

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

**CLAYTON COUNTY RECYCLING and  
AMERICAN INTERSTAE INSURANCE  
COMPANY,**

**Petitioners,**

**vs.**

**STEVEN ELMER,**

**Respondent.**

**Case No. CVCV009431**

**RULING ON PETITION  
FOR JUDICIAL REVIEW**

This application came before the Court for oral argument on May 9, 2013. Attorney Cory D. Abbas appeared for the petitioners and Attorney Mark J. Sullivan appeared for the respondent. After considering the parties' oral arguments, briefs, and exhibits, the court makes the following ruling.

**Background Facts and Proceedings**

Steven Elmer filed an original notice and petition with the Iowa Workers' Compensation Commissioner on October 22, 2009 against his employer Clayton County Recycling, American Interstate Insurance Company, Inc., and the Second Injury Fund. The parties stipulated to an August 13, 2008 injury that Elmer suffered in the course of his employment. They also stipulated to a weekly compensation rate of \$375.14, and to the fact that, prior to hearing, Elmer was overpaid for temporary partial disability benefits in the amount of \$2,430.99. The parties disputed whether petitioners were entitled to credit in this case for the overpayment of temporary partial disability benefits under Iowa Code section 85.34(4) or whether the credit should be under section 85.34(5).

The deputy workers' compensation commissioner issued an arbitration decision on July 15, 2011. In his decision, the deputy commissioner awarded permanent partial disability benefits

at the stipulated rate and credit to the petitioners for their overpayment of temporary benefits in the stipulated amount. However, the credit for the petitioners' overpayment was to apply only to any future workers' compensation injury Elmer may suffer. They would not receive any credit for the current injury. On appeal, the commissioner affirmed the presiding deputy's decision regarding the overpayment credit based on his interpretation of the Iowa Supreme Court's holding in *Swiss Colony, Inc. v. Deutmeyer*, 789 N.W.2d 129 (Iowa 2010). On October 12, 2012, the petitioners filed the instant petition for judicial review.

### **Applicable Law & Analysis**

The petitioners argue that the commissioner's interpretation of the Iowa Supreme Court's holding in *Swiss Colony, Inc. v. Deutmeyer*, 789 N.W.2d 129 (Iowa 2010) is erroneous because it fails to recognize that the holding was directed only to credits for the overpayment of permanency benefits and not credits for overpayment of temporary benefits under section 85.34(4).

#### **I. Standard of Review**

Judicial review of an agency decision is governed by Iowa Code section 17A.19(10) (2013). Section 17A.19(10)(c) states that when an agency has not been clearly vested with the discretion to interpret a provision of law, the court shall grant appropriate relief if the agency's interpretation was erroneous. Iowa Code § 17A.19(10)(c). If authority has clearly been vested in the commissioner for the interpretation of a statutory provision, the court will affirm the commissioner's interpretation unless it is "[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation." Iowa Code § 17A.19(10)(l). In order to determine if an agency was "clearly vested" with the authority to interpret a provision, the court must be "firmly convinced that the legislature actually intended (or would have intended had it thought about the question)

to delegate to the agency interpretive power with the binding force of law over the elaboration of the terms.” *Renda v. Iowa Civil Rights Commission*, 784 N.W.2d 8, 14 (Iowa 2010) (internal quotation marks omitted). When this issue is not explicitly addressed by the legislature, the court makes this determination by looking at “the precise language of the statute, its context, the purpose of the statute, and the practical considerations involved.” *Id.*

Based on the standard articulated in *Renda*, the Iowa Supreme Court has held the legislature did not intend to vest the Iowa Workers’ Compensation Commissioner with the authority to interpret Iowa Code section 85.34(5). *Swiss Colony, Inc. v. Deutmeyer*, 789 N.W.2d 129, 134 (Iowa 2010). Likewise, the Court is not firmly convinced that the legislature intended to vest the commissioner with the authority to interpret Iowa Code section 85.34(4). The agency’s authority to interpret the statute is not explicitly addressed in 85.34(4), and the language, context, and purpose of the statute, along with practical considerations, do not indicate that the agency was clearly vested with interpretive authority. Accordingly, the commissioner’s interpretation is not entitled to deference and the Court will review it for corrections of error at law. *NextEra Energy Resources LLC v. Iowa Utilities Bd.*, 815 N.W.2d 30, 37 (Iowa 2012).

## **II. Discussion**

Section 85.34(5) (hereinafter referred to as “section 5”) states “[i]f an employee is paid any weekly benefits in excess of that required by this chapter . . . the excess paid by the employer shall be a credit against the liability of the employer for any future weekly benefits . . . for a subsequent injury to the same employee.” Iowa Code § 85.34(5). The employer in *Swiss Colony v. Deutmeyer* argued this provision should be interpreted to apply only where the employer overpaid the total permanent disability award and not the rate of each separate weekly payment. *Deutmeyer*, 789 N.W.2d at 136. The Court rejected this argument, holding that the plain

language of section 5 “directs that the overpayment of *any* weekly benefits be credited to payments for subsequent injuries” and that it applies to “*all* overpayments of benefits.” *Id.* at 137 (emphases in original).

Here, the petitioners argue that *Deutmeyer* should not be construed so as to apply to healing period or temporary partial disability benefits, which, they argue, are governed under Iowa Code section 85.34(4) (hereinafter referred to as “section 4”). Section 4 states: “[i]f an employee is paid weekly compensation benefits for . . . temporary partial disability . . . in excess of that required . . . the excess shall be credited against the liability of the employer for permanent partial disability.” Iowa Code § 85.34(4). The petitioners assert that to construe *Deutmeyer* to apply to section 4 would make that section meaningless. Although prior to the *Deutmeyer* decision the commissioner apparently agreed that section 4 governed how an employer should receive credit for an overpayment of temporary benefits, the commissioner has now held that the *Deutmeyer* decision controls disposition of an employer’s overpayment of any benefits payable under chapter 85.

This means that an employer could never receive a credit against a permanency award for an overpayment of temporary benefits for the same injury. A credit for overpayment of temporary benefits would have to exist and be applied, if ever, to reduce benefits payable for a subsequent injury. For the following reasons, the court agrees with the petitioners’ argument and rejects the commissioner’s interpretation of the *Deutmeyer* decision and of sections 4 and 5.

First, while the language of the *Deutmeyer* opinion admittedly could be read as broadly as the commissioner has read it, it does not have to be read that broadly. The precise holding of the Court in *Deutmeyer* is as follows:

By using a word with an expansive import, we conclude that section 85.34(5) must be interpreted to apply to *all* overpayments of benefits, including an

overpayment of weekly benefits and not simply an overpayment of the entire benefit award.

*Deutmeyer, supra* at 137 (Iowa 2010) (italics in original)

The Court's decision, therefore, could be interpreted as adjudicating the proper operation of section 5 in the case of an overpayment of permanency benefits paid on a weekly basis versus an overpayment of permanency benefits paid as a lump sum. The Court's decision could be reasonably interpreted as meaning that an overpayment of permanent disability benefits that are being paid on a weekly basis cannot be recovered by reducing future permanency payments for the same injury.

Second, the *Deutmeyer* Court did not address, or even mention, section 4 in its opinion. The decision cannot, therefore, be taken as an adjudication of the meaning or application of that statute.

Third, the language of section 4 applies exactly and precisely to the circumstances present in this case. That language is more specific than the "all" payments language of section 5 and, therefore, to the extent there is a conflict between the two provisions, the more specific provision should control.

Fourth, the petitioners are correct in their argument that to bring this case within the scope of section 5 renders section 4 without meaning, force or effect. The legislature could not have intended to adopt such a specific statute and in the very next section, adopt a statute leaving it completely meaningless.

Fifth, it makes common sense to interpret the two sections as distinguishing between a credit (against a permanency award) for overpayment of temporary benefits (section 4) and an employer's recovery of overpaid permanency benefits (section 5). It is immediately obvious that the legislature had some distinction in mind in these two provisions since the title of section 4 is

“Credits for excess payments” and of section 5 is “Recovery of employee overpayment.” (italics in Code). It appears that what the legislature intended in these two sections is to distinguish between the recovery of overpayments that would require the employee to actually pay back money and those that could be recovered by applying a credit to reduce a permanency award not yet completely paid. As to the latter situation, the *Duetmeyer* decision, in the court’s view, precludes reducing a not fully paid permanency award because of previously overpaid permanency benefits for the same injury. That may not be what the legislature intended but, as the Court held, that is the result mandated by the language the legislature used. But neither *Duetmeyer*, nor especially the language of section 4, require that result with respect to overpaid temporary benefits, in the court’s view. Under section 4 the petitioners were entitled to a credit against the permanent partial disability award for overpayments of temporary benefits.

**IT IS, THEREFORE, THE ORDER OF THE COURT** that the petition for judicial review is sustained. The decision of the Iowa Workers’ Compensation Commissioner’s decision is **REVERSED**. This case is remanded to the commissioner for further proceedings consistent with this ruling. The costs of this action are assessed against the respondent.

**IT IS SO ORDERED JULY 9, 2013.**

---

**DOUGLAS F. STASKAL**  
Judge of the Fifth Judicial District of Iowa

Copies to:

Cory Dean Abbas  
PATTERSON LAW FIRM, L.L.P.  
505 Fifth Avenue Suite 729  
Des Moines, Iowa 50309  
Tel: (515) 283-2147  
Fax: (515) 283-1002  
[cabbas@pattersonfirm.com](mailto:cabbas@pattersonfirm.com)  
ATTORNEY FOR PETITIONERS

Mark Joseph Sullivan  
REYNOLDS & KENLINE, L.L.P.  
P.O. Box 239  
110 E. 9<sup>th</sup> Street  
Dubuque, Iowa 52004  
Tel: (563) 556-8000  
Fax: (563) 556-8009  
[Sullivan@rkenline.com](mailto:Sullivan@rkenline.com)  
ATTORNEY FOR RESPONDENT