**IN THE IOWA SUPREME COURT**

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APPEAL NO. 21-0777

POLK COUNTY CVCV 060899
IOWA DIVISION OF WORKERS' COMPENSATION
5066270

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ROSA CHAVEZ,

*Claimant/Petitioner/Appellant*

vs.

MS TECHNOLOGY, LLC and WESTFIELD INSURANCE COMPANY,

*Respondents/Defendants/Appellees*

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APPEAL FROM THE DISTRICT COURT FOR POLK COUNTY HON. JUDGE SARAH CRANE

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# BRIEF OF AMICUS CURIAE

IOWA FEDERATION OF LABOR, AFL-CIO

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1. Whether the District Court erred in holding that Claimant's rotator cuff injury was a "shoulder" injury under the newly enacted Iowa Code section 85.34(2)(n) (2017), rather than a whole body injury under Iowa Code section 85.34(2)(v) (2017).

## Authorities

### CASES

*New York Cent. R. Co. v. White*, 37 S.Ct. 247, 243 U.S. 188 (1917)
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P. Blake Keating, "Historical Origins of Workmen's Compensation Laws in the United States: Implementing the European Social Insurance Idea," 11 Kan. J.L. & Pub. Pol'y 279 (Winter 2002)
United States Department of Labor, "Does the Workers' Compensation System Fulfill its Obligations to Injured Workers," 2016 at 2-3 at https://www.dol.gov/sites/dolgov/files/OASP/files/WorkersCompensationSystemReport.pdf (accessed August 5, 2021)
United States Government Accountability Office, "Workplace Safety and Health: Additional Data Needed to Address Continued

Hazards in the Meat and Poultry Industry," 2016 at
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"Prevention of Musculoskeletal Injuries in Poultry Processing," 2013 at
https://www.osha.gov/sites/default/files/publications/OSHA3213.pdf
United States Occupational Safety and Health Administration,
"Safety and Health Guide for the Meatpacking Industry," 1988 at
https://www.osha.gov/sites/default/files/publications/osha3108.pdf
(accessed August 5, 2021)

## INTEREST OF AMICUS CURIAE

Amicus Curiae, the Iowa Federation of Labor, AFL-CIO ("Federation"), is a federation of approximately 560 labor unions throughout Iowa representing over 50,000 public and private sector employees, including workers engaged in beef and pork processing. Of the approximately 560 labor organizations affiliated with the Federation, most, if not all of the employees represented by the affiliated labor organizations are covered by Iowa's Workers' Compensation statutes.

## STATEMENT OF THE CASE

The Federation concurs in the and adopt the Statement of Facts set out at pages fourteen through fifteen of Claimant/Plaintiff/Appellant's Brief submitted to this Court. The Federation sets out the following additional facts.

Meatpacking and poultry processing workers experience high rates of injury as compared to workers in other manufacturing and manual labor

industries, even considering underreporting and the bias associated with employer-provided data. *See*, United States Government Accountability Office, "Workplace Safety and Health: Additional Data Needed to Address Continued Hazards in the Meat and Poultry Industry," 2016 at https://www.gao.gov/assets/gao-16-337.pdf (accessed August 5, 2021). Meatpacking and poultry processing requires repetitive, forceful handling of hard meat with sharp knives, and awkward postures, repetitive motions, and heavy lifting. These increase the risk of injury, notably musculoskeletal disorders. *Id*. *See also*, United States Occupational Safety and Health Administration, "Prevention of Musculoskeletal Injuries in Poultry Processing" 2013 at https://www.osha.gov/sites/default/files/publications/OSHA3213.pdf (accessed August 5, 2021). Rotator cuff injuries in particular are a known occupational hazard. *See*, United States Occupational Safety and Health Administration, "Prevention of Musculoskeletal Injuries in Poultry Processing" 2013 at https://www.osha.gov/sites/default/files/publications/OSHA3213.pdf (accessed August 5, 2021).

## STATEMENT REGARDING IOWA R. APP. P. 6.906(4)(d)

Pursuant to Iowa R. App. P. 6.906(4)(d), none of the parties to this proceeding participated in the authorship or preparation of this Brief of Amicus. Further, the authoring and preparing of this Brief of Amicus was funded solely by the Amicus.

## ARGUMENT

### I. THE PURPOSE OF IOWA'S WORKERS' COMPENSATION STATUTE IS SERVED BY A DECISION FINDING CLAIMANT'S ROTATOR CUFF INJURY TO BE A BODY OF THE WHOLE INJURY UNDER IOWA CODE SECTION 85.34(2)(V).

#### A. The Establishment of a Bright-Line Rule Effectuates the Purpose for the Enactment of Iowa's Workers' Compensation Statute.

The Federation urges the establishment of a bright-line rule finding that the glenohumeral joint constitutes the "shoulder" under Iowa Code section 85.34(2)(n) (2017) would effectuate the purpose of Iowa's Workers' Compensation statute. Significantly, the 1913 enactment of the Iowa Workers' Compensation statute in Iowa brought certainty to employees and employers regarding the method by which to compensate employees injured through their employment. For the reasons set forth below, the bright-line rule advocated by Claimant in this matter regarding a body as a whole injury under Iowa Code section 85.34(v) (2017) would effectuate the original intent

of the Iowa Workers' Compensation statute by maintaining the so-called "grand bargain" of workers' compensation, and continuing the certainty inherent in the workers' compensation system upon which employees and employers rely. Under the "grand bargain," employees agreed to give up their rights to sue employees for workplace injuries, and employers agreed to assume responsibility for workplace injuries under a "no-fault" insurance system.

Prior to the 1913 enactment of Iowa's Workers' Compensation statute, an employee's sole remedy for on-the-job injury was to sue the employer, which brought uncertainty to the employee, and resulted in burdensome litigation. P. Blake Keating, "Historical Origins of Workmen's Compensation Laws in the United States: Implementing the European Social Insurance Idea," 11 Kan. J.L. & Pub. Pol'y 279, 280 (Winter 2002). There were also practical problems associated with bringing suit. First, at a basic level, if the employee could not continue to work as a result of the injury, the employee did not have income to support themselves or their family. Second, in the absence of income, the employee also was left without adequate means to obtain medical treatment. Finally, bringing suit against one's employer was also largely ineffective. *Id.* Employers often succeeded with technical defenses, there were substantial hearing delays, and it was

difficult to convince fellow workers to testify on behalf of an injured party. *Id*. Moreover, litigation expenses made it more difficult for injured employees to seek redress through the courts. *Id*. Simply put, prior to the enactment of Iowa's Workers' Compensation statute, employees injured on the job faced an uncertain medical and financial future.

Employers likewise faced uncertainty prior to the enactment of the Iowa Workers' Compensation statute. While employers raised numerous defenses in common law actions, they faced the uncertain variable of juries and factfinders who prescribed widely varied amounts of recovery if the employer was found liable. 11 Kan. J.L. & Pub. Pol'y 279 at 297. For instance, the loss of an arm or eye may have resulted in one damages award for one injured employee and an entirely different amount for the next. Uncertainty for the employer and the employee was inherent in the pre-workers' compensation world.

As a result, many states began to enact workers' compensation statutes beginning in 1911. The purpose of the workers' compensation statutes was to enact a "grand bargain" that would bring clarity and certainty to both parties. To this end, the statutes sought to eliminate the causes of uncertainty:

> Workers' compensation sought to reverse such problems, in addition to eliminating the common

> law issue of "fault." Provision was made for a fixed scale of benefits for each type of injury. Wasteful litigation would be eliminated for there was nothing to litigate; certainty of payment was assured. The practice of preventative measures, medical services, and rehabilitation would all be assured by law. 11 Kan. J.L. & Pub. Pol'y 279 at 300.

Thus, the enactment of workers' compensation statutes, such as the statute enacted by the Iowa legislature in 1913, established a system designed to eliminate the uncertainty of both the employee and employer and to bring clarity.

This no-fault system recognized that injuries do occur in the workplace. As such, courts recognized that a purpose of the workers' compensation statutes was to allocate the burden of those injuries to industry itself because the risk of injury arises out of the employment of the employee by the employer. The United States Supreme Court said as much in *New York Cent. R. Co. v. White*, 37 S.Ct. 247, 243 U.S. 188 (1917), when examining the constitutionality of New York's newly adopted workers' compensation statute. In doing so, the Court noted the following:

> In excluding the question of fault as a cause of the injury, the act in effect disregards the proximate cause and looks to one more remote, - the primary cause, as it may be deemed, - and that is, the employment itself. *Id*. at 205.

The Iowa Supreme Court made a similar finding ten years later in *Tunnicliff v. Bettendorf, et. al.*, 204 Iowa 168, 214 N.W. 516 (Iowa 1927). In *Tunnicliff*, the Court stated:

> It is the very spirit of the Workmen's Compensation Act, the fundamental idea that is its basis, that the disability of a workman resulting from an injury arising out of and in the course of employment is a loss that should be borne by the industry itself as an incident of operation, in a sense an item of the cost of production, and as such passed on to the consumer of the product and not suffered alone by the workman or the employer, depending on individual fault or negligence. *Id*. at 517-18 (internal citations omitted).

By 1927, then, it was evident that the purpose of the establishment of workers' compensation statutes, including Iowa's statute, was to bring certainty to both the employee and employer and require the cost of workplace injuries be borne by industry itself.

Recent years have seen significant changes to state workers' compensation laws, procedures, and policies, "which have limited benefits, reduced the likelihood of successful application for workers' compensation, and/or discouraged injured workers from applying for benefits." *See*, United States Department of Labor, "Does the Workers' Compensation System Fulfill its Obligations to Injured Workers?" 2016 at 2-3, available at https://www.dol.gov/sites/dolgov/files/OASP/files/WorkersCompensationSy

stemReport.pdf (accessed August 5, 2021). This "result[s] in the transfer of the economic cost of occupationally-caused or aggravated injuries and illnesses to families, communities and other benefit programs." *Id*. at 2-3. These changes, including Iowa's 2017 reform that left "shoulder" undefined, further undermine the certainty that the 1913 statute secured.

Given the foregoing, the Federation argues that anything less than a bright-line rule defining the term "shoulder" as the glenohumeral joint will not effectuate the purpose of the Iowa Workers' Compensation statute. As argued by Claimant in her Brief, at pages twenty-four to twenty-six, a clear, bright-line definition of the term "shoulder" as the glenohumeral joint serves both the legislature's goal of decreasing litigation and the underlying purpose of the statute, which is to bring certainty and clarity to litigants.

The Federation is concerned that workers, represented by organized labor, – and the employers with whom organized labor has collective bargaining agreements, – will undertake costly, burdensome litigation without a bright-line rule finding that the glenohumeral joint is the shoulder as the term is used in Iowa Code section 85.34(2)(n). Whereas, a finding that the glenohumeral joint is the "shoulder" would serve the "grand bargain" of workers' compensation – the compromise struck between the

employer and employee when Iowa's Workers' Compensation statute was enacted.

The glenohumeral joint is the most obvious and easiest point of demarcation when factfinders must determine the nature and extent of an injury and the appropriate compensation. Specifically, because the arm - a separate scheduled member - is connected to the glenohumeral joint, there must be a basis to determine where the arm ends and the "shoulder" begins. A decision, then, establishing that the glenohumeral joint is the point of demarcation does just that – it creates a clear marker that separates the arm and the "shoulder."

Injuries beyond the glenohumeral joint and more proximal to the employee's trunk would also benefit from a decision establishing the glenohumeral joint as the point of demarcation. Injuries more proximal to the employee's trunk past the glenohumeral joint, then, should constitute "body as a whole" injuries under Iowa Code section 85.34(2)(v) (2017). Indeed, muscle strains and low back injuries are other known occupational hazards for the Federation's meatpacking and poultry processing worker members. *See*, United States Occupational Safety and Health Administration, "Prevention of Musculoskeletal Injuries in Poultry Processing" 2013 at

https://www.osha.gov/sites/default/files/publications/OSHA3213.pdf (accessed August 5, 2021); United States Occupational Safety and Health Administration, "Safety and Health Guide for the Meatpacking Industry" 1988 at https://www.osha.gov/sites/default/files/publications/osha3108.pdf (accessed August 5, 2021). Confirmation that the glenohumeral joint constitutes the "shoulder" establishes a point of clear demarcation and, by extension, an easier assessment of the monetary amount owed to the injured employee without the need for further litigation. This would effectuate the statute's purpose by providing certainty to all parties.

The Federation submits a bright-line rule establishing the glenohumeral joint as the "shoulder," as contemplated by Iowa Code section 85.34(2)(n) 2017, provides the certainty expected by employees and employers with the enactment of the Iowa Workers' Compensation statute in 1913. As noted above, one of the primary purposes of enacting workers' compensation statutes was to avoid costly litigation. Only a clear, bright-line rule establishing the glenohumeral joint as the "shoulder" provides this. Consequently, for the reasons set forth above, the Federation urges the Court to issue a decision finding that the glenohumeral joint constitutes the "shoulder" as used in Iowa Code section 85.34(2)(n) (2017).

### B. The Establishment of a Bright-Line Rule Protects Iowa's Social Safety Net and Incentivizes Employers to Make Workplaces Safer.

The Federation argues the establishment of a bright-line rule finding that the glenohumeral joint constitutes the term "shoulder" under Iowa Code section 85.34(2)(n) (2017) protects Iowa's social safety net and incentivizes employers to make safer workplaces. As noted above, with the enactment of workers' compensation statutes across the country, including in Iowa, courts recognized that the costs associated with workplace industry should be borne by industry itself. By making workplace injuries a cost of doing business, workers' compensation statutes help keep injured workers from having to rely on social safety nets due to temporary or permanent incapacitation, and encourage employers to find safer ways in which to have their employees work.

Recent research reflects that because of cuts to state workers' compensation benefits:

> [E]mployers now provide only about 20 percent of the overall financial cost of occupationally caused injuries and illnesses. Costs are instead shifted away from employers, often to workers, their families and communities. Other social benefit systems – including Social Security retirement benefits, Social Security Disability Insurance, Medicare, and, most recently, the Affordable Care Act – have expanded our social safety net, while the workers' compensation safety net has been

> shrinking. There is now growing evidence that costs of workplace-related disability are being transferred to other programs, placing additional strains on programs at a time when they are already under considerable stress. As the costs of work injury and illness shifts onto workers, their families and other benefit programs, high hazard employers have fewer incentives to eliminate workplace hazards and actually prevent injuries and illnesses from occurring. Under these conditions, injured workers, their families and taxpayers subsidize unsafe employers. United States Department of Labor, "Does the Workers' Compensation System Fulfill its Obligations to Injured Workers?" 2016 at 5-6, available at https://www.dol.gov/sites/dolgov/files/OASP/files/WorkersCompensationSystemReport.pdf (accessed August 5, 2021).

A decision finding that the glenohumeral joint constitutes the "shoulder" under Iowa's Workers' Compensation statute protects Iowa's social safety net and encourages workplace safety.

In 2017, when the Iowa legislature amended Iowa's Workers' Compensation statute, the legislature did not simply amend the statute to include the term "shoulder" as a scheduled member. Rather, the legislature also amended Iowa Code section 85.34(2)(u), which is now found at Iowa Code section 85.34(2)(v) (2017). Under Iowa Code section 85.34(2)(v) (2017), when an employee suffers an injury to the body as a whole, if the employee remains employed by the employer at the same wage rate or a greater wage rate, the employee only receives the functional impairment rating as compensation for the injury. This remains the case unless the

employer terminates the employee's employment. Thus, while the legislature placed the "shoulder" on the schedule, the legislature also created a financial incentive for employers to keep injured employees employed. The legislature's decision to take such action is a recognition that financial incentives are needed to help ensure the continued employment of injured workers, if medically possible, and to encourage employers to implement safety measures to decrease workplace injuries.

The creation of a bright-line rule defining the "shoulder" as the glenohumeral joint, then, helps accomplish the legislature's goal of ensuring that injured workers are not simply left to fend for themselves or seek help through Iowa's social safety net. For example, in this case, if the term "shoulder" is not limited to the glenohumeral joint, it is not difficult to imagine the Respondent simply finding a legal means to terminate Claimant's employment. Indeed, the Respondent would not have a financial incentive to keep the Claimant employed from a worker's compensation perspective. Put another way, an expansive definition of the term "shoulder" incentivizes the employer, if the employer so chooses, to find a legal mechanism by which to rid itself of an employee with a "shoulder" injury and replace such employee with a person who is injury-free.

Depending upon the nature and scope of the injury, coupled with the employee's work history and educational level, such action could have devastating consequences for the employee. For example, if the employee is an older worker, with a limited skill set, an educational level of a high school diploma or less, and has only worked in manual labor jobs during the employee's adult life, it may be very difficult for the employee to find suitable work consistent with the employee's skill set, experience, and educational level. The resulting loss of income and inability to find suitable work would likely result in the former employing having to avail himself or herself of either or both public and private charity to survive. Clearly, the purpose of the creation of Iowa's Workers' Compensation statute was to avoid such results. The cost of the injury is to be borne by industry itself rather than solely by the individual employee or social safety nets.

Conversely, if the term "shoulder" is limited to the glenohumeral joint, and injuries proximal to the trunk do not fall within the definition of the term, such as the injury in this case, the incentive exists for the employer to find a way to maintain the employee's employment. Then, despite an employee's age, educational level, or job experience, the employee will not bear the brunt of the loss, and the employer could not simply "externalize" the cost.

Such an outcome is exactly what the Legislature intended with its 2017 amendments to Iowa's Workers' Compensation statute. If the legislature intended to provide a more expansive definition of the term "shoulder," it would not have incentivized employers to maintain the employment of employees who suffered non-scheduled member injuries. Iowa Code section 85.34(2)(v). Simply put, the addition of the term "shoulder" to the list of scheduled member injuries must be read in conjunction with the decision to incentivize employers to continue the employment of employees who suffer non-scheduled injuries.

Relatedly, an expansive definition of the term "shoulder" fails to incentivize employers to make workplaces safer. If an employer does not have to compensate employees for injuries proximal to but beyond the glenohumeral joint as "body as a whole" injuries, and there exists no financial incentive to keep the injured employee employed, there also does not exist a financial incentive to find a safer method by which to perform the work. The creation of the workers' compensation system in Iowa and other states provided employers, in addition to certainty regarding liability, a financial incentive to make the workplace safer. A broad definition of the term "shoulder" does away with this financial incentive to make workplaces safer if there is no financial incentive to keep employees employed and

healthy. A bright-line rule that the glenohumeral joint constitutes the "shoulder" under Iowa Code section 85.34(2)(n) (2017) protects Iowa's social safety net and incentivizes employers to make workplaces safer.

In sum, for the reasons set forth above, the Federation respectfully requests that the Court issue a decision finding that the glenohumeral joint constitutes the "shoulder" as used in Iowa Code section 85.34(2)(n) (2017). And, as a result, the Court should issue a ruling finding that Claimant's injury to her rotator cuff muscles and tendons are proximate to and separate from injury to her "shoulder," as defined by Iowa Code section 85.34(2)(n) 2017, and must be compensated as an unscheduled whole body injury.

## CONCLUSION

For the foregoing reasons, Amicus respectfully requests the Court to reverse the decision of the District Court and remand the case with instructions to enter judgment in favor of Claimant/Plaintiff/Appellant.

Respectfully Submitted,

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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) because this Brief contains 3,162 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. 6.03(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 size 14 font.

/s/ Jay M. Smith
Jay M. Smith

## CERTIFICATE OF FILING

The undersigned certifies that on the 5th day of October, 2021, the undersigned electronically filed this document using the Electronic Document Management System.

/s/ Jay M. Smith
Jay M. Smith

## CERTIFICATE OF SERVICE

The undersigned certifies that on the 5th day of October, 2021, the undersigned served the Brief of Amicus Curiae – Iowa Federation of Labor, AFL-CIO on Behalf of Claimant/Plaintiff/Appellant upon the following individuals using the Electronic Document Management System:

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