
IN THE SUPREME COURT FOR THE STATE OF IOWA
No. 21-1968

**LINNHAVEN, INC., and ACCIDENT FUND NATIONAL
INSURANCE COMPANY/UNITED HEARTLAND,
Petitioners-Appellants,**

vs.

**ROGER BLASDELL, SURVIVING
SPOUSE OF HEATHER BLASDELL,
Respondent-Appellee.**

**APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY,
HONORABLE CELENE GOGERTY**

PETITIONERS'-APPELLANTS' FINAL BRIEF

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II. STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Standard of Review.

Iowa Code § 17A.19

2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995)

Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360 (Iowa 2016)

Gits Mfg. Co. v. Frank, 855 N.W.2d 195 (Iowa 2014)

Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296 (Iowa 1974)

IBP, Inc. v. Burress, 779 N.W.2d 210 (Iowa 2010)

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Lithcote Co. v. Ballenger, 471 N.W.2d 64 (Iowa App. 1991)

Meyer v. IBP, Inc., 710 N.W.2d 213 (Iowa 2006)

Midwest Ambulance Serv. v. Ruud, 754 N.W.2d 860 (Iowa 2008)

Mike Brooks, Inc. v. House, 843 N.W.2d 885 (Iowa 2014)

Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998)

B. The Supreme Court Should Reverse the District Court Order that Found Roger Blasdell did not Abandon Heather Blasdell.

Iowa Code § 84.42

Iowa Code § 85.16

Iowa Code § 85.31

James Black Dry Goods Co. v. Iowa Industrial Com’r, 186 Iowa 657, 173 N.W. 23 (1919)

C. This Court should affirm the District Court’s conclusion that the Commissioner’s designee had authority to issue the Arbitration Decision.

Iowa Code § 17A.15

Iowa Code § 86.26

D. This Court should find the Appellants are not barred from raising the defense of spousal abandonment based upon the doctrine of estoppel.

Iowa Code § 84.42

Tyson Foods, Inc., v. Hedlund, 740 N.W.2d 192 (Iowa 2007)

III. ROUTING STATEMENT

Pursuant to Iowa Rule of Appellate Procedure 6.1101(3)(a), this case should be transferred to the Iowa Court of Appeals because it presents the application of existing legal principles.

IV. STATEMENT OF THE CASE

Roger Blasdell filed a Petition alleging he should be permitted to collect death benefits following the death of his estranged legal spouse, Heather Blasdell. Petition, p. 1; App. p. 25. Linnhaven, Inc., denied liability, citing the affirmative defenses that Ms. Blasdell's death was the result of intentional injury and that Mr. Blasdell had willfully abandoned Ms. Blasdell prior to the work-related injury. Answer, p. 2; App. p. 28. The case proceeded to Arbitration Hearing on May 15, 2018, before Deputy Workers' Compensation Commission Erica Fitch. Hearing Report, p. 2; App. p. 31. The issues presented to the Agency at hearing were as follows:

1. Whether Roger Blasdell was barred from receiving death benefits based upon the doctrine of spousal abandonment pursuant to Iowa Code section 84.42(1)(a).

2. Whether Roger Blasdell was barred from receiving death benefits based upon the Claimant's intentional suicide and the affirmative defense of intentional injury pursuant to Iowa Code section 85.16(1).

3. Whether the Agency should adopt the rate calculated by the Defendants or the rate calculated by the Claimant.

On July 12, 2019, Commissioner Joseph Cortese II filed an Order of Delegation of Authority stating as follows: "Pursuant to Iowa Code section 17A.15(2) the authority for issuing a proposed decision in this matter will be assigned to Deputy Workers' Compensation Commission Stephanie J. Copley due to the present unavailability of Deputy Workers' Compensation Commissioner Erica J. Fitch." Order of Delegation of Authority, p. 1; App. p. 226. Claimant's Counsel filed no objection to the Order of Delegation of Authority. Claimant's Counsel filed no appeal from the Order of Delegation of Authority. Finally, Claimant's Counsel did not submit an Amended Post-Hearing Brief objecting to the Order of Delegation of Authority. On August 6, 2019, Deputy Copley issued an Arbitration Decision finding Mr. Blasdell "willfully deserted Heather [Blasdell] and therefore is not entitled to death benefits." Arb. Dec., p. 11; App. p. 238. Deputy Copley issued a Rehearing Decision addressing the Claimant's demeanor on July 24, 2020. Rehearing Dec., p. 1; App. p. 263. The Claimant subsequently filed a Notice of Appeal

to the Commissioner. Notice of Appeal, p. 1; App. p. 269. Claimant's Counsel's Appeal Brief contained the first objection to the Order of Delegation of Authority. Claimant's Agency Appeal Brief, p. 3.

On June 8, 2021, Commissioner Cortese issued an Appeal Decision finding that the Claimant waived any argument that the demeanor hearing was an inadequate remedy. App. Dec., p. 4; App. p. 274. Commissioner Cortese also found the Claimant "did not object to the demeanor hearing[,]” and he “did not argue, at the July 20, 2020 hearing, that the demeanor hearing was an inadequate remedy.” App. Dec., p. 4; App. p. 274. The Commissioner found that the doctrines of judicial estoppel and res judicata did not bar the Defendants from raising the issue of Mr. Blasdell's marital status as an issue in the case. App. Dec., p. 5; App. p. 275. The Commissioner also concluded Mr. Blasdell willfully deserted Ms. Blasdell prior to the work injury, so he was not entitled to collect her permanent total disability benefits. App. Dec., p. 7; App. p. 277.

The Claimant filed a Petition for Judicial Review on July 8, 2021. Petition for Judicial Review, p. 1; App. p. 279. The Defendants timely filed an Answer to the Petition for Judicial Review on July 16, 2021. Answer to Petition for Judicial Review, p. 1; App. p. 291. On December 6, 2021, District Judge Celene Gogerty issued a Ruling on Petitioner's Application

for Judicial Review. Ruling on Petition for Judicial Review, p. 1; App. p. 293. Judge Gogerty found Mr. Blasdell was not prejudiced by the delegation of authority to another Deputy to issue the Arbitration Decision. Ruling on Petition for Judicial Review, p. 5; App. p. 297. The judge also found that the “findings d[id] not support the contention that [the] Claimant abandoned Heather.” Ruling on Petition for Judicial Review, p. 7; App. p. 299. Judge Gogerty then remanded the case to the Commissioner to determine whether Ms. Blasdell’s suicide precluded the award of her workers’ compensation benefits to her estranged spouse. Ruling on Petition for Judicial Review, p. 8; App. p. 300.

V. STATEMENT OF THE FACTS

Heather Blasdell filed a Petition in Arbitration demanding workers’ compensation benefits from Linnhaven, Inc., because of an injury to the right foot, back, body as a whole, and a mental injury on November 5, 2012. Arb. Dec. pp. 1 – 2; App. pp. 4 – 5. The claim proceeded to hearing on October 7, 2014, and Deputy Workers’ Compensation Commissioner Erin Pals awarded permanent total disability benefits. Arb. Dec. pp. 1, 15; App. pp. 4, 18. The Defendants timely filed an appeal. Notice of Appeal, p. 1. An appeal decision was issued on May 20, 2016, that affirmed the award of

permanent total disability. Appeal Decision, p. 1; App. p. 24. At the Arbitration Hearing, Deputy Pals considered only the following issues:

1. Whether the injury was the cause of any temporary disability, including temporary total disability benefits, from September 27, 2013, to October 2, 2014.

2. What, if any, permanent disability the Claimant sustained as a result of the November 5, 2012 injury.

3. Whether the Claimant was entitled to payment of past medical expenses.

4. Whether the Claimant was entitled to penalty benefits.

5. Whether the Claimant was entitled to costs.

Arb. Dec. pp. 1 – 2; App. pp. 4 – 5. The Deputy could not issue any decision regarding the affirmative defense of intentional injury because Ms. Blasdell was alive at the time of hearing; this affirmative defense was not applicable until her death by intentional suicide on September 9, 2016. Arb. Dec. pp. 1 – 15; Ex. JE2, p. 1; App. pp. 4 – 19; 50.

The Manchester Police Department was called to Ms. Blasdell's residence on September 9, 2016, for a report that she was cold, had no pulse, and was not breathing. Ex. JE2, p. 1; App. p. 50. The officer who arrived at Ms. Blasdell's property was met by Steven Kephart, who was a neighbor to

Ms. Blasdell, and Austen Burrridge. Ex. JE2, p. 3; App. p. 52. Mr. Kephart informed the responding officer that Ms. Blasdell “was dead.” Ex. JE2, p. 3; App. p. 52. The officer noted Ms. Blasdell had no signs of life, and rigor mortis had set in. Ex. JE2, p. 3; App. p. 52.

Both Mr. Kephart and Mr. Burrridge stated Ms. Blasdell “has had suicide attempts in the past and was recently hospitalized for an attempt.” Ex. JE2, p. 3; App. p. 52. They also stated, “Heather and her boyfriend had recently broken up a day or a couple of days prior.” Ex. JE2, p. 3; App. p. 52. The officer located a lockbox in the bedroom of Ms. Blasdell’s residence and noted there were approximately 10 – 15 pill bottles inside, and “[s]everal of these pill bottles didn’t have any medications in them even though they were prescribed only a couple of days earlier.” Ex. JE2, p. 4; App. p. 53. The responding officer also found a handwritten suicide note from Ms. Blasdell. Ex. JE2, p. 4; App. p. 53. Ms. Blasdell’s suicide note did not reference Roger Blasdell in any manner. Ex. JE2, p. 5; App. p. 54. Instead, Ms. Blasdell asked Mr. Kephart in the suicide note to take care of her “fur babies.” Ex. JE2, p. 4; Ex. JE2, p. 5; App. pp. 54 – 55. The responding officer concluded in his report that Ms. Blasdell “either had an accidental overdose on 2 different types of medications or a successful

suicide attempt with these 2 different types of medications.” Ex. JE2, p. 4; App. p. 4.

An autopsy was performed by Dr. Dennis Klein on September 10, 2016. Ex. JE1, pp. 1 – 2; App. pp. 36 – 37. Dr. Klein concluded the cause of death was “[m]ixed drug (quetiapine and zolpidem) intoxication.” Ex. JE2, p. 2; App. p. 51. Dr. Klein observed that according to investigative reports, the “decedent had a past medical history of depression, low back pain, and suicide attempts by overdose of medications.” Ex. JE1, p. 6; App. p. 41. Dr. Klein also observed that “an unsigned, undated suicide note was found with some papers on the decedent’s bed.” Ex. JE1, p. 6; App. p. 41.

Following the Claimant’s suicide, the Defendants engaged the services of a private investigator to determine whether Roger Blasdell had abandoned Heather Blasdell both at the time of the alleged injury on November 5, 2012, and at the time Ms. Blasdell committed suicide on September 9, 2016. Ex. JE3, p. 5; App. p. 61. The investigator spoke with Angela Lee, a former girlfriend of Mr. Blasdell, on November 27, 2017, and she stated, “she broke up with Roger Blasdell in March 2017, after a 6-year relationship.” Ex. JE3, p. 5; App. p. 61. Therefore, Ms. Lee had been in a romantic relationship with Mr. Blasdell since 2011 despite his legal marriage to Ms. Blasdell and well before the work injury. Ex. JE3, p. 5; App. p. 61.

Ms. Lee stated Mr. Blasdell “claimed he was consistently unable to get ahold of Heather to coordinate anything.” Ex. JE3, p. 5; App. p. 61.

When Roger Blasdell filed his income tax return in 2011, he certified to the IRS that he was filing separately from Heather Blasdell. Ex. JE4, p. 1; App. p. 70. Mr. Blasdell again filed separately from Heather Blasdell in 2012, and he filed in the same manner in 2013. Ex. JE4, pp. 5, 9; App. pp. 74, 78. Defense counsel asked Mr. Blasdell at hearing whether the tax returns he had provided to the Defendants were certified IRS copies of tax returns, and he testified that they were simply copies of tax returns he kept for himself at home. Hearing Transcript, p. 30; App. p. 214. The Defendants were unable to timely obtain actual certified copies of Mr. Blasdell’s tax returns from the IRS due to multiple delays from Mr. Blasdell and his attorney refusing to completely fill out signed authorizations to release tax returns and disclose Mr. Blasdell’s social security number, which is a requirement to obtain tax returns from the IRS. Ex. F, pp. 1 – 6; App. pp. 179 – 184.

The Defendants’ investigation into the claim was also hindered by Mr. Blasdell’s refusal to respond to discovery requests and objections to interrogatories. Ex. D, p. 2; App. p. 169. Mr. Blasdell should have provided the Defendants with detailed information regarding Heather Blasdell’s

suicide or accidental overdose, which is the argument he later asserted at hearing. Ex. D, p. 2; App. p. 169. Instead, he objected to providing any information regarding Ms. Blasdell's death in response to valid interrogatories propounded by the Defendants. Ex. D, p. 2; App. p. 169. Mr. Blasdell also initially refused to provide any information regarding individuals he was romantically involved with after he abandoned Ms. Blasdell in 2011, as he claimed it was "not relevant to a claim for death benefits." Ex. D, p. 5; App. p. 172. At the time Mr. Blasdell raised this objection, the Defendants had already asserted the affirmative defense of spousal abandonment, placing the relevance of Mr. Blasdell's romantic relationships with other parties during his legal marriage to Ms. Blasdell at the forefront of the claim. Answer, p. 3; App. p. 30.

When Mr. Blasdell completed paperwork for his employer, XL Specialized Trailers, he did not list Heather Blasdell as an emergency contact, and he also certified to his employer that he was single. Ex. E, pp. 1 – 2; App. pp. 175 – 176. Although the Claimant attempted to allege at hearing that he only filled out emergency contact paperwork in 2017, he provided no explanation for why his personnel file contained no earlier emergency contact designation forms. Hearing Transcript, pp. 22 – 23; App. pp. 206 – 207. It is also telling that when Mr. Blasdell filled out a W-4 form

for his employer in 2011, he stated he was single. Ex. E, p. 3; App. p. 177. Furthermore, Mr. Blasdell stated he was single on a W-4 form he completed in 2015. Ex. E, p. 4. In Mr. Blasdell's deposition, he testified Heather Blasdell was a beneficiary of his health insurance. Ex. JE5, p. 3, Dep. p. 9; App. p. 84. However, he admitted at hearing that he produced no actual documentation supporting this assertion. Hearing Transcript, p. 21; App. p. 205. Mr. Blasdell also testified in his deposition that Heather Blasdell was a beneficiary on his life insurance policy as of November 5, 2012. Ex. JE5, p. 3, Dep. p. 10; App. p. 84. Again, Mr. Blasdell testified at hearing that he did not produce any health insurance documentation in support of this allegation. Ex. JE5, p. 3, Dep. p. 10; App. p. 84.

Mr. Blasdell claimed that as of November 5, 2012, Ms. Blasdell was listed as a driver of his vehicles under his car insurance policies. Ex. JE5, p. 3, Dep. p. 11; App. p. 84. At hearing, he admitted that he again produced no documentation to support this allegation. Hearing Transcript, p. 21; App. p. 205. According to Mr. Blasdell, as November 5, 2012, Ms. Blasdell was renting property separately from him in Cedar Rapids, and he was not listed on Ms. Blasdell's lease. Ex. JE5, p. 3, dep. p. 12; App. p. 84. Mr. Blasdell testified at hearing that as of the date of the initial workers' compensation injury, Ms. Blasdell was living with a friend, Kyle Cunard (spelling

unknown). Ex. JE5, p. 3, dep. p. 12; Hearing Transcript, pp. 21 – 22; App. pp. 84, 205 – 206. He admitted in his deposition that he never lived with Ms. Blasdell in 2012 at her property in Cedar Rapids. Ex. JE5, p. 4, dep. p. 15; App. p. 85. By 2012, he was living separately from Ms. Blasdell at his own property in Manchester, Iowa. Ex. JE5, p. 4, dep. pp. 13 – 14; App. pp. 85. Mr. Blasdell testified he began living separately from Ms. Blasdell in February 2011. Ex. JE5, p. 4, dep. p. 16; App. p. 85. He testified that he separated from Ms. Blasdell because of differences over finances, and he specifically stated he did not want to pay for Ms. Blasdell's expenses. Ex. JE5, p. 5, dep. p. 18; App. p. 86.

Although Mr. Blasdell claimed that from 2012 until the date of Ms. Blasdell's suicide, he saw her almost weekly, he provided no evidence aside from his own testimony of this fact. Ex. JE5, p. 5, dep. p. 19; App. p. 86. Although Mr. Blasdell claimed he gave Ms. Blasdell cash every week, he admitted he had no receipts or records proving these alleged payments actually occurred. Ex. JE5, p. 5, dep. pp. 19 – 20; App. pp. 86. Mr. Blasdell's admission that he separated from Ms. Blasdell because he did not want to pay for her expenses directly contradicts his later claim that he provided her with cash on a weekly basis. Ex. JE5, p. 5, dep. pp. 18 – 20; App. pp. 86. Despite Mr. Blasdell's claim that he spoke with Ms. Blasdell

on the phone weekly from 2012 until the date of her death, he provided no phone records proving this allegation. Ex. JE5, p. 5, dep. p. 20; App. p. 86. The only document Mr. Blasdell offered at hearing revealing any communications from Ms. Blasdell was a one-page sheet containing messages from Ms. Blasdell regarding a phone bill for her daughter. Ex. B, p. 1; App. p. 166. Mr. Blasdell provided no credible explanation at hearing for why he produced absolutely no other records of his purported communications with Ms. Blasdell. Hearing Transcript, p. 26; App. p. 26. The messages shown on Ex. B, p. 1, do not even reveal a responsive message from Mr. Blasdell to Ms. Blasdell, indicating he never responded to her. Ex. B, p. 1; App. p. 166.

Despite being legally married to Ms. Blasdell, Mr. Blasdell met his girlfriend, Angela Lee, in 2011 and moved in with her in 2012. Ex. JE5, p. 6, dep. pp. 21 – 22; App. pp. 87. He lived with Ms. Lee at his separate property in Manchester, Iowa. Ex. JE5, p. 6, dep. p. 24; App. p. 87. Mr. Blasdell admitted he did not have any sexual relationship with Ms. Blasdell since he separated from her. Ex. JE5, pp. 6 – 7, dep. pp. 24 – 25; App. pp. 87 – 88. In Mr. Blasdell's testimony, he was asked whether Ms. Blasdell provided any financial support to him from 2012 until the date she committed suicide. Ex. JE5, p. 7, dep. p. 25; App. p. 88. Mr. Blasdell

stated, “I think she might have given me money once.” Ex. JE5, p. 7, dep. p. 25; App. p. 88. Mr. Blasdell changed this testimony at hearing and claimed that Ms. Blasdell provided him with cash “[p]robably maybe five times a year.” Hearing Transcript, p. 28; App. p. 212. Mr. Blasdell admitted that Ms. Blasdell did not share any of her workers’ compensation benefits with him from 2012 until the date of her suicide. Ex. JE5, p. 7, dep. p. 25; App. p. 88. He also engaged in no conversations with Ms. Blasdell about sharing her workers’ compensation benefits with him. Ex. JE5, p. 7, dep. pp. 25 – 26; App. pp. 88. Mr. Blasdell was not listed as a beneficiary on any Last Will and Testament that Ms. Blasdell may have left. Ex. JE5, p. 7, dep. p. 26; App. p. 88. In his deposition, Mr. Blasdell testified that he did not receive any cash or property from Ms. Blasdell’s estate. Ex. JE5, p. 7, dep. p. 26; App. p. 88. At hearing, he changed his testimony and claimed he removed several items of sentimental value from Ms. Blasdell’s apartment. Hearing Transcript, p. 31; App. p. 215.

Mr. Blasdell did not testify at Heather Blasdell’s workers’ compensation hearing. Ex. JE5, p. 7, dep. p. 26; App. p. 88. He admitted he was never asked to testify by Ms. Blasdell’s attorney. Ex. JE5, p. 7, dep. p. 2; App. p. 88. Ms. Blasdell was deposed by former defense attorney Thomas Wolle on January 24, 2014. Ex. A, p. 1; App. p. 144. She testified

she had been separated from Mr. Blasdell for three years, proving she had been separated from him since at least 2011. Ex. A, p. 3, dep. p. 6; App. p. 146. Ms. Blasdell testified that the only reason she did not divorce Mr. Blasdell formally was because she did not have the money to do so. Ex. A, p. 3, dep. p. 6; App. p. 146. Although Mr. Blasdell claimed he could have afforded a divorce, his testimony that he “couldn’t handle paying the rent by [him]self” during the same period undermines that claim. JE 5, p. 5, dep. pp. 18 – 19; App. pp. 86.

VI. ARGUMENT

A. Standard of Review

The burden is on the Claimant to prove both that the injury “arose out of” and “in the course of” his or her employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). An injury “arises out of” the employment when there is a causal relationship between the employment and the injury, and the injury must be a “rational consequence of the hazard connected with the employment.” 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995) (citations omitted). Mr. Blasdell has the burden of proving by a preponderance of the evidence that Ms. Blasdell’s death was causally related to injuries arising out of and in the course of her employment. Lithcote Co. v. Ballenger, 471 N.W.2d 64, 66 (Iowa App. 1991). A possibility of

causation is not sufficient; a probability is necessary. Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 297 (Iowa 1974). The question of causal connection is within the domain of expert testimony. Lithcote Co., 471 N.W.2d at 66. The weight to be given expert opinions is for this Agency to decide. *Id.*

The District Court's review was governed by Iowa Code chapter 17A (2013). Mike Brooks, Inc. v. House, 843 N.W.2d 885, 888 (Iowa 2014). Under chapter 17A, the District Court acts in an appellate capacity to correct errors of law. *Id.* The District Court is bound by the Commissioner's findings of fact as long as those findings are supported by substantial evidence. Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360, 333 (Iowa 2016). Substantial evidence is "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1).

When reviewing an Agency action, the District Court may only reverse or modify if the Agency's decision is erroneous under one of the provisions set forth in Iowa Code section 17A.19(10), and a party's substantial rights were prejudiced. Gits Mfg. Co. v. Frank, 855 N.W.2d 195,

197 (Iowa 2014). Therefore, the District Court may reverse “upon a showing that the commissioner’s application of law to the facts of this case meets the demanding ‘irrational, illogical, or wholly unjustifiable’ standard of section 17A.19(10)(m).” Midwest Ambulance Serv. v. Ruud, 754 N.W.2d 860, 865 (Iowa 2008).

“If the findings of fact are not challenged, but the claim of error lies with the agency’s interpretation of the law, the question on review is whether the agency’s interpretation was erroneous, and [the district court] may substitute [their] interpretation for the agency’s.” Meyer v. IBP, Inc., 710 N.W.2d 213, 219 (Iowa 2006) (citing Iowa Code § 17A.19(10)(c)). In addition, if “the claim of error lies with the ultimate conclusion reached, then the challenge is to the agency’s application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence.” Id. (citing Iowa Code § 17A.19(10)(i), (j)). “[T]he commissioner as the fact finder has the responsibility for determining credibility of witnesses,” and the District Court is “bound by the commissioner’s findings if supported by substantial evidence.” Sherman v. Pella Corp., 576 N.W.2d 312, 320 (Iowa 1998).

The Iowa Supreme Court reviews the Commissioner's legal findings for the correction of errors at law. IBP, Inc., v. Burress, 779, N.W.2d 210, 213 (Iowa 2010). The Court is bound by the Commissioner's fact findings as long as substantial evidence supports the findings. Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360, 333 (Iowa 2016). The Iowa Supreme Court applies the same standard of review utilized by the District Court, that if "the claim of error lies with the *ultimate conclusion* reached, then the challenge is to the agency's application of law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring importation and relevant evidence." Meyer, 710 N.W.2d at 219 (citing Iowa Code § 17A.19(10)(i), (j)).

B. The Supreme Court Should Reverse the District Court Order that Found Roger Blasdell did not Abandon Heather Blasdell.

The Appellants have preserved error on the issue of whether Roger Blasdell was entitled to Heather Blasdell's workers' compensation benefits because this issue was raised in the Petitioners' Appeal Brief filed with the District Court, and the District Court addressed this argument in the December 6, 2021 Order Granting Petition for Judicial Review. Order Granting Petition for Judicial Review, p. 8; App. p. 300.

Deputy Stephanie Copley concluded in the Arbitration Decision issued August 6, 2019, that Mr. Blasdell “willfully deserted Heather and therefore is not entitled to death benefits.” Arb. Dec., p. 11; App. p. ____.

The Deputy concluded Mr. Blasdell’s dependence on the Claimant’s earnings ended when they separated in early 2011, and Ms. Blasdell “never shared her workers’ compensation benefits” with him. Arb. Dec., p. 11; App. p. 238. Furthermore, the Deputy concluded Mr. Blasdell “simply was not dependent on Heather’s earnings after 2011, nor was he dependent on Heather for a home, a car, or any other necessities or comforts.” Arb. Dec., p. 11; App. p. 238. Finally, the Deputy found Mr. Blasdell’s “romantic relationship with another woman, with whom he lived for several years, combined with the absence of any dependence on Heather, severed the bond that was the basis of his claim for death benefits.” Arb. Dec., p. 11; App. p. 238.

In the Appeal Decision, the Commissioner cited Iowa Code section 85.31(1)(a)(1), which states that when “death results from the injury, the employer shall pay the dependents who were wholly dependent on the earnings of the employee for support at the time of the injury.” App. Dec., p. 5; App. p. 275. The Commissioner concluded Mr. Blasdell and Ms. Blasdell “intended to terminate their marriage relationship in January 2011”

prior to the work injury. App. Dec., p. 7; App. p. 277. The Commissioner also found that “any dependency [Mr. Blasdell] might have had on [Ms. Blasdell’s] earnings ended in January 2011.” App. Dec., p. 7; App. p. 277. The Commissioner specifically found there was no evidence Mr. Blasdell received any of Ms. Blasdell’s workers’ compensation benefits; therefore, he failed to carry his burden of proof that he was “a dependent who is ‘wholly dependent’ on the earnings of [Ms. Blasdell] for support at the time of the November 2012 date of injury.” App. Dec., p. 7; App. p. 277.

The Appellants established through irrefutable evidence that Mr. Blasdell had clearly abandoned Heather Blasdell both as of November 5, 2012, the date of the initial injury, and September 9, 2016, the date of Ms. Blasdell’s suicide. Despite Mr. Blasdell’s numerous allegations at hearing and in his deposition of repeated contacts with Ms. Blasdell and ongoing provision of financial resources, he provided absolutely no objective evidence at hearing of their supposed ongoing relationship. Ex. JE5, p. 5, dep. pp. 18 – 20; App. pp. _____. This Court should find it difficult to reconcile Mr. Blasdell’s claim at hearing that he financially supported Ms. Blasdell with his admission under oath that he separated from Ms. Blasdell because he did not want to pay for her expenses. Ex. JE5, p. 5, dep. pp. 18 – 20; App. pp. 86.

Mr. Blasdell was questioned extensively both in his deposition and at hearing regarding whether he possessed any written documentation whatsoever supporting his allegations that Ms. Blasdell was a beneficiary of his health and life insurance and that he engaged in numerous forms of written and verbal communication with her on a variety of electronic devices from November 5, 2012, to the date of her suicide. Ex. JE5, p. 3, dep. pp. 9 – 10; App. p. 84. In the current digital age in which the parties engaged in supposed extensive communications, it seems impossible that Mr. Blasdell was only able to produce a single page of messages from Ms. Blasdell dated June 27, 2016, months prior to Ms. Blasdell’s suicide. Ex. B, p. 1; App. p. 166. Mr. Blasdell had ample opportunity to provide e-mail records, instant messaging and Snapchat records, and text message records proving his alleged extensive communication with Ms. Blasdell, yet he provided absolutely nothing aside from one page of messages from Ms. Blasdell. Ex. B, p. 1; App. p. 166. Furthermore, Mr. Blasdell listed himself as single on multiple tax forms in 2011 and 2015, proving his intention to be considered legally unmarried by both his employer and the federal government. Ex. E, pp. 3 – 4; App. pp. 177 – 178.

Pursuant to Iowa Code section 84.42(1)(a), “[w]hen it is shown that at the time of the injury the surviving spouse had willfully deserted deceased

without fault of the deceased, then such survivor shall not be considered as dependent in any degree.” In the case at hand, the Appellants have established Mr. Blasdell willfully deserted Heather Blasdell without any fault on the part of Ms. Blasdell. The Commissioner agreed with this finding. App. Dec., p. 7; App. p. 277. Mr. Blasdell made no allegations at hearing or in his deposition that Ms. Blasdell was unfaithful to him or engaged in any other type of behavior or deceit that caused him to desert her. See Ex. JE5, p. 5; App. p. 86. Instead, Mr. Blasdell admitted that he separated from Ms. Blasdell because he did not want to continue to pay for her expenses. Ex. JE5, p. 5, dep. p. 18 – 20; App. p. 86. It is certainly not any fault of Ms. Blasdell that she experienced difficulties with her finances, as she was receiving workers’ compensation benefits that were surely reduced by one-third for attorney fees collected by Tom Wertz, her attorney.

In the case of James Black Dry Goods Co. v. Iowa Industrial Com’r, 186 Iowa 657, 660, 173 N.W. 23, 24 (1919), the court stated that the “cessation of the marriage relations, the intent to desert, and the absence of consent of misconduct of the party alleged to have been deserted—are necessary to constitute desertion under the compensation statute.” In the James Black claim, there were a number of letters and postcards exchanged between the husband and wife after the date of desertion, and the decedent

sent his wife money. Id. Therefore, the Court held there was not desertion because the mere fact that they did not live together was not enough to constitute desertion. Id. In contrast to the James Black case, Mr. Blasdell was only able to produce a single page of messages from Ms. Blasdell dated June 27, 2016, instead of the numerous letters and postcards exchanged by the spouses in James Black. Ex. B, p. 1; App. p. 166. In the case at hand, Mr. Blasdell’s testimony clearly supports his intention to desert Ms. Blasdell because he admitted he left the relationship because he no longer wished to financially support her. Ex. JE5, p. 5, dep. pp. 18 – 20; App. pp. 86. Mr. Blasdell has offered no evidence that Ms. Blasdell consented to his abandonment of her, and in fact, she stated in her suicide letter that she was distraught by the fact that “every guy I try and date never sticks by me or he dies.” Ex. JE2, p. 4; App. p. 53.

The District Court appears to have relied upon the fact that Mr. Blasdell remained in the home he had shared with Ms. Blasdell before he ended the relationship because he no longer wished to financially support her in order to conclude he did not willfully desert Ms. Blasdell. Ex. JE5, p. 5, dep. pp. 18 – 20; Order on Petition for Judicial Review, p. 7; App. pp. 86. However, this focus on which party physically stayed in the initially shared home ignores Mr. Blasdell’s testimony that his relationship with Ms.

Blasdell ended specifically because he no longer wished to provide any financial support to her. Ex. JE5, p. 5, dep. pp. 18 – 20. App. p. 86. Although Judge Gogerty correctly noted that a factor to be considered in the determination of whether the surviving spouse abandoned the deceased spouse was whether “there [wa]s a design to forsake the other spouse willfully[,]” she should have applied Mr. Blasdell’s testimony that he ended the relationship based on his intention to stop financially supporting Ms. Blasdell to conclude he had a design to forsake her. Order on Petition for Judicial Review, p. 6; App. p. 298.

In the James Black case, there was substantive evidence that the decedent sent his wife money. 186 Iowa 657, 660, 173 N.W. 23, 24. In the case at hand, Mr. Blasdell testified in his deposition that Ms. Blasdell provided him with a small amount of cash possibly on one occasion, although he later changed this testimony at hearing to claim she provided small amounts of cash possibly five times per year. Ex. JE5, p. 7, dep. p. 25; Hearing Transcript, p. 28; App. pp. 88. The possibility that Ms. Blasdell provided Mr. Blasdell with a small amount of cash on one occasion over the course of five years simply fails to conform to the facts set forth in James Black that established a clear history of financial support from the decedent to the Claimant. 186 Iowa 657, 660, 173 N.W. 23, 24. Furthermore, Mr.

Blasdell's changing testimony about the amount of financial support allegedly provided should prevent this Court from relying on his testimony. Ex. JE5, p. 7, dep. p. 25; Hearing Transcript, p. 28; App. pp. 88.

Because the Appellants have clearly established that Mr. Blasdell abandoned Heather Blasdell under Iowa Code section 84.42(1)(a), this Court should reverse the District Court's Order on Petition for Judicial Review and affirm the Commissioner's Appeal Decision that found Mr. Blasdell was not entitled to Ms. Blasdell's workers' compensation benefits, especially given the fact that he did not share in any of her workers' compensation benefits whatsoever during the years she received benefits. Ex. JE5, p. 7, dep. p. 25. App. Dec., p. 7; App. pp. 88.

Because Deputy Copley concluded Mr. Blasdell willfully deserted the Claimant, she did not address the Defendants' affirmative defense pursuant to Iowa Code section 85.16(1). Arb. Dec., p. 11; App. p. 238. The Commissioner also did not address this defense. App. Dec., pp. 1 – 8; App. pp. 271 – 278. The District Court remanded the case to the Commission for a finding on this issue. Order on Petition for Judicial Review, p. 8; App. p. 300. The Appellants assert that despite the remand by the District Court, this Court should still find no benefits can be awarded for the Claimant's willful suicide. Pursuant to Iowa Code section 85.16(1), "[n]o compensation

under this chapter shall be allowed for an injury caused: (1) By the employee's willful intent to injure the employee's self or to willfully injure another." In the case at hand, Ms. Blasdell wrote a detailed suicide note that was found near her body by the police officer who responded to the scene of her death. Ex. JE2, p. 4; App. p. 53.

Numerous empty pill bottles were located near her body, including several pill bottles that were completely empty despite the fact they had been filled only several days prior to Ms. Blasdell's suicide. Ex. JE2, p. 4; App. p. 53. The fact that Ms. Blasdell emptied several entire pill bottles undermines Mr. Blasdell's attempted argument at hearing that Ms. Blasdell somehow unintentionally took a few too many medications, resulting in an involuntary overdose. Ex. JE2, p. 4; App. p. 53. In addition, both witnesses at the scene of Ms. Blasdell's suicide admitted she "had suicide attempts in the past and was recently hospitalized for an attempt." Ex. JE2, p. 3; App. p. 52. They also stated that "Heather and her boyfriend had recently broken up a day or a couple of days prior." Ex. JE2, p. 3; App. p. 52. Ms. Blasdell's suicide note specifically referenced her inability to maintain relationships as one of the reasons she elected to take her own life because she was distraught by the fact that "every guy I try and date never sticks by me or he dies." Ex. JE2, p. 4; App. p. 53.

Ms. Blasdell's medical records are rife with references to multiple suicide attempts and suicidal ideation. Ex. 1, pp. 12 – 18; App. pp. ____.

Therefore, the fact that she was found deceased next to a suicide note and empty pill bottles should disprove Mr. Blasdell's attempted argument that Ms. Blasdell did not commit suicide. Ex. 1, pp. 1 – 18; App. p. 109 – 112.

In addition, Mr. Blasdell has provided no evidence that Ms. Blasdell's suicide was caused by the initial November 5, 2012 work injury to her ankle. See all Claimant's exhibits on file herein. App. pp. 105 – 141. Ms. Blasdell's suicide note did not reference her work injury in any manner; instead, she only referenced mistakes she made in her life regarding her children and various relationships. Ex. JE2, p. 4; App. p. 53.

Because the Appellants have produced concrete evidence that the Claimant voluntarily committed suicide, this Court should find Roger Blasdell is barred from receiving any death benefits based upon the affirmative defense of intentional injury pursuant to Iowa Code section 85.16(1).

C. This Court should affirm the District Court's conclusion that the Commissioner's designee had authority to issue the Arbitration Decision.

Error was preserved on this issue because the District Court specifically found the Claimant was not prejudiced by the delegation of

authority. Order on Petition for Judicial Review, pg. 4; App. p. 296. On July 12, 2019, Commissioner Joseph Cortese II filed an Order of Delegation of Authority stating as follows: “Pursuant to Iowa Code section 17A.15(2) the authority for issuing a proposed decision in this matter will be assigned to Deputy Workers’ Compensation Commission Stephanie J. Copley due to the present unavailability of Deputy Workers’ Compensation Commissioner Erica J. Fitch.” See Order of Delegation of Authority on file herein; App. p. 226. Claimant’s Counsel filed no objection to the Order of Delegation of Authority. Claimant’s Counsel filed no appeal from the Order of Delegation of Authority. Finally, Claimant’s Counsel did not submit an Amended Post-Hearing Brief objecting to the Order of Delegation of Authority. Only after receiving an unfavorable decision and for the first time on appeal, Claimant’s Counsel argued the Commissioner’s designee had no authority to issue the Arbitration Decision. See Claimant’s Agency Appeal Brief on file herein.

On June 8, 2021, Commissioner Cortese issued an Appeal Decision finding that the Claimant waived any argument that the demeanor hearing was an inadequate remedy. App. Dec., p. 4; App. p. 274. Commissioner Cortese also found the Claimant “did not object to the demeanor hearing[,]” and he “did not argue, at the July 20, 2020 hearing, that the demeanor

hearing was an inadequate remedy.” App. Dec., p. 4; App. p. 274. The Commissioner concluded that delegation “was proper under Iowa Code section 17A.15(2) in this case.” App. Dec., p. 4; App. p. 274. The Commissioner also found that “the demeanor hearing was a proper remedy for [C]laimant.” App. Dec., p. 4; App. p. 274. Judge Gogerty concluded the Claimant had “not been prejudiced by the delegation of authority.” Order on Petition for Judicial Review, p. 5; App. p. 297. The Appellants ask that this Court affirm the findings of the District Court on appeal.

Iowa Code section 86.26(1) states that judicial review of “decisions or orders of the workers’ compensation commissioner may be sought in accordance with chapter 17A.” The Petition for Judicial Review “must be filed within thirty days after the issuance of the agency’s final decision.” Iowa Code section 17A.19. The July 12, 2019 Order of Delegation of Authority was clearly an “order[] of the workers’ compensation commissioner” pursuant to Iowa Code section 86.26(1). Therefore, if the Claimant disagreed with the Order of Delegation of Authority, he should have filed a Petition for Judicial Review pursuant to Iowa Code section 17A.19. No Petition for Judicial Review was ever filed. Therefore, the Commissioner properly concluded the Claimant waived the argument that the demeanor hearing was an inadequate remedy. App. Dec., p. 4; App. p.

274. Because the Commissioner and the District Court correctly concluded that the demeanor hearing was an adequate remedy, this Court should affirm that conclusion on appeal.

D. This Court should find the Appellants are not barred from raising the defense of spousal abandonment based upon the doctrine of estoppel.

Error was preserved on the issue of whether the Appellants were barred from raising the defense of spousal abandonment based upon the doctrine of estoppel because the District Court addressed the issue of spousal abandonment in the Order on Petition for Judicial Review, clearly finding the Appellants were not barred from raising that defense. Order on Petition for Judicial Review, p. 5; App. p. 297. Mr. Blasdell argued the Respondents are precluded from raising the defense of spousal abandonment pursuant to Iowa Code section 84.42(1)(a) based upon the doctrine of estoppel. See Claimant's Post-Hearing Brief on file herein. However, Mr. Blasdell's marital status was not a legal issue decided by Deputy Pals in the previous Arbitration Decision, and Mr. Blasdell had abandoned Ms. Blasdell by 2011 and was not even a witness at the Arbitration Hearing. Arb. Dec., p. 1; Ex. A, p. 3, dep. p. 6; Ex. A, p. 3, dep. p. 6; App. pp. 228, 146. The Deputy stated in the Arbitration Decision that there was a discreet set of four issues she considered, and Mr. Blasdell's marital status was not one of those

considerations, nor was spousal abandonment. Arb. Dec., p. 1; App. p. 228. In addition, Mr. Blasdel's claim for death benefits only arose when the Claimant committed suicide on September 9, 2016, as he admitted he had not received any portion of her workers' compensation benefits since the date of the initial injury on November 5, 2012. Ex. JE5, p. 7, dep. p. 25; App. p. 88.

Deputy Copley addressed the argument of judicial estoppel in the Arbitration Decision, and she concluded that because the parties stipulated to the Claimant's marital status at the time of the hearing, even if that stipulation would be considered a "decision" by the Agency, the Claimant's "marital status ha[d] no impact on her underlying entitlement to workers' compensation benefits . . . [so] it was not essential to the ultimate determination required of the agency." Arb. Dec., p. 6; App. p. 233. The Deputy also concluded Mr. Blasdel's status as a surviving spouse for the purposes of death benefits was not ripe at the time of the initial hearing because Ms. Blasdel was still alive. Arb. Dec., p. 6; App. p. 233. The Deputy concluded that because the Agency "could not and did not decide the issue of Roger's status as a surviving spouse or dependent for purposes of death benefits," the law of the case doctrine did not apply. Arb. Dec., p. 6; App. p. 233.

The Commissioner concluded that with regard to judicial estoppel, Ms. Blasdell's stipulation regarding her marital status was not material to any of the issues considered in and "played no role in the findings of fact and conclusion of the law in the December 2014 [A]rbitration [D]ecision." App. Dec., p. 5; App. p. 275. Judicial estoppel only applies when the position asserted by a party was material to the conclusion in the prior litigation. Tyson Foods, Inc., v. Hedlund, 740 N.W.2d 192, 198 (Iowa 2007). The Commissioner found that because the marital status stipulation played no role in the findings of fact and conclusions of law in the December 2014 Arbitration Decision, the stipulation did not bar the Defendants from raising the issue of marital status following Ms. Blasdell's suicide. App. Dec., p. 5; App. p. 275.

Because Mr. Blasdell had no legal right to Heather Blasdell's workers' compensation benefits until the claim for death benefits became ripe upon the Claimant's suicide, the Defendants had no need to raise the spousal abandonment defense at the time the claim initially proceeded to hearing. Therefore, this Court should find the Appellants should not be barred from raising a new affirmative defense of spousal abandonment to defend Mr. Blasdell's new Petition for death benefits, given that this Petition could not have been filed at the time of the November 5, 2012 injury.

VII. CONCLUSION

Linnhaven, Inc., and Accident Fund National Insurance Company/United Heartland have established Roger Blasdell is not entitled to Heather Blasdell's workers' compensation benefits because he willfully deserted her prior to the work injury and because Ms. Blasdell's intentional suicide bars benefits under the intentional injury affirmative defense. Therefore, this Court should reverse the District Court Order granting Mr. Blasdell's Petition for Judicial Review and remanding the case to the Commissioner for a determination of whether the claim was barred by the intentional injury defense.

WHEREFORE, Appellants pray that this Court reverse the District Court Order granting Mr. Blasdell's Petition for Judicial Review and remanding the case to the Commissioner for a determination of whether the claim was barred by the intentional injury defense.

VIII. REQUEST FOR NON-ORAL SUBMISSION

Appellants hereby waive oral arguments and request non-oral submission of the case to the Iowa Court of Appeals.

IX. CERTIFICATE OF COST

Appellants certify that the cost of electronically reproducing the Proof Brief and Appendix was \$0.00.

X. CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION.

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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/s/ Laura J. Ostrander
Signature

March 8, 2022
Date

XI. CERTIFICATE OF SERVICE

The undersigned certifies a copy of Appellants' Proof Brief was served on the 8th day of March, 2022, upon the following persons and upon the Clerk of the Iowa Supreme Court via electronic filing.

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