IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 21-0841
SCOTT COUNTY NO. CVCV049025

MANDY TRIPP,
Petitioner-Appellant,

v.

SCOTT EMERGENCY COMMUNICATION CENTER and IOWA MUNICIPALITIES WORKERS' COMPENSATION ASSOCIATION,
Respondents-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY
THE HONORABLE MARK D. CLEVE

RESPONDENTS-APPELLEES SCOTT EMERGENCY COMMUNICATION CENTER AND IOWA MUNICIPALITIES WORKERS' COMPENSATION ASSOCIATION'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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ROUTING STATEMENT

Scott Emergency Communications Center and Iowa Municipalities Workers' Compensation Association respectfully request this Court transfer this appeal to the Iowa Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1101(3) because it presents issues concerning the application of existing legal principles and presents issues that are appropriate for summary disposition. Iowa R. App. P. 6.1101(3)(a), (b).

Contrary to Tripp's assertions, this case presents neither an issue of first impression nor a question of changing legal principles. This matter involves the legal causation test for a mental-mental workers' compensation injury – a test which was decided in *Brown v. Quik Trip Corp.*, 641 N.W.2d 725 (Iowa 2002). This is not a new issue for this Court, as demonstrated by the existence of *Brown*. This is also not a modification of legal principles, as the pertinent philosophies have not changed since *Brown* was decided. Accordingly, this matter is appropriately transferred to the Court of Appeals.

STATEMENT OF THE CASE

On November 15, 2018, Mandy Tripp (hereafter "Tripp") filed an Application for Arbitration and Medical Benefits, alleging a mental-mental injury sustained on September 30, 2018, at work. (Original Notice and Petition, App. 7). Scott Emergency Communications Center (hereafter "SECC") and Iowa Municipalities Workers' Compensation Association (hereafter "IMWCA") denied Tripp sustained a mental injury arising out of and in the course of her employment, as well as the nature and extent of any benefits to which she would be entitled. (Answer, App. 8). The matter came on for hearing before Deputy Workers' Compensation Commissioner James F. Christenson on October 21, 2019. (Arb. Dec. p. 1, App. 14). At hearing, it was disputed that Tripp sustained an injury that arose out of and in the course of employment on September 30, 2018, that the injury was a cause of temporary disability, that the injury is a cause of permanent disability, that Tripp is entitled to permanent partial disability benefits, and that the alleged disability is an industrial disability. (Hearing Tr. pp. 5-6, App. 166-67). The parties stipulated to a workers' compensation rate of $773.59 per week. (Hearing Tr. p. 5, App. 166).

At the hearing, Tripp testified on her own behalf, along with her husband, Dennis Tripp. (Hearing Tr. p. 3, App. 165). On behalf of SECC

and IMWCA, the Court heard testimony from Jill Cawiezell – 911 dispatcher for MEDIC EMS, Denise Pavlik - former director at SECC, and Tracey Sanders – deputy director at SECC. (Hearing Tr. p. 3, App. 165).

On February 28, 2020, the Deputy Commissioner entered his Arbitration Decision, finding Tripp failed to carry her burden of proof that she sustained an injury that arose out of and in the course of employment. (Arb. Dec. p. 12, App. 25). Accordingly, she was not entitled to any workers' compensation benefits. On March 16, 2020, Tripp filed a Motion for Rehearing and Modification of Order, which SECC and IMWCA resisted. (Mot. for Rehearing, App. 26; Resistance to Mot. for Rehearing, App. 35). The Deputy entered his Ruling on Application for Rehearing on March 24, 2020, denying Tripp's Motion. (Rehearing Dec., App. 42).

On March 25, 2020, Tripp filed a Notice of Appeal. (Not. of Appeal, App. 45). After briefing by both parties, the Workers' Compensation Commissioner entered his Appeal Decision on November 17, 2020. (Appeal Dec., App. 47). The Commissioner affirmed both the Arbitration Decision and Ruling on Application for Rehearing in their entirety. (Appeal Dec. p. 11, App. 57).

Tripp then filed a Petition for Judicial Review. (Pet. for Jud. Rev., App. 58). Following briefing and oral argument on the issues, Judge Mark

Cleve entered an Order on Judicial Review on June 11, 2021, which affirmed the Commissioner's decision in its entirety. (Ord. on Jud. Rev., App. 61). This appeal followed.

STATEMENT OF THE FACTS

At the time of hearing, Tripp was a 40-year-old college graduate with a B.A. in criminal justice from St. Ambrose. (Hearing Tr. pp. 40-41, App. 180-81). She started with the Davenport Police as a 911 operator on June 10, 2002, and worked there until the SECC was created to consolidate all of the Scott County dispatch centers into one entity. (Hearing Tr. p. 42, App. 182). She is presently a Public Safety Dispatcher at SECC. (Hearing Tr. p. 42, App. 182). As a dispatcher, Tripp's job involves answering all incoming emergency and nonemergency calls, dispatching police and fire in Scott County, and transferring emergency medical calls to MEDCOM. (Hearing Tr. p. 42, App. 182).

While at work on September 30, 2018, Tripp answered an incoming call from a mother whose baby had died. (Hearing Tr. p. 45, App. 185). The phone call lasted approximately two minutes. (Hearing Tr. p. 46, App. 186).

On October 8, 2018, Petitioner sent an email to her employer, stating she wanted to go see her personal counselor, rather than using EAP, to discuss the September 30, 2018 call. (Def. Ex. D-24, App. 149). On October 16, 2018, Petitioner saw Lisa Beecher, MS, LMHC. Ms. Beecher noted Petitioner's history of postpartum depression and sleep disorder, as

well as a history of seeking therapy for her postpartum depression after her son was born, when her second marriage was breaking up, and the year prior due to over-functioning and parenting issues. (JE 3-5, App. 155). Ms. Beecher further noted Petitioner was already taking Clonazepam for her sleep disorder. (JE 3-5, App. 155). At that time, Ms. Beecher diagnosed Petitioner with PTSD and adjustment disorder with anxiety. (JE 3-6, App. 156). Ms. Beecher filled out FMLA paperwork to allow Petitioner to take time off of work. Petitioner continued to see Ms. Beecher semi-regularly.

On November 19, 2018, Petitioner saw Robert Gillespie, Ph.D. He noted Petitioner's symptoms were consistent with PTSD. (JE 4-60, App. 159). He recommended continued therapy and a discussion about changing the frequency Petitioner took her Klonopin. (JE 4-60, App. 159). Petitioner again saw Dr. Gillespie on January 8, 2019. At that appointment, he noted Petitioner exhibited "significantly positive improvement with respect to her posttraumatic stress disorder," reported "significant decrease in her symptomatology," and was tolerating her return to work well. (JE 4-73, App. 160). At that time, she was "not having any flashbacks or significant intrusive ideation." (JE 4-73, App. 160). Petitioner informed Dr. Gillespie she had seen an audiologist recently, who diagnosed her with hyperacusis, which would account for some of her noise sensitivity. (JE 4-73, App. 160).

Dr. Gillespie also noted that her sleep was within normal limits, though she did have a disorder that caused sleep walking, but that was "not, however, related to her posttraumatic stress disorder." (JE 4-73, App. 160). On March 1, 2019, Petitioner again saw Dr. Gillespie, and it was noted she exhibited "significant positive improvement with respect to her posttraumatic stress symptoms", and she was "nobler [sic] experiencing nightmares or any intrusive trauma related ideation." (JE 4-81, App. 161). With regard to Petitioner's functional status, Dr. Gillespie noted she had no impairment related to employment/school, marital/partner, family, interpersonal, or physical health. (JE 4-84, App. 162). Dr. Gillespie opined Petitioner reached maximum medical improvement on May 30, 2019. (Cl. Ex. 3-14, App. 89).

ARGUMENT

I. THE DISTRICT COURT WAS CORRECT IN AFFIRMING THE AGENCY'S FINDING THAT THE LEGAL CAUSATION TEST FOR MENTAL-MENTAL INJURIES SET FORTH IN *BROWN V. QUIK TRIP CORP.* IS A SUBJECTIVE STANDARD.

a. Preservation of Error.

In her Brief, Tripp fails to address error preservation. However, SECC and IMWCA submit that the issue of whether the legal causation test is a subjective or objective standard was preserved by Tripp and ruled on in each prior judicial proceeding.

b. Standard of Review.

"The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of [the appellate court's] review in workers' compensation cases." *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). The standards of Iowa Code § 17A.10 are applied to the Agency's decision to determine whether this Court's conclusions are the same as those reached by the District Court. *Univ. of Iowa Hosp. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). As long as those findings are supported by substantial evidence in the record, this Court is bound by the Agency's determination of fact. *Meyer*, 710 N.W.2d at 218. Some discretion is given to the agency's application of law to fact, unless the decision is based on an

erroneous interpretation of law. *Bluestem Solid Waste Agency v. Nutz*, 720 N.W.2d 194 (Table), 2006 WL 1409136 at *2 (Iowa App. 2006).

Legal causation is based on the facts of a case and is, therefore, reviewed for substantial evidence rather than for correction of errors of law:

> Although the standard of legal causation involves an issue of law, *see Dunlavey*, 526 N.W.2d at 853, the application of that standard to a particular setting requires the commissioner to render an outcome determinative finding of fact. A court on judicial review is bound by that fact-finding if it is supported by substantial evidence.

Asmus v. Waterloo Cmty. Sch. Dist., 722 N.W.2d 653, 657 (Iowa 2006).

Evidence is substantial for purposes of reviewing the decision of an administrative agency when a reasonable person could find the evidence adequate to reach the same finding. *Second Injury Fund of Iowa v. Bergeson,* 526 N.W.2d 543, 546 (Iowa 1995); *Second Injury Fund of Iowa v. Shank,* 516 N.W.2d 808, 812 (Iowa 1994). The fact that two different conclusions can be drawn from the same evidence does not prevent the Agency's findings from being supported by substantial evidence. *Munson v. Iowa Dep't of Transp.,* 513 N.W.2d 722, 723 (Iowa 1994); *Reed v. Iowa Dep't of Transp.,* 478 N.W.2d 844, 846 (Iowa 1991). If the Commissioner has rendered a finding that the claimant's evidence is insufficient to support the claim under applicable law, that finding may only be overturned if the

contrary appears as a matter of law. *Ward v. Iowa Dep't of Transp.,* 304 N.W.2d 236, 238 (Iowa 1981); *Wetzel v. Wilson,* 276 N.W.2d 410, 412 (Iowa 1979); *Auxier v. Woodward State Hosp.–Sch.,* 266 N.W.2d 139, 144 (Iowa 1978).

c. The Agency Appropriately Determined that the Legal Causation Test for Mental-Mental Injuries is a Subjective Standard.

Tripp contends that an objective standard should be applied to determine whether the September 30, 2018, phone call was sudden, traumatic, and unexpected, and that Tripp's occupation and training should not be considered. A standard to be used in applying the *Brown* test has not been specifically delineated. However, the Commissioner and the District Court correctly determined the analysis in *Brown* indicates the legal causation test should be a subjective one and, accordingly, a person's occupation should be taken into account to determine what qualifies as an "unexpected cause" or "unusual strain."

Prior to *Brown*, mental-mental claims were analyzed using the *Dunlavey* standard. Under that standard, a claimant had to prove "a mental injury which was caused in fact by mental stimuli in the work environment." *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 847 (Iowa 1995). Legal causation under *Dunlavey* was determined based on whether a

claimant's stress was "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." *Id*. at 858.

In *Brown* – which involved a convenience store clerk who developed PTSD after witnessing a shooting and being robbed, both while working – the Commissioner and District Court applied the *Dunlavey* standard and determined Brown did not prove legal causation because he failed to introduce evidence showing the stress he experienced was greater than that of other workers employed in the "same or similar" job. On appeal, the Iowa Supreme Court reversed this conclusion and introduced a new standard.

In presenting this new causation test, the Court referenced two Wyoming Supreme Court cases. First, the Court discussed the origin of the *Dunlavey* "unusual stress" test – *Graves v. Utah Power & Light Co.*, 713 P.2d 187 (Wyo. 1986). Subsequent to *Graves*, the Wyoming Supreme Court found in favor of a claimant on a mental-mental claim, despite the fact that there was no testimony of similarly situated employees. *Johnson v. State ex rel. Workers' Comp. Div.*, 798 P.2d 323 (Wyo. 1990).

In *Johnson*, the claimant was a truck driver who lost control of his vehicle and narrowly avoided a collision. Although he had no physical

injuries, he developed insomnia and depression. The Court held: "While it may be normal for and expected of over-the-road truck drivers to encounter hazardous, wintery driving conditions on Wyoming highways, involvement in an accident when driving in those conditions or any weather conditions falls beyond any day-to-day stress and tensions. It was the accident and not the driving in hazardous conditions that caused Johnson's injuries." *Id.* at 326. Accordingly, it was unnecessary for Johnson to demonstrate his injury resulted from unusual stress because involvement in an accident is clearly a condition of greater magnitude than other day-to-day stresses.

The *Brown* Court explained the rationale of the Wyoming Supreme Court was additionally supported by Larson's Workers' Compensation Law, which provides:

> The least troublesome cases are those involving sudden fright and fear since this kind of experience would be rated unusual in comparison with any norm. 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.

Larson & Larson, *Larson's Workers' Compensation Law* § 44.05[4][a], 44-50 (2001).

With that, the *Brown* Court provided the new legal causation test to be applied in certain limited mental-mental claims: "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." *Brown* 641 N.W.2d at 729.

Missing from this test, though, is an explicit statement whether a subjective or objective standard should be used. In his ruling in this case, the Commissioner described the differences between an objective and subjective standard:

> Generally speaking, an objective standard is a legal standard that is based on conduct and perceptions external to a particular person. The objective standard requires the finder of fact to view the circumstances from the standpoint of the hypothetical reasonable person, without regard to the claimant's personal views or experiences. The subjective standard is a legal standard that is peculiar to a particular person and based on the person's individual view and experiences.

(Appeal Dec. p. 3, App. 49).

While the *Brown* Court did not explicitly state which standard is appropriate when scrutinizing legal causation, a standard can be gleaned from the Court's analysis. The *Brown* Court cited favorably to both the *Johnson* case and the aforementioned section of Larson's Workers' Compensation Law. Based on this, it is apparent the Court felt there are certain events that are so unexpected they would meet the *Brown* standard, no matter a claimant's occupation. Further, it is clear what qualifies as an

"unexpected cause" or "unusual strain" is specific to the individual and must be decided on a case-by-case basis. What is expected and usual in a workplace is dependent on the occupation or work. Therefore, a claimant's occupation is a factor that must be considered when determining what constitutes an unexpected cause or unusual strain. The Commissioner put it well:

> Whether the traumatic event at issue stems from an unexpected cause or an unusual strain is determined by a subjective standard that takes into account claimant's occupation. As evidenced by several agency decisions, there are certainly traumatic events that are so obviously traumatic, gruesome, or overwhelming, that evidence of an individual's day-to-day stresses will be largely irrelevant.

(Appeal Dec. pp. 10-11, App. 56-57).

Tripp uses an Illinois case, *Diaz v. Illinois Workers' Compensation Commission*, 989 N.E.2d 233 (Ill. App. 2013), to argue that an objective standard must be used to ensure that first responders have the ability to recover workers' compensation benefits for PTSD. However, in overturning the lower court's ruling and awarding the claimant benefits in that case, the appellate court in *Diaz* held: "Under the Commission's analysis it would be virtually impossible for police officers or others involved in dangerous occupations to qualify for a mental-mental claim." *Diaz*, 989 N.E.2d at 242. In reference to that ruling, the Commissioner held in the present case:

> The *Brown* standard does not pose an insurmountable, heightened standard for police officers or first responders. While this agency has not had the opportunity to address a substantially similar case, such a fact pattern would appear to meet the legal causation test under *Brown*.

(Appeal Dec. p. 10, App. 56). In fact, a basic review of Iowa cases shows that a first responder can be awarded workers' compensation benefits for PTSD when applying a subjective standard. In *Schuchmann v. Dept. of Transportation*, File No. 5035676 (Arb. Dec. June 20, 2012), the claimant was employed as an Iowa DOT motor vehicle enforcement officer. While performing his job, Schuchmann responded to a personal injury motor vehicle crash, and saw the charred remains of the driver of the vehicle. After that, Schuchmann was diagnosed with PTSD and depression. He was awarded workers' compensation benefits, even though he was a first responder with related training.

Examining the Iowa Supreme Court's analysis in *Brown* makes it clear the Court intended the legal causation test in a mental-mental case to be a subjective standard. First, the analysis of this issue is factual at its core and, thus, deference must be given to the Commissioner's findings of fact. Second, the Iowa Supreme Court provided inherently subjective terminology in the applicable *Brown* test (*e.g.,* "sudden traumatic nature," "unexpected cause," and "unusual strain") and granted the Commissioner deference in

determining the factual basis that would satisfy that standard. As the Commissioner aptly-noted, similar Agency decisions using a like-analysis have been upheld several times on appeal for this reason. Third, the prior decisions in this matter are strongly supported by the findings of fact in this case and the understanding that it is appropriate to apply the Court's fact-intensive directive and not, as Tripp asserts, interpret a statute that would result in a de novo review here. For these reasons, the finding of the Commissioner and the District Court that a subjective standard should be applied to the legal causation test must be upheld.

II. THE IOWA SUPREME COURT SHOULD NEITHER MODIFY NOR OVERTURN *BROWN V. QUIK TRIP CORP.*

a. Preservation of Error.

In her Brief, Tripp fails to address error preservation. However, SECC and IMWCA submit that the issue of modifying or overturning *Brown* was raised by Tripp in each prior judicial proceeding, though it was never explicitly decided by the Deputy, Commissioner, or District Court as they do not have authority to overturn precedent of the Iowa Supreme Court.

b. Standard of Review.

Tripp is asking this Court to modify or overturn its own decision. However, precedent should not be overturned lightly. Stare decisis "is the

preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). "Stare decisis is a foundation stone of the rule of law, necessary to ensure that legal rules develop 'in a principled and intelligible fashion.'" *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 798 (2014), quoting *Vasquez v. Hillery*, 474 U.S. 254, 265 (1986). For that reason, any departure from the doctrine "demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). This Court has held: "We reiterate that we 'do not overturn our precedents lightly and will not do so absent a showing the prior decision was clearly erroneous.'" *State v. Derby*, 800 N.W.2d 52, 69 (Iowa 2011), quoting *McElroy v. State*, 703 N.W.2d 385, 394-95 (Iowa 2005).

c. Tripp Has Not Presented a Valid Reason to Modify or Overturn Brown.

Tripp argues that this Court should modify or overturn the *Brown* standard. However, there is no need to do so. *Brown* has been the law in mental-mental workers' compensation cases since 2002, and there has been nothing to indicate that decision was erroneous such that the precedent should be overturned. The *Brown* standard neither presents an unattainable

standard for first responders nor conflicts with modern medical understandings of PTSD, as alleged by Tripp.

Tripp contends that *Brown* should be modified or overturned because it is nearly twenty years old and based on a Wyoming case decided approximately thirty-five years ago. The age of a particular rule or case law is not reason alone for an alteration. *Marbury v. Madison* was decided in 1803, and it is still good law. There must be special justification for overturning precedent, and that justification must go beyond the age of the case.

Tripp advocates that a claimant diagnosed with PTSD should be entitled to benefits as a matter of law, but fails to present any precedent for such a modification, instead pointing to the spirit of *Brown*. If the *Brown* Court intended to allow such entitlement, it would have carved out the exception. Rather, the Court specifically provided a test that should be used in mental-mental cases:

> 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.

Brown, 641 N.W.2d at 729. Tripp claims this standard should be modified for mental injuries resulting in PTSD because it is "incompatible with

modern medical understandings of PTSD." (Tripp Proof Brief, p. 44). However, she has presented no authority regarding those modern medical understandings. Further, she presented no testimony regarding such. In actuality, the DSM-5 (published in 2013 – post-*Brown*) simply provides more clarity for the provider than did the DSM-4 (published in 1992 – pre-*Brown*).

Tripp's contentions cause more concern when her specific diagnosis is considered. Tripp was first diagnosed with PTSD by Lisa Beecher, MS, LMHC, on October 16, 2018, and Ms. Beecher opined this was related to Tripp's work. (JE 3-6, App. 156). This is problematic for several reasons. First, Ms. Beecher, as a social worker and mental health counselor, is not qualified to diagnose PTSD. She might be qualified to counsel patients with that diagnosis, but no evidence was presented that would qualify her to actually make the diagnosis. In addition, under the DSM-5, symptoms of PTSD must last for more than one month before a diagnosis can be made. *See* American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 272 (5th ed., 2013). Ms. Beecher diagnosed Tripp with PTSD only 16 days after the event that allegedly caused her symptoms. As such, either Tripp could not yet have been diagnosed with PTSD from a phone call that had occurred less than 30 days prior, or Tripp's PTSD was

caused by an event that occurred prior to the September 30, 2018, phone call.

Tripp was also diagnosed with PTSD by Robert Gillespie, Ph.D, on November 19, 2018. However, the symptoms she described to him, which led to the diagnosis, did not accurately reflect Tripp's status. First, Dr. Gillespie relied on Tripp's description of sleep problems as part of his diagnosis: "The patient is reporting changes in her sleep pattern with significant difficulty getting to sleep, staying asleep early-morning waking. She is describing experiencing vivid dreams and trauma related nightmares." (JE 4-60, App. 159). However, Tripp had well-documented sleep disturbances prior to the September 30, 2018, phone call. Additionally, Dr. Gillespie relied on Tripp's reports of "increased social anxiety" in making his diagnosis. (JE 4-60, App. 159). However, around the same time, Tripp was starting her Rodan & Fields business, which required significant social interaction:

Q: Has she taken on any new jobs?
A: Yes.
Q: Can you tell us about that?
A: Sure. One of the ones she had decided to participate in was Rodan & Fields, which is kind of a higher end line of skin care products. That is, I suppose, like a direct sales type of position where you explain the products to people, let them try them out and then process their orders and things.
Q: Does she function as like an independent consultant?

A: Yes. I would say that's –
Q: And when did she start that job?
A: Probably a couple months after the incident here.
Q: Could it be she started this new venture in November or December of 2018?
A: It sounds about right. I don't know exactly, though.

(Hearing Tr. 28:19-29:13, App. 178-79). In addition to Rodan & Fields, Tripp also took on another job that requires social interaction – selling wine:

Q: And can you describe the sort of environment that you're in when you do –
A: The wine tasting is either in my home or a host home, if they prefer my house because I don't have small children or animals other than Milo. They order wine from the company. I pour it, explain the wine as they drink it and how to do a tasting. I have notes I follow. And then if they want to order wine, it's plugged into the system and then the company ships it directly to them.

(Hearing Tr. 58:4-14, App. 197). When an expert's opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. *Deaver v. Armstrong Rubber Co.*, 170 N.W.2d 455, 464 (Iowa 1969).

Finally, Tripp underwent an IME with Martin Carpenter, M.D., on July 30, 2019. Dr. Carpenter reviewed the records of Ms. Beecher and Dr. Gillespie. Tripp described her symptoms to Dr. Carpenter, and he relied heavily on those statements. In making his diagnosis, Dr. Carpenter specifically noted Tripp's "avoidance of situations where there are noises

that serve as a trigger such as avoiding children playing or avoiding any area where there are high-pitched and/or loud noises" and "diminished interest in participation in significant activities." (Cl. Ex. 5-33, App. 98). However, Tripp testified that she attended a Rodan & Fields convention in Nashville, which included loud noises and lots of people:

Q: And then do you attend conventions?
A: I just did my first one this September.
Q: And tell us about that.
A: It was in Nashville. It was at the Music City arena thingy that's there. I flew out on Wednesday. There was classes during the day and then team dinners, and then I flew home on Sunday. There was a gala on Saturday that I attended for approximately 30 minutes and had to leave.
Q: Now, I've watched one of these conventions on YouTube, or portions of it. It's like a concert almost, isn't it?
A: It's loud.
Q: It's loud and there's lots of lights; correct?
A: Yes.
Q: And their job is to get you fired up to sell product; right?
A: Yes.
Q: I was a little surprised, because this is no Avon convention, is it?
A: No.
Q: These people are serious about selling skin care products.
A: Yes.
Q: And how many people do you think were in attendance?
A: 10,000.
Q: And they're all in one large room?
A: Like a big convention center, yes.
Q: And you were able to handle that okay; is that right?
A: I wore my noise-canceling headphones and music earplugs at the same time.
Q: Then did you go out at night with friends and stuff?
A: We did dinner, uh-huh.

Q: Did you go to any bars and have drinks?
A: We did a pedal bar as a team where you pedal around Nashville on a bike, for lack of a better word, and then would stop off at bars.
Q: And that's like a – I think I've seen these before. You pedal and drink at the same time and somebody else drives; is that right?
A: There's – yeah. You have to pedal for the thing to move, and you have drinks. You have to provide your own drinks, and then, yeah, there's a driver.
Q: And you were able to participate in that?
A: I did. I wore my ear – my musicians earplugs.
Q: But your PTSD has not inhibited your ability to participate in these conferences; correct?
A: I still have to participate in life, so, no. I still am going to go and try and live a life.

(Hearing Tr. 77:4-79:12, App. 203-05). Dr. Carpenter relied on Tripp's statements regarding avoidance of noises and lack of participation in activities to make his diagnosis, and those statements were not accurate. Dr. Carpenter also relied on Tripp's statements regarding sleep disturbance in making his diagnosis. (Cl. Ex. 5-33, App. 98). However, it was well-documented that Tripp already had sleep disturbances prior to the September 30, 2018, phone call, and was taking medication for those issues.

More noteworthy is the premise on which Dr. Carpenter's diagnosis was based. Dr. Carpenter noted in his report that PTSD must follow traumatic exposure: "Ms. Tripp meets the DSM-V criteria for Posttraumatic Stress Disorder. One or more of the 'A' criteria are required. She meets

criteria A2 because she witnessed the actual event of a mother discovering her deceased child." (Cl. Ex. 5-32, App. 97). This is blatantly false, as Tripp did not, in any way, witness a mother discovering her deceased child. In fact, Tripp testified that she did not actually witness anything that day:

> Q: Now, during the phone call, this may sound silly, but your life was not in danger; correct?
> **A: No.**
> Q: And you did not actually witness the event with your own eyes; correct?
> **A: No.**

(Hearing Tr. 73:20-74:1, App. 200-01). Rather, the mother discovered her deceased child and then called 911 and spoke with Tripp. Instead of witnessing the mother discovering the deceased child, Tripp was only privy to the mother's reaction after the discovery of her deceased child.

Dr. Carpenter went on to say: "The exposure occurred over the phone, however, DSM-V allows for work-related traumatic exposures to occur through electronic media. In my opinion, telephone audio is electronic media and is sufficient to produce traumatic exposure." (Cl. Ex. 5-32, App. 97). Dr. Carpenter cited no source that identifies telephone audio as electronic media, and it is presumed that no such definition is provided in the Diagnostic and Statistical Manual. It is not within Dr. Carpenter's area of expertise to broaden the definition of electronic media. Black's Law

Dictionary defines electronic media as: "Any type of device that stores and allows distribution or use of electronic information. This includes television, radio, Internet, fax, CDROMs, DVD, and any other electronic medium. Contrast to print media." (*Electronic Media*, Black's Law Dictionary, https://thelawdictionary.org/electronic-media). Without citing to any source that defines telephone audio as electronic media, Dr. Carpenter cannot just enlarge the definition on his own. The entire basis of Dr. Carpenter's PTSD diagnosis is incorrect, and should be given little weight.

For the many reasons detailed above, the opinions of Ms. Beecher, Dr. Gillespie, and Dr. Carpenter regarding Tripp's PTSD diagnosis and its relation to the September 30, 2018, phone call, are not credible. If this Court were to adopt the presumption requested by Tripp, her questionable PTSD diagnosis would be all that is required to satisfy legal causation.

Tripp urges "if a worker proves she has PTSD caused by a work event, that worker should be deemed to have satisfied legal causation as a matter of law irrespective of the absence of similar stress on other employees and with no additional requirement to demonstrate the event was 'unexpected' or 'unusual.'" (Tripp Proof Brief, p. 49). In other words, 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. The District Court summed it up perfectly:

> [T]he conclusions Petitioner wishes to give conclusive weight to – that the dead infant call was sudden, traumatic, and unexpected – state legal conclusions, not medical conclusions. Petitioner's argument seeks to allow a medical expert to usurp the entirety of the Commissioner's fact-finding role. Such a result would be clearly inappropriate.

(Order on Jud. Rev. p. 12, App. 72).

Moreover, in examining Tripp's request for an automatic presumption of compensability, it is important to consider the basis for a rebuttable presumption.

> The law applicable to rebuttable presumptions is stated in 31A C.J.S. Evidence § 115 as follows: ***a disputable or rebuttable presumption is a species of evidence that may be accepted and acted on when there is no other evidence to uphond [sic] the contention for which it stands, or one which may be overcome by other evidence.***

In re Weems' Estate, 139 N.W.2d 922, 925 (Iowa 1966). Presumptions of the nature proposed by Tripp are generally set by the Legislature rather than by the Court.

> [T]he legislature has the right to say generally what rules of evidence shall apply. The rule is set forth in 16A C.J.S. Constitutional Law § 621, pages 814-816 inclusive: 'The legislature in its discretion may, without denial of due process of law, prescribe changes in the rules of evidence for the trial of civil cases, ***subject in all cases, however, to the limitation that it may not preclude a party from presenting the facts

> supporting his theory of the case. It may, for instance, create rebuttable presumptions, or destroy presumptions…'

Danner v. Hass, 134 N.W.2d 534, 543 (Iowa 1965) (overruled on other grounds). The undersigned have been unable to locate any case law that provides for a medical diagnosis equating to legal causation. Rather, such a presumption appears to be only statutory. *See, e.g.,* Iowa Code § 411.6(4)(c)(2) (2013) ("Disease under this subsection shall also mean cancer or infectious disease and shall be presumed to have been contracted while on active duty as a result of that duty"). This is indicative that rebuttable presumptions of the nature requested by Tripp are a function of the Legislature. If the Legislature wanted to enact the standard urged by Tripp, it could have done so long ago.

Tripp has failed to prevent a compelling argument to either modify or overturn *Brown*. Accordingly, the precedent should stand.

III. THE DISTRICT COURT CORRECTLY FOUND THE AGENCY'S DECISION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

a. Preservation of Error.

In her Brief, Tripp failed to address error preservation. However, SECC and IMWCA submit that the issue of whether the Agency's decision

was supported by substantial evidence was preserved by Tripp and ruled on in each prior judicial proceeding.

b. Standard of Review.

"The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of [the Supreme Court's] review in workers' compensation cases." *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). The standards of Iowa Code § 17A.10 are applied to the Agency's decision to determine whether this Court's conclusions are the same as those reached by the District Court. *Univ. of Iowa Hosp. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). As long as those findings are supported by substantial evidence in the record, this Court is bound by the Agency's determination of fact. *Meyer*, 710 N.W.2d at 218. Some discretion is given to the agency's application of law to fact, unless the decision is based on an erroneous interpretation of law. *Bluestem Solid Waste Agency v. Nutz*, 720 N.W.2d 194 (Table), 2006 WL 1409136 at *2 (Iowa App. 2006).

Evidence is substantial for purposes of reviewing the decision of an administrative agency when a reasonable person could find the evidence adequate to reach the same finding. *Second Injury Fund of Iowa v. Bergeson,* 526 N.W.2d 543, 546 (Iowa 1995); *Second Injury Fund of Iowa v. Shank,* 516 N.W.2d 808, 812 (Iowa 1994). The fact that two different

conclusions can be drawn from the same evidence does not prevent the Agency's findings from being supported by substantial evidence. *Munson v. Iowa Dep't of Transp.,* 513 N.W.2d 722, 723 (Iowa 1994); *Reed v. Iowa Dep't of Transp.,* 478 N.W.2d 844, 846 (Iowa 1991). If the Commissioner has rendered a finding that the claimant's evidence is insufficient to support the claim under applicable law, that finding may only be overturned if the contrary appears as a matter of law. *Ward v. Iowa Dep't of Transp.,* 304 N.W.2d 236, 238 (Iowa 1981); *Wetzel v. Wilson,* 276 N.W.2d 410, 412 (Iowa 1979); *Auxier v. Woodward State Hosp.–Sch.,* 266 N.W.2d 139, 144 (Iowa 1978).

c. The Commissioner's Decision that Tripp Failed to Meet the Brown Standard is Supported by Substantial Evidence.

In order to prove legal causation for a mental-mental injury, "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." *Brown*, 641 N.W.2d at 729. The Commissioner correctly determined that Tripp failed to establish legal causation for her alleged injury of September 30, 2018.

The record demonstrates that the September 30, 2018, phone call was not a manifest happening of a sudden traumatic nature from an unexpected strain or unusual cause as required to meet the *Brown* standard. Tripp herself testified that the phone call was not unexpected:

Q: Would you agree to take a phone call such as the one you did, that's not unexpected, is it?
A: To take a distraught phone call is not unexpected.

(Hearing Tr. 71:4-8, App. 198). She further testified about other similar phone calls she has handled:

Q: And you said earlier that you've handled several other dead infant phone calls; correct?
A: Yes.
Q: Were the people on the other end of the line distraught?
A: Sometimes.
Q: Crying?
A: No.
Q: They were never crying?
A: They were not.
Q: Have you handled other phone calls where the person is crying?
A: Yes.
Q: Almost incoherent?
A: Yes.
Q: And that happens in the life of a 911 operator every day, doesn't it?
A: Potentially, yes.
Q: That's not unexpected; fair to say?
A: Fair to say.
Q: And it's not unusual; fair to say?
A: Fair to say.
Q: And I think since this happened you've handled other traumatic-type phone calls; correct?
A: Correct.

Q: And I think you handled the suicide of a teenager?
A: I did.
Q: And you were able to do that successfully, weren't you?
A: Yes.

(Hearing Tr. 74:2-75:8, App. 201-02). Tripp's own testimony invalidates her argument that the September 30, 2018, phone call was sudden or unusual in any way – it was simply one of many difficult calls that a 911 dispatcher handles on a daily basis.

Jill Cawiezell, a 911 dispatcher for MEDIC EMS, also confirmed that the September 30, 2018, call was not out of the ordinary:

Q: Have you handled infant death calls in the past?
A: Yes.
Q: Do you know approximately how many?
A: Probably in my tenure, probably about 12.
Q: So this is not unusual; is that fair to say?
A: No.
Q: I mean, that's fair to say?
A: Right.
Q: It's not an unusual phone call.
A: Right.
Q: And you as a 911 operator are sitting there, and you know that your job is to take emergency phone calls; correct?
A: Correct.
Q: So would you consider this a sudden event, the phone call?
A: No.
Q: Would you consider the person on the other end of the line who was distraught, was this unusual?
A: No.
Q: Was this unexpected?
A: No.
Q: And that is based upon your history, your work as a 911 operator; is that fair to say?

A: **Yes.**
Q: Have you handled worse phone calls?
A: **Yes.**

(Hearing Tr. 98:5-99:10, App. 214-15). Ms. Cawiezell reiterated her opinions later in her testimony:

Q: Of the phone calls you take, how many times do you deal with distraught people?
A: **A lot.**
Q: Daily?
A: **Yes.**
Q: Where you have to calm someone down and have them give you information?
A: **Yes.**
Q: Is that the type of phone call that you heard when you listened to the audio recording?
A: **Yes.**
Q: So again, in your judgment was that phone call unusual?
A: **No.**
Q: Was it unexpected?
A: **No.**
Q: And it wasn't sudden, was it?
A: **No.**

(Hearing Tr. 113:13-114:5, App. 221-22). Denise Pavlik, former director at SECC, also testified that the September 30, 2018, call was neither unexpected nor unusual:

Q: And so you heard the phone call; correct?
A: **Yes.**
Q: And it's a mother calling in about her child that had died; correct?
A: **Yes.**
Q: Did you find the phone call unusual?
A: **No.**

Q: Did you find the phone call unexpected, the tone of the phone call unexpected?
A: No.
Q: In fact, that's what you would expect from a distraught mother; is that fair to say?
A: Yes.
Q: And there was nothing sudden about the phone call; is that fair to say?
A: Yes.
Q: Because you're sitting there as a 911 operator ready to take emergency phone calls; correct?
A: Correct.

(Hearing Tr. 123:1-21, App. 228). Finally, Tracey Sanders, deputy director at SECC, testified that there was nothing sudden about the call on September 30, 2018:

Q: Now you listened to that phone call; correct?
A: Correct.
Q: And the woman on the other end of the line was distraught and upset; correct?
A: Correct.
Q: Did you find anything about that phone call unusual?
A: No.
Q: Did you find anything about that phone call unexpected?
A: No.
Q: And it wasn't sudden either, was it?
A: No.
Q: Is that the type of phone calls that a 911 operator deals with day in, day out?
A: Unexpected and different, and there is no normalcy to it, yes.

(Hearing Tr. 139:23-140:15, App. 238-39). The testimony of Tripp herself, combined with that of Ms. Cawiezell, Ms. Pavlik, and Ms. Sanders,

demonstrates that the phone call on September 30, 2018, was not a manifest happening of a sudden traumatic nature from an unexpected cause or unusual strain. As Deputy Christenson put it, "[g]iven the nature of the job of a 9-1-1 dispatcher, taking a call regarding a dying or a dead infant cannot be said to be unexpected or unusual." (Arb. Dec. p. 11, App. 24).

Tripp has likened her claim to that made in *Schuchmann v. Dept. of Transportation*, File No. 5035676 (Arb. June 20, 2012). However, that matter is easily distinguished from the one at hand. *Schuchmann* involved a Claimant employed as an Iowa DOT motor vehicle enforcement officer. While performing his job, Schuchmann responded to a personal injury motor vehicle crash, and saw the charred remains of the driver of the vehicle. After that, Schuchmann was diagnosed with PTSD and depression. With only the basic facts, *Schuchmann* may seem similar to the present case. However, there are two very important differences.

First, Schuchmann actually witnessed, in person, the charred remains in the vehicle. Tripp did not witness anything in person, but instead spoke on the telephone with the mother who had already discovered her deceased baby.

The other, and more noteworthy, difference between the two cases is the requirements of the jobs of the two claimants. In *Schuchmann*, the job

description stated that a motor vehicle officer was responsible for enforcing state laws and federal regulations on commercial vehicles by inspecting commercial vehicles. Not included in the job description, but performed when necessary, was providing assistance at the scene of motor vehicle crashes. In that case, Deputy Walleser specifically noted:

> The absence of any express statement of that duty in the definition of DOT motor vehicle officer suggests that providing such assistance was not a daily duty of enforcement officers. Indeed, providing assistance to motorists and other peace officers are classified as special projects to be performed as assigned…

Schuchmann at *2. In making his decision, the Deputy held:

> Claimant's being at the scene of a motor vehicle accident as he was in March 24, 2008 was not per se an unusual event. Being at the scene of a motor vehicle accident was not an atypical stressor for other peace officers or even for other DOT motor vehicle enforcement officers performing their incidental duties of assisting with motor vehicle crashes and other public emergencies. Notwithstanding that fact, viewing the remains of a body "charred from mid chest to the top of the head" is a manifest happening that even seasoned peace officers do not routinely encounter and do not expect to encounter routinely. It is a manifest happening of a sudden traumatic nature and certainly constitutes an unusual strain.

Schuchmann at *16. However, Tripp's situation in the matter at hand is entirely different from that in *Schuchmann*. The second essential function listed in the job description for Public Safety Dispatcher – SECC is: "Answers incoming emergency calls for service and obtains required

information for a safe, efficient emergency response. Enters all information regarding the incident into the Computer Aided Dispatch System." (Def. Ex. B-2, App. 141). Specifically listed in the job description is the statement that someone in Tripp's position is expected to answer and handle emergency calls. That is exactly what Tripp did on September 30, 2018, and exactly what she has done at work every shift before and after that day. Tripp and her coworkers all testified, as detailed above, that handling emergent and traumatic calls, like the one on September 30, 2018, is something they do every single day.

There is a line of Iowa workers' compensation decisions, decided based on *Brown*, that determined legal causation was met when a claimant's life and physical wellbeing were in jeopardy, someone else was in imminent danger, or claimant witnessed a gruesome or ghastly injury. *See Everhart v. Clarinda Correctional Facility*, File No. 5007651 (App. Sept. 30, 2005); *Mills v. Walmart*, File No. 5033095 (Arb. Sept. 27, 2011); *Christensen v. Pottawattamie County*, File No. 5051440 (Arb. March 23, 2017). Such a situation does not exist in the present case. Tripp herself testified that she was not in any danger and that she didn't witness anything with her own eyes:

Q: Now, during the phone call, this may sound silly, but your life was not in danger; correct?
A: No.
Q: And you did not actually witness the event with your own eyes; correct?
A: No.

(Hearing Tr. 73:20-74:1, App. 200-01). Accordingly, none of those scenarios are comparable to the case at hand. Deputy Christenson held:

> Iowa cases where a claimant has been found to have a mental/mental injury under the *Brown* standard appear to be situations where a claimant has feared for their own life, sees a gruesome injury, or the death of another. That is not the fact pattern in this case.

(Arb. Dec. p. 11, App. 24). The Commissioner affirmed and adopted that holding. (App. Dec. p. 2, App. 48).

The present case is more akin to the matter of *Johannsen v. Midwest Contractors, Inc.*, File No. 5013120 (Arb. March 7, 2006). In that case, Johannsen was employed as a flagger and laborer, and her primary task was to help insure the safety of a crew while repairing a road. While working as a flagger, Johannsen witnessed a motor vehicle collision involving a vehicle she had flagged to stop. She was later diagnosed with PTSD, and her treating doctors determined the PTSD was a result of witnessing the collision. At hearing, testimony was provided that flaggers on road construction crews do witness accidents. An owner and a supervisor of the

employer both testified that flagging is dangerous work and that motor vehicle accidents can and do happen in construction zones. The Deputy found "[g]iven the nature of flagging work as established by evidence and the claimant's own prior experiences while flagging, witnessing a motor vehicle accident cannot be deemed an unexpected cause or unusual strain. While the motor vehicle accident on September 4, 2003, might have been sudden and traumatic, it was not unexpected in this line of work. The claimant has failed to show legal causation based on the *Brown* test." The deputy further found that Johannsen could not meet the legal causation of *Dunlavey*. Accordingly, Johannsen was awarded nothing. The facts and circumstances in *Johannsen* are quite similar to those in the case at hand, particularly given the testimony about the frequency with which employees in a given position have had experiences similar to that of Tripp. The same result was rightfully reached in this matter as was reached in *Johannsen*.

For someone employed as a public safety dispatcher, nothing about the September 30, 2018, call was sudden. Nothing about the call was unexpected. Nothing about the call was unusual. Claimant failed to prove legal causation. The Commissioner's Appeal Decision was supported by substantial evidence and was properly affirmed by the District Court.

CONCLUSION

The District Court properly affirmed the Agency's findings in this case. A subjective standard was appropriately applied in determining legal causation pursuant to *Brown*, there is no reason to modify or overturn *Brown*, and the findings of the Commissioner in denying Tripp's claim were supported by substantial evidence. Accordingly, SECC and IMWCA respectfully request this Court uphold the decision of the District Court to affirm the Agency.

Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

The Respondents-Appellees Scott Emergency Communication Center and Iowa Municipalities Workers' Compensation Association request oral argument on all issues presented herein.

Respectfully submitted,

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CERTIFICATE OF COST

The undersigned hereby certify that the cost of printing this document was $0.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 8,225 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14 point.

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PROOF OF SERVICE

The undersigned hereby certifies that the foregoing Appellees' Final Brief was served upon the attorneys of record listed below by electronic filing and electronic delivery to the parties via the EDMS system on the 4th day of October, 2021.

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CERTIFICATE OF FILING

The undersigned hereby certify that the foregoing Appellees' Final Brief was filed with the Iowa Supreme Court by electronically filing the same on the 4th day of October, 2021.

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