

IN THE IOWA COURT OF APPEALS

NO. 21-0490

Webster County No. CVCV321086

ALEVIA GREEN,

Plaintiff – Appellee,

-vs-

**NORTH CENTRAL IOWA
REGIONAL SOLID WASTE
AUTHORITY and IMWCA,**

Defendants – Appellants.

**RESISTANCE TO APPLICATION FOR FURTHER
REVIEW BY APPELLANTS NCIRSWA AND IMWCA
BY APPELLEE ALEVIA GREEN**

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ISSUE PRESENTED FOR REVIEW

IOWA LAW ALLOWS FOR REVIEW-REOPENING OF ALEVIA GREEN'S AWARD OF MEDICAL AND TEMPORARY BENEFITS WHEN THERE IS A WORSENING OF CLAIMANT'S PHYSICAL CONDITION; OR A TEMPORARY DISABILITY DEVELOPS INTO A PERMANENT DISABILITY. DID THE COURT OF APPEALS ERR IN AFFIRMING THE DISTRICT COURT'S DECISION WHICH REVERSED THE WORKERS' COMPENSATION COMMISSIONER'S GRANT OF DEFENDANTS' SUMMARY JUDGMENT BASED ON RES JUDICATA ON THE ISSUE OF CAUSATION BECAUSE IT WAS ILLOGICAL, IRRATIONAL AND WHOLLY UNJUSTIFIED?

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Alevia Green (hereafter “Green”) asks the Court to deny the Application for Further Review of the Iowa Court of Appeals Decision dated March 2, 2022 filed by North Central Regional Solid Waste Authority and IMWCA (hereafter “Employer”).

1. The parties agree in their Appeal Brief Routing Statements that this case presents the application of existing legal principles and should therefore be transferred to the Court of Appeals pursuant to Iowa R. App. Proc. 6.1101(3)(a); see, Appellants’ Appeal Brief pg. 6; Appellee’s Appeal Brief pg. 6.

2. The Court of Appeals Decision is in line with Iowa Supreme Court precedent which declares that if there is an award of workers’ compensation benefits under Chapter 85 of the Iowa Code, an injured worker has the right to seek review-reopening of the initial award if there is a change in circumstances, including a deterioration of physical condition or when a temporary condition develops into a permanent condition. *Iowa Code* §§85.26(2) and 86.14(2) (2021); Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009); Beier Glass Co. v. Brundige, 329 N.W.2d 280 (Iowa 1983); Rose v. John Deere Ottumwa Works, 247 Iowa 900, 906, 76 N.W.2d 756, 759 (1956).

STATEMENTS SUPPORTING RESISTANCE TO
APPLICATION FOR FURTHER REVIEW

In its Appeal Brief North Central Iowa Regional Solid Waste Authority and IMWCA (hereafter “Employer”) stated that this case presents issues “of existing legal principles relating to the application and effect of res judicata. Accordingly, this case should be transferred to the Iowa Court of Appeals” pursuant to Iowa R. App. Proc. 6.1101(3)(a). *Appellants’ Br. pg. 6*. Now, given the same issues faced by the Court of Appeals and the District Court, Employer claims that this case presents issues of broad public importance so that the Iowa Supreme Court should have retained this case initially. (*App. for Further Review, pg. 7; Iowa R. App. P. 6.1103(1)(b)(4) (2022)*). They can’t have it both ways. Both parties correctly stated that this case presented the application of existing legal principles and that transferring the case to the Court of Appeals was appropriate. *Iowa R. App. Proc. 6.1101(3)(a); Appellee’s Br. pg. 6; Appellants’ Br. p. 6*.

The second ground set forth by Employer for further review is that the Court of Appeal’s Decision is in conflict with other decisions of the Iowa Supreme Court. *App. for Further Review pg. 5*. This is incorrect.

The Court of Appeals correctly rejected Employer’s claims that res judicata on causation bars Ms. Green’s right to seek review-reopening. This is not a case where the Commissioner found that Ms. Green did not have an injury caused by work or she had some permanent impairment or permanent disability caused by

something other than a work injury, such as, a pre-existing condition, or a subsequent accident, injury or other health event. This is a case for Review-Reopening when the Commissioner's original Decision found that Ms. Green sustained an injury at work which entitled her to medical and temporary benefits under Chapter 85 of The Code but there was no permanent impairment or loss of earning capacity. The finding was not that there was a permanent impairment or loss of earning capacity caused by something else.

The Court of Appeals Decision is in line with the language of Iowa Code Sections 85.26(2) and 86.14(2) and long-standing Iowa Supreme Court precedent which declares that if there is an award of benefits under Chapter 85 of The Code, an injured worker has the right to seek review-reopening of the initial award if there is a change in circumstances, including a deterioration of physical condition or a temporary condition developing into a permanent condition. *Kohlhaas v. Hog Slat, Inc.*, 777 N.W. 2d 387, 392 (Iowa 2009); *Beier Glass Co. v. Brundige*, 329 N.W.2d 280 (Iowa 1983); *Rose v. John Deere Ottumwa Works*, 247 Iowa 900, 906, 76 N.W.2d 756, 759 (1956).

The Iowa Workers' Compensation Act provides:

"An award for payments or an agreement for settlement provided by Section 86.13 for benefits under this Chapter or Chapter 85A or 85B, when the amount has not been commuted, may be reviewed upon commencement of re-opening proceedings by the Employer or the employee . . ." Iowa Code Section 85.26 (2021) (emphasis added).

Iowa Code Section 86.14(2) (2021) provides:

“In a proceeding to reopen an award for payments or agreement for settlement as provided by Section 86.13, inquiry shall be made into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon.” Iowa Code Section 86.14(2) (2021).

The statute does not limit a worker’s right to review-reopening only if there is an initial award of like kind weekly benefits as argued by Employer. The Legislature chose broad language to signify that the condition triggering a right to review-reopening: “an award for payments . . . for benefits under this Chapter.” Beier Glass Co. v. Brundige, 329 N.W.2d 280, 285-286 (Iowa 1983).

In this case, the original award found that Ms. Green sustained an injury caused by work. The Commissioner found that this injury entitled her to medical benefits and temporary disability benefits. *Iowa Code §§85.27 and 85.33 (2021)*. Thus, Ms. Green established the predicate necessary to file an Application for Review-Reopening under Iowa Code Section 85.26(2). Beier Glass Co., 329 N.W.2d at 285-286.

Ms. Green filed her Petition for Review-Reopening because the condition in her head, shoulder, back and neck from her original injury has deteriorated and the temporary condition developed into a permanent condition based upon medical treatment that occurred after the October 6, 2014 arbitration

hearing. (*App. pp. 100, 148*) The basis of her Petition is that her temporary condition has deteriorated so that she has permanent loss of function and permanent disability. This entitles her to seek review-reopening of the Commissioner's Initial Award. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

Employer argues that, before review-reopening can be allowed, there must be an award of like kind benefits in the initial decision. This is contrary to Iowa Code Section 85.26(2) and long-standing precedent which allows awards by the Commissioner to be adjusted pursuant to Iowa Code Sections 85.26(2) and 86.14(2) on the following grounds:

1. A worsening of claimant's physical condition. Kohlhaas, 777 N.W.2d at 392; or
2. A worsening of claimant's economic condition even without a deterioration of claimant's physical capacity. Kohlhaas, 777 N.W.2d at 392 (citing Blacksmith v. All American, Inc., 290 N.W.2d 348, 354 (Iowa 1980)); or
3. When a temporary disability later develops into a permanent disability. Kohlhaas, 777 N.W.2d at 392; (citing Rose v. John Deere Ottumwa Works, 247 Iowa 900, 906; 76 N.W. 2d 756, 759 (1956)); or
4. When critical facts existed but were unknown and could not have been discovered by the existence of reasonable diligence at the time of the prior

award. *Kohlhaas*, 777 N.W.2d at 392 (citing *Gosek v. Garner & Stiles*, 158 N.W.2d 731, 735 (Iowa 1968)) or

5. Where an injury to a scheduled member later causes an industrial disability. *Kohlhaas*, 777 N.W.2d at 392-393 (citing *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12, 13, 17 (Iowa 1993) (“a psychological condition caused or aggravated by a scheduled injury is to be compensated as an unscheduled injury” based on industrial disability.)).

The Court of Appeal’s Decision is consistent with the statute and the holdings of the Iowa Supreme Court. *Iowa Code Section 85.26(2) and 86.14(2) (2021)*; *Kohlhaas*, 777 N.W.2d at 392; *Beier Glass Co.*, 392 N.W.2d 280, 287 and *Rose v. John Deere Ottumwa Works*, 247 Iowa 900, 76 N.W.2d 756 (1956).

Ms. Green respectfully requests that the Court overrule and deny the Application for Further Review filed by Employer and remand this case to the Workers’ Compensation Commissioner for a hearing on the merits.

**BRIEF IN SUPPORT OF RESISTANCE TO
APPLICATION FOR FURTHER REVIEW**

STATEMENT OF THE CASE

Ms. Green filed a Petition for Review-Reopening pursuant to Iowa Code Sections 85.26(2) and 86.14(2) seeking additional medical and permanent disability benefits because her physical condition arising out of her work injuries of

April 30, 2012 has deteriorated, and her temporary injury has become a permanent injury. (*App. 69, 152*)

There is no dispute that Ms. Green sustained an injury on April 30, 2012 caused by her employment with Employer. (*App. 149, 12*) The Arbitration Decision found that Ms. Green sustained a period of temporary disability from April 30, 2012 to August 8, 2012, but that she had no permanent impairment or disability. (*App. 11, 12, 149*)

This is not a case where there was a finding of some permanent impairment or disability that was caused by something other than a work-related injury. Instead, this case involves an Application for Review-Reopening of an original Decision by the Commissioner that found that Ms. Green suffered an injury caused by her work which entitled her to temporary disability benefits and medical benefits under Chapter 85 of The Code, but that there was no permanent impairment or disability. (*App. 11, 12*) The Arbitration Decision of December 19, 2014 states:

“On April 30, 2012, the Claimant suffered a stipulated injury arising out of and in the course of her employment when the large metal door of a dumpster struck her on the right side of her back and neck. She was knocked to the ground and suffered a period of unconsciousness before being transported to Trinity Regional Medical Center in Fort Dodge, Iowa, by ambulance. In the Emergency Room, her pain was noted, as was sensitivity to light. (*App. 119*) She reported upper back pain and headaches.” (*App. 9*)

The Deputy found that Ms. Green suffered a “mild (at most) brain injury and some relatively minor physical injuries, all of which resolved without any permanency or loss of earning capacity relatively quickly.” (*App. 11, 12*) (*Emphasis added*).

The Review-Reopening Petition is not an attempt to re-litigate whether Ms. Green’s underlying injuries to her head, shoulder, neck and back were caused by work. The Arbitration award established this and it is stipulated to by the parties.

On April 11, 2016, the Commissioner affirmed the Deputy’s Arbitration Decision and found that Ms. Green did not have any permanent disability. (*App. 36*) The District Court affirmed the Commissioner’s Decision. (*App. 55-56*)

On February 24, 2016, Ms. Green began treating with Dr. Karim, a neurologist, for headaches caused by her work injury. (*App. 100*) On September 15, 2017, Ms. Green started treating with Dr. Nauman at the Fort Dodge Pain Clinic for the work injuries to her right shoulder and neck. (*App. 102, 105*) Dr. Nauman found that the work injuries to Ms. Green’s shoulder, neck and back of April 30, 2012 had deteriorated so that additional treatment was required. (*App. 105, 107, 108, 112-113, 117*)

In January 2017 Ms. Green participated in two courses of physical therapy for her shoulder, arm and neck at Highland Physical Therapy in Fort Dodge.

(*App. 119, 130*) The physical therapists found that Ms. Green's work injuries to her shoulder and neck had deteriorated since the Arbitration hearing of October 6, 2014 so that she now has a loss of function in her neck and shoulder. (*App. 119-120, 121, 122, 123-126, 127, 128-129, 130-132, 133-135, 136-139, 140-144, 145-146, 147-148*)

On June 4, 2018 Ms. Green filed her Petition seeking review-reopening of the previous award of medical and temporary benefits because her physical condition had deteriorated and her injuries had morphed from temporary to permanent injuries. (*App. 69*)

On September 10, 2018 Employer filed a Motion for Summary Judgment based upon res judicata on the issue of causation. (*App. 70*) Ms. Green resisted the Motion for Summary Judgment because res judicata does not bar her right to Review-Reopening seeking permanent disability benefits when her work injuries had deteriorated so that her temporary disability has developed into a permanent impairment and disability. (*App. 84*) Furthermore, there are genuine issues of material fact based upon medical treatment received after the Arbitration Decision showing her condition deteriorated and her temporary disability has developed into a permanent disability. (*App. 85*)

On October 11, 2018 the Deputy Commissioner granted summary judgment and noted that the initial Decision found "claimant suffered a mild 'at

most' brain injury and some relatively minor physical injuries, all of which resolved without any permanency." (*App. 156, 11*)

On January 16, 2020 the Iowa Workers' Compensation Commissioner affirmed the Deputy's grant of summary judgment acknowledging that the initial Decision established that Ms. Green's "condition resolved without any permanent disability (*App. 172*)

On March 3, 2021 the District Court reversed the Commissioner's Decision because the finding that Employer was entitled to summary judgment on res judicata was illogical and erroneous. (*App. 187-189*) The District Court stated:

"The Commissioner's conclusion that Green's award of medical and temporary benefits only renders it incapable of being increased is illogical. An award of '0' permanent impairment or disability may obviously be increased on a showing of a change in condition. (*App. 187-188*) The conclusion that Green, is precluded from bringing a review-reopening claim is erroneous." (*App. 187-188*)

The District Court went on to find:

"The Commissioner's logic as to res judicata arguments is somewhat circular . . . [T]he review-reopening pre-supposes a potential 'change in condition' (including from temporary to permanent). Such a change in condition may still be causally related to a work injury. On this matter, the parties have a difference of opinion as to the medical evidence produced on the present claim (whether a temporary injury has morphed into a permanent one). Such a difference of opinion as to a matter so consequential is a genuine issue of material fact. Because such fact issue exists, the Respondents' are not entitled to summary judgment. Green's review-reopening claim is

not barred by res judicata. The Commissioner's conclusion to the contrary was erroneous." (*App. 188*)

In its Order on Employer's Motion for Clarification, Enlargement and Modification the District Court said; "This Court found that the Commissioner's conclusion that Plaintiff's lack of permanency award renders it incapable of being increased is illogical and the conclusion that Plaintiff is precluded from bringing a review-reopening is erroneous." (*App. 212*)

"The Plaintiff alleges that her review-reopening claim is supported by a number of healthcare professionals. To deny the Plaintiff a review-reopening based not on causation but solely on how the extent of the injuries appeared years ago would be to deny any possibility that the injuries could increase in disability. That is illogical and summary judgment, based on res judicata is erroneous." (*App. 212*) (*Emphasis added*).

The District Court reversed the Commissioner's Decision granting Employer's summary judgment.

The Court of Appeals affirmed the ruling of the District Court finding the Commissioner erred in granting the Employer's Motion for Summary Judgment dismissing Green's Review-Reopening Petition. The Court remanded the matter back to the Agency for further proceedings. (*Ct. of Appeals, pg. 9*)

ARGUMENT

There is no dispute that Ms. Green sustained an injury at work on April 30, 2012. (*App. 149*) As a result of the conditions arising out of her work injury, Ms. Green was entitled to medical benefits and temporary disability benefits. (*App.*

12) See, *Iowa Code §§85.27 and 85.33 (2021)*. This entitles her to seek review-reopening of the earlier decision because her condition has deteriorated so that her temporary condition is now permanent. *Iowa Code §§85.26(2), 85.14(2) (2021)*; Kohlhaas, 777 N.W.2d 387; Beier Glass Co., 329 N.W.2d 280 and Rose, 247 Iowa 900, 75 N.W.2d 756.

This is not a case where there was a finding that her injury was not caused by work. Nor is this a case where the initial decision was that there was some permanent impairment or disability caused by something other than a work injury such as a pre-existing condition or subsequent injury. Instead, Ms. Green's Petition for Review-Reopening is based upon the original award finding she sustained an injury caused by work which entitles her to medical benefits and temporary disability benefits under Chapter 85 of The Code and she had no permanent impairment or disability. (*App. 69*) The condition arising from her work injury has deteriorated so that the temporary disability is now a permanent disability. (*App. 69, 152*)

The original Arbitration Decision found that Ms. Green "did sustain an injury arising out of and in the course of her employment, but she was not entitled to any additional medical or disability benefits beyond those voluntarily paid through August 8, 2012". (*App. 12*)

Ms. Green's claim for review-reopening is based upon the fact that the initial injuries to her head, shoulder, neck and back have worsened and morphed

from temporary to permanent impairment and disability. Her claim is based on new evidence resulting from treatment beginning on February 24, 2016 with Dr. Karim a neurologist, Dr. Nauman, a pain specialist and the physical therapists, which did not and could not exist at the time of the Arbitration hearing of October 6, 2014.

Summary judgment on res judicata was erroneous because the statute and long-standing Iowa Supreme Court precedent allows for review-reopening when there has been an award of benefits under Chapter 85 and, the Claimant's physical condition worsens, or a temporary disability becomes a permanent disability. *Iowa Code* §§85.26(2) and 86.14(2); *Kohlhaas*, 777 N.W.2d 387; *Beier Glass Co.*, 329 N.W.2d 280 and *Rose*, 247 Iowa 900, 75 N.W.2d 756. Furthermore, there are genuine issues of material fact. (*Ct. of App. pp. 7, 9*)

The Court of Appeals correctly affirmed the District Court's reversal of the Commissioner's finding that res judicata bars Ms. Green's right to file a Petition for Review-Reopening when there is an initial award for temporary and medical benefits and a finding of no permanency. This case should be remanded to the Workers' Compensation Commissioner for a hearing on the merits.

PROPOSITION I.

THE COURT OF APPEALS CORRECTLY AFFIRMED THE DISTRICT COURT'S DECISION THAT THE COMMISSIONER'S GRANT OF SUMMARY JUDGMENT ON RES JUDICATA FOR CAUSATION WAS ERRONEOUS BECAUSE IT WAS IRRATIONAL, ILLOGICAL OR WHOLLY

UNJUSTIFIABLE AND THERE ARE GENUINE ISSUES OF MATERIAL FACT BECAUSE MS. GREEN'S PETITION FOR REVIEW-REOPENING IS BASED ON A CHANGE IN HER CONDITION SO THAT HER TEMPORARY DISABILITY HAS DETERIORATED AND SHE IS NOW ENTITLED TO MEDICAL AND PERMANENT DISABILITY BENEFITS.

ARGUMENT

The Workers' Compensation Act provides that an award for payment of benefits under Chapter 85 may be reviewed upon commencement of reopening proceedings by the employer or the employee. *Iowa Code Section 85.26(2) (2021)*. In a proceeding to reopen an award for benefits, the inquiry is whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation under Chapter 85 of the Code. *Iowa Code Section 86.14(2) (2021)*.

The Iowa Workers' Compensation Act is "for the benefit of the working man and should be, within reason, liberally construed." *Barton v. Nevada Poultry Co.*, 253 Iowa 284, 289; 110 N.W.2d 660, 662 (1961). It is the long-standing rule declared by the Iowa Supreme Court that there shall be liberal construction of the worker's compensation statute in favor of the injured worker in order to accomplish its purpose. *Beier Glass Co. v. Brundige*, 329 N.W.2d 280, 286 (Iowa 1983) See also, *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 188 (Iowa 1980). The law's "beneficent purpose should not be defeated by reading something into a section

which is not there, or by a narrow or strained construction.” Disbro v. Deering Implement Co., 233 Iowa 380, 392, 9 N.W.2d 378, 384 (1943).

The interpretation and application of law by the Commissioner and as urged by Employer is narrow, illogical and erroneous. It reads something into the code that is not there. The Court of Appeals correctly affirmed the reversal of the Commissioner’s Decision because it would narrow review-reopening only to cases when the initial award or agreement or settlement was for the payment of the same type of benefits sought in review-reopening contrary to the plain language of the statute. *Iowa Code §85.26(2)*. The Employer’s argument and Commissioner’s decision also conflicts with Iowa Supreme Court precedent. (*Ct. App. p. 7*); *see, Kohlhaas v. Hog Slat, Inc.*, 777 N.W.2d 387 (Iowa 2009); *Beier Glass Co. v. Brundige*, 329 N.W.2d 280 (Iowa 1983); and *Rose v. John Deere Ottumwa Works*, 247 Iowa 900, 76 N.W.2d 756 (1956).

Iowa Code §85.26(2) does not limit the right to review-reopening only if there is an initial award for like kind weekly benefits as argued by Employer. The Legislature chose broad language to signify the condition triggering a right to review-reopening: “an award for payments . . . for benefits under this Chapter” not “an award for payments . . . for [like kind] benefits . . .”. *Iowa Code Section 85.26(2)* (2021); *Beier Glass Co.*, 329 N.W.2d at 285-286.

In Beier Glass Co. v. Brundige, 329 N.W.2d 289 (Iowa 1983) the Court held that an award for medical benefits only is within the scope of benefits the Commissioner may award through arbitration that will support a petition for review-reopening seeking temporary and permanent benefits. *Iowa Code §85.26(2) (2021)*; Beier Glass Co., 329 N.W.2d at 285-286. The Court noted that the Legislature chose broad language of “an award for payments . . . for benefits under this Chapter . . .” instead of “weekly benefits” or “permanency benefits” to make clear that an “award for benefits” is all that is necessary to trigger the right to review-reopening. Beier Glass Co., 329 N.W.2d at 285. The Court reasoned that the award for medical benefits only is subject to the requirement that the injury was caused by work; that is, it is compensable. Beier Glass Co., 329 N.W.2d at 286. Likewise, the original award of medical and temporary benefits for Ms. Green triggers her right to seek review-reopening.

In Beier Glass Co., the claimant sustained a back injury at work. The Commissioner initially found he was entitled to medical benefits only. Beier Glass Co., 329 N.W.2d at 281. The claimant in Brundige filed a petition for review-reopening seeking temporary and permanency benefits. Id. The Deputy Commissioner ruled that although the initial Arbitration Decision established Brundige’s injuries arose out of and in the course of employment, the denial of benefits other than medical benefits would not support his Petition for Review-

Reopening seeking temporary and permanency benefits. *Id.* On appeal, the Commissioner ruled that the award of medical benefits only would support review-reopening. *Id.* On judicial review, the District Court reversed the Commissioner's Decision on grounds that the award of medical benefits only was insufficient to support review-reopening seeking temporary and permanency benefits. *Id.* at 281-282.

Finally, the Court in Beier Glass Co. construed the language of Iowa Code Sections 85.26(2) and 86.14(2) and found that the statute only requires an arbitration award for any type of benefits under Chapter 85 of The Code, to support a review-reopening petition seeking additional disability benefits. Beier Glass Co., 329 N.W.2d at 286. Specifically, an award of medical benefits only will support review-reopening petitions seeking temporary and permanency benefits. *Id.*

Thus, the pre-requisite necessary to support a petition for review-reopening under the statute is an award or agreement for settlement, which establishes: (1) an Employer-employee relationship; and (2) an injury arising out of and in the course of employment. Beier Glass Co., 329 N.W.2d at 286. It is the presence of an arbitration award or settlement agreement, not the nature of benefits awarded or agreed upon which is crucial to the initial proceedings before the Commissioner. *Id.*

It is clear from the language of Iowa Code Section 85.26(2) that the issue of causation has to do with whether there is an injury caused by work; that is, whether the injury arose out of and in the course of employment entitling claimant to benefits under Chapter 85 of the Code. The statutory provision of Iowa Code Section 85.26(2) and 86.14(2) alters the traditional application of res judicata in tort cases. The Legislature has made specific provision for reviewing prior decisions of the Workers' Compensation Commissioner if there is an award for benefits and a change in the worker's condition. *Iowa Code Sections 85.26(2) and 86.14(2) (2021)*.

The initial Decision found that Ms. Green sustained an injury arising out of and in the course of employment so that she was entitled to medical and temporary benefits under Iowa Code Sections 85.27 and 85.33. The Code allows for review-reopening of this Decision and, entitles Ms. Green to additional benefits if she can prove a worsening of her condition. *Iowa Code Section 85.26(2) and 86.14(2) (2021)*. That is a genuine issue of material fact. (*Ct. App. p. 10*)

The Iowa Supreme Court has declared that awards by the Commissioner may be adjusted by review-reopening on at least five grounds in Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392-393 (Iowa 2009). Two of those grounds are a worsening of claimant's physical condition and, when a temporary condition develops into a permanent condition. Kohlhaas, 777 N.W.2d at 392 (*citing*

Rose v. John Deere Ottumwa Works, 247 Iowa 900, 906; 76 N.W.2d 756, 759 (1956)).

The Court of Appeals was correct to affirm the District Court's reversal of the Commissioner. The Commissioner's Decision is contrary to statute and prior holdings of the Iowa Supreme Court. *Iowa Code Sections 85.26(2) and 86.14(2) (2021)*; Kohlhaas, 777 N.W.2d at 392; Beier Glass Co., 329 N.W.2d 280, 287 and Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956).

CONCLUSION

Ms. Green respectfully requests that the Court overrule and deny Employer's Application for Further Review, affirm the Decision of the Court of Appeals and remand this case to the Iowa Workers' Compensation Commissioner for a hearing on the merits.

REQUEST FOR ORAL ARGUMENT

Alevia Green respectfully requests to be heard in oral argument if further review is granted.

RESPECTFULLY SUBMITTED,

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ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Resistance to Application for Further Review was the sum of \$0.

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE – VOLUME LIMITATION
FOR RESISTANCE TO APPLICATION FOR FURTHER REVIEW**

This Resistance to Application for Further Review complies with the typeface requirements and type – volume limitation of Iowa R. App. P. 6.1103(4)(a) because this Resistance to Application for Further Review has been prepared in a proportionally spaced typeface using Times New Roman in 14 pt. font and contains 4,375 words, excluding the parts exempted by Iowa R. App. P. 6.1103(4)(a).

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PROOF OF SERVICE AND CERTIFICATE OF FILING

The undersigned certifies that this Resistance to Application for Further Review was filed and served on the 28th day of March, 2022, upon the Clerk of the Supreme Court of Iowa and served upon following persons by EDMS filing:

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In full compliance with the provisions of Rule.16.315(1)(b) Iowa R. Elec. P.

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