

**IN THE COURT OF APPEALS OF IOWA**

No. 7-398 / 06-0751  
Filed September 19, 2007

**ROSEZINA MOORE,**  
Petitioner-Appellant,

**vs.**

**MOTEL SIX OPERATIONS, LP,**  
**and CNA INSURANCE COMPANY,**  
Respondents-Appellees.

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Appeal from the Iowa District Court for Polk County, Don C. Nickerson,  
Judge.

Workers' compensation claimant Rosezina Moore appeals from the denial  
of her petition for judicial review. **REVERSED AND REMANDED WITH  
DIRECTIONS.**

Bruce Stoltze and Eric M. Updegraff of Brick, Gentry, Bowers, Swartz,  
Stoltze & Levis, P.C., West Des Moines, for appellant.

Nathan McConkey of Huber, Book, Cortese, Happe & Lanz, P.L.C., West  
Des Moines, for appellee.

Heard by Huitink, P.J., Vogel and Baker, JJ.

**VOGEL, J.**

Workers' compensation claimant Rosezina Moore appeals from the denial of her petition for judicial review. This appeal gives us occasion to analyze a so-called "mental/mental" workers' compensation claim. Because we conclude the agency erred in its application of the test laid out by our supreme court in *Dunlavey v. Econ. Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995), we reverse and remand, directing the agency to apply the appropriate test for legal causation.

**Background Facts.**

Moore was hired in May 1998 by Motel 6 as a night auditor and desk clerk. She claimed that she was given only one night of on-the-job training. Within her first week of work, both managers of the motel resigned their employment. Because of this, Moore requested and was given additional duties, including some management responsibilities.

On June 16, 1998, Moore, who had a history of stress, depression, and other psychological ailments, sought medical treatment for stress and depression. Then, beginning in late June, she began working substantial overtime hours, primarily to fill in for employees who failed to show up for their work assignment. Around July 20, 1998, Moore was designated a "manager on duty" candidate by Motel 6 area manager Bill Holmes. The motel hired a new general manager in August, which allowed Moore to take a vacation. However, upon her return, she sought treatment for blurred vision and headaches and missed several days of work. On September 29, 1998, she was diagnosed with

hypothyroidism. After she further complained of stress and depression, Moore was referred for psychological treatment.

On October 9, 1998, Moore received a phone call informing her she was being terminated from her employment at Motel 6. On that same day, she attempted suicide by taking an overdose of prescribed medication and was hospitalized. The emergency room notes reference family problems as a potential cause of her attempt but make no mention of any workplace stress.

### **Procedural History.**

Moore later filed a workers' compensation petition claiming an injury date of September 24, 1998, and seeking benefits for an alleged mental injury. Following a hearing, then deputy commissioner Michael G. Trier rendered an arbitration decision finding Moore had failed to prove both medical and legal causation for her alleged injury. This decision was affirmed on appeal by Michael G. Trier, who was by then the interim workers' compensation commissioner. On judicial review from this ruling, the district court concluded the agency had improperly applied the legal test for both medical and legal causation. It remanded to the commissioner in order to reconsider the case under proper standards.

Upon remand, the deputy commissioner, Larry Walshire, issued a decision finding that although Moore had proven medical causation, she had failed to prove legal causation. The agency therefore denied her request for benefits. Moore again sought judicial review. Following a hearing on that petition, the district court affirmed, concluding the agency had applied the appropriate legal

standard and that substantial evidence supported its determination that Moore failed to prove legal causation. Moore appeals.

### **Scope and Standards of Review.**

Our review is governed by the Administrative Procedure Act. Iowa Code ch. 17A (2005); *Acuity Ins. v. Foreman*, 684 N.W.2d 212, 216 (Iowa 2004). We review the district court's decision by applying the standards of section 17A.19 to the agency action to determine if our conclusions are the same as those reached by the district court. *Univ. of Iowa Hosps. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). "It is the commissioner's duty as the trier of fact to . . . weigh the evidence, and decide the facts in issue." *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394-95 (Iowa 2007). We may not "improperly weigh[] the evidence to overrule the commissioner's findings." *Id.*

Although the standard of legal causation involves an issue of law, see *Dunlavey*, 526 N.W.2d at 853, the application of that standard to a particular setting requires the commissioner to render an outcome determinative finding of fact. *Asmus v. Waterloo Cmty. Sch. Dist.*, 722 N.W.2d 653, 656 (Iowa 2006). A court on judicial review is bound by that fact-finding if it is supported by substantial evidence. *Id.*

### **Mental/Mental Injury.**

In *Dunlavey*, 526 N.W.2d at 853-58, our supreme court recognized that a purely mental injury may be compensable under the workers' compensation laws even in the absence of an accompanying physical injury. In order for a mentally injured worker to prevail on such a claim, a claimant must prove both medical causation and legal causation. *Dunlavey*, 526 N.W.2d at 853. Medical causation

simply requires a claimant to establish that the alleged mental condition was in fact caused by employment-related activities, while legal causation presents a question of whether the policy of the law will extend responsibility to those consequences that have in fact been produced by the employment. *Id.* *Dunlavey* formulated the standard for legal causation as whether the claimant's stress was "of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer." *Id.* at 858.

Moore couches her first arguments on appeal in terms of legal error. In this regard, she maintains the agency improperly applied the legal causation element of the "similarly situated employees" test. As noted above, *Dunlavey* mandates that the agency analyze whether the claimant's stress was greater than those in similar jobs *regardless of their employer*. *Id.* In *Dunlavey*, even though the court does state that stresses experienced by employees of the same employer may be the most persuasive, it does expressly indicate that evidence of workers with similar jobs *employed by a different employer* is, at a minimum, "relevant." *Id.*

Here, in its remand decision, the agency stated:

First, in the determination of the unusualness of the causative stress, the comparison of the stress experienced under the *Dunlavey* standard is limited to a specific category of employer specific job assignments, those desk clerk/night auditors at Motel 6—not to desk clerks in general, not to motel workers in general—not to employees in general.

The agency, pursuant to this statement, proceeded to find that according to the testimony of Motel 6 management, "temporary assignments of management

duties to desk clerks/night auditors at Motel 6 were not unusual.” Similarly, in affirming this ruling on judicial review, the district court determined:

There is substantial evidence in the record to support the finding that, from an objective standard, the stressors faced by [Moore] at her job following the resignation of the motel’s managers were not unusual or greater in magnitude than other similarly situated Motel 6 desk clerks or night auditors.

Thus, it plainly appears that both the agency and the district court analyzed Moore’s claim employing a comparison of only those stresses experienced by other Motel 6 desk clerks, to the exclusion of evidence regarding other employers. In this regard, the record contains testimony from Tammy Martens, who testified as to her knowledge of Embassy Suites and Hampton Inn hotel operations. She stated that those chains would not ask a desk clerk/night auditor to assume managerial roles were a manager to suddenly quit.

The expressed reasoning undergirding the *Dunlavey* test is not fulfilled when one only compares the stress experienced by Moore with those stresses experienced only by those also in the employ of Motel 6. Such a test would allow a shoddy or bad employer, who treats all employees in a similarly shoddy fashion, to escape any liability for mental injury occasioned by that treatment. See *id.* at 857 (quoting *Graves v. Utah Power & Light Co.*, 713 P.2d 187, 193 (Wyo. 1986) (“[U]nder the same or similar job standard, an employer who puts excessive stress on several employees could not avoid the payment of benefits by simply making that excessive stress equal for all employees.”)).

Accordingly, we remand in order for the agency, on the record already created, to apply the appropriate legal causation test as set forth in *Dunlavey*. See *Winnebago Indus. v. Smith*, 548 N.W.2d 582, 584 (Iowa 1996)

(circumscribing authority on remand to the matters specified by the appellate court). In doing so, it shall consider whether Moore's stress was greater than those in similar jobs *regardless of their employer*

**REVERSED AND REMANDED WITH DIRECTIONS.**