IN THE COURT OF APPEALS OF IOWA

No. 7-484 / 06-1377
Filed December 28, 2007

MIDWEST AMBULANCE SERVICE
and COMBINED SPECIALTY INSURANCE,
f/k/a VIRGINIA SURETY COMPANY, INC.,
Respondents-Appellants,

vs.

JODI RUUD,
Petitioner-Appellee.

Appeal from the Iowa District Court for Polk County, Leo Oxberger, Judge.

The respondents appeal from the ruling on judicial review from the claimant's workers' compensation action. **AFFIRMED.**

Steven Nadel of Ahlers & Cooney, P.C., Des Moines, for appellants.

Mindi Vervaecke of the Fitzsimmons & Vervaecke Law Firm, P.L.C., Mason City, for appellee.

Heard by Huitink, P.J., and Vogel and Baker, JJ., but decided en banc.

BAKER, J.

Midwest Ambulance Service appeals from the ruling on judicial review of Jodi Ruud's workers' compensation claim. We affirm.

I. Background Facts and Proceedings

On May 12, 2000, Jodi Ruud was employed by Midwest Ambulance Service as a paramedic. As she was disinfecting an ambulance, her left shoulder dislocated. Before she was transported to Methodist Hospital, her shoulder located itself back into place. She was then examined by Dr. Berg, who released Ruud to return to work with no restrictions, but warned her it would continue to dislocate. Later that week, pursuant to Dr. Berg's referral, Ruud saw a physical therapist who told her she would need surgery at some time in the future. Ruud did not miss any work at this time.

From the time of the injury through approximately November 2000, Ruud's shoulder continued to dislocate on an average of once per month. Usually, she was able to put her shoulder back into place quickly, but she would still experience pain for up to two days following each dislocation. Between dislocations, she was pain-free.

On June 16, 2002, Ruud dove into a swimming pool and once again dislocated her shoulder. As in the past, she was able to re-locate it by herself. She missed one day of work following this dislocation and reported the incident to Midwest. In a June 20, 2002 letter to Midwest, Ruud requested treatment for her shoulder and related everything back to her original May 12, 2000 dislocation. On July 11, 2002, while lifting a patient at work, Ruud incurred a shoulder strain and reported it to her supervisor. Six days later she saw Dr.

Virginia Geary, to whom she was sent by Midwest. Dr. Geary refused to provide medical treatment, stating Midwest was denying liability because the injury was incurred during a non-work diving incident. She suggested Ruud seek an orthopedist using private medical insurance. Ruud testified that at that time she was prohibited from returning to work at Midwest until she was released by an orthopedic surgeon. Ruud has never returned to work at Midwest.

Later, in August, Ruud saw an orthopedic specialist, Dr. Raymond Emerson, who recommended an MRI and discussed the possibility of surgery. A subsequent MRI revealed a probable superior labrum anterior posterior lesion. Ruud eventually underwent surgery on September 25, 2002, to repair the tear and reconstruct the anterior labrum and capsule.

On August 27, 2003, Ruud filed a workers' compensation petition. In a November 2004 arbitration decision, a deputy commissioner found that Ruud's petition was barred by the statute of limitations found in Iowa Code section 85.26 (2003). On intra-agency appeal, the commissioner reversed and found that the petition was not time-barred. On judicial review, the district court affirmed. Midwest appeals.

II. Scope and Standards of Review

Our review of an industrial commissioner's decision is for correction of errors at law. *Simonson v. Snap-On Tools Corp.*, 588 N.W.2d 430, 434 (Iowa 1999). When we review the district court's decision, "we apply the standards of chapter 17A to determine whether the conclusions we reach are the same as those of the district court. If they are the same, we affirm; otherwise we reverse." *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004).

Under chapter 17A of the Iowa Code, the Iowa Administrative Procedure Act, the district court is authorized to review decisions rendered by the industrial commissioner. *Bearce v. FMC Corp.*, 465 N.W.2d 531, 534 (Iowa 1991). The district court may reverse or modify an agency's decision if the decision is erroneous under a ground specified in the Iowa Administrative Procedure Act, and a party's substantial rights have been prejudiced. Iowa Code § 17A.19(10). Our role as an appellate court reviewing an agency decision is threefold: (1) determine if the commissioner applied the proper legal standard or interpretation of the law; (2) determine if there was substantial evidence to support the commissioner's findings; and (3) determine if the commissioner's application of the law to the facts was irrational, illogical, or wholly unjustifiable. *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 603-04 (Iowa 2005) (discussing the interplay between Iowa Code sections 17A.19(10)(c), (f), and (m)).

We do not apply a "scrutinizing analysis" to the commissioner's findings. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 272 (Iowa 1995). Rather, we are bound by the agency's findings of fact if supported in the record as a whole and will reverse the agency findings only if we determine that substantial evidence does not support them. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). Under the substantial evidence standard,

> we determine whether there is substantial evidence in the record as a whole to support the decision of the agency . . . . Evidence is not unsubstantial merely because it would have supported contrary inferences. Evidence is substantial when a reasonable mind could accept it as adequate to reach the same finding.

Bearce, 465 N.W.2d at 534 (citations omitted). The definitive question is not whether the evidence supports a different finding, but whether the evidence supports the findings that were actually made. *Meyer*, 710 N.W.2d at 218.

This case does not turn on an interpretation of section 85.26 under section 17A.19(10)(c). The interpretation of section 85.26 is clearly vested in the court.

> The interpretation of workers' compensation statutes and related case law has not been clearly vested by a provision of law in the discretion of the agency. Therefore, we give the Commissioner's interpretation of the law no deference and are free to substitute our own judgment. On the other hand, application of the workers' compensation law to the facts as found by the Commissioner is clearly vested in the Commissioner.

Lakeside Casino and Zurich-Am. Ins. Group v. Blue, ___ N.W.2d ____, ____ (Iowa 2007) (internal citations and quotations omitted).

In this case, there is no allegation that the commissioner used the wrong test or interpretation under the discovery rule. Section 17A.19(10)(c) is not at issue here. Where a decision relies on the facts extensively to support the result as opposed to the proper legal standard or interpretation, the proper standard of review of the case moves from correction of legal errors under section 17A.19(10)(c) to a much more deferential standard under section 17A.19(10)(m) where discretion has been clearly vested in the Commissioner. This case is driven by the facts found and the inferences therefrom. The issues in this appeal are whether there was substantial evidence to support the commissioner's findings and whether the commissioner's application of the law to the facts was irrational, illogical, or wholly unjustifiable.

III. Statute of Limitations

Midwest Ambulance and its insurer contend the district court erred in concluding Ruud's action was not time-barred by the applicable statute of limitations, Iowa Code section 85.26(1). A petition for workers' compensation benefits must be filed "within two years from the date of the occurrence of the injury for which benefits are claimed." Iowa Code § 85.26(1); *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 649 (Iowa 2000). The purpose of this statute of limitations is to give the claimant time to investigate the claim and establish grounds to file a petition and to give the employer reasonable closure to potential liability. *Swartzendruber*, 613 N.W.2d at 649. The statute of limitations period does not commence until the claimant, acting as a reasonable person, recognizes the "'nature, seriousness and probable compensable character'" of the injury. *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 288 (Iowa 2001) (quoting *Orr v. Lewis Cent. Sch. Dist.*, 298 N.W.2d 256, 257 (Iowa 1980)).

> The question of when a claimant knew, or should have known, about the traumatic event and its work-related nature is a fact issue determinable by the industrial commissioner and binding on us if supported by substantial evidence in the record.

Gates v. John Deere Ottumwa Works, 587 N.W.2d 471, 475 (Iowa 1998) (citations omitted).

The commissioner made the following findings of fact:

> If Jodi had made a claim in 2000 or 2001 she would have had little, if anything, to recover. It is uncontroverted that Jodi did not miss work or incur expenses treating her shoulder problems until the summer of 2002. The injury did not adversely impact her employment until June or July 2002. Until June of 2002, events had not developed to a point where she was entitled to a meaningful remedy.

> Certainly, claimant could have sought treatment before June 2002. Her failure to realize before June 2002 that her condition was serious was reasonable. Evidence showing that her assessment was reasonable includes Dr. Berg having released her to immediately return to work without restrictions and without recommending care other than a brief amount of therapy. Dr. Everson clearly stated that in this case it was not until after repeated dislocations and the event of July 11, 2002 that surgery became necessary. It is not reasonable to expect Jodi to have more medical expertise than the physician the employer chose to treat her or her surgeon. While claimant was "in denial" of her condition to some extent while experiencing her dislocations after May 2000, that does not equate to recognizing that the condition was serious on the day the first dislocation occurred. To the contrary, it manifests her belief, optimism or hope that it was not serious. Her fear of losing her career as a paramedic does not prove that she was aware, from the outset, her condition was serious.
>
> I find that Jodi was not, and could not have been aware as a reasonable person, of the probable nature, seriousness, and compensable nature of her injury until June 2002. Her claim in this case was filed well within two years after June 2002.

The issue confronting the commissioner was when Ruud knew or should have known of the nature, seriousness, and compensability of her injury, a fact issue. *See Gates*, 587 N.W.2d at 475; *see also Dillinger v. City of Sioux City*, 368 N.W.2d 176, 182 (Iowa 1985) (holding whether employee possessed knowledge of "the nature, seriousness and probable compensability of his injury" is an issue of fact). The question before this court is whether the commissioner's findings are supported by substantial evidence. *See Meyer*, 710 N.W.2d at 218. The commissioner's findings easily meet this test.

When we review the commissioner's application of Iowa Code section 85.26 to these facts, our standard of review compels the same result. "[W]e can only reverse the agency's application of the law to the facts if we determine such an

application was 'irrational, illogical, or wholly unjustifiable.'" *Clark*, 696 N.W.2d at 604 (quoting Iowa Code § 17A.19(10)(m); *Mycogen Seeds*, 686 N.W.2d at 464).

In applying the facts to the law, the commissioner stated:

> Defendants effectively contended that claimant should have filed a claim with this agency before August 2001 (the date two years before August 2003 when the petition was filed). At that point in time, events had not yet developed to a point where claimant was entitled to a legal remedy. No benefits were yet due and at most, she could have obtained an award that acknowledged that she had an injury for which the employer was liable and that at some unspecified time in the future she would possibly require surgery and a period of accompanying disability. Her claim had not yet become compensable and she was not required to initiate litigation . . . .
>
> I found in this case that claimant did not arrive at a full understanding of the seriousness of her injury until June 2002 when she first missed work. The claim was filed on August 27, 2003 and I hold it to be timely. The defense under Iowa Code section 85.26 fails.

The commissioner's application of the law to the facts was not irrational, illogical, or wholly unjustified.

Additionally, the findings of the commissioner and his application of the law to the facts are in accord with the purpose of our workers' compensation statutes. These statutes are to be liberally construed "for the benefit of the injured employee." *Harvey's Casino v. Isenhour*, 724 N.W.2d 705, 706 (Iowa 2006). Further, "[w]hen 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." *Orr*, 298 N.W.2d at 261 (citation omitted).

While various pronouncements appear in our case law, the approach advanced in *Clark* comports with the standard of review under Chapter 17A and premise of the workers' compensation system. 696 N.W.2d at 603-04.

> The fundamental reason for the enactment of this legislation is to avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act.
>
> It was the purpose of the legislature to create a tribunal to do *rough justice-speedy, summary, informal, untechnical.* With this scheme of the legislature we must not interfere; for, if we trench in the slightest degree upon the prerogatives of the commission, one encroachment will breed another, until finally simplicity will give way to complexity, and informality to technicality.

Zomer v. West River Farms, Inc., 666 N.W.2d 130, 133 (Iowa 2003) (citation and quotation marks omitted) (emphasis added).

Consistent with the foregoing premise of the workers' compensation system, we hold that the commissioner used the proper test, there was substantial evidence to support the commissioner's findings, and the commissioner's application of the law to the facts was not irrational, illogical, or wholly unjustified.

IV. Medical Expenses

Midwest Ambulance and its insurer also contend the district court erred in affirming the commissioner's decision regarding the payment of medical expenses. They contend (1) they are entitled to a credit for expenses paid by Midwest Ambulance's group health plan during the time Ruud was covered by the plan through COBRA continuation coverage, and (2) they should not have been ordered to reimburse Ruud for any medical expenses paid by insurance plans to which Midwest did not contribute.

After she was unable to return to work in August 2002 due to her restrictions, Ruud continued her health insurance coverage with Midwest by paying for her own premiums through COBRA. She continued her COBRA

coverage until late 2002, when she became eligible for health insurance coverage through her husband's employer. Ruud admits that some of the medical benefits for which she makes a claim were paid through this COBRA coverage. Midwest argues that, because COBRA coverage is part of its group health insurance plan, and Midwest paid a portion of its current employees' premiums, pursuant to Iowa Code section 85.38(2), they are entitled to a credit for the expenses paid through Ruud's COBRA coverage. COBRA, however, is fully paid for by a former employee.

Section 85.38(2) provides that, when an employee with a disability receives benefits under any group health insurance plan which covers nonoccupational disabilities "contributed wholly or partially by the employer" which should not have been paid, "then the amounts so paid to the employee from the group plan shall be credited to or against any compensation payments." The commissioner concluded the section "requires that the employer contribute to the cost of the insurance plan as a condition for credit. [Midwest] did not contribute to the cost of COBRA . . . . Consequently, defendants are not entitled to the requested credit." The commissioner's application of the law to the facts was not irrational, illogical, or wholly unjustified. *See Clark*, 696 N.W.2d at 604. We affirm on this issue.

Midwest Ambulance and its insurer cite *Rethamel v. Havey*, 715 N.W.2d 263, 266-67 (Iowa 2006), to support their next contention, that the commissioner erred in ordering them to reimburse Ruud for any medical expense payments made by any insurance plans to which Midwest did not contribute. They contend that, because Ruud has not proven that she paid these expenses herself, she is

not entitled to reimbursement. *Rethamel* states that "a workers' compensation claimant is *not* entitled to be paid sums for medical and hospital expense *unless* there is a specific showing that the claimant himself paid the medical expenses." 715 N.W.2d at 267. It is unclear from the *Rethamel* opinion whether that claimant's medical expenses had been paid by another insurance plan or were still outstanding. In the cases cited in *Rethamel* to support the court's statement, however, the medical expenses had been paid by the employer's group health insurance plan. *See Krohn v. State*, 420 N.W.2d 463, 464-65 (Iowa 1988) (holding claimant was not entitled to reimbursement for medical and hospital expenses paid by employer's group insurance carrier); *Caylor v. Employers Mut. Cas. Co.*, 337 N.W.2d 890, 894 (Iowa Ct. App. 1983) (holding commissioner correctly determined claimant was not entitled to reimbursement for medical expenses that were paid by employer's group insurance plan). We are therefore unable to conclude, based on the court's holding in *Rethamel*, that Ruud is not entitled to reimbursement for the payment of the medical expenses by her other health insurance carriers, for which she and her husband paid the health insurance premiums.

In applying the facts to the law, the commissioner stated:

> Amounts paid by the private insurance are attributable to claimant as if she had made the payments herself. Those payments do not satisfy defendants' liability and must be reimbursed to claimant the same as if paid directly by her. Section 85.38(1). Other insurance plans may have subrogation rights. To grant the employer credit contrary to the express provisions of section 85.38(1) could readily result in a circumstance where either the claimant is liable to reimburse the private insurance plan without having received the funds with which to do so from defendants or the private insurance plan would not be able to enforce its subrogation rights.

The commissioner's application of the law to the facts was not irrational, illogical, or wholly unjustified. *See Clark*, 696 N.W.2d at 604. We also affirm on this issue.

V. Conclusion

Because the commissioner used the proper test, there was substantial evidence to support the commissioner's findings, and the commissioner's application of the law to the facts was not irrational, illogical, or wholly unjustified, we affirm the deputy commissioner's finding that Ruud's petition was not barred by the statute of limitations. We further find that the employer is not entitled to a credit under Iowa Code section 85.38(2), and Ruud is entitled to reimbursement for any medical expense payments made by the insurance plans for which she and her husband paid the health insurance premiums.

AFFIRMED.

Mahan, Zimmer, Miller Vaitheswaran, and Eisenhauer, JJ. concur; Sackett, C.J., and Huitink and Vogel, JJ. dissent.

VOGEL, J. (dissenting)

I respectfully dissent. This case presents yet another scenario of the interplay of Iowa Code sections 17A.19(10)(c) and (m)–that is, the directive that on judicial review the court "shall reverse, modify, or grant other appropriate relief from agency action . . . if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is" any of the following:

> c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
> [or]
> m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

Our supreme court has made clear the "interpretation of workers' compensation statutes and related case law has not been clearly vested by a provision of law in the discretion of the agency." *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 330 (Iowa 2005). Therefore, we give the Commissioner's interpretation of the law no deference and are free to substitute our own judgment. *Id.* On the other hand, application of the workers' compensation law to the facts as found by the Commissioner is clearly vested in the Commissioner. *See Mycogen Seeds v. Sands*, 686 N.W.2d 457, 465 (Iowa 2004). Therefore, we may reverse the Commissioner's application of the law to the facts only if it is "irrational, illogical, or wholly unjustifiable." *Finch*, 700 N.W.2d at 331.

I believe the appropriate scope of review of the discovery rule in this case is expressed under subsection (c). Under that standard, on judicial review the

court retains the ability to correct errors of law as to whether the components of the discovery rule have been met because that determination is a "provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(c). In this case, the facts are not in dispute, only the inferences drawn from those facts. The issue is whether the statute of limitations, as construed under our case law, was correctly interpreted by the agency. We should give no deference to the agency on this question. This is the primary distinction with how I and the majority would review this case.

The court's ability to examine the agency's application of the discovery rule is more expansive than the majority has undertaken, and is illustrated in the analysis set forth by our supreme court in *Swartzendruber v. Schimmel*, 613 N.W.2d 646 (Iowa 2000). In that case, whether the discovery rule applied and whether the claimant fulfilled the test of knowledge, seriousness and probable compensability of the injury was scrutinized by the court under a test of "reasonableness." *Swartzendruber*, 613 N.W.2d at 651. In other words, it appears the court analyzed that case under 17A.19(10)(c), as opposed to 17A.19(10)(m), and found we may examine not just whether the agency recited and applied the proper test, but whether the test itself is supported by the underpinning of factual reasonableness. *Id.* That function is clearly vested in the courts as "an interpretation of a provision of law" that has not clearly been vested in the discretion of the agency. Iowa Code § 17A.19(10)(c).

Swartzendruber looked to the components of the discovery rule test and stated: "The legal resolution of the question of what constitutes recognition of the

seriousness of an injury or disease is a fact specific inquiry. *See Dillinger v. City of Sioux City*, 368 N.W.2d 176, 182 (Iowa 1985). The facts, however, must satisfy the test of reasonableness." *Swartzendruber*, 613 N.W.2d at 651. In that case, the court reviewed each fact under a test of reasonableness to determine when the claimant should have known his injury, a loose artificial hip socket, was serious. *Id.* The court declined to adopt any fact specific triggers, such as claimant going to the doctor or missing work, but rather looked at what information was known to the claimant to determine when it was reasonable for him to have imputed knowledge of the seriousness of his injury. *Id.*

Citing *Ranney v. Parawax Co, Inc.*, 582 N.W.2d 152, 155 (Iowa 1998), the court reiterated that "exact knowledge of the seriousness of an injury is not required" to alert the claimant of the need to investigate. *Swartzendruber*, 613 N.W.2d at 650. Rather, "the duty to investigate begins once the claimant is aware of the problem." *Id.* Under this standard, the degree of knowledge is based upon a possibility, not a probability. *Id.* at 651. Thus, if it is reasonably possible an injury is serious enough to be compensable as a disability, the seriousness component of the test is satisfied. *Id.* We look to see when a

> claimant gains information sufficient to alert a reasonable person of the need to investigate. *Ranney*, 582 N.W.2d at 155. Thus, a claimant's knowledge is judged under the test of reasonableness. The need to investigate arises when a reasonable person has knowledge of the possible compensability of the condition.

Swartzendruber, 613 N.W.2d at 650.

Ruud's injury has a similar factual setting to *Swartzendruber*. Ruud's injury was caused during a traumatic event and was apparently severe enough to require immediate medical attention. In fact, she described her immediate pain

as "severe." On the same day as her injury, she was told by Dr. Berg that the shoulder would dislocate again and he referred her to physical therapy[1]. When she saw the physical therapist within the next week, Ruud was informed she would eventually need surgery. When asked during the workers' compensation proceedings why she did not seek further medical intervention, she responded, "denial." She later acknowledged her awareness of the physical therapist's comment regarding her future need for surgery, but testified, "I guess I was ignoring it and denying surgery . . . . That's--probably afraid I'd ruin my career." In her June 20, 2002 letter to Midwest, Ruud wrote:

> I have had problems with my shoulder before. The first time being when Frank wrote up an injury report while I was disinfecting a unit. At that time I was sent to healthsouth [sic] to have my shoulder checked. Also I went to Physical Therapy at this time. The therapist told me he could help me strengthen it, but that I would ultimately need surgery. Since then, I have had further instances with my shoulder becoming dislocated. Although these occurrences have been infrequent, they still concern me. I am to the point now where I would like to find out what my options are as far as repairing the problem . . . .

By her own admission, Ruud was well aware that something was wrong with her shoulder from the initial injury date. That knowledge was fortified with Dr. Berg's comment that the shoulder would again dislocate and days later when the physical therapist opined that surgery would be required at some point. Rudd did not have "exact knowledge" of the seriousness of her dislocated shoulder, *see Ranney*, 582 N.W.2d at 155, but she did have the certain knowledge of future dislocations and had a duty to investigate the seriousness of her injury. *Id.*

[1] Dr. Berg's notes contain this comment: "Dislocation. Rx for P.T. Will dislocate again!"

Although Rudd may not have elected to have immediate surgery, the clock nonetheless had started to run. Ruud did not miss any work from her shoulder dislocations until June 17, 2002, following her diving incident, but this is not necessarily determinative as to probable compensability. As *Swartzendruber* makes clear, "we refrain from pinpointing any specific event to establish the seriousness of an injury such as going to a physician or missing work." *Swartzendruber*, 613 N.W.2d at 651. "[W]e consider all the facts and circumstances in determining" the reasonableness of her belief as to the seriousness and compensability of the injury. *Id.*

Based on the undisputed facts in this record, I would conclude that, on the date of the injury when Ruud was examined by Dr. Berg, and surely no later than her first visit with the physical therapist, based on the *Swartzendruber* test of reasonableness, Ruud had sufficient knowledge to place her on inquiry notice as to the nature, seriousness and probable compensable nature of her injury. Ruud did not need to be certain of the seriousness and compensability of her injury, but she had imputed if not actual knowledge. *Ranney*, 582 N.W.2d at 155. Although Ruud tried to ignore her painful shoulder problem, the pain and dislocations persisted, until she finally sought a remedy. Heroic hiding or ignoring symptoms should not forestall an employee's duty to file a claim, putting the employer on notice of the possible liability.

Pursuant to *Swartzendruber* and the authority reserved to the court under Iowa Code section 17A.19(10)(c), the undisputed facts establish Ruud should have discovered the nature, seriousness and probable compensable character of her dislocated shoulder within the statutory period for filing a claim. Because this

appeal involves the interpretation of a statute, and analysis of the test used to determine the triggering of the discovery rule, Iowa Code section 85.26(1), this is always a matter of law to be determined by the court. *See City of Marion v. Iowa Dep't of Revenue & Fin.*, 643 N.W.2d 205, 206 (Iowa 2002); *see also Comes v. Microsoft Corp.*, 709 N.W.2d 114, 117 (Iowa 2006) (noting that whether the elements of issue preclusion are satisfied is a question of law). Therefore in such situations we "may substitute our interpretation for the agency's." *Clark*, 696 N.W.2d at 604.

Thus, if our proper scope of appellate review is found under 17A.19(10)(c), we should not delegate to the agency a function that rests in the role of the courts. Applying this scope of review, I would reverse the determination that Ruud's petition was not time-barred by the statute of limitations found in Iowa Code section 85.26.

Sackett, C.J. and Huitink, J., join this dissent.