

IN THE SUPREME COURT OF IOWA

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**No. 22-0684**

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LORRI HAGEN,

Petitioner-Appellee,

vs.

SERTA/NATIONAL BEDDING CO., LLC and  
SAFETY NATIONAL CASUALTY CO.,

Respondents-Appellants.

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APPEAL FROM THE IOWA DISTRICT COURT FOR  
WORTH COUNTY  
THE HONORABLE CHRIS FOY  
NO. CVCV012778

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APPELLANTS' FINAL REPLY BRIEF

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## ARGUMENT

### **I. THE COMMISSIONER’S DECISION TO EXCLUDE HAGEN’S EXPERT REPORTS FROM EVIDENCE WAS NOT AN ABUSE OF DISCRETION.**

Hagen asserts in her brief that (1) Serta failed to prove unfair prejudice by the exclusion of the reports, (2) the exclusion of the reports was not consistent with prior precedent, and (3) the exclusion of the expert reports is unfair to Hagen when compared to other claimants whose expert reports were not excluded. These arguments fail to consider the long history of the workers’ compensation agency excluding expert reports for both claimant and defendants when the reports are obtained/produced late as well as the appellate courts’ history of upholding these exclusions.

The Iowa Court of Appeals upheld the exclusion of the defendant’s rebuttal expert report in Square D. Square D Co. v. Plagman, 810 N.W.2d 25 (Table), 2011 WL 6673544 (Iowa Ct. App. 2011). The defendants’ obtained a rebuttal report from their expert after the claimant obtained an expert report. Id. at \*2. Defendants produced their report to claimant less than two weeks prior to the arbitration hearing. Id. at \*5. The defendants argued “the deputy’s exclusion of expert testimony is a severe sanction that is justified only when the agency determines admission would be unfairly prejudicial to the objecting party, a finding the deputy failed to make.” Id. at \*6.

The Court upheld the agency's decision to exclude the defendants' expert report and determined the deputy did not abuse their discretion. Id. at \*6. The Court stated: "Although the deputy did not make a specific finding of fact concerning the possibility of unfair prejudice to Plagmann, we infer that such a finding was implicit in the deputy's decision to sustain Plagmann's objection and to exclude the exhibit." The Court further stated:

As stated by our supreme court, "[i]t is of no concern to a court reviewing an administrative sanction whether a different sanction would be more appropriate or whether a less extensive sanction would have sufficed; such matters are the province of the agency." Marovec v. PMX Indus., 693 N.W.2d 779, 786 (Iowa 2005).

Id. at \*6.

The defendants' arguments in Square D are the same arguments as Hagen asserts in this case. The Court of Appeals has previously stated that unfair prejudice is inferred when the exhibit is excluded from evidence. Furthermore, the Court maintained that it is within the province of the agency to determine whether to exclude evidence for noncompliance with the hearing assignment order. Hagen's arguments should likewise fail in this case.

The Agency excluded the claimant's vocational report in Madrid because it was produced 20 days prior to the arbitration hearing. Madrid v. Oakland Food Corp., File No. 1232305, 2002 WL 32125401 at \*10 (Arb.

Dec. Jan. 31, 2002). The deputy noted: “Claimant should not profit from her own non-compliance with the hearing assignment order.” Id. at \*11.

The Agency also excluded the claimant’s medical expert report that was produced three days prior to the arbitration hearing in Harrison. Harrison v. Kone, Inc., File No. 5028937, 2010 WL 11523794 (Arb. Dec. April 5, 2010). The deputy concluded that the physician report was not from a treating physician and was, therefore, different than the medical report that should have been admitted as evidence in Schoenfeld. Id. at \*7. The deputy stated:

Finally, it is noted that the well recognized rule that statutes in workers’ compensation are to be interpreted liberally in favor of the claimant is a rule of statutory construction. This is not a case calling for construction of an ambiguous workers’ compensation statute. The procedural rules setting forth the time limits are clear and unambiguous and apply equally to claimants and employers alike.

Id. at \*9.

Based on Schoenfeld and Square D, the district court erred in overturning the sanction of exclusion of the reports in this case. The Commissioner’s decision was not an abuse of discretion. The Commissioner’s decision should be reinstated.

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### **CERTIFICATE OF FILING/SERVICE**

I hereby 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 12<sup>nd</sup> of August, 2022, and by U.S. Mail for any party not registered to receive notice of filings via the ECF process.

/s/ Lindsey E. Mills

### **CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because it contains 653 words, excluding the parts of the brief exempted.
2. This brief complies with the typeface requirement of Iowa Rule of Appellate Procedure 6.903(1)(e) because it has been prepared in proportionately spaced typeface using Microsoft Word 2017 in Times New Roman 14 point type.

/s/ Lindsey E. Mills