Appellate Update: Recent Developments in Iowa's Workers' Compensation Law

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This outline provides summaries of a majority of the appellate decisions concerning workers' compensation in Iowa over the last year and a half. A large portion of the Appellate Court decisions are based on deference to the Commissioner's decision and, as a result, are relatively brief opinions with limited precedential value. Despite the fact that these opinions are short and sparse, they can still be helpful tools for identifying relevant case law and statutes and as a starting point for additional research in a given area. Cases that are not based on this deferential standard are given a more substantial treatment in this outline and will be emphasized in the presentation.

IOWA SUPREME COURT

LEGAL CAUSATION STANDARD for PURELY MENTAL INJURIES

In the following case the Iowa Supreme Court clarifies how lower courts should analyze whether an incident that causes a purely mental injury is "unexpected or unusual." The court's decision in this case is particularly applicable to Claimants with high stress jobs, especially first responders.

Tripp v. Scott Emergency Communication Center, 977 N.W.2d 459 (Iowa 2022)

In this *Trip v. Scott Emergency Communication Center* the Iowa Supreme Court addressed the legal causation standard for purely mental injuries. The question presented in the case was whether a Claimant's particular job duties should be taken into account when deciding whether the traumatic event that caused a purely mental injury was "unexpected or unusual." A 4-3 court held that particular job duties should not be considered in making such a determination.

Mandy Tripp (Claimant) was an emergency dispatcher, who had served in the role for over 16 years. During the normal course of her work the Claimant answered a 911 call from a woman who was screaming in a high pitch over and over "Help me, my baby is dead." After, two minutes of continued screams the Claimant was able to get the woman's address and dispatched first responders. Soon thereafter, the Claimant heard from a police officer who had arrived on the scene that an infant, who appeared to have been beaten to death with a hammer, was found at the address.

After fielding the call, the Claimant could not shake the screams from her mind. Loud and high-pitched noises would trigger debilitating anxiety and the Claimant struggled to sleep. After several months of enduring this stress, the Claimant sought medical attention was diagnosis with Post Traumatic Stress Disorder (PTSD). The Claimant filed an application for workers' compensation based on her PTSD. Her employer contested the application on the grounds that it failed to meet the legal causation standard for purely mental injuries, because handling distressing calls regarding harm to infants was not "unexpected or unusual" for 911-dispatchers. The Deputy Workers' Compensation Commissioner acknowledged that this was a "difficult case" but ruled in favor of

the employer. The decision was based on *Brown v. Quick Trip Corp.*, 641 N.W.2d 725 (Iowa 2002) which held that in purely mental injury cases the traumatic events that cause an injury must be unexpected or unusual. The Deputy Commissioner reasoned that because 911-dispatchers routinely handled calls about death and traumatic injuries the call that caused the Claimant's PTSD was not unusual. The Workers' Compensation Commissioner and the Court of Appeals both affirmed this decision. The Iowa Supreme Court reversed.

The court began its analysis by noting that the standard in *Brown v. Quick Trip Corp.* did not address whether the traumatic event that causes a purely mental injury needs to be unusual or unexpected in the context of a specific job or in the larger context of employment life in general. The court also pointed out that the relevant statute, Iowa Code § 85.3(1), was also unclear on this issue. To resolve this ambiguity the court considered potential impacts of making the unexpected standard job specific. Doing so would place workers who routinely address traumatic incidents at a disadvantage as compared to normal workers and would force them to demonstrate a "hyper-unexpected" cause in order to be compensated for purely mentally injuries. The court ultimately held that this higher burden for emergency response workers, in combination with the fact that neither the statute nor the court's earlier cases required a job specific standard of unexpectedness, made it clear that such a standard was both untenable and not required by law. Instead, the court held that "the unexpected or unusual nature of the injury-inducing event should be analyzed without regard to the Claimant's own particular duties." *Tripp*, 977 N.W.2d 459, 469 (Iowa 2022). This holding clarifies the standard of legal causation for purely mental injuries in Iowa, under *Tripp* the "unexpected or unusual" standard should be analyzed without considering the Claimant's job duties.

TIME LIMMITS for REIMBURSEMENT under IOWA CODE §85.21

The following case addresses the time limits for insurers to seek reimbursement for mistakenly paying out claims to an injured worker, who on the date of injury covered by a separate insurer. The court's decision reemphasizes the importance of conducting thorough investigation at the outset of a claim.

American Home Assurance v. Liberty Mutual Fire Insurance Co., 975 N.W.2d 427 (Iowa 2022)
In *American Home Assurance v. Liberty Mutual Fire Insurance Company*, the court examined the limits of when an insurer can seek reimbursement for benefits mistakenly paid to a Claimant from another insurer on a workers' compensation claim. There, an employee was injured in the course of his employment. After arbitration, the employer and the apparent insurer, American Home Assurance (American Home), were ordered to pay the Claimant 125 weeks of permanent partial disability. American Home made its final payment in 2013. In 2016, the Claimant filed a petition to reopen his case. After the petition was filed, American Home discovered that it was not the insurer on the Claimant's date of injury. As a result, American Home filed an "Application and Consent Order for Payment Benefits under Iowa Code § 85.21."

The deputy Commissioner granted the application, which allowed American Home to petition or intervene in the reopened proceedings before the agency and to seek a determination of which insurer was liable under the claim. Shortly thereafter, American Home filed a second petition under Iowa Code § 85.21, seeking reimbursement from the insurer who actually covered the Claimant on the date of injury, Liberty Mutual Fire Insurance Company (Liberty Mutual).

Liberty Mutual filed a partial motion for summary judgment with the workers' compensation Commissioner, asserting that American Home could only seek reimbursement for benefits from a third party *after* a consent order pursuant to Iowa Code § 85.21 was entered. Because the benefits in this case had been paid out long before the consent order, Liberty Mutual argued that American Home was not entitled to any benefits paid prior to the date of the consent order. American Home filed a cross-motion for summary judgment arguing that Liberty Mutual owed contributions for benefits paid by American Home in the past. The primary issue in this case was that the statute does not contain any rules about when and how to file a petition for reimbursement from a third party.

American Home won the initial motion in front of the deputy Commissioner, and Liberty Mutual was ordered to reimburse American Home. On intra-agency appeal, this decision was reversed by the Commissioner who held that Iowa Code § 85.21 did not authorize reimbursement for payments made before a consent had been issued. The case was again appealed, this time to the district court who reversed and ruled that the Commissioner's broad discretion meant that the Commissioner's authority to issue orders under Iowa Code § 85.21was not time limited. This ruling was again reversed on a third appeal to the Iowa Court of Appeals who held that the district court's reading was inconsistent with past, sound readings of under Iowa Code § 85.21. Finally, the case was granted review by Iowa's Supreme Court.

The Iowa Supreme Court ultimately agreed with the Court of Appeals and denied American Home the ability to recover reimbursement from Liberty Mutual. Although the supreme court agreed with the Court of Appeals decision it offered a slightly different rationale. To explain its decision the supreme court began with a review of Iowa Code § 85.21. It held that the statute was intended to create a substantive right for insurers to seek indemnity or contribution from another carrier, not to layout a detailed procedural framework for how that substantive right was to be asserted. Because of the statutory silence on the issue of procedure the Commissioner had stepped in and made the determination that contribution from other insurers had to be sought before evidentiary hearings were held. The court held that this determination was not unreasonable because it meant that reimbursement and contribution claims would be adjudicated while the issues were still fresh. Further, the court held that the time between an initial claim and an evidentiary hearing was enough time for insurers to decide whether to seek reimbursement or contribution from a third party. Finally, the court recognized the Commissioner's decision was valid under the constraints of Iowa Code § 17A.19(10)(c), the statute which governs judicial review of agency decisions. The court concluded that American Home was not entitled to reimbursement because it had failed to seek it prior to the initial evidentiary hearing and thus not be able to recover from Liberty Mutual.

DEFINITION of SHOULDER

Perhaps the most impactful pair of decisions concerning workers' compensation from the Iowa Supreme Court in the last few years, the following two cases recognize that changes to the Iowa Code create a more expansive definition of shoulder.

Chavez v. MS Technology, LLC, 972 N.W.2d 662 (Iowa 2022)
Deng v. Farmland Foods, Inc., 972 N.W.2d 727 (Iowa 2022)

In this pair of cases the Iowa Supreme Court held that a shoulder injury is not limited to glenohumeral (shoulder) joint. Instead, pursuant to changes to Iowa Code § 85.34(2)(n) made in 2017, the definition was extended to include "the glenohumeral joint as well as the muscles, tendons, and ligaments that are essential for the shoulder to function." In adopting this definition,

the court rejected arguments from the two Claimants that injuries outside of the glenohumeral joint should be construed as injuries to the body as a whole.

Iowa Appellate Courts

CAUSATION STANDARDS: MENTAL INJURIES

The following case addresses the causation standard for purely mental injuries. Though the analysis in this case is slightly different from *Tripp v. Scott Emergency Communication Center* (see summary above) the court applies the same basic standard, requiring the Claimant to show a causal connection between their job and the mental injury.

Jackson v. Bridgestone Americas Tire Operations LLC, 973 N.W.2d 882 (Iowa Ct. App. 2021)

Angela Jackson, the surviving spouse of Max Jackson, brought this case seeking workers' compensation death benefits. The case was brought on the theory that Mr. Jackson suffered a mental injury during the course of his employment with Bridgestone Americas Tire Operations LLC (Bridgestone) that ultimately resulted in his death by suicide.

Mr. Jackson began working for Bridgestone in the 1980s. His job was a point of pride and incredibly important to Mr. Jackson, in the nearly thirty years that he worked for Bridgestone he only missed three days of work. In 2016, he committed an act of insubordination by refusing to follow a supervisor's safety and quality directives. He subsequently lied about these acts of insubordination. After this insubordination Mr. Jackson was placed on suspension for a short time and then on August 8th was called into the office and terminated. Shortly after his termination Mr. Jackson's son, also an employee of Bridgestone, called his father and told him not to worry because union representatives were being contacted. Despite this reassurance when Mr. Jackson arrived home he locked himself in the garage and left his car running. Mrs. Jackson was able to convince Mr. Jackson to unlock the garage however, before she was able to call law enforcement for assistance Mr. Jackson left the house. He was found dead at a nearby bridge shortly thereafter, law enforcement ruled that he died by suicide by hanging.

Mr. Jackson had a history of substance abuse but had been sober for several years. He also had a history of mental health difficulties. 8 months before his termination Mr. Jackson had undergone a behavioral health consultation where he was diagnosed with major depressive disorder and intermittent explosive disorder, during this consultation he listed several people that he "hated" but none of them were related to his work. It was recommended that he seek treatment for these disorders, but there is no evidence that he received any follow-up treatment after his initial consultation.

In January of 2018 Mrs. Jackson filed an arbitration petition for death benefits and solicited a causation opinion from Dr. James Gallagher. Dr. Gallagher opined that: "Thus, there appears to be a causative linkage between the behavior of his employer and [Max]'s swift decision to end his own life, probably out of fear and shame of losing his job. Despite [Max]'s counseling history, the abrupt termination without the due process as implied [by the union representative] was a substantial factor leading up to [Max]'s demise. It was clearly [Max]'s perception that his job loss was catastrophic." Despite this opinion from Dr. Gallagher, the deputy Commissioner at the arbitration hearing ruled that Mr. Jackson's mental difficulties, which appeared to be the underlying

cause of his suicide, were personal in nature and that the suicide could therefore not have arisen out of and in the course of his employment. The Commissioner affirmed this ruling as well.

Mrs. Jackson then appealed for review to the district court. The district court affirmed the ruling of the Commissioner by holding that Dr. Gallagher's assessment was incomplete and missing crucial information and was therefore not sufficient to support a finding of factual causation. The district court also held that the record was not able to support a finding of legal causation because there was no evidence that Mr. Jackson had been treated any differently than other insubordinate employees and that he had not been subjected to "unusual job stress." Mrs. Jackson then appealed to the Court of Appeals.

The Court of Appeals began its analysis by pointing out that Iowa treats purely mental injuries as personal, and therefore compensable, injuries in some cases. The court went on to explain that to find that a purely mental injury is compensable the Claimant must present evidence that work was both the factual and legal cause of the injury. To establish that a work incident is the factual cause of an injury the Claimant must show that the injury was causally connected to their employment. To meet the legal causation standard the Claimant must show that the mental injury must be caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer. The court then applied these standards to the facts of the case.

The Court of Appeals agreed with the district court's determination that Dr. Gallagher's causation opinion was incomplete and therefore was not persuasive that Mr. Jackson' termination was the factual cause of his suicide. The Court of Appeals pointed out that Dr. Gallagher's opinion failed to take into account Mr. Jackson's repeated insubordination and Bridgestone's policy and practice of terminating employees for such insubordination. Because Dr. Gallagher's opinion was incomplete, it was afforded little weight by the Court of Appeals. Instead of relying on Dr. Gallagher's opinion the court instead held that Mr. Jackson's alleged mental injury was not caused by workplace stressors, but by his love for his job. As a result, Mrs. Jackson was unable to show that the *job* was the cause of Mr. Jackson's mental injuries.

The court then turned its focus to legal causation. The court reemphasized that to prove legal causation a Claimant must demonstrate that the mental injury was caused by greater stress than that experienced day-to-day by other similarly situated workers. Mrs. Jackson failed to present any comparative evidence and as a result the court ruled that she did not carry her burden with regard to legal causation.

ADEQUATE NOTICE OF INJURY

In the series of cases that follows the Court of Appeals reemphasizes the importance of providing adequate notice of injury. All four cases focus their analysis on either the form or the timing of communication that the Claimant used to inform their employer of potential injuries.

Taylor v. Iowa State University Extension, 974 N.W.2d 530 (table) (Iowa Ct. App. 2022)

In this case the Claimant was involved in a car accident on her way back from giving a presentation. Shortly after the accident, the Claimant attempted to call here supervisor and inform them that she had been in an accident, however, she was unable to get a hold of them. Instead, she called an administrative assistant and let them know she had been involved in an accident. The Court of Appeals affirmed both, the agency's decision that calling an administrative assistant did not provide

the employer with adequate notice of the injury under Iowa Code § 85.32 and the decision to dismiss the case.

City of Harlan v. Thygesen, 977 N.W.2d 523 (Table) (Iowa Ct. App. 2022)
In this case the claim sought benefits for a cumulative injury to his hearing. The employer affirmatively defended this claim by alleging that the Claimant failed to give it proper notice. Both the workers' compensation deputy Commissioner and Commissioner rejected the employer's affirmative defense and awarded the Claimant PPD. On appeal to the district court the decision was reversed. The Claimant then appealed to the Court of Appeals.

The Court of Appeals affirmed the decision of the district court and denied the Claimant any benefits. The court relied on the fact that the Claimant became aware of hearing loss over a decade before he filed his claim, and that the Claimant was aware that the injury was related to his work. Together, those two facts gave rise to a duty for the Claimant to investigate the probable compensability of the injury. The Claimant's failure to do so relieved his employer from any duty to pay benefits.

Havill v. Quaker Oats Company, 2022 WL 2156212 (Slip Copy) (Iowa Ct. App. 2022)
In this case the Court of Appeals was faced with a set of facts that were nearly identical to those in *City of Harlan v. Thygesen*. The court relied heavily on the holding in *City of Harlan* and briefly restated that in cases of cumulative hearing injuries Claimants have the duty to investigate the injuries when they become aware of the loss and when they understand that such a loss is work-related.

John Deere Davenport Works v. James Dickerson, 964 N.W.2d 21 (Table) (Iowa Ct. App. 2021)
In *John Deere v. Dickerson*, an employee was injured with in the scope of his employment. On the date of the accident, the employee filled out a so-called "Near Miss Report." The report noted that the employee was working on an unfamiliar task and hit his head. The employer claims that the employee's report did not indicate that he was "hurt or damaged" and that as a result the employee failed to provide it with notice of his injury within 90 days. The employer went on to argue that such a failure constituted an affirmative defense under Iowa Code Section 85.23.

The employer attempted to argue that employees in similar positions often hit their heads and that a report that such an incident had occurred was not sufficient to put the employer on notice of an injury. The Court of Appeals rejected this argument and held instead that the fact that a written report had been submitted, regardless of its title, was enough to put the employer on notice of the possibility of an injury. Once an employer is on notice of the possibility, the employee's responsibilities under Iowa Code Section 85.23 are fulfilled and it's up to the employer to follow up.

PENALITIES

In the following cases the Court of Appeals review requests from Claimants to assess penalties against employers and insurers. The penalties allowed by the Iowa Code are the strongest tool that courts and Claimants have to ensure that employers and insurers act in accordance with the dictates of Iowa's workers' compensation scheme. The cases below discuss whether or not individual instances of benefits and medical care denials constitute unreasonable actions by insurers and employers, and whether such actions should be punished by penalty.

Cochran v. Quest Liner, Inc., 974 N.W.2d 545 (Table) (Iowa Ct. App. 2022)

In *Cochran v. Quest Liner, Inc.* a workers' compensation Claimant appealed the Commissioner's refusal to assess penalties against his former employer. The Claimant injured his hand while working for the employer. The employer stipulated that the injury was a cause of temporary disability but denied the Claimant's assertion that he was entitled to healing period benefits after being placed on MMI. The employer gave the Claimant proper 30-day notice before terminating benefits. Shortly after this notice the Claimant contested the physicians finding that he had reached MMI. The Claimant based his request for the assessment of the penalty on the employer's failure to explain the denial of benefits and it's failure to obtain an impairment rating. The employer argued that the Claimant's decision to question the physician's MMI assessment was a reasonable basis to defer seeking an impairment rating. The court held that normally a physician's MMI assessment gives rise to a duty for the employer to seek an impairment rating, but that in this case that duty was not in force because of the Claimant's denial of the MMI assessment. Because the duty was not in place in this case the court held that the assessment of the penalty would be inappropriate and affirmed the commission's decision.

Foster v. East Penn Manufacturing Co., Inc., 974 N.W.2d 180 (Table) (Iowa Ct. App. 2021)

In *Foster v. East Penn Manufacturing* a Claimant injured her arm and shoulder during the course of her employment. Her employer initially paid the costs of her treatment and the benefits associated with her time off work. To alleviate the effects of the injury the Claimant sought surgery, but the surgery did not solve the Claimant's medical issues. Following the initial surgery, the employer refused to pay additional temporary total disability benefits and denied the Claimants request for an additional surgery. This denial was based on an IME preformed several month after the Claimants request for a second surgery. After a hearing the deputy worker's compensation Commissioner imposed penalties on the employer for the delay and refused to credit the employer for any voluntary payments that it made. The Commissioner affirmed the imposition of penalties and the deputy Commissioner's refusal of credits. The employer proceeded to appeal the Commissioner's decision arguing that the delay was necessary to investigate the claim, that there existed a reasonable basis for the delay, and that there was a good faith basis for the delay of benefits.

The Court of Appeals affirmed the Commissioner's imposition of penalties and the denial of credit for any benefits paid out by the employer. The court rested its penalty decision on the fact that there was no communication about the denial of benefits for nearly four months. The court noted that there had been back and forth about the issue between the parties but that reason for the delay and denial had not been conveyed to the Claimant during this back and forth. The decision to reject the employer's request for credits was centered around the fact that the voluntary payments made by the employer were for permanent benefits and the benefits at issue in the case before the court were temporary in nature. The Court of Appeals ultimately affirmed the decision that the employer was "not due a credit for TTD benefits based on PPD benefits paid."

Regional Care Hospital Partners, Inc. v. Marrs, 957 N.W.2d 719 (Table) (Iowa Ct. App. 2021)

In *Regional Care v. Marrs* the Claimant injured her back and neck while working as a nurse for her employer. After four months of treatment the Claimant was cleared to return to light-duty work, but was never assigned to any light-duty work. Upon the Claimants medical release the employer discontinued the payment of medical expenses and temporary benefits.

Even after the Claimants' release she continued to experience back and neck pain. Several doctors agreed that she had a degenerative disc condition and that surgery was the proper treatment route. There was, however, disagreement between the three doctors who reviewed the Claimants file in

this case as to whether the injury was work related. One of the Claimant's treating doctors and a doctor hired by the employer to conduct an IME, both opined that the continued neck and back problems were work related, that the Claimant had not reached MMI, and that the Claimant was permanently impaired. A third doctor stated that the continued problems were not associated with the work injury, that the Claimant had reached MMI six months after the injury, and that the Claimant was not permanently impaired.

The Commissioner held that it was unreasonable for the employer to rely on the opinion of the third doctor because the opinion was offered months after the employer chose to discontinue benefits and because there was no evidence that the Claimant was properly notified that benefits were going to be discontinued. Because such a reliance was unreasonable, the imposition of a penalty of $39,000 (50% on the unpaid costs and benefits) was appropriate. On appeal, the employer attempted to bolster its argument against penalty by noting that other portions of the medical record indicated that the Claimant had reached MMI. The Court of Appeals rejected this argument and affirmed the Commissioner's ruling, noting that the employer failed to present sufficient evidence that it terminated benefits with reasonable cause.

City of Maxwell v. Marshall, 967 N.W.2d 566 (Table) (Iowa Ct. App. 2021)

In *Maxwell v. Marshall* a volunteer firefighter was injured during the course of his employment. After a series of surgeries and multiple years of medical care the Claimant brought this bifurcated case to the workers' compensation Commissioner seeking penalty benefits and healing period benefits. The Claimant raised the penalty benefit issue because he believed that the employer had commenced the benefits at the improper time. The Commissioner rejected this argument and stated the employer's decision to start paying benefits two days after the injury and weekly thereafter did not run afoul of the 11-day requirement laid out in Iowa Code. § 85.32. The Court of Appeals affirmed this decision with little additional discussion. The Court of Appeals then turned to the issue of healing period benefits. The Claimant presented evidence that he had not reached MMI on the date proffered by the employer. After weighing the competing evidence the Commissioner determined that the Claimants need for an additional surgery and for continued treatment long after the MMI date proffered by the employer gave rise to healing period benefits. The Court of Appeals affirmed this decision, noting deference to agency determinations regarding the weight of evidence.

Clark v. Winnebago Industries, Inc., 964 N.W.2d 10(Table) (Iowa Ct. App. 2021)

In this case the Claimant injured her right while performing duties within the scope of her employment. In a hearing before the Commissioner multiple issues were raised including the issues of permanency, alternative medical care, penalties and the rate of benefits. The Claimant's requested penalties because she was underpaid based on her marital status and because she was underpaid with regard to the permanency of her injuries. The Commissioner refused to impose penalties, that refusal was part of the basis for the Claimant's appeal. In defense of the amount of benefits it paid the employer pointed to the fact that the Claimant's W-4 listed her marital status as single and the difficulty the Claimant had in producing her marriage certificate. The employer rested on competing medical evidence to support the amount paid ofr permanent benefits. The Court of Appeals held that both issues were fairly debatable and therefore that neither of them was an appropriate basis for a penalty. The court went on to note that the Commissioner had not directly addressed a third request for penalty benefits by the Claimant for delayed payment of healing period benefits. The case was accordingly remand for further proceedings.

Drahozal v. Envoy Air, Inc. d/b/a American Airlines Group, 964 N.W.2d 351(Table) (Iowa Ct. App. 2021)

In *Drahozal v. Envoy Air* the Claimant suffered permanent and total disability after significant frostbite in 8 of her fingers, complex regional pain syndrome, and a subsequent mental injury. The Commissioner found that the Claimant had suffered an 80% industrial disability as the result of her various injuries. The Commissioner also awarded healing period benefits and penalties for 11 delayed benefit payments. The Claimant also sought penalties for the mental injury claim, which were denied. Both parties appealed the decision, the District Court affirmed the decision in its entirety. The case was then appealed to the Court of Appeals.

The Court of Appeals began its analysis of the penalties by affirming the decision to deny penalties based on the mental injury because competing medical opinions regarding causation were an appropriate reason to delay payments. The court then turned to the issue of delayed benefit payments. The employer in this case mailed benefit checks somewhat inconsistently resulting in 11 payments. In analyzing these payments, the court noted that 5 of the 11 were properly paid. For the remaining 6 late payments the court rejected an argument that the payments were "minimally late" and that corresponding penalties should also be minimal. Instead the court noted the statutory authority of the Commissioner to award penalties of up to 50% under both Iowa Code 86.13 and *Schandendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 336 (Iowa 2008).

IOWA CODE 85.27: ALTERNATE MEDICAL CARE

In the three cases that follow the Court of Appeals considers requests from the Claimant to provide orders for alternate medical care. In all three instances the court rejects the argument and supports orders outlining required care because the care was reasonable.

Dotts v. City of Des Moines, 965 N.W.2d 632 (Table) (Iowa Ct. App. 2021)

In this case a Claimant, who was injured during the course of their employment, appealed the decision of the Commissioner after his request for alternate medical care was denied. The district court considered the record, which did not include a transcript of the agency hearing and affirmed the agency's ruling. The Claimant then appealed to the Court of Appeals.

On appeal, the Claimant attempted to argue that he had not received reasonable care and that the lower decisions were not supported by substantial evidence. The Court of Appeals rejected this argument and affirmed the decisions of the Commissioner and the district court. This decision was based on the Claimant's duty of ensuring the record was complete, the Claimant failed to fulfill this duty in two ways. First, the Claimant did not submit a transcript of the agency's hearing. The Court of Appeals pointed out that it could not make a finding that the lower decisions were not supported by substantial evidence when it did not have access to the transcript of the agency hearing. Second, the Claimant failed to present a complete record, by not submitting any evidence, beyond the Claimant's testimony, about the reasonableness of the care. Based on these two failures, the Court of Appeals affirmed the lower decisions.

Reinsbach v. Great Late Cooperative, 967 N.W.2d 211 (Table) (Iowa App. Ct. 2021)

In this case the Claimant and employer settled partially some of the issues that arose out of a 2005 injury. The case was later the subject of a review-reopening proceeding in which the Claimant was awarded future medical care. The Claimant took issue with the way that the Commissioner and the District Court phrased the award and sought review from the Court of Appeals. The Court of

Appeals affirmed the District Court's construction of the order including some additional implied language that was not in the Commissioner's initial order and refused to authorize alternate care.

Denemark v. Archer Daniels Midland Company, No. 21-1851 (Slip Copy) (Iowa Ct. App. 2022)

In *Denemark v. Archer* the Claimant injured his left arm while working for the employer. The injury required surgery to fix, which was initially scheduled for early October. Before the surgery could take place the employer began to investigate the claim and put the surgery on hold. After the investigation the employer authorized the Claimant's surgery in late October. Additional delay because of scheduling and transportation issues meant that the Claimant was not able to receive surgery until the following January. Partially as a result of the delay the Claimant alleged that the care provided by the employer was unreasonable and that he was therefore entitled to alternate care. The Commissioner and District rejected this argument and pointed out that to win out on a claim for alternate care the Claimant needed to demonstrate that the care that was authorized by the employer was ineffective, inferior, or less extensive than needed. Because the Claimant still received the surgery and it was adequate care the Commissioner determine that he was not entitled to alternate care. The District Court and the Court of Appeals affirmed without much additional discussion.

CASUAL CONNECTIONS BETWEEN WORK and INJURY

In the cases that follow the lack of causal connection between an injury and a Claimant work is the basis for the denial benefits. Each of the cases stands as an example of the importance of ensuring that there is sufficient medical evidence to support a find that the injury in question is connected to the Claimant's work. The cases also exemplify the degree of deference afforded to the Commissioner's assessment of expert medical opinions.

Smith v. TPI Iowa, LLC, 965 N.W.2d 621 (Table) (Iowa App. Ct. 2021)

The Claimant in this case suffered a shoulder injury. After attempting, and failing, to have two separate doctors connect the injury to her work the Claimant sought surgery. After her surgery the Claimant went to a third doctor for an independent medical examination. The IME noted that the Claimant had impairment related to the "subject injury" but did not express any opinion about whether the subject injury was related to work. The Court of Appeals affirmed the lower courts' decisions that this injury was not compensable. This conclusion was supported by the Claimant's failure to provide expert testimony that would causally connect her injury to her work. The Court of Appeals noted that even if the IME had connected the injury to the Claimants work the lower courts' denial of benefits would stand because there was substantial evidence, provided by the other two doctors, that there was no causal connection between the injury and the work.

Cufurovic v. Tyson Foods, Inc., 965 N.W.2d 925 (Table) (Iowa App. Ct. 2021)

In *Cufurovic v. Tyson,* a Claimant injured their back. In a hearing before the deputy workers' compensation Commissioner the parties each present medical experts that argued about whether the injury arose out of the scope of the Claimant's employment. The Claimant presented testimony from one doctor, and the employer presented testimony from two doctors. Ultimately the deputy found the employer's experts to be more persuasive because they had a more complete work history and because the Claimant's expert over emphasized the amount of lifting that the Claimant's job entailed. This determination was the basis for the denial of benefits.

The district court reversed the agency's decision, and the case was appealed to the Court of Appeals. The Court of Appeals, in turn, reinstated the agency's decision. The Court of Appeals noted that there was substantial evidence to support the agency's finding and that the role of reviewing courts was not to determine whether the evidence actually supports a different finding.

Tew v. Sparboe Farms, Inc., 967 N.W.2d 367 (Table) (Iowa Ct. App. 2021)

In this case the Claimant suffered a back injury in 2008 as the result of a car accident before he started to work for the employer. After the injury, the Claimant sought surgery to repair the damage. The surgery was successful, and the Claimant returned to his normal activities, which included both basketball and cage boxing. The Claimant had occasional flare ups of back pain which he treated with muscle relaxers and pain-killers. He began working for the employer in 2016 in a job that required heavy and consistent lifting. Shortly after beginning work the Claimant began experiencing back pain which he attributed to his work. He reported sleeping in a strange position and incident where he fell while mowing as reasons for the pain to supervisor. It wasn't until two months after the reoccurrence of pain that the Claimant alleged that it was work related. At hearing the Commissioner found that the Claimant's assertation that the back was work related was not credible and denied benefits. On appeal the Court of Appeals affirmed the Commissioner's decision. In doing so, the court rejected an argument that the Commissioner failed to find a cumulative injury. The Court of Appeals noted that even if there was cumulative injury the Commissioner's decision that the injury was not related to work would make such an injury uncompensable. The court also noted that the Commissioner's decision was based on substantial evidence and that there were significant credibility issues with the Claimants testimony.

Mahoney v. Robert Half International, 965 N.W.2d 490 (Table) (Iowa Ct. App. 2021)

In this case the Court of Appeals affirmed the agency's decision to deny healing period benefits because the Claimant failed to demonstrate a new permanent injury to her arm. The Claimant experienced an injury to her right arm as the result of a 2006 car accident. In 2015 she began working for the employer and alleged that she began to experience new problems with her arm. She was diagnosed with tenosynovitis, a repetitive motion injury that resulted in a 3% impairment rating. The employer provided evidence that the Claimant's work was not repetitive. Additionally, the Deputy and Commissioner found that the doctor that diagnosed the repetitive injury did not have a sufficient description of the Claimant's work to make a finding that the injury was job-related. As a result of these two facts, the Commissioner determined that the Claimant's injuries were a continuation of problems she had since the time of her earlier car accident. The Court of Appeals affirmed this decision noting that the Commissioner has the authority to make determinations about the weight to give to expert medical testimony and that the Commissioner's decision can only be overturned when it is irrational, illogical, or wholly unjustifiable.

Mercy Medical Center v. Lund, 974 N.W.2d 537 (Table) (Iowa Ct. App. 2022)

In *Mercy Medical v. Lund* the Court of Appeals reinstated the Commissioner's determination after it had been reversed by the District Court. The Court of Appeals noted that Commissioner is responsible for determining the weight to be given to medical experts and that medical causation is "essentially within the domain of expert testimony." As such, the District Court's determination that the Commissioner misapplied competing expert testimony was overturned.

Rizvic v. Titan Tire Corp., 964 N.W.2d 562 (Table) (Iowa Ct. App. 2022)

In this case the Claimant alleged that he suffered headaches, and neck and back problems after suffering an electrical shock. Doctors affirmed that these symptoms were consistent with a low-voltage electrical shock and the Deputy Commissioner awarded the Claimant PTD benefits. The Commissioner reversed this decision after finding that Claimant was not credible. On appeal the Court of Appeals affirmed the Commissioner's findings, holding that substantial evidence supported the decision that the Claimant's medical issues were not work-related.

ConAgra Foods, Inc. v. Moore, 2022 WL 1658707 (Table) (Slip Copy) (Iowa Ct. App. 2022)
In this case the employer appealed a finding by the agency that the Claimant had experienced a permanent impairment to his hip and lower back and that the work-related injury led to a 40% industrial disability. The employer's contention that benefits were not due was based on its argument that the Claimant's evidence was not persuasive and did not provide sufficient support for the ruling. Without significant discussion the Court of Appeals applied a deferential standard of review and affirmed both contested rulings.

SECOND INJURY FUND

In the cases below the Court of Appeals addresses whether or not the Second Injury Fund is entitled to a credit for past surgery and the definition of "first qualifying injury." The first case presents a relatively strict textualist approach to a statute describing PTD-related testimony. The second case is an application of earlier case law to deny Second Injury Fund Liability.

Harrell v. Denver Findley & Sons, Inc., 2022 WL 2824746 (Table) July, 2022

In *Harrell v. Denver* a Claimant filed a workers' compensation claim against his employer and the Second Injury Fund after he experienced a foot injury. It was determined that the Claimant was permanently and totally disabled as a result of the foot injury. The Second Injury Fund sought a credit for an earlier knee-surgery that it had provided to the Claimant. The Commissioner determined that the Second Injury Fund was entitled to a credit for the earlier surgery and that any PTD benefits should be reduced accordingly. On appeal, the Claimant pointed out that the statute that outlines the evaluation of PTD prohibits the use of lay testimony. The Claimant went on to show that the Commissioner's assessment of the Claimant's PTD did not rely on expert testimony and that it should therefore be rejected. The Court of Appeals ultimately agreed with the Claimant, noting that plain language of the statute required such a reading.

Blake v. Second Injury Fund, 967 N.W.2d 221 (Table) (Iowa Ct. App. 2021)

In this case a Claimant argued that eye problems that she experienced as a result of her Grave's Disease constituted a "first qualifying injury" and therefor triggered Second Injury Fund Liability. Both the agency and the District Court held that such an injury did not trigger Second Injury Fund Liability. On appeal the Court of Appeals affirmed.

The Claimant based her argument on an earlier case where a history of complex combinations of enumerated and unenumerated member injuries resulted in finding that a hand injury could be treated as a nonscheduled injury. That case essentially held that an injury to an enumerated member constitutes a first qualifying injury even though the injury also causes impairment to the body as a whole. The Court of Appeals rejected this argument and pointed out that in the case before it the opposite was true. In the Claimant's case the injury to the scheduled member was a result of the whole body impairment the Claimant experienced as a result of her Grave's Disease. The Court of

Appeals noted that such an argument had been expressly denied by the Iowa Supreme Court before and rejected the Claimant's request to find the Second Injury Fund liable.

REVIEW-REOPEN CLAIMS

In the following two cases the Court of Appeals assess the ability of a Claimant to review-reopen claims pursuant to Iowa Code § 86.14. The second of the two cases reemphasizes the fact that the Workers' Compensation Scheme is a creature of statute and that external judicial standards are not applicable unless authorized by statute or case law.

ABF Frieght Systems v. Hillard, 974 N.W.23 817 (Table) (Iowa Ct. App. 2022)

In this case the Claimant sought to reopen a claim in order to receive an increased impairment rating. Despite rigorous arguments from the employer that there had not been a change in the Claimant's physical condition the Deputy granted the Claimant's request and increased his impairment rating. The Commissioner affirmed. On appeal the Court of Appeals noted that it could only overturn the Commissioner's decision if it was irrational, illogical, or wholly unjustifiable. Because the basis of the decision to reopen was based on the Deputy assessment of the Claimants credibility and the assessment was not irrational, illogical, or wholly unjustifiable the Court of Appeals affirmed the Commissioner's decision.

Green v. North Central Iowa Regional Solid Waste Authority, 977 N.W.2d 122 (Table) (Iowa Ct. App. 2022)

In *Green v. NCIR Solid Waste Authority* the Court of Appeals reversed the Commissioner's refusal to allow a claim to be reopened. The Claimant in this case filed a petition to reopen her claim seeking a ruling on the permanency of her injury. The employer moved for summary judgment on the petition on grounds that the Claimant should not be allowed to relitigate her claim. The Deputy and Commissioner granted this motion. On appeal to the District Court the decision to grant the motion was overturned. The Court of Appeals affirmed the District Court's reversal. The Court of Appeals held that adjudication of worker's compensation claims must be completed pursuant to the statutory scheme, and that nothing in Iowa workers' compensation statutes, or the surrounding case law supports, a claim-preclusion stye bar on review-reopened claims.

PTD BENEFITS and DEFERENCE to the COMMISSIONER

Earling Grain and Fee b. Martin, 975 N.W.2d 525 (Table) (Iowa Ct. App. 2022)

In a relatively simple holding the Court of Appeals affirmed the Commissioner's determination that a Claimant was entitled to PTD benefits. As noted, multiple times above the Court of Appeals deferred to the Commissioner's weighing of evidence, and in the presence of substantial evidence to support a finding affirmed the Commissioner's determination.

CUMULATIVE INJURY

In the two cases that follow the Court of Appeals spends time addressing cumulative injury standards. Both cases serve as excellent sources of case law and statutes covering cumulative injury.

Central Iowa Fencing, Ltd. v. Hays, 2022 WL 2826011 (Table) (Iowa Ct. App. 2022)

In this case a Claimant had a history of back issues but had been hired by the employer without any restrictions. Beginning with an injury to his back while removing a fence-post, the Claimant experienced back pain several times throughout the course of his employment. The Commissioner found that based on two injurious events and the consistent testimony of the Claimant about his back pain that he had experienced a cumulative injury. On appeal to the Court of Appeals the employer contested this finding by pointing out that in his arbitration petition the Claimant did not describe his injury as cumulative. The Court of Appeals rejected this line of argumentation, It held instead that because the petition sufficiently apprised the employer of the possibility that cumulative injury doctrine might have been applicable, that a finding of cumulative injury was appropriate.

Tilton v. H.J. Heinz Company, 2022 WL 2824290 (Table) (Slip Copy) (Iowa Ct. App. 2022)

In *Tilton v. Heinz* the Claimant suffered from back injury that built up over time. She first recognized the pain in 2000 and in 2001 recognized that it was work related. Following this recognition, the Claimant sought treatment form a chiropractor, who in February 2010, explained that the back injury was likely permanent in nature. Based on this statement from the chiropractor the employer sought and received a ruling from the Deputy Commissioner that the date of discovery of the Claimant's injury was February 2010. The February 2010 put the Claimants initial claim for compensation outside of the statute of limitations and thus invalidated the claim. On appeal the District reversed this decision, noting that an earlier adjudication of the same case found that there was not substantial evidence to support a date of discovery in 2010. Because of this determination the District Court held that it would be irrational, illogical, and wholly unjustifiable to find that the Claimant should have known that her injury was permanent 8 months prior to a time when the court held that she could not have known. The Court of Appeals briefly discussed the distinctions between the discovery rule and the manifestation rule in cumulative injury cases and then affirmed the District Courts ruling.

DEATH BENEFITS and MARITAL DESERTION

Linnhaven, Inc. v. Blasdell, 2022 WL 2826041 (Table) (Slip Copy) (Iowa Ct. App. 2022)

In this case a husband sought death benefits after the death of his estranged wife. The Claimant and her husband had married in 2008 but had been separated since 2011. The husband listed himself as single on his W4 in 2011 and 2015 and filed his taxes as married filing separately 2011 and 2012. In a deposition after her injury the Claimant noted that she and her husband would have divorced but money constraints stopped them from being able to do so. The Claimant was injured late in 2012, the injury resulted in permanent total disability because of an ankle injury and severe phycological impairment. In 2016 the Claimant died after an overdoes of prescription medication. After her death her estranged husband sought death benefits and reimbursement for the Claimant's burial expenses which he had covered. The employer argued that the husband should not have

received either because of the language found in Iowa Code § 85.24(1)(a) which provides that a surviving spouse is not entitled to death benefits "[w]hen it is shown that at the time of the injury the surviving spouse had willfully deserted deceased without fault of the deceased, then such survivor shall not be considered as dependent in any degree." In a deposition in 2018 the husband noted that he and the Claimant still had a relationship, which included regular contact via phone call and text message, financially support, and the Claimant staying at his house for periods of time. The Deputy Commissioner and the Commissioner found that this set of facts constituted desertion under Iowa Code § 85.24(1)(a) and that the husband was therefore not entitled to receive death benefits. Appeal to the District Court ensued.

The District Court reversed and held that despite the strained relationship the facts in this case did not constitute desertion. For support of this holding the District Court relied on the one case available on Iowa Code § 85.24(1)(a), which was over 100 years old. Based on the language in this case the District Court recognized that separation and desertion are synonymous, that when spouses agree to live apart there is no desertion, and that there was no evidence that the husband intended to desert the Claimant based on her fault (i.e., for physical abuse, alcoholism, or similar circumstances). Based on this legal standard the District Court held that there was not substantial evidence to support a holding that the husband desert the Claimant. The Court of Appeals, restated a majority of the District Court analysis and affirmed its ruling.