

**IN THE COURT OF APPEALS OF IOWA**

No. 8-326 / 07-1100  
Filed October 1, 2008

**JO GILLESPIE,**  
Petitioner-Appellant,

**vs.**

**WELLMARK, INC., and  
EMC INSURANCE COMPANIES,**  
Respondents-Appellees.

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Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Employee appeals from a district court judicial review ruling affirming the appeal decision of the workers' compensation commissioner. **AFFIRMED.**

Jerry Jackson of Moranville & Jackson, P.C., West Des Moines, and Mark S. Soldat of Soldat & Parrish-Sams, P.L.C., West Des Moines, for appellant.

William D. Scherle and Alexander E. Wonio of Hansen, McClintock & Riley, Des Moines, for appellee.

Heard by Sackett, C.J., and Miller and Potterfield, JJ.

**MILLER, J.**

Jo Gillespie appeals from a district court judicial review ruling affirming the appeal decision of the workers' compensation commissioner. We affirm the judgment of the district court.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

Gillespie began working for Wellmark, Inc. as a copy clerk in 1978 when she was seventeen years old. She has worked for Wellmark in a variety of different positions since that time, most recently as a behavior health customer service specialist. Throughout her career at Wellmark, she was required to engage in repetitive activities such as "keying on the computer, talking on the telephone, filing, [and] faxing."

On January 28, 2002, Gillespie told her supervisor at work that she was experiencing throbbing pain in her hands and arms. She saw Dr. John Prevo that day. He diagnosed her with bilateral carpal tunnel dysfunction, opining it was "likely a work-related situation . . . ." Dr. Prevo released her to work with restrictions, recommending that she wear bilateral wrist splints and engage in physical therapy. She experienced only minimal improvement in her symptoms in February 2002, and the results of an EMG nerve conduction study performed in March 2002 were normal. Dr. Prevo consequently referred her to orthopedic surgeon Dr. Jeffrey Rodgers for further evaluation.

Gillespie met with Dr. Rodgers in April 2002. She complained of bilateral pain in her hands and arms, with the "left worse than the right," in addition to "occasional left sided neck pain radiating to the scapula." Dr. Rodgers believed

she was most likely suffering from cervical radiculosis and ordered an MRI. The MRI performed on April 17, 2002, was unremarkable. Dr. Rodgers did not feel any work restrictions were necessary and referred her to Dr. William Koenig Jr. for pain management.

Dr. Koenig saw Gillespie in May 2002, at which time she informed him that she had been suffering from upper extremity pain and paresthesias “for quite some time.” She reported experiencing numbness, tingling, and joint pain in both of her hands along with “knots” in her shoulder blades. She believed her symptoms were associated with her keyboarding activities at work. After examining her and discovering no “nerve root compression, peripheral nerve entrapment, or any intrinsic difficulties in the neck or shoulder,” Dr. Koenig diagnosed her with myofascial pain syndrome.

In August 2002, Dr. Koenig noted Gillespie was “every bit as symptomatic as when [he] saw her last” despite “all of the treatment she has had, which . . . included nearly eight weeks of physical therapy.” He discussed surgical intervention with her, to which she was amenable. He accordingly referred her to Dr. Douglas Reagan, an orthopedic surgeon. Gillespie’s first appointment with Dr. Reagan was on August 29, 2002. Her chief complaint was “bilateral arm pain, left worse than right, and pain at the medial elbows, left worse than right.” Dr. Reagan’s examination revealed that she suffered from cubital tunnel syndrome, myofascial pain, lateral epicondylitis, and radial tunnel syndrome.

Dr. Reagan performed surgery on Gillespie’s left hand and arm on September 27, 2002, in an attempt to correct these conditions. Gillespie

continued to experience pain in her hands and arms immediately following the surgery. She attempted to return to work with restrictions on October 14, but she had to leave part way through the day due to pain in her right upper extremity and swelling in her left. By October 24, however, Gillespie's left arm had "improved remarkably." The pain in her right upper extremity unfortunately worsened.

Dr. Reagan consequently performed a second surgery, on Gillespie's right hand and arm, on November 19, 2002. She did well after the surgery and was released to work on December 11. But, on December 23, she reported to Dr. Reagan that she was experiencing "increasing pain with increasing activity." Her right hand and arm pain persisted over the next several months. She continued working with restrictions and experienced some relief from steroid injections. On June 12, 2003, Dr. Reagan noted Gillespie had no discomfort or pain and was doing "extremely well." He accordingly believed she had then reached maximum medical improvement and released her from his care. He assigned a five percent permanent partial impairment rating to both her right and left upper extremities.

Gillespie returned to Dr. Reagan in August 2003 due to renewed pain in both of her elbows and her shoulder blade. Dr. Reagan recommended physical therapy and gave her an injection and a clavicular strap to wear as needed. Her hand, arm, and shoulder pain persisted throughout September 2003 despite Dr. Reagan's treatment efforts. He believed her renewed symptoms were due to

“[p]robable fibromyalgia versus myofascial pain” and referred her to Dr. Kenneth Pollack for pain management.

Gillespie met with Dr. Pollack in early October 2003 for treatment of her bilateral upper extremity pain, which she informed him radiated from her shoulder to fingers on her left side and from her arm to fingers on her right side. Dr. Pollack’s impression after examining Gillespie was that she suffered from chronic neuropathic pain in her upper extremities along with left shoulder pain. At her request, he referred her to orthopedic surgeon Dr. Jeffrey Davick for an evaluation of her left shoulder.

Gillespie informed Dr. Davick at their appointment on October 20, 2003, that she had experienced intermittent pain in her left shoulder for five years. Following his examination of her, Dr. Davick determined she was most likely suffering from left scapulothoracic pain and discussed non-surgical treatment options with her. Gillespie did not return to Dr. Davick for further treatment of her left shoulder pain, although she continued to see Dr. Pollack for pain management. She also began seeing psychologist Dr. Sam Graham in October 2003 after Dr. Pollack noted she had a “mildly depressed affect” at his initial appointment with her.

Gillespie reported to Dr. Graham that she was experiencing difficulty sleeping, fatigue, and a loss of energy along with an unstable mood due to feelings of frustration, sadness, anxiety, and irritability. She felt “hopeless and helpless about her current work situation” and acknowledged some social withdrawal. Dr. Graham believed she was suffering from pain disorder

associated with both psychological factors and a general medical condition in addition to adjustment disorder with mixed emotional features.

Drs. Pollack and Graham treated Gillespie throughout the remainder of 2003. She also saw Dr. Lawrence Rettenmaier at the Mercy Clinics Arthritis and Osteoporosis Center on December 17, 2003, for an evaluation of her upper extremity pain. After examining her and reviewing her medical history, Dr. Rettenmaier concluded she was suffering from "fibromyalgia/chronic pain." He discussed several treatment options with her, but she did not seek any additional treatment from him after that initial consultation.

Towards the end of December 2003, Dr. Graham noted that Gillespie's mood was "brighter," even though she was still experiencing pain in her upper extremities. He also noted she was giving more consideration to career realignment, which he and some of her physicians had encouraged her to contemplate. She eventually decided to apply for long-term disability benefits through Wellmark in January 2004. However, she was terminated from her employment with the company on January 16, 2004, shortly after she submitted her application for long-term disability benefits, "for failure to disclose a breach of confidentiality." Wellmark did not pay Graham any workers' compensation benefits from January 22, 2004, through April 22, 2004.

Gillespie's symptoms of depression intensified following her termination, prompting Dr. Graham to add a secondary diagnosis of major depressive disorder in February 2004. In April 2004, Dr. Graham stated that Gillespie's mental health diagnoses were causally related to her work injuries and were of

such severity that she could not “work in a competitive environment at this time.” He later opined in May 2004, after reviewing her progress reports, that he believed “she was showing depression of such intensity that she would have been unable to sustain competitive employment by our appointment on January 22, 2004.” Wellmark reinstated Gillespie’s workers’ compensation benefits in April 2004 following its receipt of Dr. Graham’s April 2004 opinion regarding her mental health condition. It did not, however, pay her for the benefits accrued between January 22, 2004, and April 22, 2004, until October of that year.

By August 2004, Dr. Pollack was no longer able to control Gillespie’s pain with the medications he was able to prescribe for her. He accordingly referred her to pain specialist Dr. John Peppin who examined her on August 18, 2004. Her primary complaints at that time concerned pain in her right arm, elbow, wrist, and hand, in addition to left arm and thumb pain. He noted that although she had experienced left shoulder pain at one time, that pain ceased after she stopped working at Wellmark. Dr. Peppin diagnosed her, in part, with chronic upper extremity neuropathic pain and began treating her condition with stronger pain medications than those previously prescribed by Dr. Pollack. He also recommended that she continue her psychological treatment with Dr. Graham, stating her “depression is a direct result of her arm pain.”

In September 2004, Dr. Graham observed that Gillespie’s mood was “more hopeful.” He anticipated she would “be able to resume regular employment as soon as employment within her limitations or skill level can be located,” which he believed would help resolve her depression. He subsequently

opined that he did “not anticipate any permanent psychological limitations or restrictions” as a result of her mental health diagnoses, though he believed she would need his “services for six to twelve months after a successful return to work . . . and that she will need medication support indefinitely.” Dr. Peppin likewise suggested that Gillespie’s pain would improve upon her obtaining employment within her physical restrictions, but he also noted she “has real and significant pain that will need to be treated for the remainder of her life.”

Gillespie filed a petition with the Iowa Workers’ Compensation Commissioner in May 2004, seeking workers’ compensation benefits from Wellmark and its workers’ compensation insurance carrier, EMC Insurance Companies, (collectively Wellmark). She alleged she suffered injuries, which manifested on January 28, 2002, to both of her arms and to her left shoulder as a result of “repetitive keying.” She also alleged that she suffered a mental health injury as a result of her work injuries. Gillespie additionally sought penalty benefits for Wellmark’s delay in paying her benefits that accrued from January 22, 2004, through April 22, 2004.

Wellmark admitted that Gillespie suffered permanent bilateral hand and arm injuries, in addition to a temporary psychological injury, resulting from her employment with the company. It disputed, however, whether her left shoulder injury arose out of and in the course of her employment at Wellmark. It also disputed whether her left shoulder and psychological injuries resulted in any permanent impairment or disability, and it contested Gillespie’s request for penalty benefits.



Following an arbitration hearing, the deputy workers' compensation commissioner determined Gillespie's left shoulder injury was not causally related to her employment at Wellmark. However, the deputy concluded Gillespie did prove she suffered a permanent disability as a result of her mental health injury, which resulted in a forty percent loss of earning capacity. The deputy also determined that Gillespie sustained a six percent permanent partial impairment to her body as a whole due to her bilateral upper extremity injuries. The deputy granted Gillespie's claim for penalty benefits, finding there was no rationale given by Wellmark to explain its delay in paying her benefits.

Both Gillespie and Wellmark appealed, and a different deputy workers' compensation commissioner<sup>1</sup> "reversed" the arbitration decision. Although the deputy on appeal agreed Gillespie's left shoulder injury was not work-related, she determined that the deputy presiding at the arbitration hearing incorrectly concluded that Gillespie suffered a permanent disability as a result of her mental health injury. She accordingly awarded Gillespie permanent partial disability benefits based solely upon her bilateral arm injuries. Finally, the deputy on appeal determined Gillespie should not have been awarded penalty benefits because there was a reasonable basis for Wellmark to not pay her weekly benefits after her termination from the company.

Gillespie filed a petition for judicial review. Following a hearing, the district court affirmed the agency decision. She now appeals the district court's judicial review ruling, claiming the agency erred in finding (1) her work injury was

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<sup>1</sup> The workers' compensation commissioner delegated his authority to issue the final agency decision in this case to a deputy commissioner due to a conflict of interest on the part of the commissioner.

confined to her arms, (2) her psychological injury was not permanent, and (3) she was not entitled to penalty benefits.<sup>2</sup>

## II. SCOPE AND STANDARDS OF REVIEW.

The Iowa Administrative Procedure Act, chapter 17A of the Iowa Code, governs the scope of our review in workers' compensation cases. Iowa Code § 86.26; *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). "Under the Act, we may only interfere with the commissioner's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Meyer*, 710 N.W.2d at 218. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002). In reviewing the district court's decision, we apply the standards of chapter 17A to determine whether our conclusions are the same as those reached by the district court. *Clark v. Vicorp Rests., Inc.*, 696 N.W.2d 596, 603 (Iowa 2005).

"If the claim of error lies with the agency's findings of *fact*, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole. *Meyer*, 710 N.W.2d at 219. Factual findings regarding the award of workers' compensation benefits are within the commissioner's discretion, so we are bound by the commissioner's findings of

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<sup>2</sup> Gillespie contends the agency's decision was erroneous under Iowa Code sections 17A.19(10)(d), (f), (i), (j), (l), (m), and (n) (2005). However, the district court's judicial review ruling examined the agency's decision under only subsections (f) and (m). Our analysis of Gillespie's claims on appeal will likewise be confined to those two grounds. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

fact if they are supported by substantial evidence. *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464-65 (Iowa 2004).

Because factual determinations are within the discretion of the agency, so is its application of law to the facts. *Clark*, 696 N.W.2d at 604; *see also Meyer*, 710 N.W.2d at 219 (stating the reviewing court should “allocate some degree of discretion” in considering the agency’s application of law to facts, “but not the breadth of discretion given to the findings of facts”). We will reverse the agency’s application of the law to the facts if we determine its application was “irrational, illogical, or wholly unjustifiable.” *Meyer*, 710 N.W.2d at 218.

### **III. MERITS.**

We must first address Gillespie’s claim that the agency’s decision did not comply with Iowa Code section 17A.16(1), which requires the agency to “state the evidence relied upon and detail the reasons for his conclusions.” *Heartland Specialty Foods v. Johnson*, 731 N.W.2d 397, 400 (Iowa Ct. App. 2007). “[T]he commissioner’s decision must be ‘sufficiently detailed to show the path he has taken through conflicting evidence.’” *Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997) (citation omitted). However, “the commissioner need not discuss every evidentiary fact and the basis for its acceptance or rejection” so long as the analytical process can be followed on appeal. *Id.* The commissioner’s duty to furnish a detailed opinion is therefore fulfilled if it is possible to work backward from the agency’s written opinion and deduce what must have been the agency’s legal conclusions and findings of fact. *Id.*

We initially note that it does not appear that Gillespie's claim regarding section 17A.16(1) was raised or decided by the district court on judicial review. *See Meier*, 641 N.W.2d at 537. In any event, according to the standard articulated above, we conclude the deputy's decision contains sufficiently detailed legal conclusions supported by findings of fact. We reject Gillespie's argument that the agency's decision failed to comply with section 17A.16(1) because the deputy's resolution of fact "occurred and was merged into the law conclusions." The findings of fact and conclusions of law in the agency's decision were "separately stated" as required by that section. Iowa Code § 17A.16(1).

**A. Left Shoulder Injury.**

We turn next to Gillespie's claim that the agency's decision that her left shoulder pain was not causally related to her employment at Wellmark is not supported by substantial evidence in the record. We are bound by the commissioner's fact findings if they are supported by substantial evidence in the record as a whole. *Meyer*, 710 N.W.2d at 218. Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(f)(1); *Mycogen Seeds*, 686 N.W.2d at 464. Thus, evidence is substantial when a reasonable person could accept it as adequate to reach the same finding. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 657 (Iowa 2006). "Because the commissioner is

charged with weighing the evidence, we liberally and broadly construe the findings to uphold his decision.” *Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 331 (Iowa 2005).

With these principles in mind, we reject Gillespie’s claim that a reasonable person based on the evidence presented in this case would not “confine the area of [Gillespie’s] work injury to the arms alone.” “Whether an injury has a direct causal connection with the employment or arose independently thereof is ordinarily established by expert testimony, and the weight to be given such an opinion is for the finder of fact.” *St. Luke’s Hosp. v. Gray*, 604 N.W.2d 646, 652 (Iowa 2000). The deputy determined the “most convincing opinion concerning the extent of [Gillespie’s] injury and whether it is limited to her arms or extends into her shoulder is from Dr. Pollack.”

Dr. Pollack treated Gillespie for almost a year. He definitively stated that her “work-related injury is confined to the upper extremities,” while her “shoulder and scapulothoracic pain is typical of what is seen with fibromyalgia,” which is “never a work-related condition or the result of a specific injury.” Dr. Rettenmaier, one of the first physicians to diagnose Gillespie’s left shoulder pain as fibromyalgia, likewise opined that condition was not caused by her employment at Wellmark because “[t]here is no known cause for fibromyalgia, and it is an unrelated phenomenon.” Dr. Davick similarly stated he did not “see a distinct cause for her [left shoulder] discomfort.”

Gillespie cites to multiple places in her medical records where she complained of left shoulder pain in arguing that that alleged injury arose “from the

same overuse [at work] which made the other parts of the upper extremities symptomatic.” While her medical records do document her left shoulder complaints, no physician ever conclusively opined that it was work-related. Gillespie also relies on ambiguous statements in the reports of Drs. Davick and Rettenmaier in support of her argument.<sup>3</sup> However, “[t]he fact that two inconsistent conclusions may be drawn from the same evidence does not prevent the agency’s findings from being supported by substantial evidence.” *Asmus*, 722 N.W.2d at 657.

It is the role of the agency to determine the credibility of the witnesses and the weight to be given to any evidence, and it may accept or reject an expert opinion in whole or in part. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 321 (Iowa 1998). Thus, the agency was free to give weight to the opinion of Dr. Pollack, as it did, in determining Gillespie’s work-related injury was confined to her arms. We therefore reject Gillespie’s claim that the agency’s decision regarding her left shoulder pain was not supported by substantial evidence.

We also reject Gillespie’s claim that the agency erred in its application of law to the facts in concluding her work-related injury was confined to her arms. She appears to argue the deputy should have considered, but did not, “whether the [left shoulder] injury was sustained as part of the repetitive-motion,

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<sup>3</sup> In one of Dr. Rettenmaier’s responses to an inquiry from Gillespie’s attorney, he stated her “repetitive work at the keyboard for 20 years played a role in the onset of her shoulder pains.” However, he subsequently explained he was not referring to her diagnosis of fibromyalgia when he made that statement and reaffirmed his earlier opinion that her fibromyalgia was not work-related. Dr. Davick likewise stated that “repetitive type work can cause posterior shoulder pain in the scapulothoracic region. If stopping the work stops the pain, then they are likely related.” But he later stated that he was unsure as to the cause of her left shoulder pain.

cumulative-injury process itself . . . not just whether it occurred later within the sequelae of the [1/28/02] work injury.” The appeal deputy specifically considered and rejected this argument. Referencing the opinions of Drs. Pollack, Davick, and Rettenmaier, the deputy determined Gillespie’s left shoulder pain was not due to the repetitive work she performed at Wellmark, finding instead that it was related to her diagnosis of fibromyalgia, which is not a work-related condition. Gillespie has failed to establish how the agency’s decision in this regard was “irrational, illogical, or wholly unjustifiable.” *Meyer*, 710 N.W.2d at 218.

**B. Mental Injury.**

Gillespie next claims the agency’s conclusion that her mental injury did not produce a permanent impairment or disability is not supported by substantial evidence in the record. Relying on the “express opinion of Dr. Graham,” the deputy on appeal concluded that Gillespie did not “sustain her burden of proof that she has permanent disability as a result of mental health problems.”<sup>4</sup> We believe the deputy’s conclusion is supported by substantial evidence.

A psychological condition caused or aggravated by a work-related physical trauma is compensable under our Workers’ Compensation Act, Iowa Code chapter 85. *Mortimer v. Fruehauf Corp.*, 502 N.W.2d 12, 16 (Iowa 1993).

[W]hen there has been a compensable accident, and claimant’s injury related disability is increased or prolonged by a trauma

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<sup>4</sup> We reject Gillespie’s arguments that the agency did not “consider the entire gamut of impairments proven by the material and relevant evidence” in reaching this conclusion and that it “did not apply in its true breadth the law which requires a determination of whether as the ‘result’ of the stipulated work injury, Gillespie ‘was affected with an ailment that extended beyond the scheduled loss of . . .’ the arms.” The deputy’s opinion on appeal contains detailed findings regarding Gillespie’s mental health condition. The deputy also specifically considered whether her work-related injury extended beyond her arms due to her mental health condition. We thus find no merit to these contentions.

connected neurosis or hysterical paralysis, all disability, including effects of any such nervous disorder, is compensable.

*Gosek v. Garmer & Stiles Co.*, 158 N.W.2d 731, 733 (Iowa 1968). A permanent psychological injury caused or aggravated by a scheduled injury is compensable as an unscheduled injury. Iowa Code § 85.34(2)(u); *Mortimer*, 502 N.W.2d at 17. Again, the question of whether Gillespie sustained a permanent disability as a result of her stipulated work-related psychological condition is “essentially within the domain of expert testimony.” *Deaver v. Armstrong Rubber Co.*, 170 N.W.2d 455, 464 (Iowa 1969) (affirming agency’s finding that employee was entitled to benefits for depression caused by a work-related injury).

The only expert evidence introduced on this issue came from Dr. Graham’s reports regarding his psychological treatment of Gillespie. On May 18, 2005, Dr. Graham opined that he did “not anticipate any permanent psychological limitations or restrictions” resulting from Gillespie’s mental health condition. He believed Gillespie had been “capable of returning to work within her physical restrictions from a psychological perspective . . . since April 27, 2005,” and that her mental health would continue to improve upon resuming fulltime employment. However, he also stated that he believed “she will need continued maintenance of psychotropic medication and some additional psychotherapy through the next few months.” In an earlier report, Dr. Graham anticipated that Gillespie would need “medication maintenance indefinitely.” Relying on these latter statements by Dr. Graham, Gillespie argues that her indefinite need for medication to treat her mental health injury and her inability to



obtain employment following her termination from Wellmark means she was permanently impaired as a result of that injury. We do not agree.

We reiterate the principle that an agency's decision does not lack substantial evidence simply because inconsistent conclusions may be drawn from the same evidence. *Asmus*, 722 N.W.2d at 657. In situations where the agency has rendered a finding that the claimant's evidence is insufficient to support a claim under applicable law, that negative finding may only be overturned if the contrary appears as a matter of law. *Id.*

While Dr. Graham's statements regarding Gillespie's possible continuing need for medication and further treatment may have permitted a finding of permanency, see James R. Lawyer & Judith Ann Graves Higgs, *Iowa Workers' Compensation – Law & Practice* § 13:5, at 146 n.21 (2007), those statements do not compel such a finding. This is especially so in light of Dr. Graham's explicit conclusions that Gillespie did not suffer any permanent impairment as a result of her mental health condition and that she was capable of and would benefit from returning to work. The ultimate decision in resolving such conflicts in evidence is entrusted to the agency. *Id.* We must accordingly affirm the decision of the agency that Gillespie did not suffer any permanent impairment or disability as a result of her mental health condition. See *Klein v. Furnas Elec. Co.*, 384 N.W.2d 370, 374 (Iowa 1986) (affirming agency's finding that there was no psychological impairment attributable to claimant's employment where agency was presented with conflicting evidence on the issue).

**C. Penalty Benefits.**

Finally, we address Gillespie's claim that the agency erred by denying her request for penalty benefits for Wellmark's delay in paying her temporary total disability or healing period benefits that accrued between January 22, 2004, and April 22, 2004. Iowa Code section 86.13 provides,

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied.

Under section 86.13, an unreasonable delay in payment of benefits, as well as benefits that are underpaid, entitles an employee to penalty benefits unless the employer establishes reasonable and probable cause or excuse. See *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 237 (Iowa 1996). A reasonable cause or excuse exists if the employer had a reasonable basis to contest the employee's entitlement to benefits. *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 260 (Iowa 1996). "A 'reasonable basis' for denial of the claim exists if the claim is 'fairly debatable.'" *Id.*

Borrowing from the fairly debatable standard used in the tort of bad-faith denial of insurance claims, our supreme court in *City of Madrid v. Blasnitz*, 742 N.W.2d 77, 82 (Iowa 2007), recently stated that a claim in the workers' compensation arena is fairly debatable when it is open to dispute on any logical basis. "Whether a claim is fairly debatable can generally be decided as a matter of law by the court." 742 N.W.2d at 82. This is so because "where an objectively reasonable basis for denial of a claim *actually exists*, the insurer cannot be held liable for bad faith as a matter of law." *Id.* (citation omitted).

Courts do not weigh the conflicting evidence that was before the insurer. *Id.* Instead, they decide whether evidence existed to justify denial of the claim. *Id.*

In reversing the hearing deputy's decision to award Gillespie penalty benefits, the deputy on appeal determined there was a reasonable basis for Wellmark not to pay weekly benefits to Gillespie upon her termination from the company because (1) her "depression likely had multiple causes, not all of which were related to her injury";<sup>5</sup> (2) her "depressive symptoms increased after her termination"; and (3) her termination from Wellmark was due to circumstances unrelated to her injury. Gillespie argues the deputy erred in its denial of her claim for penalty benefits because Wellmark did not actually rely on these cited reasons when it delayed payment of the benefits that accrued between January 22, 2004, and April 22, 2004. We believe the record shows otherwise.<sup>6</sup>

At the arbitration hearing, Margaret Collins, a representative of Wellmark, testified that she initially terminated Gillespie's workers' compensation benefits following her dismissal from the company "[b]ecause when [she] was terminated, it was because of a non injury-related incident." Collins further testified that she did not believe Gillespie's depression was related to her employment at Wellmark based on a note memorializing a phone conversation between Drs. Pollack and Graham. That note stated both Drs. Pollack and Graham felt Gillespie's

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<sup>5</sup> In February 2004, Dr. Graham observed that Gillespie "has experienced a series of difficult events, culminat[ing] with the fall of her mother in a bathtub," which resulted in "increased emotional arousal." In July 2004, he noted Gillespie's mood continued to be depressed due to financial difficulties she was experiencing.

<sup>6</sup> We therefore need not and do not address Gillespie's extensive argument in her reply brief that in order "for an excuse to be reasonable, it has to be proven by the employer to be the actual basis . . . of the compensation-payment delay, not that it hypothetically could have been the actual basis . . . ."

“increased somatic complaints are based upon an exacerbation of depression after she lost her job.” Finally, Collins testified that Gillespie received unemployment benefits upon her termination from the company, and she did not believe Gillespie could receive both types of benefits simultaneously. *See Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 485 (Iowa 2007) (stating the question of whether a worker can receive both workers’ compensation benefits and unemployment benefits at the same time is fairly debatable).

We conclude these facts establish that Wellmark had a reasonable basis to contend Gillespie was not entitled to workers’ compensation benefits following her dismissal from the company for breaching its confidentiality rules. In so concluding, we note that Wellmark was not required to accept the evidence most favorable to Gillespie and ignore contradictory evidence. *City of Madrid*, 742 N.W.2d at 83. Moreover, the fact that an insurer’s position is ultimately found to lack merit is not sufficient by itself to establish that the employer lacked a reasonable basis for denial of the claim. *Id.* at 82. “The focus is on the existence of a debatable issue, not on which party was correct.” *Id.* Because a debatable issue existed regarding Gillespie’s entitlement to benefits after she was dismissed from Wellmark, the deputy on appeal did not err in denying her claim for penalty benefits.

#### **IV. CONCLUSION.**

We conclude substantial evidence supports the agency’s decision that Gillespie’s left shoulder pain was not causally related to her employment at Wellmark. We further conclude the agency’s conclusion that Gillespie’s mental

health injury did not produce a permanent impairment or disability is supported by substantial evidence in the record. Gillespie did not establish how the agency's decision as to either of these two issues was irrational, illogical, or wholly unjustifiable. Finally, we conclude the agency did not err in denying Gillespie's claim for penalty benefits. We therefore affirm the district court judicial review ruling affirming the appeal decision of the workers' compensation commissioner.

**AFFIRMED.**