IN THE IOWA SUPREME COURT

No. 22-1328
Polk County No. CVCV063124

BRIDGESTONE AMERICAS, INC. and
OLD REPUBLIC INSURANCE COMPANY,
Petitioners/Appellants

vs.

CHARLES ANDERSON,
Respondent/Appellee.

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

RESPONDENT/APPELLEE'S FINAL BRIEF

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III. THIS COURT SHOULD AFFIRM THE FIFTY PERCENT AWARD

Cases

Arndt v. City of Le Claire, 728 N.W.2d 389, 392-93 (Iowa 2007)

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ROUTING STATEMENT

This case is should be transferred to the Court of Appeals under Iowa R. App. P. 6.1101(3) as it presents the application of existing legal principles and substantial evidence review of factual matters.

INTRODUCTION

This workers' compensation case raises three issues. First, was injury-causation established? Anderson asserts that answer is yes and points out this is a fact-intensive question already answered in Anderson's favor by every adjudicator who has examined the issue. Second, was the district court correct in determining that claimant's unique case should be compensated as an industrial disability? Based on the plain language of the statures, this answer is yes. And third, is the award of fifty percent industrial disability supported by the evidence? This third question is also a fact-intensive question already answered in Anderson's favor by the commissioner and the district court, and this court should likewise affirm.

STANDARD OF REVIEW

In 2022, this court issued two important workers' compensation decisions. *See Tripp v. Scott Emergency Commc'n Ctr.*, 977 N.W.2d

459 (Iowa 2022); *Chavez v. MS Tech. LLC*, 972 N.W.2d 662 (Iowa 2022). Each discussed the relevant standard of review considerations:

> The standards set forth in Iowa Code chapter 17A guide our judicial review of agency decision-making to determine whether our conclusion is the same as the district court. Further, we review the commissioner's interpretation of Iowa Code chapter 85 for correction of errors at law instead of deferring to the agency's interpretation because the legislature has not clearly vested the commissioner with authority to interpret that chapter. Nevertheless, [w]e accept the commissioner's factual findings when supported by substantial evidence.
>
> ***
>
> Our goal in interpreting the statutory provisions contained in chapter 85 of the Iowa Code is to determine and effectuate the legislature's intent. We do so by looking at the legislature's language rather than speculating about what the legislature might have said. Further, [w]e assess the statute in its entirety rather than isolated words or phrases to ensure our interpretation is harmonious with the statute as a whole. [L]egislative intent is expressed by omission as well as by inclusion. Thus, when the legislature includes certain language in one section of a statute but omits it in another section of the same statute, we generally presume the omission is intentional.

Chavez, 972 N.W.2d at 666, 668 (citations and quotation marks omitted). Previously, this court stated:

> Lest we lose sight of the polestar for our legal analysis in this case, we must interpret our own causation test in harmony with the words of the workers' compensation statute. The role of this court is to apply the words "of a statute as written." *In re Marshall*, 805 N.W.2d 145, 160 (Iowa 2011). "[W]e may not- under the guise of statutory

> construction-enlarge or otherwise change the terms of a statute as the legislature adopted it." *State v. Miller*, 590 N.W.2d 45, 47 (Iowa 1999). For us to interpret the statute to achieve some policy objective found nowhere in the statute's language … invades a sphere reserved for the legislature. *See In re Est. of Gist*, 763 N.W.2d 561, 567-68 (Iowa 2009).

Tripp, 977 N.W.2d at 467-68.

STATEMENT OF THE CASE

Anderson agrees with Bridgestone's description in its Statement of the Case.

STATEMENT OF FACTS

To best understand the facts, Anderson directs the court to the combined decision in the appendix.[1] The combined decision does an excellent job of laying out the pertinent facts. A hearing transcript was available at the time the deputy wrote the arbitration decision, so citations to the hearing transcript and exhibits are in the combined decision and need not be repeated here, other than appendix citation where necessary. The district court cited entirely to the combined decision as it laid out the pertinent facts.

[1] The district court cited extensively to the factual statements of the commissioner. The commissioner in turn cited the findings of the deputy. For this reason the decision of the deputy and commissioner are combined at pages 122-140 of the appendix and referenced as the "combined decision."

Anderson finds the factual statements on pages 2-8 of the combined decision to be an excellent summary of traditional factors helpful in understanding the case and in analyzing the industrial disability sustained by Anderson. (Appx pp. 124-130). Bridgestone's appeal briefs have also recited the facts fairly.

Anderson adds the following considerations. On page one of the deputy's decision, the deputy observed claimant was the "only witness to testify at trial." (Appx pp. 123). This observation is central to the commissioner's adoption of the deputy's decision, because the only source of testimonial evidence was the claimant along with the deputy's observation of the claimant and review of the exhibits. These tasks were performed by the deputy who had the chance to observe and evaluate Anderson's.

Bridgestone offered no witness to dispute Charlie Anderson's testimony, nor did it provide any independent medical evidence to rebut the reports and opinion of Doctors Harrison, Davick, or Stoken. (Appx p. 264).

As a result, claimant offers only his Case Fact Chart below to provide a quick reference to the important evidence supporting the finding of injury causation and supporting the fifty percent award. That

chart will be helpful in understanding the issues presented in Brief Point 1 and 3 of Bridgestone's appeal brief. Other facts will be developed as necessary in the discussion.

CASE FACTS CHART

Factor	Information	Source	Cite
Age	68 years old	Claimant	(Appx p. 210).
Injury	• Right shoulder traumatic full thickness rotator cuff tear with acromioclavicular joint arthropathy; right shoulder arthroscopy with a subacromial decompression, distal clavicle excision and open rotator cuff repair. • Right cubital and carpal tunnel syndrome; anterior ulnar nerve transposition, Z-lengthening of the flexor pronator, and right carpal tunnel release.	Joint Medical Records	(Appx p. 179). (Appx p. 180).

Factor	Information	Source	Cite
Causation of injuries to work	• Dr. Troll (exacerbation) • Dr. Davick • Dr. Harrison • Dr. Stoken		(Appx pp. 152-153). (Appx pp. 174). (Appx pp. 155-157). (Appx pp. 191-192).
Education	High school graduate	Claimant	(Appx p. 210).
Work History	Has worked as a tire builder at Bridgestone/Bridgestone since 1974	Claimant	(Appx pp. 212-218).
Rating	Dr. Davick: 8% shoulder impairment Dr. Stoken: **Right shoulder**: • 9% impairment of the RUE due to deficits in ROM • 10% RUE impairment due to distal clavicle excision	Joint Medical Records Claimant's Exhibits	(Appx p. 174). (Appx pp. 191-192).

Factor	Information	Source	Cite
	• 6% UE impairment due to deficits of flexion strength • 3% UE impairment due to deficits in abduction strength • 2% UE impairment due to deficits in adduction strength • 2% UE impairment due to deficits in external rotation strength		
Restrictions	Dr. Davick: "I do not believe Mr. Anderson is capable of returning to work as a tire builder. I think the repetitive lifting up to 75 lbs. would be too much given his shoulder condition."	Joint Medical Records	(Appx p. 174).
	Dr. Stoken: Avoid working at or above the shoulder level. Avoid lifting more than 10 lbs. on a frequent basis and 20 lbs. on an occasional basis. This places him in the **light** category of work.	Claimant's Exhibits	(Appx p. 192).
	Dr. Harrison: No work with these injuries	Joint Medical Records	(Appx pp. 159-164).

BRIEF POINT I

***SUBSTANTIAL EVIDENCE SUPPORTS THE COURT'S RULING THAT ANDERSON SUSTAINED INJURIES TO* "AN" ARM AND "A" SHOULDER**

On this appeal, Bridgestone has reorganized the arguments it presented to the district court. Below, Bridgestone relegated the injury-causation argument to the second point and presented the statutory scheduled-member argument as its main point of contention. In fact, at oral argument before the district court, Bridgestone did not discuss causation or the commissioner's fifty percent award of benefits.[2] (Appx pp. 265-274).

Bridgestone's causation argument raises a question of fact decided in Anderson's favor by each level of review issuing an opinion in his case. First, the deputy commissioner, then the Iowa Workers Compensation Commissioner found causation. And most importantly, the district court found substantial evidence supported those causation findings. (Appx pp. 103-119).

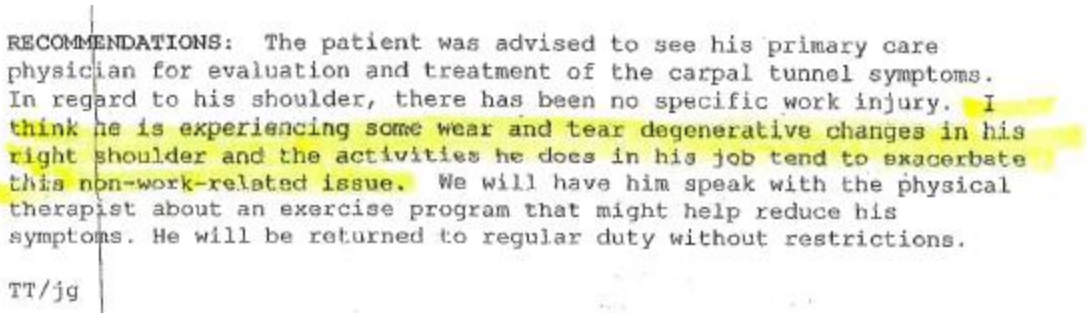
[2] Bridgestone stated the main "focus of the briefing" addressed whether the commissioner should have combined two separate scheduled injuries in the catch-all found in subsection 85.34(2)(v). (Appx p. 266)

As it pertains to the issues of causation as found by the commissioner and the district court, the standard of review is whether fact-intensive conclusions are supported by substantial evidence:

> The district court or an appellate court can only grant Arndt relief from the commissioner's decision if a determination of fact by the commissioner "is not supported by substantial evidence in the record before the court when that record is viewed as a whole." [Iowa Code] § 17A.19(10)(*f*). Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the commissioner's decision is not supported by substantial evidence. An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record. *Fischer v. City of Sioux City,* 695 N.W.2d 31, 33–34 (Iowa 2005).

Arndt v. City of Le Claire, 728 N.W.2d 389, 393 (Iowa 2007) (citation omitted).

By way of background, Bridgestone has taken a position of complete denial on the injuries all along. The root of Bridgestone's denial appears in the medical record of company doctor, Todd Troll, M.D., which was created by Dr. Troll at the time Mr. Anderson reported his October 31, 2018 injury. But, upon close examination, the record from Dr. Troll also supports a finding of causation. Dr. Troll stated the work of a tire builder at Bridgestone is highly repetitive and would "exacerbate" Mr. Anderson's shoulder and wrist and arm injuries. Here is what Dr. Troll noted in that first visit:



RECOMMENDATIONS: The patient was advised to see his primary care physician for evaluation and treatment of the carpal tunnel symptoms. In regard to his shoulder, there has been no specific work injury. I think he is experiencing some wear and tear degenerative changes in his right shoulder and the activities he does in his job tend to exacerbate this non-work-related issue. We will have him speak with the physical therapist about an exercise program that might help reduce his symptoms. He will be returned to regular duty without restrictions.

TT/jg

(Appx. p. 152-153). It is well established Iowa law that an exacerbation of a prior injury is fully compensable. *Musselman v. Central Tel. Co.*, 261 Iowa 352, 359, 154 N.W.2d 128, 132 (1967). Iowa law does not require a specific, traumatic injury in order to receive benefits. Rather, if a worker proves his work duties materially affected his previous health condition, the entire injury is compensable. *See id.*

To generate a basis for denial of the condition as work related, Dr. Troll observes in his narrative that Anderson did not describe a *traumatic* injury. Dr. Troll must not know that a work exacerbation of an underlying condition can be deemed work-related. Further, both the general duties at Bridgestone and Mr. Anderson's forty-four years of repetitive heavy work with Bridgestone demonstrate that injuries to the shoulder, arm, and hand are common for Bridgestone workers, as discussed later herein.

Under Iowa law, a gradual injury which takes place over a "period of time" is compensable. *Excel Corp. v. Smithart*, 654 N.W.2d 891, 896

(Iowa 2002). It is sufficient for the worker to show the disability developed gradually or progressively from work activity over a period of time. *McKeever Custom Cabinets v. Smith*, 379 N.W.2d 368, 373 (Iowa 1985) (stating "disability gradually came … as he continued to pound with hammers and sand with vibrators over a period of time—an accumulation of traumas"). This court has held that the date of injury in gradual/cumulative injury cases is the time at which the *disability manifests*[3] itself or the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992). In *McKeever* the proper injury date coincided with the time claimant was finally compelled to leave his job and receive medical treatment. 379 N.W.2d at 374-75. When looking at gradual (exacerbations) injury fact patterns, and determining an injury date, the workers' compensation commissioner is given wide latitude and is entitled to consider

> a multitude of factors such as absence from work because of inability to perform, the point at which medical care is received, or others, none of which is necessarily

[3] Anderson testified he sought medical help when he could not lift his arm to build tires. (Appx p. 250) He further testified "he thought it was time to take care of both of them," meaning the shoulder and arm. Appx p. 251)

> dispositive. Thus, for purposes of the cumulative injury rule, the Commissioner's determination regarding the date on which the injury manifests itself, so long as supported by substantial evidence as is required by Iowa Code section 17A.19(8)(f), will not be disturbed on appeal.

Tasler, 483 N.W.2d at 830. Here, causation is supported by substantial evidence.

When a worker uses their arms to builds tires for decades, gradual injuries are common, and Bridgestone knows this very well despite insisting that Anderson must show a specific-trauma event. As a part of this case, Anderson initially brought a companion Second Injury Fund claim, now dismissed and not pending on this appeal. However, the details of Anderson's 1989 hand injury are informative in showing how a Bridgestone worker can be hurt over time. Anderson's 1989 left hand carpal tunnel injury came on as a result of gradual[4] wear and tear and was accepted by Bridgestone as work related. (Appx pp. 230-231, 249). Anderson explained on cross-examination that there was little discussion of a specific injury event, stating, they just "accepted it." (T. p. 44; Appx p. 248, lines 23-24). The hand surgeon was an authorized doctor for Bridgestone, and the 1989 medical

[4] Much the same as what happened in 2018 to his right hand in this case.

records confirm that carpal tunnel syndrome was a known occupational problem at Bridgestone, even for a worker who only had six years of work experience *at that time*. (Appx pp. 152).

The surgeon's medical dictation shows that when releasing Anderson to return to work following this accepted work injury,[5] the surgeon cautioned Bridgestone that returning Anderson to this type of occupation could lead to "recurrence" of carpal tunnel syndrome. (Appx p. 166) The surgeon further explained, if Mr. Anderson returned to his regular employment (which he did), there is a 20% chance of recurrence of carpal tunnel. Finally, the surgeon stated that carpal tunnel would have a 10% chance of recurrence even if claimant switched away from the highly repetitive and stressful job of tire building and took on lesser duties with Bridgestone. (Appx p. 166).

Why is this note from Anderson's old surgeon significant to Bridgestone's 2022 causation argument? It is significant because thirty years before the 2018 injuries in this case, Bridgestone's company doctor was advising the company that carpal tunnel problems could be caused as a result of general tire building activities and that same

[5] Bridgestone paid for medical and healing period benefits. (Appx p. 230).

doctor (accurately) predicted more problems for Mr. Anderson if he kept building tires.

All of this proved true with Anderson's report of injury on October 31, 2018. By that time the old surgeon was long gone and Dr. Troll, who does not understand the significance of "exacerbation" under Iowa law, was in control of the acceptance or denial of repetitive motion injuries.

Both Dr. Davick, the shoulder surgeon, and Dr. Harrison, the family doctor, state Anderson's injuries are the result of work at Bridgestone. (Appx pp. 155-157, 174). And both of these doctors saw Mr. Anderson far more than Dr. Troll did. In fact, Bridgestone did not call Dr. Troll to testify in person or by written report. Further, in her independent medical examination, Dr. Stoken also details causation. (Appx p. 191). And it must be stressed that Bridgestone *did not* present a competing IME on the causation question. *Accord*, *Chavez,* 972 N.W.2d at 671 (observing claimant "did not present" a rating from her doctor or from her expert in an IME).

Additionally, Bridgestone's written job description found in pages 175-78 of Exhibit 14, details how a tire builder could injure his shoulders, arms, and hands. (Appx pp. 199-202). These records detail

the heavy nature of the work involved. Typical weights involved the range of 70-90 pounds. (Appx p. 226). The heavy nature of his job was also described by Mr. Anderson. (Appx pp. 219-229).

Particular emphasis in Anderson's testimony was made to page 176 of Claimant's Exhibit 14, where the hazards of the work are partially described. (Appx p. 227). Some of the words on the bottom of the page are missing, but Bridgestone informs the reader that "cuts, bruises, or minor hand injuries from knife, scissors, hand stitchers etc. broken fingers, hand"[6] were all mechanisms of injury, or areas of injury. These records demonstrate Bridgestone knew that all sorts of injuries could be caused by the work that was highly repetitive, heavy, and dangerous. (Appx pp. 227-228).

Additional consideration can be given to the Bridgestone occupational health records, where there are also numerous references to Anderson injuring his shoulder and hands from the repetitive use and stressful activity of day-to-day tire building. (Appx pp. 146-151). The record on JE 1, p. 4a is helpful. (Appx p. 150). Here the Bridgestone nurse describes Mr. Anderson as having a sore right shoulder as far back as 1998. As with the records from Dr. Grundberg,

[6] The sentence just stops, obviously cut off.

the 1989 carpal tunnel doctor, these older medical notations about work injuries at Bridgestone illustrate that repetitive and forceful use of the hands and arms with weights of seventy-five pounds or more leads to shoulder and arm injuries. Elsewhere in this group of records are references to other injuries to the fingers, hands, wrists, arms and neck. (Appx pp. 146,149-151, 203-207).

The next point in the causation discussion is what happened on cross-examination at hearing. That entire cross-examination is limited to pages 72-88 of the transcript. (Appx pp. 247-263). The hearing record establishes Bridgestone did not present any rebuttal to Anderson's testimony about the connection between his work duties and his injuries in the hand, arm and shoulder. Only the work at Bridgestone was discussed in cross-examination. (Appx pp. 247-263). There were no questions posed about non-work events as the cause of the injuries reported on October 31, 2018.

Bridgestone admits it took no statements, took no photos, offered no independent medical exam, and, most importantly, it offered no witnesses to rebut the causal connection between thirty-five years of tire building and Anderson's injuries. (Appx pp. 194-195; 264).

Bridgestone handled its opportunity to produce a single witness to rebut Mr. Anderson as follows:

> MR. DUTTON: None, Your Honor. We rest.
>
> ADMINISTRATIVE LAW JUDGE: Mr. Wegman, do you have any witnesses?
>
> MR. WEGMAN: No witnesses, Judge. Defense rests. Thank you.

(Appx p. 264). In *Chavez*, this court commented on one party not producing the evidence needed to support its contentions. *Chavez,* 972 N.W.2d at 671. And, in another important Iowa workers' compensation case, this court in 2022 noted, "No witness disputed any testimony from Tripp's medical professionals." *Tripp,* 977 N.W.2d at 463.

To be sure, there were cross-examination questions about when symptoms began in the wrist, arm, and shoulder, but Bridgestone's cross-examination did not break the causal link between forty-four years of heavy, repetitive work and the injuries. Questions from

counsel about an acute[7] onset of pain on a given day are not evidence and certainly do not defeat the finding of injury causation made by the commissioner and affirmed by the district court.

On page 18 of its brief, Firestone sites the *Arndt* case, alleging it is "strikingly similar" to issues in this appeal. 728 N.W.2d 389. Anderson agrees *Arndt* is helpful authority, but not for the reasons urged by Bridgestone. *Arndt* explains that where the commissioner's factual findings are supported by substantial evidence, it is not the role of the district court, the court of appeals, or the supreme court to substitute its own judgments about the facts. *Id*. at 393.

In *Arndt,* claimant lost on the causation issue before the deputy *and* the commissioner. *Id*. at 392. On appeal, both the district court and the court of appeals reversed, finding the injury work-related. *Id*. at 392-93. The employer then appealed to the supreme court, which reinstated the commissioner's ruling on causation adverse to Arndt. Importantly, the *Arndt* court followed the substantial evidence rule and

[7] From the record it is apparent there was not a single trauma which produced the shoulder complaint. On page 14 of his deposition, claimant testified there was not a "certain time" when he got hurt. He just reached the point where he could not raise his shoulder. (Appx p. 187) Again, on page 16 of the same deposition, Mr. Anderson agrees it should not be thought of as an "acute" injury.

determined there was substantial evidence to support the commissioner's adverse ruling: "Just because the interpretation of the evidence is open to a fair difference of opinion does not mean the commissioner's decision is not supported by substantial evidence. An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record." *Arndt,* 728 N.W.2d at 393 (quotation marks and citations omitted). Thus, *Arndt* stands for the proposition that this court *should not substitute its judgment* on a factual matter. That factual duty lies with the commissioner who heard the witness and found Anderson had established causation.

Last, this is not the first time Bridgestone has unsuccessfully litigated the specific-injury causation question it presents in this case. In 2013, Bridgestone worker Marlon Jackman went to hearing based on Bridgestone's total denial of compensability for a shoulder injury. *Jackman v Bridgestone/Bridgestone*, File No. 5040145, 2013 WL 4779886 (I. C. Aug. 30, 2013). In *Jackman* the key causation witness for Bridgestone was … Dr. Troll. As he did in this case, Dr. Troll used similar language in his dictation focusing on the lack of an acute injury and therefore suggested Jackman seek help with a private doctor:

> Dr. Troll found no objective evidence of injury and opined that "[w]ith a normal exam and *no clear evidence of a work injury, I cannot directly relate his symptoms to his work; therefore, I consider this a non-work-related problem." (Ex. 1, p. 1) Dr. Troll advised claimant to be evaluated by his personal physician.*

Jackman, at *2. (Emphasis added). The attorney in *Jackman* was Tim Wegman, Bridgestone's attorney in Anderson's case. As was done by the Anderson hearing deputy, the *Jackman* deputy rejected the Troll/Wegman specific-injury causation defense, stating:

> Dr. Troll's causation opinion is qualified. He notes that he cannot "directly relate his symptoms to work." (Ex. 1, p. 1) However, Dr. Troll does not rule work activities out as a substantial contributing factor to claimant's injuries. Nor does either party ask him to offer an opinion about whether the work activities caused an aggravation, exacerbation, or acceleration of claimant's underlying degenerative conditions. Dr. Troll's opinions are not well explained and appear to reject a work cause because there is not a traumatic, easily identifiable work incident and injury. However, Dr. Troll's opinions do not address or speak to the essential legal elements of claimant's alleged injuries.

Id. at *4.

In conclusion, Charlie Anderson was found credible by the deputy and the commissioner. The district court agreed. Here, unlike *Arndt*, there is no conflict in the rulings on causation and injury because Anderson prevailed at all levels. *Arndt* demonstrates the unanimous rulings on causation and injury in Anderson's favor should be affirmed

under the substantial evidence test because this court "can only grant [Bridgestone] relief from the commissioner's decision if a determination of fact by the commissioner is not supported by substantial evidence." *See Arndt*, 728 N.W.2d at 393. This record is replete with unchallenged, substantial evidence of causation. Thus, the district court should be affirmed.

BRIEF POINT II

ANDERSON'S INJURIES TO "AN" ARM AND "A" SHOULDER RESULTED IN AN UNSCHEDULED INDUSTRIAL DISABILITY

A. The statute in question is plainly written and readily understood. The district court should be affirmed.

Under Iowa Code section 85.34, the commissioner's classification of a "claimant's injury as either scheduled or unscheduled determines the extent of the claimant's entitlement to permanent partial disability benefits." *Chavez,* 972 N.W.2d at 666. More specifically, Iowa Code sections 85.34(2)(a)-(u) "govern permanent partial disability" awards "for injuries to specific members of the body and provide a schedule of benefits for injuries to those specific members." *Id*. The legislature chose to described these specific members of the body by using singular language to specify the applicable body member. *See* Iowa Code § 85.34(2)(a-u) (2018)(stating, among others,

"a hand," "an arm," and "a shoulder"). If the legislature wanted to combine body parts injured in a single event, as urged by Bridgestone, it could easily could have done so as recently as 2017 when it added shoulder as a scheduled member. See *id*. § 85.35(2)(t) (providing compensation for both arms, hands, feet, legs, eyes, "or any two thereof, caused by a single accident," but not including shoulder in the members addressed in the subsection).

Importantly and critical to the district court's affirmance of the commissioner: "Disabilities resulting from injuries other than those listed in paragraphs (a) through (u) of section 85.34 are considered unscheduled injuries that allow for benefits based on the injury to the body as a whole and are evaluated according to the industrial method" under Iowa Code section 85.34(2)(v). *Chavez,* 972 N.W.2d at 666-67.

Bridgestone contends the district court erred in affirming the commissioner's award of disability on an industrial basis. According to Bridgestone, Anderson's arm and shoulder injuries should be confined strictly to a scheduled award of compensation in light of the 2017 amendments to the Iowa Code that added "a shoulder" as a new scheduled member.

But here, Anderson suffered a loss of ***both*** "an" arm and "a" shoulder in a single injury. *See id.* § Iowa Code § 85.34(2)(n) ("For the loss of a shoulder, weekly compensation during four hundred weeks."); *See also* 85.34(2)(m) ("The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm [with] weekly compensation during two hundred fifty weeks."). Examining the plain language of the statute, the commissioner rejected Bridgestone's analysis, finding Anderson's injuries could not be assigned ***only*** to either of those statutory provisions — "an arm" or "a shoulder." (Appx pp. 134-35, 143). On appeal, the district court agreed, stating: "Subsection (m) speaks only to the loss of *an* arm, a singular body part. Thus, the [commissioner] properly determined that subsection (m) did not apply to Anderson as he had more than just the loss of an arm." (Appx pp. 112-13). (Italics emphasis in original). Similarly, because (n) covers only the loss of "a shoulder" and Anderson suffered loss of *both* an arm and a shoulder, subsection (n) did not apply. (Appx pp. 113). The statutes in question were written in the singular, not the plural, and this is the key to the outcome.

Next, the district court recognized, "[h]istorically, injuries to two scheduled body parts were addressed by" Iowa Code section

85.34(2)(t), which applies to "the loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident." (Appx p. 113). The court then agreed with the commissioner's conclusion that because the word "shoulder" is not present in subsection (t), it does not apply to Anderson's injuries to both "an arm" and "a shoulder," ruling:

> The Iowa Supreme Court, in dicta, seems to agree subsection (t) does not apply to injuries involving the shoulder. *Chavez*, 972 N.W.2d at 671 ("Chavez acknowledges this section does not apply because it does not mention shoulder injuries."). When section 85.34 was amended to add a single shoulder injury to the schedule, the legislature did not amend subsection (t) to include the shoulder under the two-injury schedule [in subsection (t)].
>
> . . . "[L]egislative intent is expressed by omission as well as by inclusion." *Thus, when the legislature includes certain language in one section of a statute but omits it in another section of the same statute, we generally presume the omission is intentional*. *Id.* at 667-68.
>
> Subsection (t) exists so that if a worker has injuries to two body parts as specified in the subsection, a schedule for compensation should be followed. However, this is not the case here, as injuries to the shoulder were not specifically included in subsection (t), and the court presumes this omission was intentional. The only logical conclusion is that subsection (t) cannot apply to Anderson and the [agency] did not err when [it] reached this conclusion.

(Appx pp. 113-114) (citations omitted) (Italics emphasis by district court). Thus, because there is no mention of shoulder or shoulders in

subsection (t), it cannot be utilized as a tool of compensation for Anderson.

Finally, the commissioner turned to the "catch all" provision in Iowa Code section 85.34(2)(v), which covers "all cases of permanent partial disability other than those described or referred to in paragraphs "a" through "u."" After concluding subsections (m), (n), and (t) did not apply to Anderson's injuries, the commissioner applied subsection (v) and awarded benefits, stating:

> Based on the above findings of fact, I conclude Mr. Anderson sustained permanent disability to his right arm and permanent disability to his right shoulder, caused by a single accident. I concluded that Mr. Anderson's permanent partial disability does not fall into any single subsection listed in "a" through "u" and therefore, the plain language of the statute provides that he shall be compensated as set forth in subsection "v." I conclude that Mr. Anderson has demonstrated that he should be compensated on the basis of an unscheduled injury based on a 500-week schedule.

(Appx pp. 135, 143). The district court followed this same path of legal reasoning and likewise determined the catch-all provision applied to Anderson's injuries. (Appx pp. 115).

Despite the legislature's failure to (1) add any plural designation to single body parts in the schedules, or (2) add singular or plural references to shoulder injuries in subsection (t) in the 2017

amendments, Bridgestone nevertheless argues the legislature *intended* shoulder injuries be compensated as a scheduled injury with reduced litigation and not under the catch-all provision in subsection (v). (Bridgestone brief p. 24). The district court did not err in rejecting Bridgestone's illogical interpretation of the statutory compensation scheme:

> The Legislature intended to put a single injured shoulder in the schedule by their recent amendment to the statute [subsection (n)], but they opted not to include the shoulder in the two-injury schedule under subsection (t). The only logical conclusion is that they intended a worker who has multiple injuries (which specifically includes a shoulder injury) should fall into the catch-all subsection (v). Subsection (v), which was not modified when subsection (n) was added to the statute, must be there for a reason and the reasonable conclusion is it is for multiple injuries which do not fall under subsection (t).

(Appx p. 115).

The district court correctly affirmed the commissioner's use of the catch-all provision based on the unique facts of this case and the plain language of the statutes. A reversal by this court, following Bridgestone's "separate schedule compensation" argument,[8] would render the "catch-all" provision of Iowa Code section 85.34(2)(v)

[8] That two injured areas of the shoulder and arm should be broken apart for award purposes.

meaningless. Importantly, the limited role of the courts was emphasized recently by the supreme court:

> The role of this court is to apply the words "of a statute as written." "[W]e may not—under the guise of statutory construction—enlarge or otherwise change the terms of a statute as the legislature adopted it." For us to interpret the statute to achieve some policy objective found nowhere in the statute's language . . . invades a sphere reserved for the legislature.

Tripp, 977 N.W.2d at 467-68. (citations omitted). This reasoning incorporates other well-established rules of the court limiting its interpretation of Iowa statues to the words the legislature actually wrote: "Iowa workers' compensation system is a creature of statue, being both conceived and constructed by legislative action." *Id.* at 464. Additionally, in *McSpadden v. Big Ben Coal Co.*, the court instructed: "One of those rules is that a statute should be accorded a logical, sensible construction which gives harmonious meaning to related sections and accomplishes the legislative purpose." 288 N.W.2d 181, 188 (Iowa 1980) (citations omitted).

The catch-all provision exists for circumstances like Mr. Anderson's, where two separate body parts are impaired from a single accident. His case meets the test of section 85.34(2)(v): "In all cases of permanent partial disability other than those hereinabove described

or referred to in paragraphs "a" through "u" hereof, the compensation *shall* be paid . . . .” (Emphasis added). Under the plain language of the statute, Anderson must (“shall”) be compensated under section 85.34 (v). The commissioner properly applied the catch-all provision, and the district court’s affirmance of the commissioner should be upheld in this appeal.

Further, this resolution accords with the results in cases where a worker has three, separate scheduled-member injuries from the same event. Such injuries are also compensated on an industrial basis because triple injuries do not fit the “singular[9]” language confines of Iowa Code section 85.34(2)(t). *See Sparks v. P&J Equip Corp.,* File No. 5058524, 2020 WL 2616411, at *2 (I.C. May 18, 2020) (injury to three members in one event establishes entitlement to industrial disability).

B. Other Bridgestone arguments.

On page 26 of its brief, Bridgestone implies that every shoulder case results in litigation and involves undue expense/attorney fees to injured workers. This is not reality. The vast majority of all cases are resolved without controversy, without filing a petition and without

[9] e.g. “a finger”; “a thumb”, “an arm”, etc.

incurring attorney fees. According to the 2017 Workers' Compensation Annual Report (p. 35-36), there were "over 20,000 injuries[10]" to workers in Iowa. Of that total, about 620 injuries of every imaginable type, resulted in a hearing before a deputy commissioner.

On page 27 of its brief, Bridgestone argues the reasoning of the district court using the catch-all provision could lead to unjust results in future cases. It sets out examples of a worker with a finger amputation and a hand injury being compensated on an industrial basis. In reality, the commissioner has already determined an injury distal to a joint is rolled (subsumed) into the next bigger scheduled loss for compensation purposes. So, for example, injuries to the fingers are commonly subsumed into the hand for rating purposes. *See also Miranda v. IBP/Tyson Foods, Inc*., File No. 5008521, 2005 WL 1842567, at *3-4 (I.C. Aug. 2, 2005). Thus, there is a way to compensate Bridgestone's hypothetical[11] of a finger/hand injury

[10] https://www.iowaworkforcedevelopment.gov/sites/search.iowaworkforcedevelopment.gov/files/documents/2018/AnnualReport_2017-02.pdf type: "iowa work force development 2017 annual report"

[11] With this hypothetical, Bridgestone is offering this court a serving of red-herring. It is not likely Bridgestone can point to any case where a judge gave an industrial award for finger and hand injuries. Even if Bridgestone might be correct with its concern, its remedy lies with the legislature, not the courts.

without an award of industrial disability. The distinction for Anderson is his injuries are not confined to the fingers or hand. His injury is to a shoulder and an arm from a single accident. And because the plain language of Iowa code section 85.34(2)(t) (dealing with two specified scheduled member injuries) does not include any reference to a shoulder, Anderson cannot get compensation for his injuries under subsection (t). As the district court correctly found, this leaves Iowa code section 85.34(2)(v) as the correct method of compensation for Anderson.

In the last paragraph on page 27 of its brief, Bridgestone cites deputy-level cases from twenty years ago to explain how injuries to fingers were compensated at the turn of the century. These finger/hand cases are not informative on issues here for four reasons. First, from the decisions there is no way to determine if any issues pertinent to this appeal were raised[12] in those cases. For example, in the 2002 *Frye* case, it is not known if the permanency dispute extended beyond the hand. *Frye v. IBP. Inc*., File No. 1269626, 2002 WL

[12] For decades parties in a work comp case fill out a detailed hearing report which requires them to declare if the injury in question is to a scheduled member (finger, hand, foot, etc.), or the body as a whole. (Appx pp. 12. Issue #5). Without that report there is no way to fully understand the controversy in a given case.

35636088 (I.C. Sept. 4, 2002). Second, these are deputy-level decisions that have not been scrutinized by the commissioner or any district court. Third, these cases were decided in an era of different methods of determining disability.[13] And fourth, this court has already determined that case law existing before the legislative changes in 2017 is not authoritative. *Chavez* 972 N.W.2d at 670 (stating pre-2017 amendment caselaw is unpersuasive).

It is sometimes left unsaid that the scheduled-member provisions of Iowa compensation laws can lead to harsh or unfair results. For example, a waitress who suffers a below-the-knee amputation will never be compensated on an industrial basis if her injury is confined to the leg. But this is the way Iowa's compensation statute works. In Bridgestone's view, Anderson deserves such a limited outcome because it is rhetorically possible to jam his case into the confines of two separate scheduled-member statutes, even though the injuries sprang from one event. But, such a separation of Anderson's injuries

[13] In 2018 the commissioner's administrative rules recognized the use of the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, as the preferred method of determining impairment and on how to combine impairments to the next larger body unit, such as fingers to hand. Iowa Admin. Code r. 876-2.4(85,86). [ARC 3528C, IAB 12/20/17, effective 1/24/18]

would ignore the catch-all provision ("in all other cases") of Iowa Code section 85.34(2)(v). Ignoring subsection (v) would render it meaningless; something that cannot be done by the court. Put another way, the legislature added the catch-all provision of section 85.34(2)(v) to the code for a reason, never modified it, and thus, its continued presence in the code cannot be waived away by references to unstated legislative intent when evaluating Anderson's injury. When examining statutes, it makes no difference what the legislature "thought" it was doing back in 2017. The court's focus must be on how it wrote the statute. If the legislature got it wrong, the remedy is to go back to the legislature, not the courts. *See Tripp,* 977 N.W.2d at 467-68.

In its brief Bridgestone directly cites to 2017 legislative action adding the shoulder as a separate method of scheduled compensation. It asserts what happened back in 2017 proves the "catch-all" provisions should not be used. Bridgestone support its thin argument that the "catch-all" provision should be bypassed by citing to a video[14] from the

[14] On page 25 of its brief, Bridgestone has added a new footnote to its earlier argument by including a lengthy URL to yet another snippet of Iowa legislature video from the year 2017. Anderson only found the video by typing each character of the URL into a browser. Bridgestone alleges this video of legislative debate is pertinent to issues in this case. It directs the court to the oral statements of Representative Cownie. This particular video was not presented as a part of the record

2017 Iowa legislature containing final remarks from the bill sponsor, Representative Gary Carlson. Bridgestone broadly asserts this video is relevant to understanding legislative action regarding what is now

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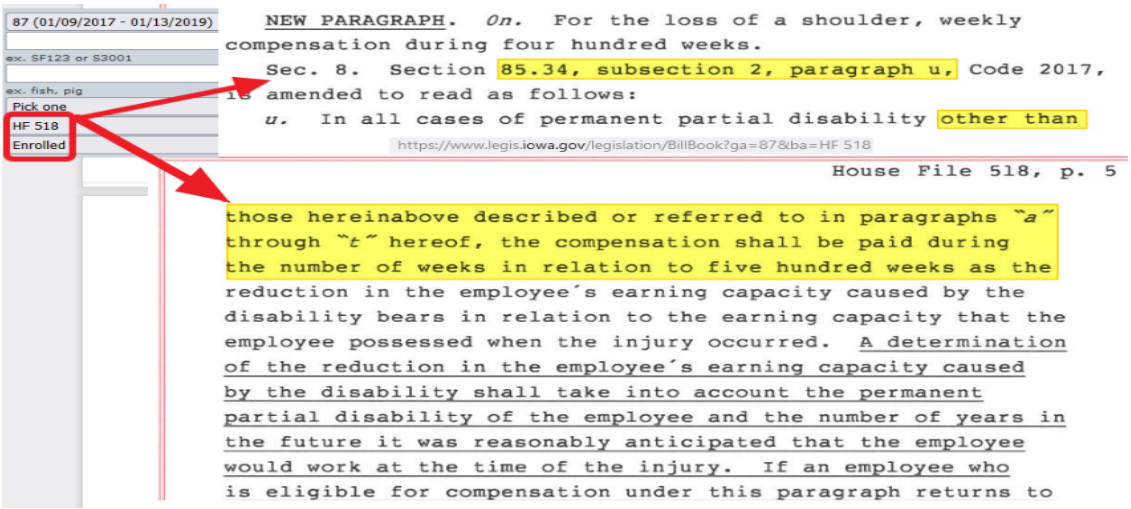
to the district court. As such, it should be struck from the record and not considered.

If it is considered, the video does not support the proposition urged in Bridgestone's brief. Anderson offers the following points. The video link actually starts at time marker 1:12:15. There Cownie is apparently reading a statement attributed to a deputy commissioner which, from context, apparently was made in an unidentified work comp proceeding that took place in November of 2016. It is not possible to know what the deputy was actually speaking about, or if the deputy was correctly quoted by the representative. The information read by Cownie makes clear it pertained to a legal concept called "apportionment." Apportionment is a concept based in Iowa Code Section 85.34(7)(b)(2), which provides that when a worker suffers two industrial disability injuries with the same employer, the worker should be paid industrial disability based on the combined disability from the two injuries; and the employer should receive a credit for the benefits paid for the first injury. Apportionment has nothing to do with the issues in Anderson's case. And despite the suggestion by Bridgestone, the newly argued video of Cownie has nothing to do with "protracted litigation," "costs," or "predictability."

One last point on this topic so far afield from the pending issues. In his video snippet, Cownie was advocating that the 2017 statutory changes (moving shoulder into the schedule) would add certainty to the statutes. Anderson agrees! Certainty was created when the legislature took action in 2017. That certainty has been recognized by Deputy Pals, Commissioner Cortese, and the district court, who all determined that Anderson should be compensated under Iowa code section 85.34(2)(v). Those well-reasoned rulings are just not the certainty that Bridgestone now seeks to have this court create. Bridgestone's remedy is to return to the legislature and work on making a new batch of sausage.

codified as Iowa Code section 83.34(2)(v). To assist the court, Anderson has watched the entire video and points out the relevant time marker begins at 4:45:00. There, Carlson spoke for nine minutes and offered rambling reasons why changes were needed to Iowa Code section 85.34 generally. What he *did not say was anything about the "catch-all"* provision of what is now labelled Iowa Code section 35.34(2)(v).

The screen shot of the actual law changes made by HF-518 shows not a single word utilized by the commissioner and district court in Anderson's case was changed:



That untouched language is highlighted in yellow and shows that nothing was changed in 2017 regarding the "catch-all" provision.

Rather than prove a legislative desire to modify the applicability of the "catch-all" provision, this video reinforces the validity of that code section as explicitly written. The "catch-all" language is there for a reason, and Mr. Anderson's case is a perfect application of that provision.

The legislature is presumed to know the state of the law, including case law, at the time it enacts a statute. *State v. Fluhr*, 287 N.W.2d 857, 862 (Iowa 1980). If the 2017 legislature wanted to limit a case like Anderson's to remove his pattern of injury from the "catch-all" provision, it would have done so through the drafting process at that time. For example, the legislature easily could have removed the singular listing of body parts by incorporating plural body part references (e.g. "an arm" becomes "arms") into the subparts. It did not. The district court correctly used the catch-all provision based on the plain language of the statute.

In this case the commissioner reached his result by going through the relevant code sections one at a time to determine if Mr. Anderson's injuries fit any of the singularly listed subparts of section 85.34(2). (Appx pp. 134-35). The district court followed the same path through the relevant statutes in an equally well-written decision. The

statutory "catch-all" provision is there for a case like Mr. Anderson's. The agency said it perfectly:

> I concluded that Mr. Anderson's permanent partial disability does not fall into any single subsection listed in "a" through "u" and therefore, *the plain language of the statute provides that he shall be compensated as set forth in subsection "v."*

(Appx pp. 135). (Emphasis added.).

This court should decline Bridgestone's invitation to add concepts to the scheduled-member statutes that the legislature did not write into the statute[15]. The court may not ignore the plain meaning of statutes such as the "catch-all" provision and limit Anderson's recovery

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[15] Speaking of legislative action, an Amicus Curiae brief has been filed by the Iowa Association of Business and Industry. ABI advocates for what it contends was intent of the legislation back it 2017. "Advocacy" is the key word here. In its "Statement of Identity and Interest" ABI has not disclosed to the court that it was an intimate player in all versions of HF 518 as it was studied and passed into law by the legislature. What ABI did back in 2017 was file lobbyist declarations for four individuals on *each version* of the pending legislation. And, ABI was involved early in the process with its team of lobbyists registering at 9:09 p.m. on February 27, 2017, shortly after the filing of HSB 169, an earlier version of HF 518.
https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=87&ba=HSB169
Here is what that filing looked like:

HSB 169	1691YC	Nicole Crain	For	Iowa Association of Business and Industry (ABI)	02/27/2017 09:09 PM
HSB 169	1691YC	Brad Hartkopf	For	Iowa Association of Business and Industry (ABI)	02/27/2017 09:09 PM
HSB 169	1691YC	Jessica Hyland	For	Iowa Association of Business and Industry (ABI)	02/27/2017 09:09 PM
HSB 169	1691YC	Michael Ralston	For	Iowa Association of Business and Industry (ABI)	02/27/2017 09:09 PM

ABI had four lobbyists working the language of this bill in 2017. It got the bill it wanted.

to something that does not fit his injury pattern or the plain language of the statutes. In a recent case, the Iowa Commissioner stated: "As noted by the Iowa Supreme Court, however, I must '*follow what the legislature actually drafted ..., not what it might have wanted to draft*.'" *Patrie v. Martinson Construction Co.*, File No. 5068408, 2021 WL 2627018 at *2 (I.C. May 26, 2021) (citation omitted). This court should affirm the application of facts to the law as persuasively stated by the commissioner and as affirmed by the district court in its well-reasoned decision.

BRIEF POINT III

THIS COURT SHOULD AFFIRM THE FIFTY PERCENT AWARD

There is perhaps no more difficult task than determining the extent of disability. This determination is always fact-intensive. Basically, it comes down to a judgment call by the deputy and then the commissioner, if there is an administrative appeal.

Anderson agrees the standard of review on this fact-intensive issue involves the application of law to facts. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512 (Iowa 2012). To conduct the needed review appellate courts examine the record to "ensure that the fact finding is itself reasonable." *Id*. at 525. But, the court does not "engage in a

scrutinizing analysis, for, if we trench in the lightest degree upon the prerogatives of the commission, one encroachment will breed another, until finally simplicity will give way to complexity, and informality to technicality." *Id.*

Here, Commissioner Cortese described the deputy's decision as "well-reasoned" and adopted that decision as his own. (Appx pp. 143). And, the district court did the same in its own well-reasoned decision, stating: "Reviewing all the factors considered by the Deputy and the Commissioner, this court finds no reason or cause to disturb the assignment of a 50 percent loss." (Appx pp. 117-18).

Throughout this process, Charlie Anderson has admitted he is not 100% disabled. In fact, he testified he would like to be at Bridgestone building tires because he's still got the "gumption" and the "fire" to keep making top wages. (Appx p. 219). That "fire" to work is why he would still be second in seniority in the plant if he did go back: number one in seniority is still working! (Appx p. 229). When you are on top, why quit if you enjoy the benefits of the job? It was Bridgestone alone who made the decision to push claimant out by virtue of the severe economic penalty faced by a Bridgestone worker during a period of extended absence. (Appx pp. 240-242).

Mr. Anderson knows he can still work and testified he still has the desire to work[16] in jobs within his physical ability. The "go, go, go" attitude that made him so successful at Bridgestone is still present, as he clearly wants to work in some productive capacity. (Appx pp. 219, 229). He is not bothered by being sixty-eight years old and has no plans to retire altogether. He has a younger wife who is working, and he plans to do so as well, even in a disabled condition. (Appx p. 243).

Age is mentioned in Bridgestone's brief as a point of contention about the commissioner's 50% award. Here, Bridgestone argues both sides of the work-disability issue. On one hand, it asserts Anderson has good work lined up and will surely be successful as a greenhouse worker even though he has not taken that job for valid, covid-related reasons. On the other hand, it also argues Anderson would surely have retired in the near future now that he was sixty-eight years old and had a good pension in hand.

[16] Just as the Covid pandemic has dramatically altered the way work comp hearings are conducted, it has also had a strong affect on male workers in their 60's who faced risks of illness or death if they ventured out into the work force without wisdom and caution. At the time of hearing, Anderson was not yet double-vaccinated and understood the threat the Delta Covid variant would pose to even vaccinated workers in the summer of 2021. (Appx pp. 244, 263).

For this argument about retirement age, Bridgestone offers conjecture[17] on the age at which Anderson would have retired, but it *offered no evidence at hearing* to support its notion he would have retired soon. In fact, the only evidence in this record is Anderson's statements that he had no retirement date in mind at the time of this injury. (Appx p. 243).

The facts are he was working at the time the injury forced him out. He had a younger wife who is still working. He was making top wages. He intended to work as long as his wife worked. (Appx p. 243). That is all that is known in this record.

There is no handy rule about how long Anderson would have worked and been productive. Many people continue working into their later years because they enjoy it, like/need the money, and like socializing with others. As was reported in US News:[18]

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[17] On page 31 of its brief, Bridgestone implies having a nice retirement check might cause Anderson's younger wife to retire early, leading to his own retirement. It cites page 61 of the transcript. (Appx p. 243). That testimony makes clear there was no grand retirement plan in Anderson's mind. This assertion is pure speculation and was not posed as a question to Anderson at hearing.

[18] https://money.usnews.com/money/retirement/second-careers/articles/never-retire-why-people-are-still-working-in-their-70s-and-80s June 15, 2020. Type: "US News Why People Are Still Working in Their 70s"

> It's not uncommon for baby boomers to continue to work well into their 60s, 70s or even 80s. Some people decide to continue working because they need the money, while others love what they do and can't imagine not doing it anymore or just need to stay busy. With continued improvements in health care and life expectancy, people can spend as long in retirement as they spent working.

Examples of workers going long beyond “expected” retirement are numerous. Just ask Tom Brady, Pope Francis, or Iowa Senator Charles Grassley, who at age 89 just won a sixth term in the US Senate by urging voters to judge him not on his age but his abilities. Age alone is not the ultimate determinative factor of how long a worker will work.

The commissioner specifically carried out the statutory duty to “take into account” age and possible retirement on Anderson’s work life. Iowa Code § 85.34(2)(v) (2021). This result was adopted by the district court. The statute does not spell out how age is to be considered. All that is required is that it be considered. If the legislature wanted age to be an actual penalty to an injured worker, it could have said so; it did not.

In the beginning of this brief, claimant provided a chart of common factors of industrial disability. These are the well-known factors often used by lawyers, the agency, and the courts to examine the loss to a worker from a work-related injury. As a reminder, claimant

is sixty-eight years old, has limited education, and a forty-four-year exclusive work history with a single employer, Bridgestone. His only relevant past work history is that of tire builder. He also testified he is not skilled at using his cell phone for anything other than calls. (Appx p. 246). All doctors who have ventured an opinion regarding restrictions state Anderson is unable to work as a tire builder.[19] And, because of these injuries, he was not allowed to return to his life-long occupation.

In conclusion, Charlie Anderson was found credible by the deputy and the commissioner. The district court agreed. Here, unlike *Arndt*, there is no conflict in the rulings on the 50% disability because Anderson prevailed at all levels. *Arndt* demonstrates the unanimous rulings on the disability in Anderson's favor should be affirmed under the substantial evidence test because this court "can only grant [Bridgestone] relief from the commissioner's decision if a determination of fact by the commissioner is not supported by substantial evidence." *See Arndt*, 728 N.W.2n at 393. This record is replete with

[19] That is Drs. Davick, Harrison and Stoken. (Appx pp. 174, 155-156, 192).

unchallenged, substantial evidence of the factors of disability, and the district court should be affirmed.

CONCLUSION

The district court did an excellent job laying out the pertinent facts, relevant law, and applying the law to the facts. That court's ruling affirmed the earlier decisions by the deputy and commissioner. This court should affirm.

NO REQUEST FOR ORAL ARGUMENT

The parties provided oral argument before the district court. (Appx pp. 265-274) In that argument, Firestone contended the main "focus of the briefing" was on the question of whether the commissioner and the district court correctly combined two distinct scheduled injuries in the catch-all provision in subsection 85.34(2)(v). Issues of causation and extent of injury were not mentioned during the district court argument. Because that argument is reported and already in the appendix, there is no need for a second round of discussion.

Respectfully Submitted,

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ATTORNEYS FOR RESPONDENT/APPELLEE

CERTIFICATE OF COSTS

Respondents certifies that no costs were incurred in printing or duplicating paper copies of briefs.

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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) because this brief has been prepared in a proportionally spaced typeface using Arial size 14-point font and contains 10,076 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g).

/s/ Channing L. Dutton — December 7, 2022
Channing L. Dutton — Date

CERTIFICATE OF SERVICE

I, Channing L. Dutton, member of the Bar of Iowa, hereby certify that on December 7, 2022, I or a person acting on my behalf served

the above Respondent's/Appellee's Proof Brief to the Petitioners'/Appellants' attorney of record, via EDMS in full compliance with Rules of Appellate Procedure and Rules of Civil Procedure.

/s/ Channing L. Dutton
Channing L. Dutton

CERTIFICATE OF FILING

I, Channing L. Dutton, hereby certify that on December 7, 2022, I electronically filed the attached Respondent's/Appellee's Proof Brief with the Clerk of the Iowa Supreme Court using the Iowa EDMS, which will send notification of such filing to the following attorney of record:

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