency with the authority to interpret the statute, then the Court reviews for correction of errors at law. *Id.*; Iowa Code § 17A.19(10)(c). "[N]o deference is given to the commissioner's interpretation of law because the interpretation of the workers' compensation statutes and related case law has not been clearly vested by a provision of law in the discretion of the agency." *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012). Therefore, the Court will review the Commissioner's interpretation of Iowa Code section 85.34(4) under the correction of errors at law standard.

III. MERITS

Petitioner sets out two main claims. First, Petitioner claims the Commissioner erred in reversing the Deputy Commissioner's finding that Petitioner had proven a sequela injury on June 30, 2018. Petitioner's second claim is that the Commissioner incorrectly interpreted Iowa Code section 85.34(4), allowing Respondent credits for overpayment of weekly benefits. The Court addresses each claim below.

A. Whether there was Substantial Evidence in the Record for the Commissioner to Find Petitioner Failed to Establish a June 30, 2018 Sequela Injury

The Commissioner reviewed the evidentiary record and arguments of the parties de novo. In his Appeal Decision, the Commissioner reversed the Deputy Commissioner's

finding that the Petitioner proved the injuries he sustained from falling from his pontoon boat on June 30, 2018 to be sequelae injuries of Petitioner's January 22, 2017 work injury to his right eye. *CR* Part 1. p. 31, *App. Dec.* p. 2. "The legislature has by a provision of law vested the commissioner with the discretion to make factual determinations. Medical causation is a question of fact vested in the commissioner's discretion." *Mike Brooks, Inc. v. House*, 843 N.W.2d 885, 889 (Iowa 2014) (citations omitted). In applying the appropriate deference for substantial evidence, the Court concludes the agency's factual finding that Petitioner's June 30 injuries were not sequelae injuries of Petitioner's January 22 boating accident. See Iowa Code § 17A.19(10)(f).

A previous injury to one part of the body can precipitate an injury to another. *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12, 16-17 (Iowa 1993). This can be referred to as a sequela injury. Claimant "must prove by a preponderance of the evidence that the injury is the proximate cause of the claimed disability." *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). "In order for a cause to be proximate, it must be a 'substantial factor.'" *Ayers v. D & N Fence Co., Inc.*, 731 N.W.2d 11, 17 (Iowa 2007). "A possibility of causation is not sufficient; a probability is necessary." *Frye v. Smith-Doyle Contractors*, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The question of causal connection is within the domain of expert testimony. *Id.* "The weight to be given the expert opinion is for the agency as fact finder to determine." *Id.*

The Commissioner, in weighing the evidence, found the testimony from the experts and Petitioner failed to establish the January 22 right eye work injury was a substantial factor in the June 30 boating accident and the subsequent injuries. *CR* Part 1. p. 36, *App. Dec.* p. 7. Petitioner testified during hearing that regarding the day of the boating accident,

he is unable to recall anything between 6:00PM and 11:00PM, including the accident itself. *Trans.* pp. 41-2. Petitioner's last memories around the time of the accident are unloading things from the boat and tying the boat down. *Trans.* p. 86. Petitioner speculates that he must have missed a step, fell forward and hit his face, which knocked him out, and then fell back off the boat and hit his head on the ground. *Trans.* p. 42. When asked how the Petitioner came to this conclusion, he admitted he did not know exactly what happened. *Id.* As far as Petitioner knows, there were no witnesses to the accident that would be able to elaborate on the specifics of what happened. *Trans.* at 85.

In the Arbitration Decision, the Deputy Commissioner noted the fall could have resulted from a number of possibilities including tripping over a life jacket or something else on the boat, slipping on some remaining water on the boat, having too much to drink, or engaging in risky behavior. *CR* Part 1. p. 134, *Arb. Dec.* p. 13. It simply could have been an unfortunate accident. As such, the Commissioner found there was no evidence in the record to show that Petitioner's right eye vision impairment caused him to fall, there was no evidence as to how he fell, or and there was no evidence indicating the circumstances leading to his fall. *Id.* at 36, *App. Dec.* p. 6.

In weighing the opinions of Dr. Kim and Dr. Dwyer, the Commissioner did not find either doctor's opinions provided sufficient evidence that Petitioner's right eye injury was a substantial factor in the June 30 fall. In response to the question "[w]ould Mr. Thomas be at a greater risk of fall injuries, such as the one occurring on June 30, 2018, due to his vision deficits?" by Petitioner's attorney, Dr. Kim simply opined "Mr. Thomas was at a greater risk of fall as a direct consequence of the loss of vision and depth perception." *CR*, Part 2, pp. 59-64, *Exh.* 2 pp. 1-7. Dr. Kim did not specify that the January 22 right

eye work injury was itself a substantial factor in the June 30 fall, rather that Petitioner is generally more susceptible to falls due to the right eye work injury.

The Commissioner found Dr. Dwyer's opinion to be equally lacking in supporting Petitioner's claim that the January 22 right eye work injury was a substantial factor in the June 30 fall. In response to the same question of whether or not Petitioner would be at a greater risk of fall injuries as a result of his January 22 right eye work injury, Dr. Dwyer opined "it is conceivable that his unilateral vision loss contributed to the fall." *Id.* at p. 52, *Exh. 1* p. 8. Not that it was a substantial factor (or a probability) in Petitioner's June 30 fall, but rather that it was a possibility. See *Frye*, 569 N.W. 2d at 154.

The weight to be given to Dr. Kim and Dr. Dwyer's opinions is for the Commissioner to determine. *Id.* at 156. The Court finds there was substantial evidence in the record to support the Commissioner's finding there was a lack of evidence to indicate Petitioner's January 22 right eye injury was a substantial factor in his June 30 fall and resulting injuries.

B. Whether the Commissioner Incorrectly Interpreted Iowa Code section 85.34

Petitioner asserts the Commissioner erred in finding Respondent was entitled to a credit for overpayment of weekly temporary disability and healing period benefits in contravention of Iowa Code section 85.34 and *Swiss Colony, Inc. v. Deutmeyer*, 789 N.W.2d 129 (Iowa 2010). The Iowa Legislature made changes to Code chapter 85 in 2017 after Petitioner's work injury occurred. The Legislature specified in the legislation that changes to the Act amending section 85.34 would apply to injuries occurring on or after the effective date of the Act. See 2017 Acts, ch. 23, §§ 6-14, 24. Petitioner's injury

occurred in January 2017, months before the amendments to Code chapter 85 took effect. As such, the Commissioner did not err in finding credits owed to the Respondent for alleged overpayment were governed by the pre-amended law.

Applicable Iowa Code section 85.34, at the time of Petitioner's work injury, provides in relevant part:

4. *Credit for excess payments.* If an employee is paid weekly compensation benefits for temporary total disability under section 85.33 subsection 1, for a healing period under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, **the excess shall be credited against the liability of the employer for permanent partial disability under section 85.34, subsection 2**, provided that the employer or the employer's representative acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

5. *Recovery of employee overpayment.* If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a subsequent injury to the same employee The credit shall remain available for eight years after the date the overpayment was established.

Iowa Code § 85.34(4)-(5) (emphasis added). At the time of Petitioner's injury, the pre-2017 language of Iowa Code section 85.34(4) clearly provides that an employer is entitled to a credit against permanent partial disability benefits for any previously overpaid temporary total disability, healing period, or temporary partial disability benefits.

Contrary to Petitioner's claim, *Swiss Colony* is not controlling in this present case for four main reasons, which have been set forth by this Court in 2013 by Judge Staskal and reiterated in 2014 by Judge Blaine. First, *Swiss Colony* "could be reasonably interpreted narrowly as only meaning that an overpayment of permanent disability benefits that are being paid on a weekly basis cannot be recovered by reducing future

permanency payments for the same injury.” *McBride v. Case’s Marketing. Co.*, CVCV046613, Court’s Order on Petition for Judicial Review, *15-16 (Polk Cnty. Dist. Ct., Apr. 8, 2014) referencing *Clayton County Recycling v. Elmer*, CVCV009431, Court’s Order on Petition for Judicial Review, *5 (Polk Cnty. Dist. Ct., July 9, 2013). Second, *Swiss Colony* does not mention 85.34(4), thus, “the decision cannot be taken as an adjudication of the meaning or application of that subsection.” *Id.*

Third, “the language of subsection 4 applies exactly and precisely to the circumstances present in this case. That language is more specific than the “all” payments language of section 5 and, therefore, to the extent there is a conflict between the two provisions, the more specific provision should control.” *Id.* Fourth, *Swiss Colony* being applied to temporary benefits would make subsection 4 meaningless. *Id.* Therefore, “Iowa Code section 85.34(5) and *Swiss Colony* do not apply to the overpayment of temporary total disability. Rather Iowa Code section 85.34(4) applies to the overpayment of temporary total disability.” *Id.* The decisions by Judge Staskal and Judge Blaine are analogous to the present case before the Court because the credits for overpayment at issue in this case are also in regard to temporary disability and healing period benefits. The Court concludes the Commissioner did not err in his interpretation and application of Iowa Code section 85.34(4) and his granting of overpayment credits to Respondent.

IV. CONCLUSION

For all of the reasons set forth above, the Court concludes there was substantial evidence in the record to support the Commissioner’s finding that Petitioner failed to prove a June 30, 2018 sequela injury. The Court further concludes the Commissioner did not

err in his interpretation of Iowa Code section 85.34(4). Accordingly, Petitioner's Petition for Judicial Review is **DENIED**.

Costs are assessed to the Petitioner.



State of Iowa Courts

Case Number
CVCV063876
Type:

Case Title
ROBERT THOMAS VS ARCHER DANIELS MIDLAND CO
ORDER FOR JUDGMENT

So Ordered

A handwritten signature in blue ink, appearing to read "Celene Gogerty", is written over a horizontal line.

Celene Gogerty, District Judge
Fifth Judicial District of Iowa

Electronically signed on 2023-02-03 13:06:05