

IN THE SUPREME COURT OF IOWA

Appeal No. 24-0056

SECOND INJURY FUND OF IOWA,
Petitioner-Appellee,

-v-

REGENA STRABLE,
Respondent-Appellant.

**ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY**

HONORABLE ROBERT B. HANSON, PRESIDING

LAW NO. CVCV064995

APPELLANT'S FINAL REPLY BRIEF

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CERTIFICATE OF FILING/SERVICE

I, Gregory M. Taylor, attorney for the Appellant, certify that a true and accurate copy of this instrument has been and will be filed electronically with the Clerk of the Iowa Supreme Court and forwarded to all counsel via the electronic filing system on this 19th of April, 2024, and by U.S. Mail for any party not registered to receive notice of filings via the ECF process.

By: /s/ Gregory M. Taylor
Gregory M. Taylor

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STATEMENT OF THE ISSUES

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ARGUMENT

I. IF THE COURT REVERSES THE DISTRICT COURT, THE COURT SHOULD REMAND THE CASE BACK TO THE DISTRICT COURT FOR ENTRY OF A RULING ON THE ISSUE OF THE EXTENT OF THE FUND'S CREDIT

Nearly all of the issues raised by the Second Injury Fund in its brief were addressed by Appellee in its original brief. Those arguments will not be repeated here. However, Appellee submits the following to clarify its prayer for relief given that the Second Injury Fund has asked this Court to remand the case back to the Commissioner in the event the Court finds that Strable is entitled to benefits from the Fund.

In the underlying appeal decision, the Commissioner concluded that Strable established a first and second qualifying loss under Iowa Code section 85.64 and calculated the Second Injury Fund's credit to be 112.4 weeks. (App. 31, 33). After the appeal decision, the Fund filed an Application for Rehearing on December 19, 2022, arguing in part that the final agency action miscalculated the Fund's credit. (Application for Rehearing, pp. 8-11). The Fund's Application for Rehearing was deemed denied when the Commissioner did not rule on it within twenty days.

On judicial review, the Second Injury Fund challenged the agency decision in two respects. First, the Fund argued that Strable did not sustain a qualifying second loss under section 85.64. Second, the Fund challenged the

Commissioner's calculation of the Fund's credit. On judicial review, Judge Hanson never ruled on the second issue (i.e., the Fund's credit) because Judge Hanson concluded Strable was not entitled to any benefits from the Fund. (App. 46).

In the current appeal, the Second Injury Fund briefly addressed the credit issue at the end of its brief. (Appellee's Brief, pp. 39-42). The Fund asked this Court to remand the case back to the Commissioner (rather than to district court) to determine the Fund's credit. (Appellee's Brief, p. 39). However, Appellant contends that a remand to the Commissioner would be inappropriate given the Commissioner's denial of the Application for Rehearing on this issue. Instead, Appellant avers that if the Court reverses the district court, the case should be remanded back to the district court for entry of a ruling on the issue of the extent of the Fund's credit.

This Court reviews decisions of the Workers' Compensation Commissioner according to Iowa Code Chapter 17A of the Iowa Administrative Procedure Act. *Swiss Colony, Inc. v. Deutmeyer*, 789 N.W.2d 129, 133 (Iowa 2010). Appellate courts are to review a district court's ruling on judicial review of a workers' compensation decision for correction of errors of law. *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 414 (Iowa 2001). An appeal of the district court's review of an agency's decision "is limited to

determining whether the district court correctly applied the law in exercising its section 17A.19(8) judicial review function.” *Ahrendsen ex rel. Ahrendsen v. Iowa Dep’t of Human Servs.*, 613 N.W.2d 674, 676 (Iowa 2000). Here, since the district court never ruled on the credit issue, there was no ruling by the district court for this Court to review for errors at law. Under these circumstances, Appellant contends that if the Court reverses the district court and concludes that Strable sustained a qualifying second injury under Iowa Code section 85.64, the Court should remand the case back to the district court for entry of a ruling on whether the Commissioner properly determined the Fund’s credit.

CONCLUSION

For the reasons set forth herein and in Appellant’s brief, the district court ruling should be reversed and the case remanded back to the district court for a ruling on the issue of the extent of the Second Injury Fund’s credit under Iowa Code section 85.64.

CERTIFICATE OF COST

The undersigned certifies that the cost of printing the required copies of the Appellant's Reply Brief was \$0.00, as it was electronically filed.

By: /s/ Gregory M. Taylor
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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

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