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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO: 22-2081

LON TWEETEN d/b/a TWEETEN FARMS and GRINNELL MUTUAL,
Petitioners-Appellants,

vs.

COREY TWEETEN,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
THE HONORABLE DAVID NELMARK

APPELLEE'S FINAL BRIEF and REQUEST FOR ORAL ARGUMENT

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ROUTING STATEMENT

This case requires resolution of substantial issues of first impression considering the statutory changes that were made in 2017 to Iowa Code chapter 85, also known as the Iowa Workers' Compensation Act. Accordingly, retention is appropriate pursuant to Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

Corey Tweeten filed a petition for workers' compensation benefits on January 21, 2020, alleging a right upper extremity injury against his employer while also making a claim for benefits against the Second Injury Fund of Iowa due to a prior injury to his right ankle. App. p. 5. The claim against the Second Injury Fund resolved before hearing so the Arbitration hearing addressed solely the claim against the employer for the right upper extremity injury. That hearing was held on March 10, 2021, before Deputy Commissioner James Christenson. App. p. 18. He issued his decision on September 17, 2021, finding that Corey had proven his right upper extremity injury occurred in the course of his employment, that his claim was not time barred under the discovery rule, that Corey was entitled to certain temporary and permanency benefits as a result of his injury, and that Corey was entitled to medical

expenses and his reimbursement for an examination pursuant to Iowa Code §85.39. App. p. 18.

On September 30, 2021, Defendants timely filed a request for rehearing to address the award of healing period benefits and to address whether the settlement with the Second Injury Fund deprived the agency of jurisdiction. The Rehearing Decision was issued on October 13, 2021, agreeing with the Defendants on the issue regarding healing period benefits, but finding the Fund settlement did not deprive the agency of jurisdiction. App. p. 38.

Defendants filed their notice of appeal to the agency on October 21, 2021. On May 20, 2022, the Commissioner affirmed the deputy commissioner in its entirety as revised by the rehearing decision. App. p. 45.

Defendants filed their Petition for Judicial Review on June 13, 2022, and amended that petition on June 17, 2022. The Honorable David Nelmark issued his ruling on November 30, 2022. App. p. 61. Pertinent to this appeal, his ruling agreed with the Commissioner that the settlement with the Second Injury Fund did not deprive the agency of jurisdiction based upon the language found in Iowa Code §85.35. App. p. 61. The district court affirmed the Commissioner's findings that Corey

sustained a compensable injury to his deltoid but excluded the elbow injury as time barred concluding the discovery rule no longer applied. App. p. 61. The Court also affirmed medical expenses for the deltoid injury as well as reimbursement for Dr. Sassman's examination. App. p. 61.

Defendants filed their notice of appeal to the Iowa Supreme Court on December 21, 2022. App. p. 89.

STATEMENT OF FACTS

Corey Tweeten was working with his dad on the family farm in July of 2017. App. p. 172. At that time, his dad was his employer. App. p. 164. They were cleaning out a grain bin when Corey noticed symptoms in his right arm. App. p. 173. His dad was fully aware of the symptoms and aware of Corey's medical treatment to address those symptoms. App. pp. 161-162.

Corey first saw a medical provider in August 2017. App. p. 91. He was diagnosed with tennis elbow, provided a tennis elbow strap, and told to ice his elbow and use Aleve. App. p. 91. He next saw a provider in January of 2018. App. p. 92. Again, he was told to use ice and Aleve and try physical therapy. Id. During the time Corey was in physical therapy, he noted that his "pain jumped from below my elbow to about

three or four inches above my elbow." App. p. 166. In April 2018, Corey was diagnosed with tennis elbow and shoulder pain. App. p. 94. He was prescribed a Medrol Dosepak and encouraged to ice. Id.

In May of 2018, due to continued pain in the shoulder area, Corey was given an injection in the deltoid. App. p. 97. He was also referred to get an MRI. App. p. 97. Corey was told there were no abnormal findings on the MRI and was referred to a specialist, Dr. Warme. App. p. 98.

Corey saw Dr. Warme's PA on June 1, 2018. App. p. 99. A second MRI was recommended. Id. It was not until June 12, 2018, that Corey learned that the MRI showed a significant deltoid insertional tear that would need surgery. App. p. 100. Surgery to repair the deltoid occurred just days later on June 18, 2018. App. p. 101. At the time of surgery, Dr. Warme noted he could put his finger all the way down to Corey's bone where the tendon was torn. App. p. 102. It was Dr. Warme's opinion that Corey had likely overcompensated due to the tennis elbow which led to the tearing in the deltoid. App. p. 103. Dr. Sassman agreed with Dr. Warme. App. p. 123.

STANDARD OF REVIEW AS TO ALL ISSUES

Iowa Code Chapter 17A governs review of this matter. *See*, Iowa Code §86.26 (1997). In reviewing a decision on appellate review,

Iowa courts have applied the **substantial evidence standard**. *See, e.g.*, Long v. Roberts Dairy Corp., 528 N.W.2d 122, 122 (Iowa 1995). Under this standard of review, the court is "obliged to broadly and liberally apply [the agency's] findings to uphold rather than defeat the commissioner's decision." Id. at 123 (citing Ward v. Iowa Dep't of Transp., 304 N.W.2d 236, 237 (Iowa 1991)).

The Commissioner's findings are binding on appeal unless a contrary result is compelled as a matter of law. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The Court is not free to interfere with the commissioner's findings where there is conflict in the evidence or when reasonable minds might disagree about the inferences to be drawn from the evidence whether disputed or not. Catalfo v. Firestone Tire & Rubber Co., 213 N.W.2d 506 (Iowa 1973). Judicial review of decision of the commissioner is not de novo and commissioner's findings have force of a jury verdict. Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296 (Iowa 1974). The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity. Iowa Code §17A.19(8)(a) (2005).

As instructed in Meyer v. IBP, Inc., 710 N.W.2d 213, 218 – 19 (Iowa 2006):

> On judicial review, courts are bound by the commissioner's resolution of the first question-finding the operative facts from the evidence presented-if supported by substantial evidence in the record as a whole. *Excel Corp. v. Smithart,* 654 N.W.2d 891, 896 (Iowa 2002) (citing *IBP, Inc. v. Harpole,* 621N.W.2d 410, 414 (Iowa 2001)); *accord* Iowa Code §17A 19 (10) (f). In other words, the question on appeal is not whether the evidence supports a different finding than the finding made by the commissioner, but whether the evidence "supports the findings actually made." *St. Luke's Hosp. v. Gray,* 604 N.W.2d 646, 649 (Iowa 2000). On the other hand, the application of the law to the facts - the second question - takes a different approach and can be affected by other grounds of error such as erroneous interpretation of law; irrational reasoning; failure to consider relevant facts; or irrational, illogical, or wholly unjustifiable application of law to the facts. *See* "*219 Iowa Code §17A.19 (10) (c), *(i), (j),* (m). We allocate some degree of discretion in our review of this question, but not the breadth of discretion given to the findings of fact. *See* Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act (1998) Chapter 17A, Code of Iowa (House File 667 As Adopted)* 70 (1998) ("[W]hen an agency is delegated discretion in applying a provision of law to specified facts the scope of review appropriately applied by courts must be deferential because the legislature decided that the agency expertness justifies vesting primary jurisdiction over that matter in the discretion of the agency rather than in the courts."); *see also Clark v. Vicorp Rests., Inc.,* 696 N.W.2d 596, 604 (Iowa 2005) ("Because factual determinations are within the discretion of the agency, so is its application of law to the facts."); *Mycogen Seeds v. Sands,* 686 N.W.2d 457, 465 (Iowa 2004) **("[G]iven that factual determinations in workers' compensation cases are 'clearly vested by a provision of law in the discretion of the agency,' it follows that application of the law to those facts is likewise 'vested by a provision of law in the discretion of the agency.'** " (citing Iowa Code §17A.19(10) (f)). (emphasis added)

ARGUMENT

I. THE DISTRICT COURT CORRECTLY REJECTED DEFENDANTS' CONTENTION THAT A SEPARATE SETTLEMENT AGREEMENT WITH THE SECOND INJURY FUND EXTINGUISHED THE PENDING CLAIM AGAINST THE EMPLOYER RELYING ON THE STATUTORY LANGUAGE "SUBJECT MATTER OF THE COMPROMISE".

Error Preservation. Corey agrees Defendants preserved error by timely filing its Appeal of the District Court's Order on Judicial Review. The District Court decided this issue. App. p. 82.

Argument. When Corey filed his petition, he filed claims against his employer and the Second Injury Fund[1]. App. p. 5. His claim against his employer was limited to his right arm. App. p. 5. In contrast, Corey's claim against the Fund was for his "industrial loss" due to the combination of a first qualifying injury to his right ankle and his work injury to his right arm. App. p. 5.

On 2/15/21, a Notice of Intent to Settle with Corey was filed by the Second Injury Fund. App. p. 6. The hearing in this matter

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[1] The Second Injury Fund was statutorily created to "encourage the employment of handicapped persons by making the current employer responsible only for the amount of disability related" to a work injury sustained in the course of employment and not for prior injuries that may impact the worker's employability. "The Fund assumes responsibility for the difference between the disability attributable to the employer and the total amount of disability." Lawyer and Higgs, Iowa Workers' Compensation – Law and Practice (3rd ed.), §17-1. While the claims against the employer and the Second Injury Fund are filed on the same petition, they are entirely separate claims as the claim against the Fund is dependent on finding two qualifying injuries and the claim against the employer is dependent on finding a work injury only for the second claimed injury.

proceeded against the employer on 3/10/21. Defendants did not raise any jurisdictional issue prior to, or at, the arbitration hearing. App. p. 47. Defendants raised their jurisdictional argument for the first time in their post-hearing brief, filed 4/13/21. The settlement between Corey and the Fund was not approved until 4/23/21. App. p. 17. Deputy Christenson issued his Arbitration Decision on 9/17/21. App. p. 18. Defendants filed a Motion for Rehearing, again raising the lack of jurisdiction to hear this matter on 9/30/21. App. p. 32. Deputy Christenson denied Defendants' jurisdictional arguments in his Ruling on Rehearing filed on 10/13/21. App. p. 38. The Commissioner affirmed the Deputy's decision. App. p. 45.

Defendants contend that Corey's settlement with the Second Injury Fund extinguishes any claim against the employer. The district court disagreed. The district court based its determination upon the language found in Iowa Code §85.35(9).[2]

Iowa Code §85.35(9) states that an "approved compromise settlement shall constitute a final bar to any further rights arising under this chapter … **regarding the subject matter of the**

[2] The district court found that Defendants did not waive and did timely assert their jurisdictional objection. Corey asserts Defendants did waive and did not timely assert their objection. However, Corey also agrees with the district court that relying on the language of the statute itself to defeat Defendants' position is superior to the waiver argument.

compromise...". Iowa Code §85.35(9) (emphasis added). What is the significance of the words "regarding the subject matter of the compromise"? Up until 2005, parties to a closed-file, compromise work comp settlement had to stipulate that there was a "bona fide dispute" that there was even a work injury. Iowa Code §85.35 (2004). With no work injury, clearly the Commissioner would no longer have jurisdiction. Closed-file, compromise settlements pre-2005 had to be full and final because there were no other options.

In 2005, significant amendments were made to §85.35 that altered the finality of settlements. First, the introductory provision of §85.35 was amended as follows:

> The parties to a contested case, or persons who are involved in a dispute which could culminate in a contested case may enter into a settlement of any claim arising under this chapter ... providing for ~~final~~ disposition of the claim...

Iowa Code §85.35 (2004) then amended to be §85.35(1)(2005).

The second amendment that is pertinent to this discussion is the concluding paragraph of Iowa Code §85.35 (2004) which was amended to be Iowa Code §85.35(8)(2005) and now stands as Iowa Code §85.35(9)(2009). That amendment is as follows:

> Notwithstanding any provisions of this chapter ... an approved compromise settlement shall constitute a final bar to any

> further rights arising under this chapter...regarding the subject matter of the compromise.

The removal of the word "final" and the addition of the words "compromise" and "regarding the subject matter of the compromise" instruct us that settlements are not required to be "final" anymore. So, if a settlement is not "final," what remains? What remains is "the subject matter of the compromise." Namely, what the parties agreed to in the settlement documents.

As the district court aptly noted

> "Subject matter of the compromise" must have meaning. The only logical meaning is that the final bar provision applies only to claims that have the same subject matter as those released in a settlement. Here, the only claim released was for potential future compensation from SIF. There is no language releasing claims against the employer or its insurance carrier. Further, the potential liability of SIF was only the industrial loss resulting from the *combination* of the new arm injuries and a pre-existing ankle injury. The potential liability of Petitioners was solely for the arm injuries. Thus, the "subject matter of the compromise" was different than the subject matter of the workers' compensation proceedings. To find that an employer is relieved of liability because of a separate settlement with a third party for potential liability on a separate loss would defeat the purpose of the workers' compensation regime.

App. p. 76.

Iowa Code §85.35(6) supports the district court's interpretation in that it does allow exceptions to be carved out to retain subject matter

jurisdiction. That section allows parties to reach resolution on part of a claim while allowing medicals to remain open. Iowa Code §85.35(6). Similarly, Iowa Code §85.35(4) allows for a combination settlement wherein part of the claim remains open yet provides "full and final disposition" of other parts of the claim. Iowa Code §85.35(4). These amended sections give credence to the fact that the legislature only intended a settlement to be "full and final" as to the **"subject matter of the compromise."** Iowa Code §85.35(6). The words "subject matter of the compromise" have meaning and clarify what "full and final" actually means. That is particularly true when the subject matter of a Fund claim pertains to industrial disability benefits, whereas the subject matter of a claim against an employer in a claim involving the Fund is limited to a scheduled member.

It is also clear from the settlement documents approved, the only parties to the settlement were Corey and the Second Injury Fund. "Settlement agreements are essentially contracts." Shirley v. Pothast, 508 N.W.2d 712, 715 (Iowa 1993). A settlement agreement is a contract between the parties to that settlement and is binding only on the parties to the contract. Sierra Club v. Wayne Weber LLC, 689 N.W.2d 696, 702 (Iowa 2004). Their enforcement is therefore governed by the

principles of contract law. *See* Huber v. Hovey, 501 N.W.2d 53, 55 (Iowa 1993). Contract "[i]nterpretation is the process for determining the meaning of the words used by the parties in a contract." Pillsbury Co. v. Wells Dairy, Inc., 752 N.W.2d 430, 435 (Iowa 2008). "The **cardinal rule** of contract interpretation is to determine what the **intent of the parties was at the time they entered into the contract**." Id. at 437; *see also* Peak v. Adams, 799 N.W.2d 535, 543 (Iowa 2011) ("In the construction of written contracts, the cardinal principle is that the intent of the parties must control ...." (quoting Iowa R. App. P. 6.904(3)(n))).

It is patently clear in Corey's case that both he and the Fund, by their respective signatures, expressly limited the reach of their compromise settlement to the parties themselves. The subject matter of the compromise was the agreement for the Fund and Corey to resolve the claim pending between them and them only. Accordingly, the settlement extinguishes the rights to further benefits only as to the Fund. Further, the form settlement documents were specifically altered to make it clear the settlement was solely between Corey and Fund. App. p. 14.

Again, it is clear from the settlement documents approved, the only parties to the settlement were Corey and the Second Injury Fund. The intent of the parties was to resolve the dispute as to the industrial nature of Corey's claim then pending against the Fund. The employer took no part in negotiations. The employer did not sign the settlement documents. The lack of their participation in the process of settlement is precisely because the pending claim against the employer concerned an entirely separate matter.

As on judicial review, Defendants cite to numerous appellate cases purporting to support their position. Yet this Court, just like the district court, will readily distinguish the facts of those cases from the facts in this case.[3] All the more distinguishable since all but two of the cases were decided before the 2005 amendments.

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[3] It would be difficult to narratively set out the distinctions any better than the district court in pages 16-21 of its Ruling. For sake of inclusion, though, a brief summary is provided to assist the reader.
White v. Northwestern Bell Telephone Co., 514 N.W.2d 70 (Iowa 1994) involved a workers' compensation claim that was settled against the employer pursuant to 85.35 (1991). After the settlement, issues arose regarding ongoing medical care. The Court appropriately found that the full and final settlement divested the agency of jurisdiction. The facts of *White* are not at all relevant to this claim.
State Ex. Rel. Iowa St. Hwy. Comm'n v. Read, 228 N.W.2d 199 (Iowa 1975) is an eminent domain case and in no way relevant to this claim.
United Fire & Casualty Co. v. St. Paul Fire & Marine Ins. Co., 677 N.W.2d 755 (Iowa 2004) involved indemnification under 85.21 between the two parties. St. Paul knew it could file for 85.21 protection but instead, St. Paul settled with the injured worker under 85.35 (1999), including a clause saying St. Paul could go after United Fire for the settlement amount. Following that settlement, St. Paul then turned around and went after United Fire for the full amount of the settlement – a settlement that was negotiated without any input from United Fire. Again, the Court appropriately held that since United Fire was not involved in the settlement reached, it could not be bound by any terms reached. This case actually helps Corey because here, the employer was not a party to the settlement between Corey and the Second Injury Fund.
Bankers Standard Ins. Co. v. Stanley, 661 N.W.2d 178 (Iowa 2003) involved an injured worker that settled his work comp claim under 85.35 (2001) and then settled a third-party claim. AFTER both settlements were reached, the work comp carrier sought indemnification out of the third-party settlement. Again, the

With no appellate guidance, we turn to the agency for guidance. Yet again, the district court dismissed Defendants' reliance on Ahn v. Key City Transport, Inc., File No. 5042640 (App. 10/8/15) as misplaced because the facts are materially distinguishable from this case. App. p. 82.

The district court found there was language in the *Ahn* settlement documents that put the Claimant on notice that future claims would be barred. Id. The district court notes that while that same template language was present in Corey's settlement documents, "*that passage was ultimately deleted.*" Id. (italics in original) The district court goes on to conclude that "Carving out a particular claim from the settlement *between the parties to the agreement* may be impermissible, but that is different than carving out claims against an employer not party to the settlement." Id. (italics in original).

Court appropriately held that the indemnity chip had to be played as part of the settlement process and not held back.

Terry v. Dorothy, 950 N.W.2d 246 (Iowa 2020) involved an injured worker that reached a settlement pursuant to 85.35(3) (2015) releasing all parties including specific language releasing "any employees". After that settlement, the injured worker filed a gross negligence claim against a supervisor who was an employee of the discharged employer. The Court did not find a settlement reached under 85.35(3) prohibited a further claim against another employee. Rather the Court appropriately found that the language set out in the terms of the settlement agreement extinguished any claim against the supervisor since "any" employees were specifically mentioned in the settlement documents themselves.

Heartland Express v. Gardner, 675 N.W.2d 259 (Iowa 2003) is not applicable since Corey's injury happened within the state of Iowa.

Harvey's Casino v. Isenhour, 713 N.W.2d 247 (Iowa 2006) is also misplaced since Corey is not a seaman covered by a law of Congress.

The "last word" on this issue – at least as of this writing – came down last month (February 2023) from the agency. The Commissioner was presented with this precise issue on appeal and the Commissioner held a settlement between a Claimant and the Fund did not deprive the agency of jurisdiction over a claim against the employer. Milbrandt v. R.R. Donnelly, File No. 20009756.01, (App. Dec., 2/17/23). In arriving at that decision, the Commissioner stated:

> To hold otherwise would render the language of the amendment to the statute restricting the bar to matters "regarding the subject matter of the compromise" superfluous and is contrary to the intent of the legislature. See Little v. Davis, 974 N.W.2d 70 (Iowa 2022) (noting the courts read legislation in a manner to avoid reading portions of the statute meaningless or superfluous). Such an interpretation would lead to absurd results and would discourage parties from settling claims prior to hearing.

Milbrandt, File No. 20009756.01, (App. Dec., 2/17/23), pp. 14-15.

As the Commissioner notes in *Milbrandt*, the agency and the courts have always favored settlements. For the 30+ years the undersigned has practiced workers' compensation law before the agency, thousands upon thousands of closed-file settlements under Iowa Code §85.35 have been reached between a Claimant and the Second Injury Fund, followed by a hearing against just the employer. Similar settlements happen every day in Iowa. If Defendants' novel

theory is correct, the agency has heard thousands and thousands of cases over which it lacked subject matter jurisdiction. This would likely come as a surprise to the agency. Also, if the agency has lacked subject matter jurisdiction over all those cases, for all these years, does that not cause all decisions between Claimants and Employers which followed a closed file Second Injury Fund Settlement to be void? And, not just decisions, but settlements? Does every defense attorney which has ever represented an Employer at an arbitration hearing, or entered into settlement with a Claimant, *after* a Claimant's closed file settlement with the Second Injury Fund need to put his or her client on notice of the attorney's malpractice? Defendants' contention has the potential to amass the largest class-action lawsuit against defense attorneys and defense firms that Iowa has ever seen. Clearly, this is nonsense and the district court agreed. The district court should be affirmed.

II. THE DISTRICT COURT CORRECTLY FOUND COREY'S DELTOID INJURY WAS NOT BARRED BY THE STATUTE OF LIMITATIONS BUT ERRANTLY CONCLUDED THE DISCOVERY RULE NO LONGER APPLIED IN WORKERS' COMPENSATION CASES. SINCE THE LEGISLATURE CODIFIED THE MANIFESTATION TEST DEFINING THE DATE OF INJURY AND DID NOT ADDRESS

THE DISCOVERY RULE, THE DISCOVERY RULE STILL APPLIES.

Error Preservation. Corey agrees Defendants preserved error by timely filing its Appeal of the District Court's Order on Judicial Review. The District Court decided this issue on pages 12 and 13 of its Ruling. App. pp. 72-73.

Argument. Corey knew he did something to injure his right arm while working in July of 2017. App. p. 165. He went to his medical provider a few weeks later and was diagnosed with tennis elbow and told to take Aleve and try an elbow brace. App. p. 91. Corey then did not seek any treatment until January of 2018. App. p. 92. Again, he was diagnosed with tennis elbow and encouraged to continue the Aleve and the brace. Id. He was also directed to physical therapy which he did in January. Id. Corey mentioned nothing about his arm at his DOT physical later that month (App. p. 93) and then did not seek treatment again until April of 2018. App. p. 94. At that point, he was provided a Medrol Dosepak and a prescription NSAID. Id.

In May of 2018, Corey received an injection to his right arm for the first time. App. p. 97. Given the minimal relief obtained by the injection, Corey was then referred for an MRI. App. p. 97. Corey was informed the results of that MRI revealed no abnormalities, so he was

referred to a specialist on 5/23/18. App. p. 98. Corey was seen by the specialist on 6/1/18 and a second MRI was ordered. App. p. 99. Following the second MRI, on 6/12/18, Corey first learned that he had a significant tear in his deltoid muscle. App. p. 100. Corey continued to work up until the day of his surgery on 6/18/18. App. p. 101. Corey's petition for workers' compensation benefits was filed on 1/21/20, well within two years from the date on which the nature and seriousness of his injury manifested.

For over forty years, the "discovery rule" has applied to workers' compensation cases in Iowa. The seminal case which applied the discovery rule was Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256 (Iowa 1980). In *Orr*, claimant was "struck on the back of the neck by a falling plank." Id. at 257. According to the Court, Mr. Orr averred that despite the traumatic incident and the exercise of reasonable diligence, Orr "was unable to determine the headaches were caused by the May 1975 incident until September 1977." Id. Defendants moved to dismiss Orr's petition based upon the two-year statute of limitations defense. In its decision, the Court ruled that "we are concerned here only with whether the discovery rule is available to claimant under section 85.26." Id. at 258. The Court wrote:

> We must apply the workers' compensation statute broadly and liberally in furtherance of its humanitarian objective. *See Halstead v. Johnson's Texaco*, 264 N.W.2d 757, 759 (Iowa 1978). Courts do not favor statutes of limitations. When two interpretations of a limitations statute are possible, the one giving the longer period to a litigant seeking relief is to be preferred and applied. *Sprung v. Rasmussen*, 180 N.W.2d 430, 433 (Iowa 1970).

Id. at 261. The court concluded that the discovery rule was applicable on the facts of the case and remanded the claim to the agency for further proceedings. Id. at 261-262.

In Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997), the Court held that the proper date of injury was the "date of manifestation of the disability." Id. at 151. The "**manifestation test**" is the "date on which the claimant, as a reasonable person, would be plainly aware of (1) the injury and (2) the causal relationship between the injury and claimant's employment. Id.

In Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001), the Court affirmed *Jordan* and reiterated that an **injury date occurs when the injury is sustained, and the worker knows the injury to be work-related**. However, under the discovery rule, the statute of limitations does not begin to run until the employee is aware the injury is "serious enough to have a permanent adverse impact on the

claimant's employment or employability, i.e., the claimant knows or should know the 'nature, seriousness, and probable compensable character' of his injury or condition." *Herrera,* 633 N.W.2d at 288. (quoting Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256, 257 (Iowa 1980)). A claimant must have knowledge, either actual or implied, of all three characteristics of the injury before the statute of limitations begins to run. Swartzendruber v. Schimmel, 613 N.W.2d 646, 650 (Iowa 2000).

The seriousness component of the discovery rule exists so that "every minor ache, pain, or symptom" does not begin the statute of limitations. 2B Arthur Larson, *Workers' Compensation* § 78.41(e), at 15-279 (1994). Thus, the failure to file a claim within two years of the occurrence of an injury may be excused if the claimant had no reason to believe the condition was serious. *See id.* at 15-281. If the injury is trivial or minor, or the symptoms indicate no serious trouble, the seriousness component is not met. *See id.*

In further addressing the seriousness component, the Court of Appeals in Schroeder v. City of Boone, 2001 WL 293505 (Iowa App. 2001), stated that the two-year statute of limitations period begins to run when the injured employee discovers or in the exercise of

reasonable diligence should have discovered the nature, seriousness and probable compensable character of her injury citing Ranney v. Parawax Co. Inc., 582 N.W.2d 152, 154 (Iowa 1998). With regards to the "seriousness" component of this test, the Court relied upon Swartzendruber v. Schimmel, 613 N.W.2d 646 (Iowa 2000) wherein it was held that the failure to file a workers' compensation claim within two years of the occurrence is excused if the claimant had no reason to believe the condition was serious.

> "The legal resolution of the question of what constitutes recognition of the seriousness of an injury or disease is a fact specific inquiry. The facts, however, must satisfy the test of reasonableness. Under the test of reasonableness, we refrain from pinpointing any specific event to establish the seriousness of an injury, such as going to a physician or missing work. Although these events are relevant, we consider all facts and circumstances in resolving the issue." Id. at 651. "The seriousness component of the discovery rule exists so that 'every minor ache, pain, or symptom' does not begin the statute of limitations." Id. at 650.

The discovery rule also applies to cumulative injuries. The beginning of the statute of limitations may not begin, under the discovery rule, until the worker knows the nature of the disability, the seriousness of the disability, and the probable compensable nature of the disability. Chapa v. John Deere Ottumwa Works, 652 N.W.2d 187 (Iowa 2002). *See also* Larson Mfg. Co. Inc. v. Thorson, 763 N.W.2d

842, 854–55 (Iowa 2009); Midwest Ambulance Serv. v. Ruud, 75 N.W.2d 860, 865 (Iowa 2008); Swartzendruber v. Schimmel, 613 N.W.2d 646 (Iowa 2000).

The Iowa Supreme Court most recently considered the discovery rule in Baker v. Bridgestone/Firestone, 872 N.W.2d 672 (Iowa 2015). Baker was diagnosed with a minor muscle strain when Dr. Troll, the plant doctor, examined him on May 25 and at the time of follow-up appointments in July and September. Dr. Troll initially prescribed only over-the-counter medications for pain and advised Baker to perform stretching exercises during the several weeks after the incident. Additionally, Baker missed no work and continued to perform his regular job duties at his own pace without specific limitations for several months after the May 23 incident. Baker was not immediately referred to a specialist. The Court held that while none of these facts were dispositive on the issue of seriousness, when taken together, they warranted application of the discovery rule to preserve Baker's claim. Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 683 (Iowa 2015)

Much like Mr. Baker, Corey, as a reasonable person, did not know and could not have known the nature of his injury, the seriousness of his injury, nor that his condition was serious enough to

have a permanent impact on his employment or employability, until learning his deltoid muscle was completely torn. App. p. 100. The following timeline is illustrative:

July 2017	Corey knew he tweaked his right arm while cleaning out grain bins (App. p. 165)
8/14/17	Diagnosed with tennis elbow. Told to use Aleve, ice, and an elbow strap (App. p. 91)
1/3/18	Diagnosed with tennis elbow. Told to use Aleve, ice, and try physical therapy. (App. p. 92)
4/13/18	Diagnosed with tennis elbow & shoulder pain. Told to try Medrol Dosepak & ice. (App. p. 94)
5/11/18	Injection at deltoid. (App. p. 97)
5/17/18	Referral for MRI (App. p. 97)
5/23/18	Told no abnormality on MRI. Referred to specialist. (App. p. 98)
6/1/18	Seen by Dr. Warme's PA. Sent for second MRI. (App. p. 99)
6/12/18	Told MRI showed significant deltoid insertional tear (App. p. 100)

Between the initial incident in July of 2017 and his surgery in June of 2018, Corey's medical treatment consisted of Aleve, a brace, a brief course of physical therapy, and one injection. App. pp. 91-98. Even if one were to conclude that the injection suggested some element of seriousness, that injection did not occur until May 11, 2018, which means Corey's January 2020 petition was timely filed. App. p. 97.

Corey's own testimony pinpoints the timing of Corey's awareness of the nature, seriousness, and adverse impact on his employment:

9 Q. Corey, when did you first recognize the
10 true nature of your injury that you sustained to your
11 arm?
12 A. It probably would have been when we first
13 saw -- or my second visit with Dr. Warme when we seen
14 the MRI and seen the hole in the arm.
15 Q. When would have been the first time you
16 would have recognized the seriousness of your injury?
17 A. Probably about that same point in time.
18 Because a torn muscle is a torn muscle.
19 Q. Did you return to full-time work with your
20 dad on the farm?
21 A. No, I have not.

App. p. 167.

The facts in Corey's case are quintessential in justifying the policy behind the discovery rule; namely, not wanting injured workers to report 'every minor ache, pain, or symptom' to the employer. Corey had no reason to believe he had anything other than minor tennis elbow until being referred to Dr. Warme. Before that time, he had no appreciation for the nature of his injury, nor its seriousness, and he certainly had no idea it would permanently and adversely impact his employment.

In its Ruling, the district court concluded following the 2017 amendments, the discovery rule "no longer applies to workers' compensation claims". App. p. 72. A plain reading of the amended statute shows the district court is wrong.

Iowa Code §85.26(1) – the statute of limitations section - was amended in 2017 to add the following sentence: "For purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related." Iowa Code §85.26(1). That sentence codifies the language in the case law regarding when the date of injury occurs, also known as the "manifestation date." *See* Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824, 829-830 (Iowa 1992); *Herrera*, 633 N.W.2d at 287-288. In fact, Defendants agree that is exactly what that language does. ("What this language has done is to codify a test as to when the injury will have occurred, and from that date of occurrence the statute of limitations is then set." Def. Brief, p. 38). That language changes nothing about the court's ability to consider use of the discovery rule as the date of injury is only the starting point for considering the discovery rule.

Application of the discovery rule is a two-part process. *Herrera,* 633 N.W.2d at 288 ("The preferred analysis is to first determine the date the injury occurred under the *Tasler* test, and then to determine whether the statutory period commenced on that date or whether it commenced upon a later date upon application of the discovery rule.") For cumulative trauma purposes, the date of injury is fixed "as of the time the disability manifests itself." *Tasler,* 483 N.W.2d at 829. Now, the legislature has codified long-standing law on the manifestation test, codifying that the date of injury is the date the employee knew or should have known the injury was work-related. In doing so, the legislature did not address the second prong which, then, is answering the questions addressed by the discovery rule. Namely, at what point did the employee appreciate the nature, seriousness, and probable compensability of the injury.

One of the bases for the district court's errant conclusion was a snippet from the amendment's sponsor during a floor debate in the Senate expressing concern about employers not knowing of injuries until years later. App. p. 72. First, case law in Iowa is clear that the court should not look to the comments and opinions of one or two legislators to divine legislative intent because each legislator has his or her own

reasons for voting a certain way on legislation. Donnelly v. Board of Trustees of Fire Retirement System of City of Des Moines, 403 N.W.2d 768 (Iowa 1987). The Court must consider the language of the statute that was enacted – not what one legislator discussed during floor debates. Second, that concern is not at issue here as the employer witnessed the injury and knew all the facts surrounding the injury.

More importantly, **the Court cannot hear what the legislature did not say**. The legislature could have easily written the amendment to say "the discovery rule does not apply to workers' compensation cases." Or include language indicating *Orr* and its progeny were overruled.[4] The omission of such language is also instructive. As this Court has found

> legislative intent is expressed by what the legislature has said, not what it could or might have said. When a statute's language is clear, we look no further for meaning than its express terms. Intent may be expressed by the omission, as well as the inclusion, of statutory terms. Put another way, the express mention of one thing implies the exclusion of other things not specifically mentioned.

Hawkeye Land Co. v. Iowa Utilities Bd., 847 N.W.2d 199, 210 (Iowa 2014)(citing State v. Beach, 630 N.W.2d 598, 600 (Iowa 2001))

[4] The legislature clearly knows how to overrule case law as in 2019, they overruled Bluml v. Dee Jay's Inc., 920 N.W.2d 82 (Iowa 2018) by amending Iowa Code §85.61 via SF 507/HF 593. That amendment created Iowa Code §85.61 (7)(c) which states that "Personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment…" Again, specifically overruling *Bluml*.

What the legislature chose to do was codify the manifestation test for determining the date of injury. They did not address the discovery rule. The legislature is presumed to know the state of the law, including case law, at the time it enacts a statute. Welch v. Iowa Dep't of Transp., 801 N.W.2d 590, 600 (Iowa 2011). This Court is bound by the "words chosen by the legislature." State v. Childs, 898 N.W.2d 177, 184 (Iowa 2017) (quoting State v. Iowa Dist. Ct., 730 N.W.2d 677, 679 (Iowa 2007)); *see* Holland v. State, 115 N.W.2d 161, 164 (Iowa 1962) ("It is our duty to accept the law as the legislative body enacts it."). Again, the Court cannot read words into the statute the legislature failed to write, and the legislature did not address the discovery rule when it amended §85.26(1).

While not binding on the Court, agency expertise is to be given some deference in applying law to the facts. Mycogen Seeds v. Sands, 686 N.W.2d 457, 465 (Iowa 2004) In Carter v. Bridgestone Americas, Inc., File No. 1649560.01 (Appeal 7/8/2021), the Commissioner noted that the legislature's amendments to 85.23 and 85.26 "closely align with the court's longstanding definition and application of the manifestation test." *Carter,* at p. 5. The Commissioner concluded that the legislature's amendments

"essentially codified the cumulative injury rule/manifestation test." Id. The Commissioner's holding in *Carter* mirrors what other deputy commissioners have held. *See*, Stiles v. Annett Holdings, File No. 5064673 (Palmer Arb. 11/15/19); Wilton v. Dexter Laundry, File No. 5066443 (Gerrish-Lampe Arb. 1/21/2020.

As a secondary issue, the district court separated Corey's tennis elbow and shoulder injury, finding the tennis elbow not compensable relying on the errant conclusion the discovery rule no longer applied but finding the shoulder was compensable as the petition was filed timely as to when Corey *discovered* (was diagnosed) with that injury. App. p. 72. Interestingly, the Court states "No case law is needed to infer that knowledge of an injury is a prerequisite for knowledge that the injury was work-related." Id. To large extent, that naked statement sets forth the precise reason there is a discovery rule.

Relying on the opinions of Dr. Warme and Dr. Sassman, the Commissioner affirmed the deputy commissioner in finding that Corey's deltoid injury was a result of overcompensating for his elbow injury. App. p. 47. The district court also relied on the opinions of Dr. Warme and Dr. Sassman in finding Corey's deltoid injury occurred "due to [Corey] overcompensating for the elbow injury." App. p. 73.

Again, the commissioner's findings have force of a jury verdict. Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296 (Iowa 1974). Since the district court arrived at the same conclusion as the Commissioner, the district court should have affirmed the agency on its holding.

The discovery rule is still alive and well in Iowa. The language drafted and enacted by the legislature serves to codify the date of injury for workers' compensation cases in Iowa. Yet when it comes to applying the discovery rule, determining the correct date of injury under the manifestation test is only the first step. The second step of determining the nature, seriousness, and compensability of an injury – the test when applying the discovery rule - was not addressed by the legislature. Since the district court was merely speculating about what the legislature did not say, the district court was in error to conclude the discovery rule no longer applies to workers' compensation claims.

Furthermore, the medical evidence combined with Corey's testimony is substantial evidence to support the Commissioner's Appeal Decision in finding Corey timely filed his petition.

III. THE DISTRICT COURT CORRECTLY FOUND COREY ENTITLED TO THE MEDICAL EXPENSES SUBMITTED AT HEARING.

Error Preservation. Corey agrees Defendants preserved error by timely filing its Appeal of the District Court's Order on Judicial Review. The District Court decided this issue. App. p. 86.

Argument. The reasonable cost of subsequent care chosen by the injured worker, following the employer's abandonment of care or a failure to assume liability for the condition sought to be treated, may be reimbursed upon a showing that the care was reasonable and necessary treatment of the work injury. Haack v. Von Hoffman Graphics, File No.1268172 (App. July 31, 2002). There is no evidence to prove the care Corey obtained on his own was unreasonable or unnecessary. Furthermore, the care provided benefit to Corey. As such, the Commissioner properly awarded the medical bills in Joint Exhibit 10 and the district court correctly affirmed.

In Defendants' Appeal Brief to the Commissioner, Defendants raised for the first time, an objection to the summary of medical bills contained in Joint Exhibit 10. App. p. 134. The objection appears to be foundation as Defendants suggest the actual billing statements underlying the summary are needed for Corey to prevail and establish the expenses are related to his injury.

First, Defendants' objection to evidence must be offered at the hearing, not after. Schmitt v. Koehring Cranes, Inc., 798 N.W.2d 491, 501 (Iowa Ct. App. 2011). Second, Exhibit 10 was admitted as a JOINT exhibit without objection. App. pp. 159-160. Third, Defendants stipulated in the hearing report that the "medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and Defendants are not offering contrary evidence." App. p. 10. Finally, the undersigned's experience is that the agency prefers summaries to a pile of bills – particularly when the reasonableness of the care or cost is not in dispute. Certainly, the Commissioner has endorsed the use of medical bill summaries. Drury v. W-S Industrial Services, File No. 5055775, (App. 12/20/18).

Since Defendants failed to object to Joint Exhibit 10 at the time of hearing, joined in its submission, failed to raise the issue on the hearing report, and had no testimony or evidence to refute Corey's uncontroverted testimony, they cannot now claim the exhibit is an insufficient basis upon which to award medical benefits to Corey. As the district court notes, to hold otherwise would reward Defendants for "sandbagging" at the time of hearing." App. p. 86. Substantial evidence supports the district court's ruling to affirm the Commissioner's award

of medical benefits in Joint Exhibit 10. The district court should be affirmed.

IV. THE DISTRICT COURT CORRECTLY FOUND IT WAS APPROPRIATE TO ORDER REIMBURSEMENT FOR DR. SASSMAN'S INDEPENDENT MEDICAL EXAMINATION TO ESTABLISH A RATING UNDER IOWA CODE §85.39 SINCE IT WOULD BE IMPOSSIBLE TO OBTAIN A RATING WITHOUT AN APPROPRIATE EXAMINATION.

Error Preservation. Corey agrees Defendants preserved error by timely filing its Appeal of the District Court's Order on Judicial Review. The District Court decided this issue. App. p. 86.

Argument. Since Corey waited to see Dr. Sassman until after receiving the impairment rating from Dr. Aviles, Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), is not applicable and Corey's IME with Dr. Sassman falls under Iowa Code §85.39.

Once again, Defendants raise a novel contention that Iowa Code §85.39 should now be interpreted to allow for only an "impairment rating" with no "examination". Def. Brief, p. 50. Defendants' contention would defeat the entire purpose of §85.39.[5]

[5] "The statutory process balances the competing interests of the employer and employee and permits the employee to obtain an independent medical **examination** at the employer's expense." Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 844 (Iowa 2015)(emphasis added)

There is no mechanism for an injured worker to obtain a rating absent an examination. Even with the change in the wording of §85.39, legislation cannot be interpreted in a manner that leads to an absurd result, and Defendants' interpretation does just that. Brakke v. Iowa Dep't of Nat. Res., 897 N.W.2d 522, 534 (Iowa 2017).

Furthermore, Defendants' contention focuses on a few words in §85.39(2) to the exclusion of the remainder of the statute. Iowa Code §85.39(2) states:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, **the employee shall**, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, **be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and** reasonably necessary **transportation expenses** incurred for the examination. The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination. An employer is only liable to **reimburse an employee for the cost of an examination** conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an **examination** if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the

> reasonableness of a fee for an **examination** made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Iowa Code §85.39(2)(2017)(emphasis added).

The language of this statute is clear. The injured worker is entitled to be reimbursed for an "examination" and "transportation expenses." No statutory interpretation is necessary regarding those requirements. We turn, then, to the final sentence which states the fee for such examination shall be the "typical fee" charged to "perform an impairment rating." The plain meaning suggests to the reader that the fee would be the going rate for a provider to "perform an impairment rating." How does a provider "perform an impairment rating"? They review treatment records. They perform an examination. They issue a report. The examination is inextricably intertwined in the process of "performing" an impairment rating.

The plain language of the statute disputes Defendants' contention that "85.39 does not cover additional costs to provide opinions beyond impairment" (Def. Brief, p. 50), as the statute specifically requires reimbursement of the "examination" as well as "transportation expenses". However, should the Court determine the necessity to engage in the exercise of statutory interpretation, it must

look at the language of the statute as a whole. Doe v. State, 943 N.W.2d 608, 610 (Iowa 2020). *See* State v. Pettijohn, 899 N.W.2d 1, 16 (Iowa 2017) ("Interpreting a statute requires us to assess it in its entirety to ensure our interpretation is harmonious with the statute as a whole rather than assessing isolated words or phrases."); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012) at 167 ("Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts.").

Just recently, the Court of Appeals examined this statute and failed to consider the entire statute in concluding the reimbursement was limited to the "impairment rating fee." MidAmerican Constr. LLC v. Sandlin, No. 22-0471, 2023 WL 2148754 (Iowa Ct. App. Feb. 22, 2023). In *Sandlin*, the record included evidence of the fee structure for the doctor that performed the examination. *Sandlin*, at 4. That evidence showed that the doctor charged $500.00 for an impairment rating and $1400.00 as a base fee for an Independent Medical

Examination. Id. We have no such evidence offered in this record. There is no fee schedule for the Court to consider.

Yet even if there were such evidence, the Court of Appeals erred in tunneling their vision to focus on the word "rating" without considering the entire phrase "perform an impairment rating" and the context of the entire rest of the statute talking about "examinations." The Court of Appeals finds "the statute as now written only allows for reimbursement of an examination based on the typical fee charged for *an impairment rating*." *Sandlin*, at 4 (emphasis added). Yet that is not accurate. That is not the language used in the statute. The statute as revised allows for reimbursement of an examination based on the typical fee to "**perform** an impairment rating." According to Merriam-Webster, the word "perform" "implies action that follows established patterns or procedures or fulfills agreed-upon requirements and often connotes special skill." https://www.merriam-webster.com/dictionary/perform. To perform implies a process.

The AMA Guides to the Evaluation of Permanent Impairment ("Guides")[6] require a provider to follow certain procedures – *to*

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[6] In 2017, the legislature amended Iowa Code §85.34 to require usage of the AMA Guides to determine functional loss. "[T]he extent of loss or percentage of permanent impairment shall be determined solely by

perform certain requirements - in arriving at an impairment rating. First, an evaluator must determine whether the worker is at maximal medical improvement. If not, a rating is premature. *Guides*, section 2.4 at App. p. 154 & section 2.6a.5 at App. p. 156. The evaluator must know about past injuries, by reviewing past medical records, to determine if there is apportionment or aggravation to consider. *Guides*, section 1.6 at App. pp. 152-153. A history from the worker must be taken. *Guides*, section 2.6a.1 at App. p. 156. A physical examination is needed to assess a worker's current status and perform accurate measurements. *Guides*, section 2.6a.3 at App. p. 156. A review of the records and history must be done to understand the treatment that has occurred as well as treatment that has not occurred. *Guides*, section 2.5g at App. p. 155. The evaluator must determine a diagnosis. *Guides*, section 2.6a.6 at App. p. 157. Finally, the evaluator must determine the rating. *Guides*, section 2.6a.8 at App. p. 157.

The *Sandlin* decision ignores the mandates of the *Guides* as to what "performing an impairment rating" requires. The statutory language specifically says "to perform an impairment rating." The

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utilizing the guides to the evaluation of permanent impairment." Iowa Code §85.34(2)(x).

statute also mandates ratings to be performed pursuant to the *Guides*. Iowa Code §85.34(2)(x). And as set out above, the *Guides* require an evaluator to go through a process to properly arrive at a rating.

Contrary to the conclusion of the Court of Appeals, an examination and review of the medical records are an integral part of the impairment rating. Considering the examination as part of the rating also makes the statute more harmonious in that it gives voice to the repeated use of the word "examination" within the statute.

Finally, Defendants' contention that Dr. Sassman's bill should be parsed out amongst the various body parts is quite the stretch in Corey's case. A simple review of Dr. Sassman's report shows that roughly 90% of the report is dedicated to discussing and evaluating Corey's right arm. App. pp. 111-127. The right ankle and neck get little attention. Id.

Based upon a plain reading of the statute and substantial evidence, the district court's decision to order reimbursement of Dr. Sassman's IME bill should be affirmed.

CONCLUSION

Corey's settlement with the Second Injury Fund did not extinguish his pending claim against his employer as the subject matter of the

compromise in the settlement with the Fund was solely the claim Corey had against the Fund and did not include the employer.

Corey's petition was timely filed under the discovery rule. The plain language of the statute reveals the legislature only codified the long standing case law establishing the date of injury under the manifestation test. It did not address the discovery rule as to the nature, seriousness and compensability of an injury.

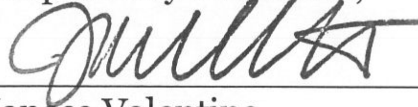
Substantial evidence supports the Commissioner's and district court's determinations that Corey's medical bills for his injury should be paid by Defendants.

Substantial evidence also supports reimbursement for Dr. Sassman's examination. The statutory language requires reimbursement for an examination and the cost of that examination is limited to the reasonable fee to "perform" an impairment rating. The statute requires ratings to be done pursuant to the *Guides*. The *Guides* require a number of steps to be taken to perform a rating. Accordingly, the reasonable fee necessarily includes all of the components required to arrive at a rating.

REQUEST FOR ORAL ARGUMENT

Corey Tweeten hereby requests Oral Argument to further discuss the issues on appeal.

Respectfully submitted,



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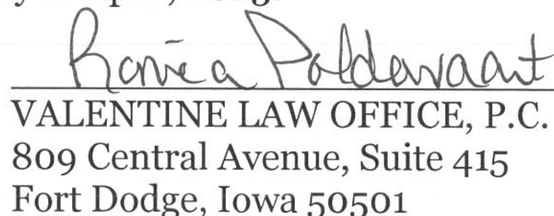
I, Ronica Poldervaart, an employee of Valentine Law Office, attorney for Corey Tweeten, certify the attached Final Brief and Request for Oral Arguments was filed with the clerk of the Iowa Supreme Court via electronic filing on this 12 th day of April, 2023.



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I, Ronica Poldervaart, an employee of Valentine Law Office, attorney for Corey Tweeten, certify the attached Final Brief and Request for Oral Argument filed with the Clerk of the Iowa Supreme Court was forwarded to all counsel via the electronic filing system and email on this 12 th day of April, 2023, and by U.S. Mail for any party not registered to receive notice of filings via the ECF process.

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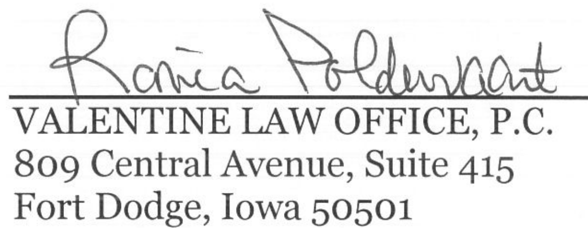

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