IN THE SUPREME COURT OF IOWA

No. 21-0841

MANDY TRIPP,

Petitioner-Appellant,

vs.

SCOTT EMERGENCY COMMUNICATION CENTER and IOWA MUNCIPALITIES WORKERS COMPENSATION ASSOCIATION,

Respondents-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
HONORABLE MARK CLEVE
Scott County No. CVCV300684

PETITIONER-APPELLANT'S FINAL REPLY BRIEF

Andrew W. Bribriesco
Gabriela Navarro
2407 18th Street, Suite 200
Bettendorf, Iowa 52722
Ph.: 563-359-8266
Fax: 563-359-5010
Email: andrew@bribriescolawfirm.com

Attorneys for Petitioner-Appellant

PROOF OF SERVICE AND CERTIFICATE OF FILING

The undersigned certifies that this Appellant's Final Reply Brief was served and filed on the 2nd day of October, 2021 upon the following persons and upon the Clerk of the Supreme Court by electronic filing and electronic delivery to the parties via the EDMS system, pursuant to Iowa R. App. P. 6.902(2) and Iowa Ct. R. 16.1221(2) to the following:

Jane Lorentzen
Chandler Surrency
HOPKINS & HUEBNER P.C.
2700 Grand Avenue, Suite 111
Des Moines, IA 50312

Clerk of the Iowa Supreme Court
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319

By: /s/ Andrew W. Bribriesco

Andrew W. Bribriesco AT0010666
Gabriela Navarro AT0014136
2407 18th Street, Suite 200
Bettendorf, IA 52722
Ph: (563) 359-8266
Fax: (563) 359-5010
Email: andrew@bribriescolawfirm.com

ATTORNEYS FOR PETITIONER-APPELLANT

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REPLY BRIEF

The main issue to be decided on appeal is whether the district court erred in affirming the agency's decision that Appellant Mandy Tripp's PTSD (mental-mental injury) is not compensable because she failed to prove legal causation.

Tripp argues that the Commissioner erred as a matter of law by concluding that the standard set-forth in *Brown v. Quik Trip Corp.*, 641 N.W.2d 725 (Iowa 2002), is a subjective test rather than an objective test.

Tripp also argues that the *Brown* Standard should be modified and/or abandoned as it relates to PTSD claims when considering modern medical understandings of PTSD and the harsh, unjust, and unintended denial of mental-mental claims for workers suffering from PTSD, especially first responders.

PTSD is a medical condition that can only be diagnosed after satisfying multiple criteria under the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-V), including that the person was exposed to a particular type of traumatic event (death, threatened death, serious injury) in a particular manner (directly, witness of, indirect exposure). The DSM-V was published in 2013, eleven years after the Iowa Supreme Court decided *Brown* and thirty-five years after the Montana decision that was the source of the *Brown* Standard.[1] *Brown*, 641

[1] The DSM-III was published in 1980, the DSM-IV was published in 1994, and the DSM-V was published in 2013, so there have been two revisions since the Montana test (*i.e.*, the source for the *Brown* Standard) was created.

N.W.2d at 729 (citing *Tocco v. City of Great Falls,* 714 P.2d 160, 163-64 (Mont. 1986)).[2] As science, technology, and medicine advances, so should the Court's judicially created standards, such as the one created in *Brown*. Interpretations of the law should accord with contemporary understandings of mental illnesses in our society. *See e.g.*, *Ortiz v. Loyd Roling Constr.*, 928 N.W.2d 651, 655 (Iowa 2019).

This case illustrates exactly why the *Brown* Standard should be modified and/or overturned: because that test creates a harsh, unjust, and unintended result for Iowa first responders, including 911 dispatchers, police officers, and firefighters. This case reveals that the *Brown* Standard and modern medical standards for PTSD are out of sync: how can a worker factually establish a diagnosis of PTSD—exposure to a life-and-death event and experience permanent symptoms as a result of that traumatic event—yet be denied benefits because a first responder's job is to deal with traumatic events? The question the Court will need to answer is whether workers' compensation law should be interpreted and applied in a manner that precludes Iowa first responders with PTSD from receiving benefits for a legitimate, work-related mental injury.

[2] *Tocco* did not involve a mental-mental injury like the instant case, but involved a claimant who had died from an aggravation of preexisting arteriorsclerosis and high blood pressure. *Tocco,* 714 P.2d at 163. The Court found that his death was compensable pursuant to Section 39-71-119(1) of Montana Workers' Compensation Laws. *Id.*

If the Court does not reverse the Commissioner based upon the identified problems with the *Brown* Standard, the Court should still reverse the Commissioner because his core factual finding—that the Dead Infant Call was not unexpected or unusual—is not supported by substantial evidence.

I. THE COMMISSIONER ERRED AS A MATTER OF LAW WHEN HE CONCLUDED THE LEGAL CAUSATION TEST FOR MENTAL-MENTAL INJURIES SET FORTH IN *BROWN V. QUIK TRIP CORP.*, 641 N.W.2d 725 (IOWA 2002), IS A SUBJECTIVE STANDARD.

The parties agree that the *Brown* Court failed to *explicitly* state whether the *Brown* Standard is an objective or a subjective test, which is to be applied by the agency when determining the compensability of a mental-mental injury. While Tripp submits that the *Brown* Standard is an objective test, which is more fully described in her Brief, the Employer argues that the *Brown* Court's intention can be "gleaned" from a reading of *Brown*. However, the Employer's support for its interpretation of *Brown* is unpersuasive as described below.

A. Johnson *is Cited in* Brown *In Order To Distinguish The Reliability of Mental-Mental Injuries That Stem from One Traumatic Event Versus Gradual Everyday Work Stress.*

In support of its position that the *Brown* Standard is a subjective test, the Employer illustrates the case of *Johnson v. State ex rel. Worker's Comp. Div.*, 798 P.2d 323 (Wyo.1990). Yet, a closer illustration of *Johnson* reveals that the *Brown* Court's main purpose for citing to *Johnson* is for the support that mental-mental

injuries stemming from a traumatic event are reliable enough where legal causation is not required. *See Brown*, 641 N.W.2d at 728. The Court wrote that:

> Where a mental injury occurs rapidly and can be readily traced to a specific event… there is a sufficient badge of reliability to assuage the Court's apprehension. Where, however, a mental injury develops gradually and is linked to no particular incident, the risk of groundless claims looms large indeed…
>
> Both *Graves* and *Dunlavey* are distinguishable because in those cases the stress was not based on specific traumatic incidents. In fact, subsequent to the *Graves* case, the Wyoming Supreme Court found in favor of a claimant's mental/mental claim, even though no similarly situated employee had testified. *See Johnson v. State ex rel. Worker's Comp. Div.*, 798 P.2d 323, 324-25 (Wyo.1990)…
>
> This rationale is supported by a respected authority who notes that claims based on a sudden event may not require proof of "normal" working conditions…
>
> The appropriate test under the circumstances of the present case is not whether the stress is greater than that experienced by similarly situated employees, as we required in *Dunlavey*.

Id. at 728-29 (internal quotations omitted) (internal citations omitted).

Based upon the clear text of *Brown*, the Court did not cite to *Johnson* (or *Graves*) for the inference that the *Brown* Standard should be a subjective test, but rather for the purpose of illuminating the difference between a mental-mental injury based upon one event versus one that gradually develops.

Unlike what is argued by the Employer, *Johnson* is actually inapposite to the issue as to whether the *Brown* Standard is a subjective or an objective test. Additional support is found when reviewing the *Johnson* case itself. In *Johnson*,

the Wyoming Supreme Court was reviewing a case that involved a truck driver's development of depression and PTSD[3] due to a narrowly avoided collision. 798 P.2d at 323.

First, the Wyoming Supreme Court does not use any explicit or implicit language as to whether it was adopting a subjective or objective test for mental-mental injuries. *See generally id.* Second, the Wyoming Supreme Court was more focused on how the undisputed medical evidence demonstrated how the worker's PTSD and depression were causally related to the narrowly avoided collision (*i.e.*, medical causation was undisputed):

> Johnson suffered no physical injuries as a result of the February accident. However, soon after the accident, he started having nightmares, had trouble sleeping and felt depressed. He saw a psychiatrist for his problems in March 1989. The psychiatrist determined that Johnson was suffering from depression and post-traumatic stress disorder. The psychiatrist was unable to find any other circumstances in Johnson's life such as the condition of his marriage and family life that would cause the stress and depression. He concluded that Johnson's symptoms were a result of the accident.

Id. at 323-24. Finding that the "record contains none of the evidentiary deficiencies" found in *Graves*, the Supreme Court of Wyoming held that:

> The record indicates that Johnson demonstrated he suffered a compensable injury. Johnson's psychiatrist testified that Johnson's depression and stress resulted from the accident. He ruled out any other cause. This evidence is undisputed in the record. The causal

[3] It should be noted that while the Wyoming Supreme Court notes the diagnosis of PTSD in its decision, the *Brown* Court does not make reference to that diagnosis when citing and illustrating *Johnson*.

> connection requirement is satisfied since the accident from which the injury resulted occurred while the workman was driving a Yellow Freight truck which was an activity and requirement of his employment.

Id. at 325-26. Reading *Johnson* in the context of the *Brown* Standard, it should be concluded that *Johnson* stands more for the proposition that—if a worker demonstrates that a work event is undisputedly the cause of his/her PTSD—then the law should deem that claim compensable.[4]

Consequently, *Johnson* is actually strong support that Tripp's claim should be found legally compensable because all of the mental health experts in this case diagnosed Tripp with PTSD and all of them concluded that the Dead Infant Call on 9/30/18 was the cause of Tripp's PTSD. (App. 77, 82, 87, 99) The Employer did not retain any medical expert to refute that Tripp met the criteria for PTSD or to address medical causation in general.

B. Brown *Did Not Involve A First Responder And, Thus, Any Application to Iowa First Responders Would Be Inadequate Without A More Explicit Discussion by the Court.*

The Court created the *Brown* Standard when reviewing facts involving a store clerk who was robbed at gunpoint. *Brown*, 641 N.W.2d at 726-27. The Court held that evidence of stress experienced by similarly situated workers was not

[4] The Deputy made a factual finding that Tripp had "some sort of mental health condition that was triggered, in part, by the phone call." (App. 25)

required "if the event or events giving rise to the claim are readily identifiable" under the following standard:

> **When 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.**

Id. 728, 729 (emphasis added).

Notably, the *Brown* Court did not carve out an exception for occupations, such as first responders, as it seemed clear that the test's focus would be on whether the "readily identifiable event" was "from an unexpected cause or unusual strain."[5]

Based upon the actual written language of the decision, it would be insufficient to "glean" an interpretation that the *Brown* standard is a subjective test without specific consideration to Iowa first responders (police officers, fire fighters, EMTs, 911 dispatchers, etc.). *Brown* involved a store clerk. *Johnson* a truck driver. What about first responders? Should they face a higher standard when seeking benefits for work-related PTSD when the very nature of their job requires them to train, prepare, and experience life-and-death situations?

[5] The Iowa Court of Appeals' decision in *Brown* provides a discussion on injury and incident statistics related to gas station attendants. *Brown v. Quik Trip Corp.*, 2001 WL 1132735, at *3 (Iowa Ct. App. 2001). The concurring opinion in the Court of Appeals' decision found that the statistics demonstrated claimant's compensability: "After a careful review of the data, I conclude the data proves beyond dispute the rarity of the incidence of assaults and violent acts in occupations similar to Brown's." *Id.* at 5 (Hecht, J., concurring).

Although first responders anticipate, train, and prepare for traumatic events that will occur on the job, it does not mean that they should be denied benefits for a legitimate mental-mental injury when such an event occurs. First responders are modern-day heroes, but they are by no means the fictional characters described in *Brown* that constantly experience "dramatic brushes with death." 641 N.W.2d at 729 ("Except for the adventurous heroes that inhabit the world of one-hour television thrillers, continuous terror, shock, and dramatic brushes with death are not the normal routine of life.") (quoting Larson's Workers' Compensation Law).

A subjective standard, especially when applied to first responders, will make recovery of claims nearly impossible. *See e.g.*, *Diaz v. Ill. Workers' Comp. Comm'n*, 989 N.E.2d 233, 238-42 (Ill. App. Ct. 2013) (adopting an objective test for mental-mental injuries).

C. Schuchmann *and Other Agency Cases Are Not Binding Precedent and Not Sufficient Instruction for the Agency.*

To begin with, both parties attempt to use *Schuchmann v. Dept. of Transportation*, File No. 5035676 (Arb. Dec. June 20, 2012) in support of their position.[6] The Employer attempts to use *Schuchmann v. Dept. of Transportation*, File No. 5035676 (Arb. Dec. June 20, 2012) in support of its interpretation that the *Brown* Standard is a workable, subjective standard. However, *Schuchmann* is not

[6] Tripp submits that *Shuchmann* exemplifies how the agency should have applied the *Brown* Standard using a narrow view of the Dead Infant Call. (*See* Appellant's Br., p. 53).

binding precedent and, furthermore, does not provide sufficient instruction as to how the agency should apply the *Brown* Standard, especially when it involves a first responder.

As described in the arbitration decision, the claimant in *Shuchmann* was trained at the Iowa Law Enforcement Academy, had witnessed five prior traumatic work events involving 3 fatalities,[7] and his job responsibilities included helping law enforcement personnel at the scene of motor vehicle crashes. *Schuchmann v. Dept. of Transportation*, File No. 5035676, p. 2 (Arb. Dec. June 20, 2012).

Subsequently, the claimant then witnessed the aftermath of one particular motor vehicle crash, which he developed PTSD and filed a claim for workers' compensation benefits. *Id.* at 1-3. The claimant in *Schuchmann* was never personally in danger. *See id.* Despite having the subjective training, despite not being in personal danger, and despite the prior traumatic experiences, the Deputy found that the claimant met the *Brown* Standard. *Id.* at 7.

The defendants appealed this decision to the Commissioner, who summarily affirmed the decision. *See Schuchmann v. Dept. of Transportation*, File No. 5035676 (Appeal Dec. May 20, 2013). One could speculate had the defendants

[7] "Likewise, claimant identified only five traumatic work events as having occurred from when he began his enforcement officer job in 1999 and spring 2008. Four were motor vehicle crashes, one of which resulted in two fatalities; one was a manhunt that ended with the suspect's death, apparently by smothering in a bin of oats." *Schuchmann v. Dept. of Transportation*, File No. 5035676, p. 2 (Arb. Dec. June 20, 2012).

continued appealing, many of the issues presented in the instant case would have resurfaced sooner before the Court. Thus, reliance on *Schuchmann* is insufficient as it is not precedent, did not provide any sweeping legal precedent, and the Court should explicitly determine whether the *Brown* Standard is objective or subjective, especially when considering occupations such as first responders.

D. The Employer Does Not Consider Long-Standing Precedent That The Law Should Be Liberally Interpreted and the Employer Does Not Consider Public Policy Considerations.

Also missing from the analysis of the Employer is the complete disregard that workers' compensation laws have the "primary purpose" to benefit the worker and that the Court strives to interpret the law broadly and liberally to benefit the worker. *See Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 770 (Iowa 2016); *Gregory v. Second Injury Fund of Iowa*, 777 N.W.2d 395, 399 (Iowa 2010). Whether the words "unexpected cause or unusual strain" were meant to be determined by a subjective or an objective standard must be considered in the context of the Court's precedent that workers' compensation law should be liberally and broadly construed in favor of the injured worker, that the employer cannot raise the assumption of risk doctrine, and that the employer takes an employee as "she is." *Secrest v. Galloway Co.*, 239 Iowa 168, 170, 30 N.W.2d 793, 795 (1948); *Leffler v. Wilson & Co.*, 320 N.W.2d 634, 635 (Iowa Ct. App. 1982).

The Employer's argument of a subjective standard does not align with these long-standing principles, as demonstrated by the facts in this case. Tripp has shown that her PTSD developed because of a work event and she should not "fall in the cracks" of the law. *See Paulsen v. City of Davenport,* File No. 5033124 (App. Dec. 4/9/13) (finding that the Agency favors the awarding of workers' compensation benefits to an injured police officer that may "fall between the cracks" in recovering benefits under Chapter 85 and Chapters 410/411); *see also Paulsen v. City of Davenport*, File No. 5033124 (App. Dec. 5/7/15).

Public policy considerations must also be taken into account. Tripp—a 911 Dispatcher for over 17 years with a diagnosis of PTSD that was medically caused by a work event—should be able to present a claim without having co-workers and supervisors testify as to why the claimed work event was not traumatic, not an unexpected cause, or not an unusual strain *to them*.[8] Allowing the denial of benefits to Tripp due to a subjective standard, along with similar denials that will undoubtedly occur in the future, will cause unnecessary delay in mental health care for first responders. The basis for this denial also perpetuates and furthers the stigma for first responders who have PTSD, and indicates to them that PTSD is a personal weakness and something the law does not deem compensable. (*See, e.g.,*

[8] There were nine live witnesses who testified at hearing in the *Schuchmann* case. *Schuchmann v. Dept. of Transportation*, File No. 5035676, p. 1 (Arb. Dec. June 20, 2012).

App. 109, 150) This result is not good public policy, especially since there is already an epidemic of first responders (and veterans) in this country who have untreated PTSD due to the lack of awareness, lack of understanding, and lack of acceptance that PTSD is a legitimate condition from which people suffer. (*See* App. 150, 173, 207-210; *see also* App. 241)

E. The Employer Does Not Cite To Iowa Precedent Where Subjective Tests Are Applied in Workers' Compensation Settings.

The error in allowing the Commissioner to interpret the words "unexpected cause or unusual strain" using a subjective standard is also supported by the Court's express statement in *Dunlavey* that legal causation is an "objective" test. 526 N.W.2d at 858. Nothing said in *Brown* changed the nature of the test to a subjective one and in fact, the *Brown* Court explicitly noted that "legal causation" would be met "**irrespective of the absence of similar stress on other employees.**" 641 N.W.2d at 729 (emphasis added). This language specifically precludes evidence or testimony of other similarly situated workers – such as Cawiezell, Pavlik, and Sanders in the instant case – that they did not view the event as unusual or unexpected.[9]

As the Illinois court recognized in *Diaz v. Ill. Workers' Comp. Comm'n*, 989 N.E.2d 233 (Ill. App. Ct. 2013), public policy best supports an objective standard,

[9] Tripp objected to the testimony of these witnesses regarding their subjective impressions as irrelevant under the *Brown* Standard, which should be evaluated by how Tripp experienced the Dead Infant Call. (*See* App. 213, 229-230)

so as to ensure that first responders have the ability to recover workers' compensation benefits for work-caused PTSD. The Court appears to favor objective tests in employment-related cases. *See, e.g., Van Meter Indus. v. Mason City Human Rights*, 675 N.W.2d 503, 511 (2004) (holding that fact finders must apply an objective standard to determine whether a constructive discharge occurred); *Dolan v. Aid Ins. Co.*, 431 N.W.2d 790, 794 (Iowa 1988) (concluding the test to show an element for the tort of bad faith is an objective standard); *Cowman v. Hornaday*, 329 N.W.2d 422, 425-27 (Iowa 1983) (concluding that the "patient rule," which requires an objective test, was better suited to control the relationship of the patient and physician in the case).

The Employer did not cite to any other case, test, or workers' compensation law that utilizes a subjective standard when coming to a conclusion of law.

Based upon the Commissioner's and District Court's erroneous interpretation of the law, Tripp requests that the Court reverse on appeal and conclude that Tripp established legal causation as defined in *Brown* because that standard is an objective test and not a subjective test.

II. THE SUPREME COURT SHOULD MODIFY OR OVERTURN THE TWENTY-YEAR-OLD *BROWN* STANDARD FOR MENTAL-MENTAL INJURIES RESULTING IN PTSD BECAUSE THAT TEST IS INCOMPATIBLE WITH MODERN MEDICAL UNDERSTANDINGS OF PTSD AND RESULTS IN A HARSH, UNJUST, AND UNINTENDED DENIAL OF BENEFITS TO WORKERS SUFFERING FROM PTSD, ESPECIALLY FIRST RESPONDERS.

The Court's rationale that mental injuries caused by a sudden traumatic event have a "sufficient badge of reliability" to support an award of workers' compensation benefits is still wise. *Brown*, 641 N.W.2d at 728-29. Yet, the legal causation standard for such mental injuries should reflect the modern medical definitions and understandings of PTSD, not a Montana Supreme Court case issued over 35 years ago.[10]

A. *Under the Modification/Overturning of the* Brown *Standard, the Agency Would Decide Mental-Mental Injuries Resulting From One Event (PTSD) Just Like Physical Injuries Under The Law.*

It is a mischaracterization when the Employer says that, "Tripp is arguing that medical causation equates to legal causation. This proposition defies the law, as it would place a legal decision in the hands of a medical professional." (Appellees' Brief, pp. 33-34) Following that sentence, the Employer cites to the

[10] *Tocco* did not involve a mental-mental injury like the instant case, but involved a claimant who had died from an aggravation of preexisting arteriorsclerosis and high blood pressure. *Tocco*, 714 P.2d at 163. The Court found that his death was compensable pursuant to Section 39-71-119(1) of Montana Workers' Compensation Laws. *Id.*

district court's ruling, which is completely out of context. The Employer cites to the ruling for an issue Tripp argued before the district court, which was not made before this Court.[11]

Unlike what the Employer argues, Tripp is not urging for something radical in the arena of workers' compensation law. Tripp is simply urging that mental-mental injuries that cause PTSD, which by its very diagnosis requires it to be caused by a traumatic event, should be treated like physical injuries *i.e.*, legal causation would not be required.

If a worker lifts a box at work and sustains an injury because of lifting that box, then a worker only has the burden of proof to demonstrate medical causation. *See Dunalvey*, 526 N.W.2d at 853; *see also generally Lakeside Casino v. Blue*, 743 N.W.2d 169, 173-74 (Iowa 2007). That worker is not required to prove legal causation.[12] *See id.* The requirement of legal causation was a judicially created requirement for mental-mental injuries. *Dunlavey*, 526 N.W.2d at 853-55 (creating a standard for "a pure nontraumatic mental injury").

[11] As stated in footnote two of Tripp's initial brief, the District Court also rejected Tripp's argument that the Commissioner improperly rejected expert evidence; however, Tripp does not present that argument on Appeal before the Court. (*See* App. 71-72)

[12] Legal causation addresses whether the "policy of the law will extend responsibility to those consequences which have in fact been produced." *Dunlavey*, 526 N.W.2d at 853.

Because the legislature did not impose legal causation, Tripp urges the Court to modify/overturn the *Brown* Standard as it relates to claims for PTSD so that legal causation is not required.[13] Thus, Tripp is not requesting for "an automatic presumption of compensability." (*See* Appellee's Br., p. 34) Tripp is simply requesting that PTSD claims be fought and decided on the merits of medical causation like physical injuries.

If the Court adopts Tripp's position, a worker who claims to have PTSD from a work event would still have the burden of proof to demonstrate that he/she carries the diagnosis of PTSD and the burden of proof that the diagnosis is medically caused by the work event. There is **not** an automatic presumption of compensability and the payment of benefits simply by claiming PTSD.

In other words, employers can still defend claims by challenging the actual diagnosis[14] and the medical causation, just like employers are able to do in the countless other workers' compensation claims that are brought for physical

[13] A worker does not need to establish legal causation for "physical-mental" injuries. *See Everhart v. Clarinda Correctional Facility*, File No. 5007651, 2005 WL 2465835, p. 1-2 (Appeal Dec. 9/30/05); *see also Heartland Specialty Foods v. Johnson*, 731 N.W.2d 397, 401-02 (Iowa Ct. App. 2007) (rejecting an attempt to "heighten the standard of recovery for a mental injury resulting from a work-related injury").

[14] In Appellee's Brief, the Employer attempts to challenge the veracity of Tripp's PTSD diagnosis; however, the Employer never presented any medical or expert evidence to dispute the PTSD diagnosis. Furthermore, it is inappropriate to discuss how debilitating Tripp's PTSD diagnosis is at this stage as that is a question of nature and extent, which is an issue to be determined by the Agency on remand.

injuries. It would be disingenuous to say that, simply because a worker claims a back injury from lifting a box, that the worker has "an automatic presumption of compensability" because he/she does not need to prove legal causation.

The Employer is also concerned that the legal causation requirement would still be met by simply having a "questionable PTSD diagnosis," but that is how workers' compensation laws function with physical injuries.[15] A worker claiming a "questionable" back injury still has the burden of proof to demonstrate that lifting the box at work was in fact the cause of medical disability. Likewise, Tripp submits that a worker claiming PTSD would still have the burden of proof to demonstrate the diagnosis of PTSD and medical causation.

Just like with physical injuries, employers will be able to present evidence, including expert evidence, that the worker does not have PTSD and/or a worker's PTSD is not causally related to the work event. In fact, employers will have better abilities to challenge a worker's "questionable diagnosis" of PTSD because there is a strict, objective criteria to obtain the diagnosis of PTSD.[16] This actually places the employer in a better 'situation' to defend a PTSD claim than, say for example, an employer defending a claim for a back injury where the worker is claiming

[15] The Deputy noted in his decision that other jurisdictions treat PTSD claims as an accidental injury *i.e.*, the worker does not need to show legal causation, citing cases from New York, New Jersey, North Carolina, Texas, and Virginia. (App. 23)
[16] *See* Exhibit 5 (noting the objective criteria in the DSM-V).

permanent disability solely based upon subjective complaints and no objective evidence (such as an x-ray, MRI, etc.).

If the Court instructs the agency to treat mental-mental PTSD injuries like physical injuries, then the agency, as the finder of fact, will still determine the compensability of a claim after weighing the testimony, medical records, and expert evidence.[17]

Tripp submits that the Court should adopt this position and, unlike what is argued by the Employer, the Court would not be legislating any type of presumption and would not be adding any advantage to worker's claiming PTSD; rather, the Court would be removing an unnecessary barrier for Iowans claiming benefits for work-related PTSD and would eliminate the harsh and unintended denial of legitimate PTSD claims, especially by first responders. *See Gregory*, 777 N.W.2d at 399 (asserting that the Court "will not defeat the [workers' compensation] statute's beneficent purpose by reading something into it that is not there, or by a narrow and strained construction.").

[17] In Appellee's Brief, the Employer attempts to criticize the opinions of Tripp's treating mental health providers and the opinions of Tripp's retained expert. Yet, those factually driven critiques are for the agency to determine, potentially on remand, as the agency never actually decided the issue of medical causation. (App. 43) ("As claimant failed to carry her burden of proof she sustained an injury that arose out of and in the course of employment, the issue of medical causation under Brown is moot and need not be addressed.").

B. *There Is A Need to Revisit/Modify The* Brown *Standard As It Relates to PTSD Claims, First Responders, and How PTSD Claims Are Determined Before the Agency.*

The Employer argues that there is no need for the Court to revisit the *Brown* Standard. Citing to United States Supreme Court precedent and Iowa Supreme Court precedent, the Employer argues that there must be a valid reason to overturn precedent regardless of the age of the case. Missing from the Employer's citations, however, are cases related to Iowa workers' compensation laws. *See e.g., Henriksen v. Younglove Const.*, 540 N.W.2d 254, 260-61 (Iowa 1995) (discussing how the Court was "willing to correct [their] own mistake[s]" for an interpretation of an Iowa workers' compensation statute involving jurisdiction).

Furthermore, as more fully described in Appellant's initial brief, there is justification to revisit/modify the *Brown* Standard.[18] At its core, the *Brown* Standard, which eliminated the need to show legal causation, was created for workers who developed PTSD from a single, traceable work event. *See Brown*, 641 N.W.2d at 726 (noting the claimant had PTSD); *Johnson*, 798 P.2d at 323 (noting the claimant had PTSD).

[18] The *Brown* Standard was modeled after a Montana Supreme Court case from 1986. *Brown*, 641 N.W.2d at 729 (citing *Tocco v. City of Great Falls*, 714 P.2d 160, 163-64 (Mont. 1986)). Tocco, furthermore, involved a claimant who had died from an aggravation of preexisting arteriorsclerosis and high blood pressure. *Tocco*, 714 P.2d at 163.

Yet, as demonstrated by the very outcome of this case, the *Brown* Standard itself is an unnecessary legal hurdle and is the reason for the harsh, unintended, and denial of legitimate PTSD claims. It is a standard, as interpreted, that permits the legal denial of a first responder from receiving benefits solely because the very nature of the occupation. What possible public policy is furthered by denying benefits to first responders, 911 dispatchers, police officers, and firefighters who have proved they have PTSD from "a readily identifiable" work event? *See Brown*, 641 N.W.2d at 728 (modifying the *Dunlavey* test when the mental injury is caused by "a readily identifiable" work event).

35 years after the Montana case was decided, PTSD is still stigmatized and this Court's modification to recognize PTSD as part of the law would be a step in the right direction in making sure prompt medical delivery is provided to work-related PTSD events.

Moreover, as can be seen from the Commissioner's Appeal Decision, the agency has applied the *Brown* Standard inconsistently in various cases. In the appeal decision, the Commissioner demonstrates difficulty in trying to reconcile the various cases decided under the *Brown* Standard, and that difficulty is evidence

that modification (at minimum) would help provide judicially efficient and consistent ways to determine cases involving mental-mental PTSD injuries.[19]

III. THE COMMISSIONER'S DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

If the Court determines that the *Brown* Standard is a subjective standard and that it should not be modified/overturned for a diagnosis of PTSD, Tripp submits that the Commissioner's Decision is not supported by substantial evidence as a reasonable fact-finder would have found that Tripp's PTSD stems from an "unexpected cause or unusual strain." *See Brown*, 641 N.W.2d at 729.

The parties both agree 911 dispatchers take distraught phone calls. The parties agree that Tripp was not in harm's way. Yet, the main determination is whether the Dead Infant Call was "unusual" and/or "unexpected" in light of all the evidence presented at hearing.

When considering that all of the evidence demonstrated that 911 calls involving infant deaths in Scott County are extremely rare *i.e.,* unusual and unexpected by definition, then the district court's ruling should be reversed.

[19] The Deputy also demonstrated uncertainty to how the *Brown* Standard is / or should be applied. He noted in his decision that the *Brown* Standard "appears" to be met in "situations where a claimant has feared for their own life, sees a gruesome injury, or the death of another." (App. 24) The Deputy's statement is not based upon any binding precedent.

Ignoring the undisputed testimony regarding the exceedingly rare[20] content of this call, its duration,[21] and its intensity,[22] the Commissioner chose to rely on the conclusory testimony of three co-workers who testified that in their experience this call was not unexpected or unusual. Whether this testimony is substantial, however, must be judged in light of relevant evidence that detracts from the Agency's finding. Amazingly, in this case, the most important evidence that detracts from the testimony upon which the Agency relied comes from the very same witnesses. How can the co-workers' opinions that this call was not unexpected or unusual be judged "substantial" when these *same* witnesses testified that such calls constituted approximately .00002622% and/or .00008511% of the calls handled by 911 dispatchers? The rarity of such calls by definition makes them unexpected and unusual, even for 911 dispatchers. When the record is viewed as a whole, the Court must conclude the Agency's finding is not supported by substantial evidence, even when considering the nature of Tripp's occupation.

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[20] According Cawiezell, the percentage of calls that are dead infant calls is approximately **.00008511%**. (*See* App. 219) According to Pavlik, the percentage of calls that are dead infant calls is approximately **.00002622%**. (*See* App. 236-237) Officer Tripp – who has been a police officer for over 23 years in Scott County – has *never* responded to call involving a dead infant. (App. 175)

[21] A typical 911 emergency call is 35 seconds (App. 113), but Tripp was on the Dead Infant Call for over two minutes while the mother made "guttural, awful" screaming sounds. (App. 137, 189)

[22] None of the Employer's witnesses who testified the Dead Infant Call was not unusual or unexpected even mentioned the continuing nature of the traumatic event.

Furthermore, in its brief, the Employer attempts to argue that agency cases support the district court's ruling that the Commissioner's Decision was supported by substantial evidence. For example, the Employer attempts to distinguish *Schuchmann v. Dept. of Transportation*, File No. 5035676 (Arb. Dec. June 20, 2012) with the instant case. However, the facts of this case are actually more akin to *Schuchmann* than what is illustrated by the Employer.

As described in the arbitration decision, the claimant in *Shuchmann* was trained at the Iowa Law Enforcement Academy, had witnessed five prior traumatic work events involving 3 fatalities,[23] and his job responsibilities included helping law enforcement personnel at the scene of motor vehicle crashes. *Schuchmann v. Dept. of Transportation*, File No. 5035676, p. 2 (Arb. Dec. June 20, 2012).

Subsequently, the claimant then witnessed the aftermath of one particular motor vehicle crash, which he developed PTSD and filed a claim for workers' compensation benefits. *Id.* at 1-3. The claimant in *Schuchmann* was never personally in danger. *See id.* Despite having the subjective training, despite not being in personal danger, and despite the prior traumatic experiences, the Deputy found that the claimant met the *Brown* Standard. *Id.* at 7.

[23] "Likewise, claimant identified only five traumatic work events as having occurred from when he began his enforcement officer job in 1999 and spring 2008. Four were motor vehicle crashes, one of which resulted in two fatalities; one was a manhunt that ended with the suspect's death, apparently by smothering in a bin of oats." *Schuchmann v. Dept. of Transportation*, File No. 5035676, p. 2 (Arb. Dec. June 20, 2012).

When reviewing the facts, the claimant in *Schuchmann* and Tripp were both not in personal danger themselves, had both prior traumatic experiences due to the nature of their job, had both done training, and then, subsequently, one work event medically caused PTSD. The agency did not deny benefits for the claimant in *Schuchmann* merely because part of his job responsibilities was to help with accidents; rather, they looked to the rareness of traumatic experiences. *Id.* at 7.

CONCLUSION

WHEREFORE, Appellant Mandy Tripp respectfully requests that the Supreme Court REVERSE the District Court's Order as it was shown that the District Court and the Agency erred as a matter of law when they did not apply the correct legal standard for mental-mental injuries resulting in PTSD under Chapter 85 of the Iowa Code. Appellant requests that her mental-mental injury be found compensable as a matter of law and that her case be REMANDED to the Agency for the determination of benefits and remaining issues.

ATTORNEY'S COST CERTIFICATE

We hereby certify that the costs paid for printing Petitioner-Appellant's Reply Brief was the sum of $0.00.

BY: _/s/ Andrew W. Bribriesco_____
Andrew W. Bribriesco AT0010666
Gabriela Navarro AT0014136
2407, 18th Street, Suite 200
Bettendorf, IA 52722
Phone: (563) 359-8266
Fax: (563) 359-5010
Email: andrew@bribriescolawfirm.com

ATTORNEYS FOR PETITIONER-APPELLANT

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