ESTABLISHING CAUSATION IN IOWA WORKERS’ COMPENSATION LAW: AN ANALYSIS OF COMMON DISPUTES OVER THE COMPENSABILITY OF CERTAIN INJURIES

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TABLE OF CONTENTS

I. Introduction ................................................................. 464
II. Cumulative or Gradual Injuries: What Is a “Substantial” Factor? ................................................................. 468
III. Proving Aggravation Injuries ........................................... 471
IV. Aggravation Versus Change in Condition: Review Reopening in Work-Injury Cases ........................................ 475
V. “In the Course of” Employment Issues ................................. 477
A. Going and Coming, Special Errands, and Substantial Deviations ................................................................. 478
B. Quasi-Course Activities: Injuries Sustained En Route to Medical Care ......................................................... 481
VI. “Arising Out Of” Issues ....................................................... 483
A. Increased-, Actual-, and Positional-Risk Doctrines and Idiopathic Injuries ................................................................. 483
B. Special Causation Issues in Heart Attacks and Strokes ........ 493
C. Workplace Assaults ......................................................... 495
D. Recreational Activities ....................................................... 497
E. Willful Injury, Horseplay, and Intoxication Exclusions ........ 498
VII. Basic Concepts in Sequela Injury Claims ......................... 503
VIII. Injuries from Medical Care ............................................ 504
IX. Deteriorating or Subsequent Conditions Relating to Original Injuries ................................................................. 505
X. Causation Issues in Presenting Mental Injuries ................. 506
XI. Additional Considerations with Causation Disputes: Medical Care

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I. INTRODUCTION

Iowa Code section 85.3(1) establishes that employers are liable for compensation to employees “for any and all personal injuries sustained by an employee arising out of and in the course of the employment.” That simple phrase, “arising out of and in the course of the employment,” is the gateway for determining an employee’s entitlement to employer-paid medical care, benefits for periods of temporary disability or while the employee is in a healing period, and benefits for any permanent disability the employee has sustained. In short, the determination of whether an injured worker is entitled to the protections and benefits of the Iowa Workers’ Compensation Act hinges initially on the interpretation of a single sentence in Iowa Code section 85.3(1). While the employee has the burden of proving by a preponderance of the evidence “the injuries arose out of and in the course of employment,” the Iowa Supreme Court has generally accepted that a wide range of circumstances meet the necessary level of causal connection. The Iowa Supreme Court has also given the word “injury” a broader interpretation than its meaning in everyday usage. Among the accepted forms of “injury” in Iowa are not only singular and traumatic events, but also the gradual worsening of a condition over time as a cumulative injury, the development of depression and anxiety as mental injuries, and the aggravation of preexisting conditions as aggravation injuries.

Apart from the broad definition of the word “injury” in Iowa, special

1. Iowa Code § 85.3(1) (2009).
2. See id.
4. Lakeside Casino v. Blue, 743 N.W.2d 169, 176 (Iowa 2007) (explaining cases in which injuries arose out of the employee’s employment).
6. See id.
attention has also been paid to the phrase “arising out of and in the course of the employment” from Iowa Code section 85.3(1). The phrase itself has two separate and equally important elements. To meet the “arising out of” element, a worker has the burden of proving the cause and origin of the injury flows from his or her work activities. To meet the second element—whether the injury was sustained “in the course of” a worker’s employment—the worker must prove the time, place, and circumstances of the injury relate the injury to his or her work or duties and activities incidental to his or her work.

Essentially, a worker has to prove (1) he or she was engaged in work activities when the injury occurred or developed and (2) the nature of the work activities contributed to the injury’s development. What seems like a very simple test becomes quite complex in application when certain factors emerge. For example, in gradual or cumulative injury cases, such as an injury alleged to be the result of overuse of a certain area of the body, it is rare that any single act or factor can be determined to be the exclusive, leading, or even major cause of an employee’s injury. In cases in which employees are engaged in travel or recreational activities relating to their jobs, the line between the time and place for work activities and the time and place for personal activities becomes blurred. When preexisting conditions are an issue in a new injury claim, the distinction between the natural deterioration of a condition and the acceleration of the injury process can become critical in determining whether there has been a new, compensable injury that flows from work activities. Distinguishing between purely personal conditions and conditions caused in part by work activities is particularly challenging when the injury is a heart attack, stroke, or seemingly idiopathic fall. Finally, when the actions of a third party cause an injury, the difference between risks personal to the employee and injuries that arise out of the hazards of the employee’s work must be established.

Our courts have long held the Iowa Workers’ Compensation Act was drafted for the benefit of injured workers and should be liberally construed to further that objective. This policy has been in place since the Pierce v. Bekins Van & Storage Co. decision in 1919, when the court held that

8. See Xenia, 786 N.W.2d at 254 (citing Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996)).
9. Id.
because of its remedial nature, the Iowa workers’ compensation statute “shall have a broad and liberal construction in aid of accomplishing the object of the enactment.”\textsuperscript{12} “In construing the provisions of the Compensation Law the court is bound, not to a narrow, technical construction, but rather to a broad and liberal construction to make effectual the very purposes for which the law was passed.”\textsuperscript{13} The court has also held the Act “is to be liberally construed so as to get within the spirit rather than only within the letter of the law.”\textsuperscript{14} Liberal interpretation of Iowa’s workers’ compensation laws is necessary because the Act was originally implemented for the benefit of injured workers and their dependents, and the courts are bound to help realize that objective in their application of the Act and in resolution of legal questions related to it.\textsuperscript{15} The Iowa Workers’ Compensation Act is elastic in nature, as it stretches to allow inclusion of various types of injuries and recoveries to maximize the protections the Act affords injured workers.\textsuperscript{16}

Thus, when addressing the legal question of whether an injury arises out of and in the course of employment, the phrase is to be interpreted as favoring compensation for injuries so long as they bear some meaningful relationship to the work performed by the employee. In \textit{Meyer v. IBP, Inc.}, the supreme court held that the question of “whether an injury arose out of and in the course of employment presents a mixed question of law and fact.”\textsuperscript{17} While workers’ compensation claimants have the burden of proving the causal connection between their injuries and their work, it is a fundamental concept in Iowa workers’ compensation law that injuries that “arise out of and in the course of” employment are compensable, and the phrase is to be construed broadly and in favor of allowing workers to

\textsuperscript{12} Pierce v. Bekins Van & Storage Co., 172 N.W. 191, 192 (Iowa 1919) (citing Kennerson v. Towboat Co., 94 A.2d 372 (Conn. 1915)).
\textsuperscript{13} Yates v. Humphrey, 255 N.W. 639, 642 (Iowa 1934) (citations omitted).
\textsuperscript{14} Crowe v. De Soto Consol. Sch. Dist., 68 N.W.2d 63, 68 (Iowa 1955) (citing Bidwell Coal Co. v. Davidson, 174 N.W. 592 (Iowa 1919)).
\textsuperscript{15} See Barton v. Nevada Poultry Co., 110 N.W.2d 660, 662 (Iowa 1961) (explaining workers’ compensation is “for the benefit of the working man and should be, within reason, liberally construed”).
\textsuperscript{16} See Dep’t of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa Ct. App. 1990) (stating that Iowa has a “liberal rule permitting compensation for personal injury even though it does not arise out of an ‘accident’ or ‘special incident’ or ‘unusual occurrence’”).
\textsuperscript{17} Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006) (citing Hawk v. Jim Hawk Chevrolet–Buick, Inc., 282 N.W.2d 84, 87 (Iowa 1979)).
recover for their injuries.\textsuperscript{18}

The legal standard, however, is only one of two critical components a claimant must meet in proving a work-related injury. A claimant must also show causation in fact, or medical causation of the injury.\textsuperscript{19} The medical causation burden simply relates to proof that the alleged condition is causally connected to the worker’s employment, while legal causation presents a question of whether the policy of the law extends responsibility to those consequences that have in fact been produced by the employment.\textsuperscript{20} Thus, the injured worker carries the burden of proving by a preponderance of the medical evidence that an injury is sufficiently related to work activities.\textsuperscript{21} The worker satisfies that burden by proving the causal connection between the work activity and the injury sustained is probable rather than merely possible.\textsuperscript{22} The burden of proving causation that is placed on a workers’ compensation claimant has been specifically defined by the Iowa Supreme Court as being a “less onerous” standard than that which is used in tort law.\textsuperscript{23} The Iowa Supreme Court went out of its way in \textit{Meyer} to clarify the “arising out of” requirement shall not be confused or conflated with “the causation standards applicable to tort law” and “[t]he concept of proximate or legal cause applicable to tort law is misplaced in determining work-connectedness under workers’ compensation law.”\textsuperscript{24} Because the statutory burden placed on the injured worker is liberally construed in the worker’s favor, it has long been established that the workers’ compensation claimant need only show an injury was caused in substantial part by the claimant’s work, meaning the claimant’s work need be but a single, contributing factor in causing the injury.\textsuperscript{25} This is a crucial point in analyzing injuries that develop over time, or what are commonly referred to as “cumulative injuries.”

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\textsuperscript{18.} \textit{See id.} at 222–24 (noting the causation standards applicable to tort law are not applicable to the “arising out of” element); \textit{see also} Disbrow v. Deering Implement Co., 9 N.W.2d 378, 384 (Iowa 1943) (“The Workmen’s Compensation Law was designed to aid and protect the industrial worker . . . .”).
\textsuperscript{19.} \textit{Dunlavey v. Econ. Fire & Cas. Co.}, 526 N.W.2d 845, 853 (Iowa 1995) (citations omitted).
\textsuperscript{20.} \textit{Id.}
\textsuperscript{22.} Sherman v. Pella Corp., 576 N.W.2d 312, 321 (Iowa 1998).
\textsuperscript{23.} \textit{Meyer}, 710 N.W.2d at 223 n.4.
\textsuperscript{24.} \textit{Id.} at 222–23 (citing 1 ARTHUR LARSON & LEX K. LARSON, LARSON’S WORKERS’ COMPENSATION LAW § 3.06 (2005)).
\textsuperscript{25.} Blacksmith v. All-American, Inc., 290 N.W.2d 348, 354 (Iowa 1980).
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II. CUMULATIVE OR GRADUAL INJURIES: WHAT IS A “SUBSTANTIAL” FACTOR?

The Iowa Code requires the claimant to establish a personal injury related to his or her employment, and Iowa’s expanded definition of personal injuries has specifically included those injuries that develop over time due to work activities. The Iowa Supreme Court adopted the “cumulative injury” rule in *McKeever Custom Cabinets v. Smith* and subsequently declared that cumulative injuries were “clearly compensable” in *Noble v. Lamoni Products*. While limiting the application of the statute to only workplace accidents or events directly causing specified injuries would clearly have been the simplest approach to interpreting the Act, it would have excluded the very real problem of conditions brought on by prolonged overuse of an area of the body, as well as the consequence of repeated exertions or smaller traumas that take a toll on the worker over weeks, months, or even years. Because cumulative injuries develop over time, rather than in connection with a specific event, they pose unique problems. Cumulative injuries do not have true injury dates, muddying the waters regarding when workers are required to provide their employers with notice of injury. Other problems include the tolling of the statute of limitations based on when an injured worker should have reasonably discovered the injury, as well as the weighing of work-related and personal factors that may have contributed to the employee’s condition. Ultimately, though, the question becomes whether the “accumulation of

27. *Id.*
29. *See McKeever*, 379 N.W.2d at 373.
30. For statute of limitation and notice issues, the discovery rule extends the time frame until the employee, as a reasonable person, knows or should know the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 288 (Iowa 2001); *Oscar Mayer Foods Corp. v. Tasler*, 483 N.W.2d 824, 829 (Iowa 1992); *McKeever*, 379 N.W.2d at 375. The “date” for the manifestation or discovery of a cumulative injury can be the first time a worker seeks medical attention, is provided with surgery or other invasive medical care, first misses work, or any other significant event that would signal the worker has in fact sustained a serious injury. *George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148, 151 (Iowa 1997). Thus, an injury manifests when “both the fact of the injury and the causal relationship of the injury to the claimant’s employment would have become plainly apparent to a reasonable person.” *Oscar Mayer*, 483 N.W.2d at 829 (quoting *Bellwood Nursing Home v. Indus. Comm’n*, 505 N.E.2d 1026, 1029 (Ill. 1987)).
traumas” from the employee’s work activities contributed to the development of a disabling condition.\(^\text{31}\) As work activities need not be the only cause or the primary cause, the key question is whether work activities contributed to the development of the eventual injury.\(^\text{32}\) Iowa courts have held that cumulative injuries are considered compensable work injuries when the employee’s work was a substantial contributing factor in the development of the condition at issue.\(^\text{33}\) While there have been efforts to challenge that interpretation, as well as efforts to change the statute to require an employee’s work activities be the primary or leading cause of an injury in order to be compensable, those efforts have failed to disturb this principle.\(^\text{34}\) Thus, an employee’s work activities are established as being a proximate cause of an injury if the work is a substantial factor in bringing about the resulting condition, as work activities need not be the only cause or the primary cause.\(^\text{35}\) Iowa has recognized that the progression of traumas associated with the development of carpal tunnel syndrome constitutes a cumulative injury for workers’ compensation purposes, so long as the “repeated traumas” of one’s work were a causal factor in the development of the injury.\(^\text{36}\) In analyzing whether carpal tunnel syndrome would qualify as a cumulative injury or as an occupational disease, the court recognized nonwork factors, such as diabetes, can be associated with the development of carpal tunnel syndrome.\(^\text{37}\) Nonetheless, in Noble v. Lamoni Products, the Iowa Supreme Court concluded Noble’s carpal tunnel syndrome resulted from “repetitive traumatic work activity,” so it met the requirements for classification as a cumulative work activity arising out of employment.\(^\text{38}\)

33. See, e.g., *Thompson v. Brown Bros. Inc.*, No. 02-1864, 2003 WL 22699180, at *3 (Iowa Ct. App. Nov. 17, 2003) (holding the agency should have considered whether repeated use of employee’s shoulder in the course of employment was a substantial factor in causing the cumulative injury).
34. See, e.g., H.F. 705, 81st Gen. Assemb. (Iowa 2005) (A successor to H.S.B. 88, H.F. 705 proposed that the cumulative work or aggravating injury must be “the single most substantial factor” in causing the injury to be compensable.), available at http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=BillInfo&Service=Billbook&menu=text&ga=81&hbill=HF705.
37. *Id.* at 295.
38. *Id.*
In essence, though, the “substantial factor” issue in workers’ compensation is largely a fact-based determination requiring an analysis of medical opinions. The question of causal connection between work activities and the resulting injury has long been held to be within the domain of expert testimony, although lay evidence relating to the relationship between work and injury is also examined. While causation in fact, or medical causation, must be proven to be probable and not merely possible, a worker can buttress a physician’s opinion that medical causation is possible with lay testimony showing the probable connection between the condition at issue and the claimant’s work. This standard implores the claimant’s attorney to ensure medical opinions reflect the appropriate burden on medical causation, as the standard leaves the Workers’ Compensation Commissioner with significant discretion—though not unlimited authority—in assessing the compensability of a claim by weighing the facts surrounding the “substantial factor” test. The conclusion of whether a factor is “substantial” in bringing about the resulting injury and disability is a mixed question of law and fact; thus, the Commissioner is not afforded the significant protections of the substantial-evidence standard by the reviewing court on appeal. Instead, the court reviews the ultimate conclusion and assesses whether it is a rational application of the law to the factual findings. Still, when there are multiple contributing factors, the law only requires the work-related factor be a substantial factor for the injury to be compensable. It would be medical fiction in most cases to require a worker to specifically designate a percentage or even the predominant cause of an injury related to the progression of accumulative traumas. The word “substantial” for workers’ compensation purposes has only been expressly required to be “more than

40. See Rose v. John Deere Ottumwa Works, 76 N.W.2d 756, 762 (Iowa 1956) (holding it is reasonable to rely on the “combined testimony” of a doctor’s opinion regarding the possibility the injury was work related and the claimant’s affirmative testimony regarding the nature of the condition to deem an alleged injury compensable); Hedberg & Vonderhaar, supra note 5, at 821 (“[T]he probability may be inferred by combining expert ‘possibility’ testimony with non-expert testimony that the condition . . . did not exist prior to the occurrence of the facts giving rise to the claim.” (citations omitted)).
41. See Rose, 76 N.W.2d at 762.
42. See Meyer v. IBP, Inc., 710 N.W.2d 213, 219 (Iowa 2006).
43. Id.
44. Blacksmith v. All-American, Inc., 290 N.W.2d 348, 354 (Iowa 1980).
slight[]” rather than particularly extensive or obvious.\textsuperscript{45} For that reason, a cause is substantial in cumulative-injury cases just as it is in all other cases—the cumulative effect of the employee’s work activities need only be a single, but meaningful, contributing factor in the development of the disabling condition.

III. PROVING AGGRAVATION INJURIES

An employee begins the employment relationship with or without preexisting injuries or asymptomatic conditions that may or may not end up relating to a work-injury claim. In Iowa, as an employer takes an employee subject to any active or dormant health impairments, it has long been held that a preexisting injury or a predisposition to injury does not disqualify a claim for benefits.\textsuperscript{46} Thus, employers take workers as they find them, inclusive of preexisting conditions. The Iowa Supreme Court has repeatedly indicated that while a worker is not entitled to workers’ compensation for the results of a preexisting injury or disease alone, the mere existence of such conditions at the time of a subsequent injury is not a defense barring workers from compensation.\textsuperscript{47}

When a preexisting condition or disability has been materially “aggravated, accelerated, worsened or ‘lighted up’” so that it results in a disability, the claimant is entitled to recover despite the existence of a prior infirmity.\textsuperscript{48} It is important to clarify these concepts are not to be conflated into simply “aggravation” injuries. Each term has a unique meaning. When it comes to acceleration injury claims, the question to be answered is not whether the injury was truly worsened. Instead, the focus is on whether the condition at issue would be in the same impaired state at the point in time of the claimed injury had the employee not engaged in the work activities alleged to have accelerated the injury process or hastened the deterioration of the claimant’s condition. In \textit{Sinclair v. McDonald}, the


\textsuperscript{46} See, e.g., Meyer, 710 N.W.2d at 225 (“Meyer could have had a predisposition to develop carpal tunnel syndrome prior to beginning his employment with IBP. Yet, if the injury manifested during his first minute of popping tongues as an IBP employee, it still would have arisen out of his employment because his job duties . . . increased the risk that carpal tunnel syndrome would manifest.” (citing Koehler Elec. v. Wills, 608 N.W.2d 1, 5 (Iowa 2000))).

\textsuperscript{47} Rose v. John Deere Ottumwa Works, 76 N.W.2d 756, 760–61 (Iowa 1956).

Iowa Supreme Court explained that a worker sustains “a personal injury within the meaning of the law” if work activities accelerate a preexisting physical condition to the point its eventual consequence was realized “sooner than it otherwise would have occurred.”49 “Lighted up” injuries occur when dormant or asymptomatic conditions become problematic for the employee for the first time—as is the case when a worker has significant preexisting arthritis or disc bulges—after sustaining a work-related injury.50 While the concepts of acceleration or “lighted up” injuries are largely predicated on an employee’s preexisting conditions changing as a result of work injuries, employers who allege that an injury is the inevitable consequence of the aging process for a worker cannot ignore the role that work activities play in the development of a disability. In McSpadden v. Big Ben Coal Co., the Iowa Supreme Court stated, “[T]he fact that the normal aging process may produce the ailment from which a claimant suffers as an actual result from his employment experience does not operate to bar a finding of disability.”51 Rather, the critical question for determining whether injury claims are based on the aggravation of a condition is whether the claimant’s work activities played a role in aggravating or worsening the condition, thereby leading to the injury or disability.52

While the law is not designed to allow workers to simply point to preexisting disabilities and seek benefits after work activities start, it also is not designed to ignore the very real increase in disability that can result from a worker having his or her condition worsened due to his or her performance of employment-related functions. The primary issue that determines whether an injury has resulted, which would allow an aggravation injury claim to prevail, hinges on the nature of the aggravating factors from the employee’s work activities. In Ziegler v. United States Gypsum Co., the Iowa Supreme Court declared work-connected injuries that more than slightly aggravate the condition qualify as personal injuries for workers’ compensation purposes.53 While the supreme court has more readily described a condition as aggravated, accelerated, worsened, or

49. Sinclair v. McDonald, 296 N.W. 362, 364 (Iowa 1941).
50. See, e.g., Hanson v. Dickinson, 176 N.W. 823, 825 (Iowa 1920).
52. See Roes, 76 N.W.2d at 761 (“If plaintiff was diseased and his condition was aggravated, accelerated, worsened or ‘lighted up’ by the injury so it resulted in the disability found to exist plaintiff was entitled to recover.” (citations omitted)).
lighted up by injurious work activities, it has not so readily repeated the qualification for such injuries to be the “more than slightly” standard pronounced in Ziegler. In an unpublished decision, the Iowa Court of Appeals pointed out the supreme court’s refusal to reaffirm the “more than slightly” part of the test in applying the legal standard for proving aggravation injuries in subsequent decisions.\(^{54}\) The court of appeals indicated the supreme court’s silence on the standard implied a requirement that aggravation be “material” in order to trigger a compensable claim, and in doing so, the court of appeals indirectly, but implicitly, established a seemingly higher burden of proof than the supreme court sought to establish in Ziegler.\(^{55}\) In avoidance of the “more than slightly” standard in post-Ziegler aggravation-injury analyses by the appellate courts, the court of appeals explained that courts “perceive little difference between the ‘more than slightly’ language used in Ziegler, and the ‘substantial or material’ language” more regularly quoted.\(^{56}\) While the supreme court has offered no formal guidance on this debate, the fact the language from Ziegler has not been disavowed indicates the court is, at the very least, reluctant to increase the burden placed on the injured worker who makes an aggravation-injury claim. In fact, the supreme court has explained in its analysis of other issues in workers’ compensation that its use of “shorthand” expression of legal standards does not equate to a substantive change in the law.\(^{57}\)

The wording of a “more than slightly” standard indicates a standard that hinges on the reality of some aggravation having occurred that has caused some consequence in terms of the worker’s impairment, and it only formally excludes the most minor aggravations from being compensable. Had the supreme court intended for the aggravation to be “material”—another inherently vague term—or “substantial”—a more certain term with a very different meaning than that offered by the phrase “more than slightly”—in order to qualify as compensable, it would have expressly done so. Rather, the Iowa Supreme Court has signaled its intent to hold fast to


\(^{55}\) Compare P.D.S.I. v. Peterson, 685 N.W.2d 627, 630 (Iowa 2004) (using standard where employment materially aggravated prior condition), with Ziegler, 106 N.W.2d at 595 (requiring prior condition be “slightly aggravated” by present condition).

\(^{56}\) See Simmering, 2005 WL 2757227, at *3.

\(^{57}\) Larson Mfg. Co. v. Thorson, 763 N.W.2d 842, 855 (Iowa 2009) (“We now clarify that our ‘shorthand’ expression of the discovery rule . . . did not signal the court’s intent to reformulate the rule.”).
its interpretations of the Iowa Workers’ Compensation Act, broadly construing the law to further its basic purpose of protecting and benefiting injured workers. Thus, any interpretation of a more burdensome “material”-aggravation standard must reflect the Ziegler holding, which excludes only those aggravations that are insignificant, slight, or inconsequential in nature. Therefore, aggravations actually effecting a change in a worker’s condition are generally compensable.

In addition to setting the floor for compensability in aggravation-injury claims, it is also important to understand the meaning behind other concepts used in assessing whether claims qualify as work-related injuries, entitling workers to benefits. Demystifying terms such as “lighted up” requires extrapolating both the legal and medical significance of these words and phrases. As briefly noted above, “lighted up” is a shorthand way of indicating that an injury caused previously asymptomatic or dormant conditions to become symptomatic, making the employer responsible for the now-disabling condition. Acceleration claims are based on the concept that work-related injuries or cumulative trauma have hastened or accelerated the disabling process of a condition. These claims also arise when a mildly disabling condition becomes more disabling because of the work-related injury than it would have otherwise. This concept is closely related to the idea that an incident of injury or the gradual repetition of workplace traumas may exacerbate or elevate the severity of a preexisting condition either permanently or temporarily.

Both temporary and permanent disabilities are compensable under Iowa law. The distinction is important for determining whether a worker may be entitled to a lifetime of permanent total disability benefits or to a few payments for a period of temporary disability. Therefore, it is important for a worker to show an aggravation injury has caused an increased level of disability in order to recover permanency benefits. In Ellingson v. Fleetguard, Inc., the supreme court held that a claimant must prove he or “she has suffered a distinct and discreet disability” that was caused by the additional work activities. It is important to note that the claimant need only show aggravation of a prior injury or condition to trigger a new injury claim. As explained above, there is a clear and unmistakable

62. See Floyd v. Quaker Oats, 646 N.W.2d 105, 108–09 (Iowa 2002); Ellingson, 599 N.W.2d at 444.
difference between what constitutes an injury that more than slightly aggravates a preexisting condition and the resulting distinct and discrete level of disability from that aggravation. The court of appeals acknowledged in an unpublished decision in Winter v. Rosenboom Machine & Tool, Inc. that “temporary injury” and “temporary aggravation” are terms not contemplated in the statute. Further, “the legislature intended that once personal injury is proven, the next determination is whether it was a proximate cause of disability, death, or the need for medical care.”

The key question in aggravation-injury cases is not the permanent nature of the aggravation itself, but the level of disability that results from the aggravation. Once the aggravation of a condition has been proved, the resulting effect of that aggravation, in terms of the worker’s disability, involves a separate analysis for assessment of the worker’s entitlement to disability benefits. That may lead to a modest or substantial award of permanency benefits, and full compensation is allowed for injuries that are “the result of workplace activities aggravating a preexisting condition.”

IV. AGGRAVATION VERSUS CHANGE IN CONDITION: REVIEW REOPENING IN WORK-INJURY CASES

When the underlying condition or pre-existing infirmity is from a previous work injury, it is important to analyze whether there has been an aggravation injury or if the prior condition was actually underestimated in a prior workers’ compensation award or settlement. If the extent of disability from the prior work injury was mistakenly determined to be too low, and there was no permanent, work-related aggravation, the Iowa Workers’ Compensation Act allows for another remedy.

One of the most unique quirks in workers’ compensation claims is the review-reopening process as provided in Iowa Code section 86.14. Review reopening allows a party to petition for an analysis by the Commissioner to determine if “the condition of the employee warrants an end to, diminishment of, or increase of compensation” that was originally

64. Id. (citing Thayer v. State, 653 N.W.2d 595, 599–600 (Iowa 2002)).
66. Floyd, 646 N.W.2d at 110 (citing Rose v. John Deere Ottumwa Works, 76 N.W.2d 756, 760–61 (Iowa 1956)).
determined by an award or agreement for settlement.\textsuperscript{68} Most often, these proceedings are based on a request by a claimant to have the amount of benefits raised due to an increase in industrial disability caused by the injury that was the basis for the original award or settlement.\textsuperscript{69} Depending on the factors causing some enhanced loss of access to the labor market, an increase in industrial disability, other than what was originally anticipated may occur without a change in physical condition.\textsuperscript{70} More specifically, the supreme court has held that a showing that there has been a change in earning capacity subsequent to the original award is adequate to justify an increase in the originally determined or agreed-upon benefits awarded for the worker's industrial loss.\textsuperscript{71}

The review-reopening standards were adjusted in an apparent variance with the plain language of the statute in \textit{Acuity Insurance v. Foreman}.\textsuperscript{72} Recently, the Iowa Supreme Court reassessed the meaning of the \textit{Acuity} test in \textit{Kohlhaas v. Hog Slat, Inc.}.\textsuperscript{73} In \textit{Kohlhaas}, the supreme court found the previously applied requirement of showing that the issue upon reopening the claim was an “unanticipated” change allowed far too much speculation about future changes in condition or earning capacity at the time of the initial award, and it nullified the basic purpose of review-reopening claims—to correct a previous award or settlement based on the actual condition of the employee after the passage of time.\textsuperscript{74} The supreme court announced in its \textit{Kohlhaas} decision that the \textit{Acuity} test was aimed at preventing mere reassessment of a condition that has already been found to exist in either an award or settlement.\textsuperscript{75} The court noted, “[F]unctional impairment and disability . . . at the time of the award . . . is not based on any anticipated deterioration of function that might or might not occur in the future.”\textsuperscript{76} The loss of earning capacity is determined by the Commissioner based on factors bearing on industrial disability as they are known at the time of the hearing, and therefore, the factors are not and cannot be based on what the claimant’s physical condition and economic

\textsuperscript{68.} Id.
\textsuperscript{69.} See, e.g., Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 457 (Iowa 1969).
\textsuperscript{70.} See id. at 466.
\textsuperscript{71.} See Blacksmith v. All-American, Inc., 290 N.W.2d 348, 354 (Iowa 1980).
\textsuperscript{72.} See Acuity Ins. v. Foreman, 684 N.W.2d 212, 216–17 (Iowa 2004).
\textsuperscript{73.} Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 391–92 (Iowa 2009).
\textsuperscript{74.} Id.
\textsuperscript{75.} Id.
\textsuperscript{76.} Id. at 392 (citations omitted).
realities might be at some future time. Whether, following an award or settlement, the changes that develop over time after an award or settlement are injurious conditions themselves or result in changes to the claimant’s earning capacity, the very purpose of review-reopening proceedings is to consider those changes and allow adjustment of benefits to reflect the true extent of the claimant’s disability. The Kohlhaas decision marked the formal abandonment of the review-reopening burden of proving that the increase in disability was not contemplated by the prior award or settlement. Thus, the injured worker is allowed to petition for an adjustment to the awarded or agreed-upon benefits resulting from a work injury by showing the realities of his or her condition have changed, justifying an increase in the disability benefits due.

V. “IN THE COURSE OF” EMPLOYMENT ISSUES

Iowa Code section 85.61(7) offers a definition for “in the course of employment”:

The words “personal injury arising out of and in the course of the employment” shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer’s business requires their presence and subjects them to dangers incident to the business.

The definition provided in section 85.61(7) plainly and specifically extends the workplace to include employer-owned premises and areas adjacent thereto; employer-occupied and used areas that may not necessarily be the employer’s own property; and areas where the employer requires the employee to travel to work. Thus, injuries sustained in employee parking lots; employer used, but not owned, storage facilities; 

77. Id.
78. See id.
79. See id. (“The review-reopening claimant need not prove . . . the current extent of disability was not contemplated by the commissioner . . . .”).
80. See id.
82. See id.
and hotels where employees stay during employment-related travel\textsuperscript{85} all have been found compensable.

\textbf{A. Going and Coming, Special Errands, and Substantial Deviations}

Generally, injuries sustained while an employee is traveling to or from work are not compensable because they are not considered to have been sustained in the course of employment. The widely recognized “going and coming” rule provides: “[A]bsent special circumstances, injuries occurring off the employer’s premises while the employee is on the way to or from work are not compensable,” especially when employees have fixed worksites and work hours.\textsuperscript{86} In Iowa, the “going and coming” rule’s special-circumstance exceptions primarily revolve around evaluating the added connections to the employee’s work activities that elevate the trip from merely a commute to work to an activity related to employment.\textsuperscript{87} The exceptions to the rule “extend the employer’s premises under certain circumstances when it would be unduly restrictive to limit coverage of compensation statutes to the physical perimeters of the employer’s premises.”\textsuperscript{88} These circumstances include a worker provided with a company vehicle or required to have a vehicle to perform the job, and a worker performing an employment-related errand as part of his or her commute.\textsuperscript{89} The very purpose of recognizing these exceptions is, as the late Professor Larson\textsuperscript{90} explained, “[C]ourse of employment should extend to any injury which occurred at a point where the employee was within range of dangers associated with the employment.”\textsuperscript{91} Accordingly, a worker should not be excluded from the benefits of workers’ compensation simply because “the hazards of the employment spill over the boundary-line” between the actual workplace and activities off the worksite premises.\textsuperscript{92} In

\textsuperscript{85} See Anderson v. Hotel Cataract, 17 N.W.2d 913, 917 (S.D. 1945).


\textsuperscript{87} Frost, 299 N.W.2d at 648–49.

\textsuperscript{88} Id.

\textsuperscript{89} See Ciha, 552 N.W.2d at 151–52.

\textsuperscript{90} The late Professor Larson was the original author of the well-respected and often cited treatise Larson’s Workers’ Compensation Law. 1 ARTHUR LARSON & LEX K. LARSON, LARSON’S WORKERS’ COMPENSATION LAW ch. 13 (2010).

\textsuperscript{91} Id.

\textsuperscript{92} Id. § 13.03[1].
the 1929 case, *Kyle v. Greene High School*, the Iowa Supreme Court explained there must be an exception to the “going and coming” rule when the injury is sustained while on a “special errand” related to the employment:

An exception to the aforesaid general rule is found in cases where it is shown that the employee, although not at his regular place of employment, even before or after customary working hours, is doing, is on his way home after performing, or on the way from his home to perform, some special service or errand or the discharge of some duty incidental to the nature of his employment in the interest of, or under direction of, his employer. In such cases, an injury arising en route from the home to the place where the work is performed, or from the place of performance of the work to the home, is considered as arising out of and in the course of the employment.93

Under the “special errand” exception, an employee who is performing a work-related function for the benefit of his or her employer at the time of the injury is considered to have been in the course of employment.94 In *Pribyl v. Standard Electric Co.*, the Iowa Supreme Court explained that trips made exclusively for the benefit of the employer extend the worksite for workers’ compensation purposes when the employee’s trip is “made in response to a special request, agreement, or instruction[]” that would make the entire trip to be in the course of the employment.95

In the more recent case of *Quaker Oats Co. v. Ciha*, the Iowa Supreme Court again examined the “going and coming” rule and further explained the “special errand” exception, which is one of the most commonly disputed exceptions to the “going and coming” rule.96 In that case, an on-call supervisor decided to return to the worksite to address a problem with a cooling fan.97 He was injured on his trip home from the

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95. Id. at 442.
96. See Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996) (explaining “an employee ‘would be pursuing his master’s business’ if his trip to and from the employer’s premises were a special trip made in response to a special request, agreement or instructions to go from his home to the plant to do something for the employer’s benefit” (quoting Pribyl, 67 N.W.2d at 442)).
97. Id. at 147.
The court determined the purpose of his trip was not personal, but it was for Quaker Oats’s business and thus a qualifying “special errand.” In assessing the work-relatedness of the errand, the Ciha Court reviewed its prior determinations on special errand cases, noting, “Our conclusion is not inconsistent with our interpretation of the special errand exception in other cases.”

Overall, the Iowa Supreme Court puts significant emphasis on why the errand differentiates from what an employee would normally do outside his or her work. In Bulman v. Sanitary Farm Dairies, the court noted that going to and coming from work at unique hours is part of the normal commute for a substitute driver, while an electrician commuting to an actual worksite would be making a trip specifically for the purpose of employment. Essentially, the key question is whether the employee is simply engaged in a commute to or from the place of employment at the time of the injury or whether there is some other factor that transforms the trip itself into being an employment-related activity.

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98. Id.
99. Id. at 152.
100. Id. at 152–53 (citations omitted). The court noted that in Bulman v. Sanitary Farm Dairies it held that a “substitute truck driver employee was not on a special errand at the time he was injured on his trip home after completing another driver’s delivery route; [the] employee was not involved in a mission ‘special’ from that which he would typically perform as a substitute driver.” Id. at 152 (citing Bulman v. Sanitary Farm Dairies, 73 N.W.2d 27, 30 (Iowa 1955)). It stated that in Pribyl it held an “employee electrician was on a special errand at the time he was killed while driving to a work site; [the] employee was required to travel to the work site by his own means and was to be reimbursed eight cents per mile by the employer.” Id. (citing Pribyl, 67 N.W.2d at 444). The court also noted that in Pohler v. T.W. Snow Construction Co. it found an “employee construction supervisor was on a special errand at the time he was killed by [a] freight train while returning to his temporary home; [the] employee was stationed out-of-state for three weeks to complete a railroad excavation project.” Id. at 152–53 (citing Pohler v. T.W. Snow Constr. Co., 33 N.W.2d 416, 420–21 (Iowa 1948)). Furthermore, the court stated that in Otto v. Independent School District it concluded an “employee janitor was not on a special errand at the time he was injured on his trip to work; [the] employee was injured as he made his daily trip to school as he did every weekday morning.” Id. at 153 (citing Otto v. Indep. Sch. Dist., 23 N.W.2d 915, 919 (Iowa 1946)). Finally, the court mentioned that in Kyle v. Greene High School it found an “employee janitor was on a special errand at the time he was killed while walking back to school to turn on the gymnasium lights; [the] employee was requested to return to work outside of his regular working hours after he had returned home for the day to perform an urgent and unexpected duty.” Id. (citing Kyle v. Greene High Sch., 226 N.W. 71, 73 (Iowa 1929)).
The “special errand” and other exceptions themselves, though, do not automatically convert off-site injuries into work-related injuries. When an employee makes a deviation from the employment-related errand for personal reasons, the employee may terminate the work-related connection of the trip. Iowa recognizes the “substantial deviation” concept. As explained in the Ciha opinion, even if an employee is on a special errand, an injury is not compensable if he or she is found to have sufficiently deviated from the errand to the extent the trip is no longer truly connected to the employer’s work. However, an employee is not required to take the most direct route to or from the work errand in order to still be in the course of employment; rather, the issue is whether the deviation is reasonably viewed as a total departure or abandonment of the work-related errand. Thus, the worksite is extended for workers’ compensation purposes when an employee is engaged in a work-related trip or errand that is distinguishable from a simple and regular commute. Such an extension of the worksite is only terminated upon showing the trip or errand deviated from work relevant to the employee’s journey.

B. Quasi-Course Activities: Injuries Sustained En Route to Medical Care

The Workers’ Compensation Commission has held, “[I]njuries received during travel for medical care for a work-related injury can be a compensable consequence of the injury.” This construction was based on three factors: (1) Iowa’s policy of liberally construing its workers’ compensation laws in favor of the worker, (2) Professor Larson’s view that such injuries are compensable, and (3) Iowa’s statute requiring employers to provide medical care and cover transportation expenses associated with that care.

According to Professor Larson, the simplest application of the quasi-course principle is to treat all medical consequences flowing from the

102. See Ciha, 552 N.W.2d at 153.
103. See id. (citations omitted).
107. Larson & Larson, supra note 90, § 10.05.
primary injury as compensable.\textsuperscript{109} Professor Larson noted, “quasi-course of employment” activities include those acts “that would not have been undertaken but for the compensable injury.”\textsuperscript{110} He continued, “Quasi-course activities in this sense would include, for example, making a trip to the doctor’s office . . . .”\textsuperscript{111} This means an “automobile accident during a trip to a doctor’s office has usually been considered sufficiently causally related to the employment by the mere fact that a work-connected injury was the cause of the journey.”\textsuperscript{112} Professor Larson also stated, “[C]ausation should not be deemed broken by mere negligence in the performance of that activity, but only by intentional conduct which may be regarded as expressly or impliedly prohibited by the employer.”\textsuperscript{113}

Iowa Code section 85.27 requires that the employer furnish medical care for work injuries, including “reasonably necessary transportation expenses.”\textsuperscript{114} Courts following Professor Larson’s rule have found that provisions such as section 85.27 are impliedly in the contract of employment because they impose “correlative duties on the employer and employee” regarding work injuries; therefore, an employee acts within the scope of employment when traveling to and from such medical care.\textsuperscript{115}

Iowa courts have often looked to Larson’s Workers Compensation Law when interpreting workers’ compensation laws.\textsuperscript{116} Given this longtime reliance, along with the previously discussed rules on liberal statutory construction in favor of the injured worker and the duties imposed by Iowa Code section 85.27, it logically follows that the leading rule among the states is also appropriate in Iowa—an injured worker seeking treatment is covered for injuries suffered while seeking that care.\textsuperscript{117}

\begin{itemize}
\item \textsuperscript{109} Larson \& Larson, supra note 90, \S 10.05.
\item \textsuperscript{110} Id.
\item \textsuperscript{111} Id.
\item \textsuperscript{112} Id. \S 10.07.
\item \textsuperscript{113} Id. \S 10.05.
\item \textsuperscript{114} Iowa Code \S 85.27(1) (2009).
\item \textsuperscript{115} See Moreau v. Zayre Corp., 408 A.2d 1289, 1294 (Me. 1979).
\item \textsuperscript{117} See Cheryl M. Bailey, Annotation, Workers’ Compensation: Compensability of Injuries Incurred Traveling to or from Medical Treatment of Earlier Compensable Injury, 83 A.L.R. 4th 110, 123, 125 (1991) (citing decision finding injuries
VI. “ARISING OUT OF” ISSUES

A. Increased-, Actual-, and Positional-Risk Doctrines and Idiopathic Injuries

There are times when injuries occur at a specific time and place without any real explanation. A worker’s knee may buckle without warning while walking across a floor, he or she may suffer a heart attack while writing an invoice, or he or she may pass out while driving a truck. In those incidents, while the employee may have been in the course of his or her employment, the compensability of the injuries sustained depends upon the relationship the work activities had to the injury—the “arising out of” element. This means an injury must be naturally incident to the nature of the employee’s work or a “rational consequence” of the hazards presented by the employee’s work.\(^{118}\) Thus, the injury must bear a causal relationship to the working environment or the conditions of employment.\(^{119}\) Purely personal injuries are only compensable if the work environment or work activities contribute to the risk or aggravate the injury.\(^{120}\) In a risk analysis to determine whether a workplace injury arises out of the employment, Professor Larson has indicated it is important to clarify the category of risk involved.\(^{121}\) According to him, there are three classes of risk: those distinctly associated with employment, those idiopathic or personal to the worker, and those that are neutral.\(^{122}\) Professor Larson does make a distinction between idiopathic and unexplained fall cases, clarifying that unexplained fall cases have a “completely neutral origin,” while idiopathic fall cases are “personal” to the claimant in their origin.\(^{123}\)

There are three predominant analyses that have generally been recognized in addressing the categories of risks associated with work injuries: positional risk, actual risk, and increased risk.\(^{124}\) The Iowa Supreme Court sustained when employee was injured en route seeking medical treatment were compensable).\(^{118}\) *Meyer*, 710 N.W.2d at 222 (citing Koehler Elec. v. Wills, 608 N.W.2d 1, 3–4 (Iowa 2000)).

\(^{119}\) Id.

\(^{120}\) Id.

\(^{121}\) *See* Larson & Larson, *supra* note 90, ch. 4.

\(^{122}\) Id. §§ 4.01–.04.

\(^{123}\) Id. § 9.01[1].

\(^{124}\) *See id.* §§ 3.03–.05. A fourth doctrine, the peculiar-risk rule, has been abandoned by almost all jurisdictions where it was once applied. *See id.* § 3.02 (noting the peculiar-risk doctrine was once the dominant rule). According to this extremely restrictive doctrine, the worker was required to show a risk was peculiar to his or her
has used two of those theories, the actual- and increased-risk rules, in applying the “arising out of” requirement.\textsuperscript{125} At times, the court has seemingly conflated these two concepts, inserting confusion as to which is the appropriate standard.\textsuperscript{126} Rather than viewing these two doctrines as mutually exclusive, though, it seems Iowa courts have actually declared them viable alternatives for establishing causation in workers’ compensation claims.\textsuperscript{127} Indeed, furthering the court’s inclusive approach to causation is the budding prospect that even the positional-risk doctrine may be a viable means of proving the work-related nature of an injury.

Increased risk, as defined by Professor Larson, requires a showing the employment somehow put the worker in a position that increased or elevated the risk of injury, as opposed to the risks generally faced by the public.\textsuperscript{128} In applying the increased-risk doctrine to Iowa cases, the Iowa Supreme Court has held a worker is “only required to ‘prove that a condition of his employment increased the risk of injury.’”\textsuperscript{129} In the case of \textit{Miedema v. Dial Corp.}, the court reviewed an unusual fact pattern that truly tested the “arising out of” requirement.\textsuperscript{130} The claimant in \textit{Miedema} suffered a severe

\textsuperscript{125} In \textit{Hanson v. Reichelt}, the Iowa Supreme Court expressly adopted the actual-risk rule in element exposure cases, stating, “If the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of the employment.” Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990). The court held, “[I]t makes no difference that the risk was common to the general public on the day of the injury.” Id.; see also Lakeside Casino v. Blue, 743 N.W.2d 169, 174–75 (Iowa 2007) (noting that, since Hanson, the court has “abandoned any requirement that the employment subject the employee to a risk or hazard that is greater than that faced by the general public,” so long as it is an actual risk of employment (citing Floyd v. Quaker Oats, 646 N.W.2d 105, 108 (Iowa 2002))). In a carpal tunnel case, the Iowa Supreme Court used the increased-risk rule to determine that even if an employee was predisposed to the injury, carpal tunnel could still arise out of employment if the employee’s job duties “increased the risk that carpal tunnel syndrome would manifest.” Meyer, 710 N.W.2d at 225 (citing Koehler Elec. v. Wills, 608 N.W.2d 1, 5 (Iowa 2000)).

\textsuperscript{126} The Iowa Supreme Court purported to reject the increased-risk rule in favor of the actual-risk rule in certain situations. See Hanson, 452 N.W.2d at 168.

\textsuperscript{127} See, \textit{e.g.}, Benco Mfg. v. Albertsen, No. 08-0746, 2009 WL 249647, at *3 (Iowa Ct. App. Feb. 4, 2009) (“Iowa, with limited exceptions, rejected the increased-risk rule and adopted the actual-risk rule . . . .” (emphasis added) (citing Lakeside Casino, 743 N.W.2d at 177)).

\textsuperscript{128} \textit{LARSON & LARSON, supra note 90, ch. 3.}

\textsuperscript{129} \textit{Meyer, 710 N.W.2d at 225 (citations omitted).}

\textsuperscript{130} \textit{Miedema v. Dial Corp., 551 N.W.2d 309, 310 (Iowa 1996).}
back strain after turning to flush the toilet at work. \textsuperscript{131} While the worker was clearly at the employer’s place of business and sustained an injury while on the clock, the key dispute came from the relationship between the worker’s injury and his work activities. \textsuperscript{132} The court concluded that it would be improper to treat this injury as arising out of the worker’s employment because the risk of a back injury in that circumstance was “in no way connected to nor increased by” the worker’s employment. \textsuperscript{133}

The Iowa Supreme Court has routinely recognized that if an employee satisfies the increased-risk test, the burden of proof for the “arising out of” requirement has been met. \textsuperscript{134} To be clear, though, the increased-risk doctrine is often a higher burden for the injured worker than either the actual-risk doctrine or the positional-risk doctrine. \textsuperscript{135} In reviewing the progression of cases involving each of the three alternatives, it has become clear the Iowa Supreme Court is not wedded to any single approach to these types of claims. \textsuperscript{136} The actual-risk doctrine, in particular, has been successfully applied by injured workers to prove a sufficient causal connection for workers’ compensation purposes. \textsuperscript{137}

In applying the increased-risk doctrine to defeat the worker’s claim in \textit{Miedema}, the court noted a basic tenet of the actual-risk doctrine: “If the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and in the course of employment.” \textsuperscript{138} The Iowa Supreme Court determined in \textit{Hanson v. Reichelt} that an employee’s heat stroke injury sustained while performing farm work was compensable because the work exposed the

\textsuperscript{131.} Id.
\textsuperscript{132.} Id.
\textsuperscript{133.} Id. at 311.
\textsuperscript{134.} See, e.g., id. (citing Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990)).
\textsuperscript{135.} See, e.g., Hansen, 452 N.W.2d at 168 (“We think the actual risk rule is the better rule and more in line with how we construe our Workers’ Compensation Act. We construe the Act liberally in favor of the employee . . . .” (citing Teel v. McCord, 394 N.W.2d 405, 406–07 (Iowa 1986))); Matthew B. Duckworth, Comment, \textit{The Need for Workers’ Compensation in the Age of Telecommuters}, 5 J. SMALL & EMERGING BUS. L. 403, 411–12 (2001) (discussing recovery under the actual-risk doctrine where the increased-risk doctrine would not be satisfied, and under the potential-risk doctrine where neither the increased- nor actual-risk doctrines would be satisfied).
\textsuperscript{136.} \textit{Compare} Koehler Elec. v. Wills, 608 N.W.2d 1, 5 (Iowa 2000) (requiring only proof a condition of “employment increased the risk of injury”), with \textit{Hanson}, 452 N.W.2d at 168 (adopting the actual-risk rule).
\textsuperscript{137.} See \textit{Hanson}, 452 N.W.2d at 168 (adopting the actual-risk rule).
\textsuperscript{138.} See \textit{Miedema}, 551 N.W.2d at 311 (quoting \textit{Hanson}, 452 N.W.2d at 168).
employee to high-temperature labor that gave rise to his injury, and “the actual risk rule is the better rule and more in line with how we construe our Workers’ Compensation Act.”139 As the Act is to be construed to “resolve all doubts in favor of the employee,” the court determined the adoption of the actual-risk rule was appropriate when “the nature of the employment exposes the employee to the risk of such an injury.”140 The actual-risk doctrine utilized by the Iowa Supreme Court in Lakeside Casino v. Blue was actually first identified and adopted by the court in Hanson:

If the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of the employment. And it makes no difference that the risk was common to the general public on the day of the injury.141

Thus, the Hanson decision, which was decided well before the Miedema case, expressly adopted the less burdensome actual-risk doctrine.142 In doing so, the Hanson Court stated that there is a causal connection between work and injury, even if the risks presented by the employment are no greater than “those found by the general public.”143 In regards to the compensability of a work injury, “it makes no difference that the risk was common to the general public on the day of the injury.”144 Professor Larson explained the actual-risk doctrine tests only whether the risk resulting in injury was, in fact, a risk of the worker’s employment, without regard to whether the same risk would be common to the general public.145

While more inclusive than the increased-risk doctrine, the actual-risk doctrine stops short of the level of inclusiveness found in the positional-risk doctrine. Positional risk simply involves the inquiry of whether the injury would not have occurred but for the worker being employed and, by virtue of that employment, being placed in the position where the injury was sustained.146

Thus, the risk of injury only need come about as a result of performing

139. Hanson, 452 N.W.2d at 168.
140. Id. (citing Teel, 394 N.W.2d at 406–07).
141. Lakeside Casino v. Blue, 743 N.W.2d 169, 174 (Iowa 2007) (quoting Hanson, 452 N.W.2d at 174).
142. Hanson, 452 N.W.2d at 168.
143. Id.
144. Id.
145. LARSON & LARSON, supra note 90, § 3.04.
146. Id. § 3.05.
duties in the workplace. There is no requirement the risk of the action being performed by the employee be increased or heightened in any way. 147 Stated another way, the employee need only show the injury occurred as a result of a condition or requirement of his or her employment. 148

The Iowa Supreme Court’s decision in Lakeside Casino offered new clarity on the actual-risk doctrine, the doctrine the court has most readily accepted and applied in construing the meaning of the “arising out of” requirement. In that case, the court reviewed prior cases involving the “arising out of” component of Iowa workers’ compensation law. 149 It focused largely on the Miedema case, noting, “[T]he injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of [the] employment.” 150 The court also specifically referenced its decision in Floyd v. Quaker Oats, stating, “[W]ith limited exceptions we have abandoned any requirement that the employment subject the employee to a risk or hazard that is greater than that faced by the general public.” 151 The 2002 Iowa Supreme Court decision in McIlravy v. North River Insurance Co. further explained the limits of the actual-risk doctrine in the context of an insurance, bad-faith tort claim. 152 While the McIlravy Court noted there is no requirement that work activities “involve more hazard or exertion than a [worker’s] activities outside the work place[,] . . . . this does not mean an injury sustained . . . without any additional evidence connecting the injury in some way to the work place” would be compensable. 153 The court has offered many indications that the actual-risk doctrine is not only sufficient to use in proving causation, but that it also only requires minimal proof of some relationship between the work or workplace and the resulting injury. Finally, and perhaps most importantly, the more recent holding in Lakeside Casino specifically disavowed and rejected the increased-risk rule as the exclusive

147. Id. at 174–75 (citing Floyd v. Quaker Oats, 646 N.W.2d 105, 108 (Iowa 2002)).
148. Id.
149. See id. at 174–76 & nn.2–5.
150. Id. at 174 (alteration in original) (quoting Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996)).
151. Id. at 174–75 (citing Floyd, 646 N.W.2d at 108).
152. See McIlravy v. N. River Ins. Co., 653 N.W.2d 323, 331 (Iowa 2002) (inquiring as to whether the defendant insurance company had a reasonable basis for the initial denial of workers’ compensation benefits, and if so, whether after the defendant became aware of information contradictory to its initial denial, it promptly started payment on the claim).
153. Id. (emphasis added) (citing Miedema, 551 N.W.2d at 311).
means of establishing a work-related injury and expressly adopted a broadly applied actual-risk rule.\textsuperscript{154}

Aside from the actual-risk doctrine, the debate on the “arising out of” element in workers’ compensation claims has also included the positional-risk doctrine.\textsuperscript{155} This doctrine offers the advantage of being the easiest to apply by presuming an injury is work related if it resulted from being in a location because of one’s work obligation.\textsuperscript{156} Thus, under the positional-risk doctrine, an idiopathic knee injury would be compensable simply because the claimant’s employment brought him to the location where he was injured.\textsuperscript{157} The fact the claimant was at work is the primary focus in whether or not the claimant was in a position to be injured, even if the injury was not actually caused by something at the work site.\textsuperscript{158} Even though the plain language of Iowa Code section 85.61(7) explains the partial phrase “in the course of,” as well as the “arising out of” requirement,\textsuperscript{159} the Iowa Supreme Court has refused to adopt the positional-risk rule.

In the \textit{Lakeside Casino} decision, the supreme court applied the actual-risk doctrine to the facts of the case on appeal and stated Iowa had not yet adopted the positional-risk rule.\textsuperscript{160} While the court has declined to accept the positional-risk doctrine, it has stopped short of wholly disavowing it, stating, “Iowa has not adopted the positional-risk rule, and we decline to do so now under the circumstances presented by \textit{this} case.”\textsuperscript{161}

The court went on to review the facts and concluded they were more appropriately aligned with the actual-risk rule, reaffirming the notion it is willing to recognize alternative theories of the risk doctrine when deciding contested cases.\textsuperscript{162} Before this decision, the alternatives were seemingly limited to the actual- and increased-risk doctrines by prior holdings, such as

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\item\textsuperscript{154} \textit{Lakeside Casino}, 743 N.W.2d at 175 n.3 (citing \textit{Miedema}, 551 N.W.2d at 311).
\item\textsuperscript{155} See \textit{LARSON & LARSON}, supra note 90, \S 3.05 (citations omitted) (discussing jurisdictions that have adopted the positional-risk doctrine).
\item\textsuperscript{156} See id.
\item\textsuperscript{157} See \textit{id.; Lakeside Casino}, 743 N.W.2d at 176–77.
\item\textsuperscript{158} See \textit{LARSON & LARSON, supra} note 90, \S 3.05.
\item\textsuperscript{159} \textit{IOWA CODE} \S 85.61(7) (2009).
\item\textsuperscript{160} \textit{Lakeside Casino}, 743 N.W.2d at 177.
\item\textsuperscript{161} \textit{Id.} (emphasis added). The court noted Professor Larson has argued “an unexplained fall should be compensated under the positional-risk rule,” but here, it did not find the employee’s stumble was unexplained. \textit{Id.} (citing \textit{LARSON & LARSON, supra} note 90, \S 7.04[1][a]).
\item\textsuperscript{162} See id.
Miedema, which declared an injury, for workers’ compensation purposes, “must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of [the employee’s] employment.” 163 In essence, the court accepts two possibilities for converting seemingly idiopathic injuries into work-related injuries. The first is to show that the hazards of the workplace increased the extent of an injury. 164 For example, a worker who has a fall after a knee gives out for purely personal reasons, but happened to be on a ladder at the time the knee buckled, would likely have sustained a worse injury than a person who was on even ground at the time the knee buckled. 165 This means the work presented the actual risk that was realized—an aggravating hazard to the employee that increased the severity of his injury—thus making it a compensable claim. Second, the employee can show the workplace presented a specific, actual risk that caused an injury. 166 In Lakeside Casino, the actual risk was the hazard of climbing stairs. 167 While the risk was in no way peculiar to the worksite, it certainly posed an actual risk to a worker who was placed in the position of climbing stairs as a result of her employment. 168

This progression of cases shows the expansion of the court’s application of the risk doctrines to the benefit of injured workers, and the court’s analysis in Lakeside Casino may be telling of the court’s future assessments. In the full context of how these cases have progressed, the supreme court’s refusal to apply the positional-risk doctrine to the specific facts in the Lakeside Casino case indicated that, should a true positional-risk case be presented, the court may accept and apply Professor Larson’s positional-risk standard. 169 There is certainly some historical and logical support for that approach. 170 The positional-risk rule is the standard that offers the most complete compliance with the statutory standard pronounced by the legislature, by application of both the liberal statutory construction principle and the principle that statutes are to be given their “plain language” meaning in statutory interpretation. The Iowa Supreme Court may have

164. Koehler Elec. v. Wills, 608 N.W.2d 1, 5 (Iowa 2000).
165. See id.
166. See Lakeside Casino, 743 N.W.2d at 177–78; Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990).
167. Lakeside Casino, 743 N.W.2d at 177.
168. Id.
169. Id. at 176–77.
170. See LARSON & LARSON, supra note 90, § 3.05.
offered a tacit acknowledgement of that in its *Lakeside Casino* opinion; at the very least, by specifically declining to apply the positional-doctrine to circumstances presented by that case, it has declined to affirmatively denounce the applicability of the positional-risk doctrine to Iowa cases.\[171\] In liberally construing Iowa Code section 85.3(1) and its defining section—85.61(7)—to the benefit of the injured worker, it would seem there is a compelling question of whether or not the court is poised to adopt the positional-risk rule in the near future, should the right circumstances be presented.

When an employee’s injury merely occurs at work, and is unrelated to his or her employment, the injury is considered to be “idiopathic” and not compensable because it fails to arise out of his or her employment.\[172\] For example, if an employee inexplicably falls at work, injuries sustained in that fall are not compensable unless there is something to connect the fall or resulting injury to the worker’s employment.\[173\] However, if employment activities or the employment premises contribute to the increased risk of a fall or severity of the resulting injury, the otherwise idiopathic injury transitions into a compensable, work-related injury.\[174\] In *Lakeside Casino*, the court made clear Iowa has recognized and applied the actual-risk rule to require proof that an injury was “‘in some way . . . caused by or related to the working environment or the conditions of the employment.’”\[175\] In that case, a worker was injured when she tripped and fell walking down her employer’s stairs.\[176\] The court found going up or down a set of stairs presented an actual risk of falling and, indeed, posed a hazard of employment.\[177\] That led to the conclusion the injury arose out of the worker’s employment.\[178\] The court was not concerned with whether the stairs were a hazard routinely faced by the general public.\[179\]

\[171\] See *Lakeside Casino*, 743 N.W.2d at 176–77.
\[172\] See *Koehler Elec. v. Wills*, 608 N.W.2d 1, 3–4 (Iowa 2000). “[I]njuries resulting from risks personal to the claimant are not compensable.” *Id.* at 4 (citations omitted).
\[173\] See *Larson & Larson*, supra note 90, § 12.01 (noting the injury must arise “within the time and space boundaries of the employment, and in the course of an activity whose purpose is related to the employment”).
\[174\] *Koehler Elec.*, 608 N.W.2d at 5.
\[175\] *Lakeside Casino*, 743 N.W.2d at 174–75 (quoting *Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996)).
\[176\] *Id.* at 171.
\[177\] *Id.* at 177–78.
\[178\] *Id.* at 178.
\[179\] *Id.* at 174–75 (noting the abandonment of the requirement the exposed
Similarly, in *Koehler Electric v. Wills*, the Iowa Supreme Court concluded a worker who fell from a ladder at work due to alcohol withdrawal sustained a compensable injury because, despite the fact the alcohol withdrawal was not work related, the fall from the ladder increased the likelihood and effects of the resulting injury.\(^{180}\) Thus, even when a worker sustains an injury as a result of a purely personal condition or risk, the injury is still compensable if the employment contributed to the risk of injury or aggravated the injury.\(^{181}\)

In *Benco Manufacturing v. Albertsen*, the Workers’ Compensation Commissioner held that a worker who fell and fractured her spine on a concrete wall after passing out sustained a work-related injury.\(^{182}\) This was because hitting the concrete wall increased the severity of the worker’s injury.\(^{183}\) A 2010 commission decision showed factors as simple as a claimant wearing steel-toed boots can present a hazard sufficient to connect a seemingly unrelated injury—an employee’s knee popping out while walking across a concrete floor, for example—to the worker’s employment.\(^{184}\) The employer would call the claimant’s injury unexplained or idiopathic.\(^{185}\) The Commissioner disagreed, stating,

\[
\text{[A]n employee’s burden can be satisfied by demonstrating that the nature of the employment exposed the employee to the risk of injury, and claimant presented testimony that the nature of his employment increased the risk of the type of injury he suffered. Here, because of the added weight and stress of steel toed work boots, and a tool belt placed on his leg and knee while walking on hard non-cushioned concrete, the employment exposed the claimant to additional risk of injury which he in fact suffered.}^{186}
\]

In sum, the aggravating or worsening factors for idiopathic injuries need not be highly unusual to result in a compensable injury.\(^{187}\) Injuries

\(^{180}\) Koehler Elec. v. Wills, 608 N.W.2d 1, 4–5 (Iowa 2000).
\(^{181}\) Id.
\(^{183}\) See id.
\(^{185}\) Id.
\(^{186}\) Id. (citing McIlravy v. N. River Ins. Co., 653 N.W.2d 323, 332 (Iowa 2002)).
\(^{187}\) See Lakeside Casino v. Blue, 743 N.W.2d 169, 177 (Iowa 2007); Benco
worsened by falls from significant heights or stairs, or falls onto hard or unforgiving surfaces, are often sufficient to connect the worsened extent of injury to the worker’s employment.

Other times, a worker’s injuries may appear to be idiopathic and not be aggravated by anything on the employer’s premises but still related to employment by virtue of the nature of the work leading up to the eventual incident of injury. In the case Ace Construction v. McIlravy, the court of appeals held that when a worker who regularly performs work that increases the risk for the development of an injury, the employer is liable when that risk is realized. Specifically, the court noted, “[T]he heavy lifting and carrying and knee flexion maneuvers [the claimant] was required to perform as part of his job duties placed him at an increased risk for the type of injury he sustained.” In applying the legal standard to the facts, the court held,

\[\text{[T]he precise moment of the injury—the popping sound and sensation in [the claimant’s] knee—occurred when he was merely walking across a flat surface. However, there is no requirement that an injury be immediately predicated by a sudden or traumatic event, and the medical testimony supports a finding that the type of work [the claimant] engaged in exposed him to and increased the risk of precisely the type of injury he suffered.}\]

In McIlravy v. North River Insurance Co., the Iowa Supreme Court examined the same facts as Ace Construction v. McIlravy, but it did so in the context of an insurance, bad-faith tort claim. The medical evidence in that case related to the employee’s injury; the location where his knee gave out at work; work activities; and conditions prior to the incident, which included repetitive lifting, climbing, bending, and carrying extra weight. With medical evidence providing support, the injury was deemed to have satisfied the “arising out of” requirement.

An evaluation of whether an alleged idiopathic injury is work related involves a review of not only the cause of the injury, but each way the

\[\text{Mfg., 2009 WL 249647, at *4; Gracia, 2010 WL 1664969, at *2.}\]
\[\text{See Ace Constr. v. McIlravy, No. 00-1096, 2001 WL 355692, at *1 (Iowa Ct. App. Apr. 11, 2001).}\]
\[\text{Id. at *3–4.}\]
\[\text{Id. at *3.}\]
\[\text{Id. at *4.}\]
\[\text{See McIlravy v. N. River Ins. Co., 653 N.W.2d 323, 327 (Iowa 2002).}\]
\[\text{Id. at 332–33.}\]
\[\text{Id. at 333.}\]
employment relationship may have contributed to the injury. Not only are workplace hazards—such as stairs and heights—recognized to contribute to the risk of a worker’s injury, but workplace structures that can contribute to the worsening of the resulting injury are also adequate to connect the condition to employment. If an injury can be connected to the progression of work activities that, over the years, increased the risk of an injury, the eventual injury can be compensable as well. Therefore, truly idiopathic injuries are rare even under the actual- and increased-risk standards. As indicated earlier, there has been a movement to recognize the positional-risk test in many states in order to bring additional clarity to compensability issues in these cases. As noted above, the Iowa Supreme Court has yet to adopt the positional-risk rule, but it has indicated a willingness to consider its applicability to the right set of facts in the future.

B. Special Causation Issues in Heart Attacks and Strokes

When a worker suffers a heart attack while performing employment-related functions, there is naturally a difficult question of how the heart attack may relate to the individual’s work activities. A heart attack is often the resulting event attributable to a varied number of risk factors, which essentially equate to preexisting defects. To legally connect such an event to one’s work, Iowa has recognized three types of circumstances that make heart attacks, and presumably strokes, compensable events. First and foremost is the “heavy exertion” standard, in which a worker’s preexisting heart defect is stressed by his or her ordinary work activities that include heavy exertions or added stressors that are “greater than that of nonemployment life,” which have the effect of aggravating or accelerating the defective heart condition to the point of substantially contributing to the compensable cardiac injury. The second test is the “unusual” exertion standard, which is similar to the “heavy exertion” standard but differs in that it points to an “unusually strenuous employment exertion” adding stress to the preexisting condition that ultimately results in a

195. See id. at 333 n.4 (noting uncontested evidence of carrying extra weight, repetitive lifting, and climbing “satisfied the ‘arising out of’ employment element of a workers’ compensation claim”).
196. See Larson & Larson, supra note 90, § 3.05.
197. See Lakeside Casino v. Blue, 743 N.W.2d 169, 177 (Iowa 2007).
198. See Sondag v. Ferris Hardware, 220 N.W.2d 903, 905, 907 (Iowa 1974).
199. Id. at 905 (citations omitted).
compensable heart attack. 200 Finally, Iowa has also recognized compensation for heart attacks arising out of and in the course of employment when the cardiac event is followed by “continued exertions” on the job that contribute to or aggravate damage from the heart attack. 201 These general rules define how work activities can be deemed to increase the risk of damage related to a worker’s heart attack and thus convert what may otherwise be deemed a personal condition unrelated to employment into a work-related injury.

When reviewing the Iowa Supreme Court’s rationale in weighing the legal causation issues presented in heart attack cases, it follows that similar events, such as strokes, would naturally be deemed compensable under similar circumstances. In the agency decision of Clark v. Inland Truck Parts Co., a deputy Workers’ Compensation Commissioner indicated the legal causation principles related to heart attacks also relate to strokes. 202 While never reviewed by Iowa’s appellate courts, the legal analysis extending the rules pertaining to heart attacks to stroke cases was endorsed when Clark was affirmed upon de novo review by the Workers’ Compensation Commissioner. 203

There is a common thread to these three recognized means of classifying a heart attack as a work-related injury—the employee’s work enhances the risk of, or damage caused by, a cardiac event. Thus, despite the specific circumstances that have been recognized in assessing legal causation of heart attack and stroke cases, the ultimate issue is the same as it is in all other injuries, and a heart attack is a compensable injury if an employee’s work was an aggravating or otherwise material factor in bringing about the resulting disability. This essentially makes the formal legal tests the court has espoused follow, in the ultimate conclusive application of law and fact, the basic factual causation determinations. In sum, if a worker is able to show through medical and lay testimony that causation exists between his or her work and his or her resulting disability from a heart attack or stroke, it tends to follow the causal connections between the work and the injury are likely to meet the “arising out of” requirement of Iowa Code chapter 85.

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200. Id. at 905–06.
201. Id.
203. Id. at *11.
C. Workplace Assaults

Workplace assaults pose interesting questions regarding the compensability of the injuries sustained. These circumstances require an assessment of both risk doctrines discussed previously in relation to the often peculiar facts associated with the assault. It is important to evaluate both the “arising out of” and the “in course of” elements to resolve the question of compensability in assault claims. Specifically in Iowa, Iowa Code section 85.16 provides that injuries caused “[b]y the willful act of a third party directed against the employee for reasons personal to such employee” are not compensable.204

Workers are generally excluded from compensation when they are the aggressors in the assault, but when they are victims the key questions often focus on why, how, and where the assault took place.205 The “why” factor relates to what triggered the aggressor to assault the worker and whether the reasons were “personal.” Was it a completely random act? Was it the result of a dispute with a coworker, and if so, what was the basis of the dispute? Was it an acquaintance of the worker who simply chose the workplace as the site for the attack?

Assaults taking place at the worksite or while on a work-related trip or errand generally resolve the “in the course of” question, but the worksite can be extended based on the circumstances of the assault. Professor Larson examined various factors in determining if an assault is compensable.206 Those factors include the street risks associated with the worksite, the nature or setting of the job, and the subject matter of the assault.207 In Everts v. Jorgensen, the Iowa Supreme Court held a motel clerk who was attacked while on duty by a recently fired coemployee was entitled to workers’ compensation benefits.208 Also, in Cedar Rapids Community School v. Cady, the supreme court held a workers’ compensation award was also appropriate when an employee was killed by a psychotic fellow employee.209 In Cady, a school district employed two janitors, and the two men had very little contact at work and no contact outside of it.210 Nevertheless, one of the men, who suffered from schizophrenia, began to believe the other man was a “hit man”

204. IOWA CODE § 85.16(3) (2009).
205. See LARSON & LARSON, supra note 90, §§ 8.01–.04.
206. See id. § 8.01.
207. Id. § 8.01(1)(c)–(d), (2).
210. Id.
assigned to kill him.211 This led the schizophrenic man to shoot and kill the other man.212 Though the delusions of the worker were not inherently work related, the court found the employment relationship sufficiently connected the assault to a street risk to make it compensable.213 The court held such an injury arises out of employment when it is “a rational consequence of a hazard connected with the employment.”214 Professor Larson also addressed this issue in his treatise, explaining the assault’s “deliberateness” and “premeditation” are to be weighed against its “impulsiveness” in order to determine whether it was truly a “willful intention to injure” circumstance.215

Even if a worker is injured away from the actual worksite, there is a “zone of danger” exception to the general principle that requires injuries be on the employer’s premises in order to be compensable.216 In liberally construing the workers’ compensation statute for the benefit of the injured worker, it is counterintuitive to cut off the employer’s liability for injuries that are connected to a worker’s employment simply because they take place away from the worksite. The Iowa Supreme Court has even recognized the compensability of injuries resulting from driving while intoxicated from work when the employer has encouraged the consumption of alcohol, as well as injuries sustained from falling on a public sidewalk near a workers’ place of employment.217

While Iowa Code section 85.16 allows an employer to assert that an injury was “the willful act of a third party directed against the employee for reasons personal to such employee,”218 this defense is quite narrow. There must be proof there were adequate “personal” reasons for the assault that were wholly distinguishable from any work-related reasons.219 When the claimant is “merely the passive object of” a third-party’s assault, such an attack cannot be deemed to be motivated by reasons personal to the claimant.220 The Iowa Workers’ Compensation Act is designed to protect injured employees, and those protections have been consistently interpreted to necessarily include the victims of workplace assaults in most

211. Id.
212. Id. at 299.
213. Id. at 300.
214. Id. at 302-03.
215. LARSON & LARSON, supra note 90, § 8.01[5][d].
216. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 129 (Iowa 1995).
217. See id. at 129–30; Frost v. S.S. Kresge Co., 299 N.W.2d 646, 647 (Iowa 1980).
218. IOWA CODE § 85.16(3) (2009).
219. See Cady, 278 N.W.2d at 303.
220. See id.
circumstances.

D. Recreational Activities

Iowa also looked to Professor Larson in establishing the factors that make injuries that occur during recreational activities compensable as injuries sustained in the course of employment.\footnote{221} According to Professor Larson, recreational injuries are compensable when, for example, they occur on the employer’s premises during a break or “recreation period as a regular incident of the employment,” or whenever the employer, by either an expressed requirement or an implicit indication employee participation may be required, “brings the activity within the orbit of the employment.”\footnote{222} The latter test—whether the employer requires participation—can present some significant challenges. It is often difficult to discern whether a worker is compelled to participate in an employer-sponsored function, and it should be appreciated that workers often feel compelled to fulfill the requests of their employers as not necessarily requirements of the job, but certainly as part of an implied need for employee involvement in the employer’s extracurricular activities. These can range from internal, community-building events to public and charitable events where the employer may indicate a strong desire for employee participation without any expression that involvement by workers is, in fact, required as a condition of employment. Thus, Professor Larson’s standard, as adopted by the Iowa courts, allows a worker to show that his or her involvement in the recreational activity was encouraged by the employer to the extent it would give the employee the reasonable belief it was, in fact, implied as an extension of the employment relationship.\footnote{223}

Professor Larson also identified a third and more broadly inclusive factor: “The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.”\footnote{224} This third test was evaluated in \textit{Briar Cliff College v. Campolo}, in which the Iowa Supreme Court held the “business-related benefit test” compels a showing of a direct benefit to the employer, rather than merely indicating

\footnote{221}{See \textit{Briar Cliff Coll. v. Campolo}, 360 N.W.2d 91, 94 (Iowa 1984).}
\footnote{222}{\textit{2 Arthur Larson & Lex K. Larson, Larson’s Workers’ Compensation Law} § 22.01 (2010).}
\footnote{223}{\textit{Briar Cliff Coll. v. Campolo}, 360 N.W.2d 91, 94 (Iowa 1984).}
\footnote{224}{\textit{Larson & Larson, supra} note 222, § 22.01.}
the activity builds employee morale and camaraderie. In *Campolo*, the claimant was a college faculty member who died after participating in an intramural basketball game. The court concluded that his participation in the basketball game with students benefited the school’s overall efforts aimed at student retention, and therefore offered a sufficient business-related benefit to bring the activity within the course of employment, thus making an injury sustained during that activity compensable. In *Gazette Communications, Inc. v. Powell*, however, the Iowa Court of Appeals reiterated that if the “sole benefit” alleged to bring the injury within the course of employment is building morale or camaraderie among employees, a recreational activity is not sufficiently work related. The court of appeals noted that it would not allow recoveries for injuries sustained during “activities that merely build morale and camaraderie [because that] would permit for complete coverage of all the employer’s refreshing social and recreational activities.” Thus, a worker’s burden in proving a recreational injury requires connecting the activity with an employer’s goal or objective. The employer’s goal must extend beyond simply promoting the health and happiness of the workforce. The employer need not formally ratify the benefit; the worker simply must relate how his or her participation in the extracurricular activity generates some appreciable benefit to the employer’s business. This would seemingly include activities that promote building client and customer relationships, improving the employer’s public relations and public image, and stimulating the employer’s business.

**E. Willful Injury, Horseplay, and Intoxication Exclusions**

Apart from failing to arise out of and in the course of employment, some injuries are excluded from being compensable due to the

225. *Campolo*, 360 N.W.2d at 94.
226. Id. at 93.
227. Id. at 94.
229. Id. (quoting LARSON & LARSON, supra note 222, § 22.05[3]).
230. Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (attending customer relations dinner to strengthen relationships with customers found to benefit employer).
231. *Campolo*, 360 N.W.2d at 93–94 (participating in intramural basketball game intended to improve student retention and recruitment).
232. See, e.g., 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995) (socializing with customers and “hust[le]ing the purchase of drinks” was encouraged).
circumstances through which they were sustained. According to Iowa Code section 85.16, compensation is not allowed for injuries caused by an employee’s willful self-injury or attempts to injure others, an employee’s non-work-related intoxication, or “the willful act of a third party directed against the employee for reasons personal to such employee.” The exclusion of willful injury by a third party found in section 85.16(3) was previously discussed in the context of workplace assaults, though it is important to note not all third-party injuries from willful conduct are based in the context of an assault. As indicated in the following Iowa Supreme Court decision, the willful act can take many forms and be presented in many peculiar contexts.

In *Xenia Rural Water District v. Vegors*, the claimant was injured at work when a coworker hit him with a pickup truck. The accident occurred when Vegors “wiggled [his] butt” at the coworker to say hello while his hands were full. In response, the coworker tried to tap Vegors with the mirror of his truck but hit Vegors with the vehicle instead. Xenia contested Vegors’s claim for benefits by arguing Vegors was barred from recovery “because he engaged in horseplay” and asserted the affirmative defense of willful injury.

In terms of horseplay, the court adopted a four-factor test published by Professor Larson and used in various forms by other jurisdictions. The test determines whether the particular facts of the alleged horseplay establish a substantial deviation from the course of employment, barring recovery. The factors to be weighed in assessing whether an act amounts to horseplay, meriting an exclusion from workers’ compensation benefits, include:

1. The extent and seriousness of the deviation,
2. The completeness of the deviation (i.e., whether it was commingled with the performance of duty or involved an abandonment of duty),

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235. *Id.*
236. *Id.*
237. *Id.*
238. *See id.* at 257.
239. *Id.* at 256–57.
(3) [T]he extent to which the practice of horseplay had become an accepted part of the employment, and

(4) [T]he extent to which the nature of the employment may be expected to include some such horseplay.240

Ultimately, the court agreed with the Deputy Commissioner’s conclusion that Vegors shook his posterior as a means of communication and not to instigate or participate in an act of horseplay; thus, benefits were not barred on that ground.241 The court clarified that in asserting the horseplay defense, a defendant in a workers’ compensation claim does not assume the burden of proving the act was horseplay; rather, the claimant must prove he or she did not engage in horseplay as part of the burden of showing the injury arose out of and in the course of employment.242

The court also addressed section 85.16(3), which bars recovery where an employee’s injury is caused “‘[b]y the willful act of a third party directed against the employee for reasons personal to such employee.’”243 The supreme court found there is “no reason in the language of the statute to limit its application to third parties who are not coworkers.”244 The court held the coworker striking Vegors with the truck “was not done for ‘reasons personal to the employee,’” explaining that incidents that arise between coworkers are often “‘part and parcel’” to the “work environment and will not bar compensation unless an employee’s action is caused by ‘influences originating entirely outside the working relation and not substantially magnified by it.’”245 The court further explained,

Section 85.16(3) is limited to actions which are taken “for reasons personal” to the employee and not as a consequence of the working environment. There is no evidence in the record that Byrd and Vegors had any relationship outside of work other than as coworkers or that Byrd hit Vegors for any reason imported from outside the working environment. Therefore, as a matter of law, the affirmative defense in

240. Id. at 256 (quoting Phillips v. John Morrell & Co., 484 N.W.2d 527, 530–31 (S.D. 1992)).
241. Id. at 255.
242. Id. at 254–55.
243. Id. at 257 (alteration in original) (quoting IOWA CODE § 85.16(3) (2009)).
244. Id. at 258.
245. Id. at 259 (alteration in original) (quoting Hartford Accident & Indem. Co. v. Cardillo, 112 F.2d 11, 17 (D.C. Cir. 1940)).
section 85.16(3) does not bar Vegors’s claim for benefits.246

The court, in clarifying employees are “third parties” for the purposes of the Iowa Workers’ Compensation Act, made it clear workplaces are filled with potential third parties.247 The fact an injury was the result of an act by a third party, however, as explained in *Xenia* and previously analyzed in the workplace-assault context, does very little in itself to affect the compensability of the injury.248 Instead, as in all other circumstances, the focus is on the third party’s relationship to the injured worker and the work-related context of both the injured worker’s and the third party’s actions that caused the injury.

The other key issue contemplated by the exclusions in section 85.16 is the role of intoxication in the injury process.249 The focus in these cases is whether the worker’s intoxication was unrelated to the employment relationship and whether the injury at issue was caused by the worker’s intoxication. While this seems like a straightforward and simple concept, there are plenty of circumstances in which alcohol consumption occurred not only in the course of the worker’s employment, but also as part of his or her participation in employment-related activities. In *2800 Corp. v. Fernandez*, the Iowa Supreme Court considered whether the injured worker’s intoxication arose out of and in the course of employment.250 The employer, an exotic lounge, had claimed one of its dancers was not entitled to compensation because her intoxication was attributable “to her drinking and drug usage before work, rather than to her drinking at work.”251 The court, however, agreed with the decision of the Workers’ Compensation Commissioner, holding that alcohol consumption on the job was not only allowed by the employer, but had almost become a job requirement.252 As “[t]he employer required its dancers to socialize with customers and to hustle the purchase of drinks for the dancers,”253 the employer could hardly be surprised it would be liable for the consequences of the intoxication of its dancers.254 The court looked at the benefit provided to the employer from the workers consuming alcohol and determined the employer not

246. Id.
247. See id. at 258.
248. Id.
249. See IOWA CODE § 85.16(2) (2009).
251. Id. at 126, 128.
252. See id. at 128.
253. Id.
254. See id. at 128, 130.
only directly profited from the sale of drinks, but also “the dancers’ socializing contributed to the lounge’s goodwill by creating an atmosphere appealing to its customers.”

Thus, the intoxication was work related, and the employer could not benefit from the exclusions provided in section 85.16(3). In *Farmers Elevator Co., Kingsley v. Manning*, the court noted that the implicit benefits the employer gains in encouraging employees to socialize with customers can cause an employee’s intoxication to be work related. The court essentially stated “an employee [who] is traveling to or from a social function” that is sufficiently work related may sustain a compensable injury, despite the fact the event location was away from the worksite, the employee left the event location, and the employee was intoxicated. The intoxication defense, therefore, does not serve to protect employers from the consequences of using and benefiting from social events designed to build client and employee relationships and that involve consumption of alcohol. The onus is on the employer to ensure such mixed social and business events do not place employees, or the general public, at risk.

The other key element in intoxication cases is the cause-and-effect relationship between the employee’s intoxication and injury. According to the statute, the intoxication defense is not proven by showing the employee was merely intoxicated at the time of the injury and that the intoxication itself was not related to the employee’s work; instead, the employer must prove “the intoxication was a substantial factor in causing the injury.”

This can be particularly difficult in cases in which the intoxication is alleged to have been from a “narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner,” as drugs often remain in an individual’s system long after the intoxicating effects of those substances have worn off. According to the Mayo Clinic, drugs can remain detectable in a person’s system from two to three days in cases of methamphetamine and opiate use, five to seven days when the drug is cocaine or a barbiturate, or a staggering thirty days in the case of

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255. *Id.* at 128 (citing Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979)).

256. *Manning*, 286 N.W.2d at 177–79.

257. *See id.* at 178.

258. *See id.* at 177 (holding alcohol consumption at a business event prior to the injury did not preclude workers’ compensation benefits).

259. *Iowa Code* § 85.16(2) (2009).

260. *See id.*
long-term marijuana use.\textsuperscript{261} Thus, the employer’s burden in proving an
injury is excluded from compensability because the intoxication defense
requires a showing that the worker was intoxicated, the impairment caused
by the worker’s intoxication was a substantial factor in bringing the injury
about, and the consumption of the intoxicating substance was not done
within the scope of employment.\textsuperscript{262}

\section*{VII. Basic Concepts in Sequela Injury Claims}

When the question is whether compensability should be extended to a
subsequent or aggravated injury related in some way to the primary injury,
the applicable rules are based on the concepts of “direct and natural”
results and intervening causes.\textsuperscript{263} In 1936, the Iowa Supreme Court
explained,

If the employee suffers a compensable injury and thereafter suffers
further disability which is the proximate result of the original injury,
such further disability is compensable. Where an employee suffers a
compensable injury and thereafter returns to work and, as a result
thereof, his first injury is aggravated and accelerated so that he is
greater disabled than before, the entire disability may be compensated
for.\textsuperscript{264}

Therefore, when it comes to treating and providing compensation for
sequela injuries, “the employer is liable for all consequences that naturally
and proximately flow from the [original compensable injury.]”\textsuperscript{265}

The court has also quoted Professor Larson in explaining that sequela
injuries are part and parcel to the original injury in terms of both medical
care and disability: “‘When the primary injury is shown to have arisen out
of and in the course of employment, every natural consequence that flows
from the injury likewise arises out of the employment, unless it is the result
of an independent intervening cause attributable to claimant’s own

\textsuperscript{261.} Mayo Clinic, 2008 Drug Testing: An Overview of Mayo Clinic
Tests Designed for Detecting Drug Abuse 19, 22, 34 (2008), available at

\textsuperscript{262.} See Iowa Code § 85.16.

\textsuperscript{263.} See Larson & Larson, supra note 90, § 10.01.

\textsuperscript{264.} Oldham v. Scofield & Welch, 266 N.W. 480, 481 (Iowa 1936) (citing 71
C.J. Workmen’s Compensation Act § 368 (1935)).

\textsuperscript{265.} Id. at 482.
intentional conduct.”

In applying the concept to conditions that result as a sequel of the original work injury are compensable, the appellate courts and workers’ compensation Commissioner have both found an array of circumstances for recovery. The agency has held a worker’s altered gait related to a lower extremity injury aggravated the worker’s underlying degenerative arthritis in the left hip and lower back, making those conditions part of the compensable injury and eventually resulting in a permanent total disability award. In fact, the sequela rule has become so prominent in its applicability that there have even been penalties for unreasonable denial of benefits payments regarding sequela injuries. Other compensable sequelae have included infections from treatment; injuries to an extremity developing from overuse of, or compensation for, an original injury to another extremity; and falls from balance or weakness problems attributable to an original injury.

VIII. INJURIES FROM MEDICAL CARE

The Iowa Supreme Court has expressly recognized injuries resulting from medical treatment for a work-related injury are compensable. These sequelae from medical care arise in the form of aggravations of the work-related condition or even as new injuries wholly distinct from the original injury. Thus, as a general rule, when an injury worsens as the result of treatment, or even when the treatment itself causes a wholly distinct injury from the original work injury, the new or worsened condition is

deemed proximate to the original injury and compensable as a matter of law.\textsuperscript{273} Simply put, an employer is responsible for the consequences—both in terms of additional medical care and increased disability—when the treatment of a work injury either worsens an injury or creates a new injury or condition.

IX. DETERIORATING OR SUBSEQUENT CONDITIONS RELATING TO ORIGINAL INJURIES

The case of \textit{Midwest Ambulance Service v. Ruud} illustrated how latent injuries and aftereffects of work injuries can lead to injuries that are eventually permanently disabling and compensable.\textsuperscript{274} Ruud was an emergency medical technician who dislocated her left shoulder while working for Midwest Ambulance Service.\textsuperscript{275} She received some conservative care after the injury, but it was not until more than two years after the work-related injury that “Ruud reinjured and dislocated her shoulder while diving at an off-duty social event.”\textsuperscript{276} It was after this incident that she first missed work and eventually required surgery.\textsuperscript{277} The Iowa Supreme Court found Ruud’s injury was compensable despite statute of limitations issues because the Commissioner found she was not “aware as a reasonable person, of the probable nature, seriousness, and compensable character of her injury until . . . her injury became sufficiently serious to force her to miss work and undergo surgical repair of her shoulder.”\textsuperscript{278} While the original injury had healed to a point at which the claimant had been able to return to work without permanent consequences, the fact remained that the shoulder had been weakened in the original injury and eventually became a serious and disabling condition.\textsuperscript{279} Logically, when a work injury sets off an injury process or causes a deficiency in the body eventually resulting in a serious impairment, the original work-related nature of the underlying condition is not to be discounted, nor is the employer absolved of responsibility for the

\textsuperscript{273} \textit{See Cross, 16 N.W.2d at 617; see also Yount v. United Fire & Cas. Co., 129 N.W.2d 75, 76 (Iowa 1964) (“[T]estimony . . . [was] sufficient to support a finding that there was a connecting chain of causation between treatment, shock, cerebrovascular damage and resulting disabilities.”).}

\textsuperscript{274} \textit{Midwest Ambulance Serv. v. Ruud, 754 N.W.2d 860, 865, 868 (Iowa 2008).}

\textsuperscript{275} \textit{Id. at 862.}

\textsuperscript{276} \textit{Id. at 863.}

\textsuperscript{277} \textit{Id.}

\textsuperscript{278} \textit{Id. at 865.}

\textsuperscript{279} \textit{See id.}
injury that instigated the injury process.

Exploring this issue even further in more traumatic events, such as spinal injuries rendering an individual paraplegic or quadriplegic, it is important to note the eventual consequence of these injuries is often death. The death may be attributable to the very condition that caused weaknesses in the extremities. This condition may have also weakened the intercostal muscles of the chest, which are important in pulmonary function. In the cases of individuals with spinal injuries eventually dying from various respiratory complications, it would seem Iowa law would at least recognize the original spinal injury as a substantial factor in causing the claimant’s eventual death and therefore deem the injury compensable as a sequela of that original work injury.

While this emerging body of law allowing recoveries for the deterioration or eventual development of serious conditions connected to original injuries, which may at first seem remote in time, appears to place an unfair and onerous burden on employers, the core purpose of the Workers’ Compensation Act is to ensure workers are not simply abandoned and left to deal with the eventual consequences of their work injuries by themselves. The review-reopening process, discovery rule, and other protections of the Iowa Workers’ Compensation Act are designed to ensure the protections and benefits afforded to workers with serious work injuries are not easily ignored or terminated.

X. CAUSATION ISSUES IN PRESENTING MENTAL INJURIES

Iowa has recognized mental conditions can qualify as injuries arising out of and in the course of employment. In doing so, it first recognized mental conditions as sequelae of physical injuries, and then adopted standards for proving purely mental injuries. In accepting “physical/mental” injuries, the Iowa Supreme Court reasoned the sequelae of a compensable work injury that relates to an additional disability include resulting mental conditions and disorders. Deaver v. Armstrong Rubber Co. involved a depressive disorder brought on by a physical work injury.

282. *Id.* at 458.
The court specifically held that the term “personal injury” in Iowa Code section 85.61(7) is broadly defined and therefore included “‘mental ailments or nervous conditions.” Thus, when a claimant sustains a physical injury and subsequently develops a mental condition related to that physical loss, the resulting mental impairment can be compensable. Additionally, physical injuries worsening a claimant’s mental condition are also compensable. As a mental injury is not confined to a body part enumerated in the injury schedule provided in Iowa Code section 85.34(2), “a psychological condition caused or aggravated by a scheduled injury is to be compensated as an unscheduled injury.” Thus, Iowa law allows for claimants to recover industrial-loss benefits for mental injuries caused or worsened by physical work injuries without any special causation requirements or burdens. In fact, the Iowa Court of Appeals has even rejected the notion that an underlying physical injury must be a compensable permanent injury in order to give rise to the compensable physical/mental injury. It thoroughly analyzed this issue in Heartland Specialty Foods v. Johnson:

Even though the physical/mental standard arose from cases where the claimant sought additional compensation for mental injuries stemming from a previously awarded compensable injury, we do not read these cases to require that the underlying work-related trauma must be a compensable injury in and of itself. This holding is consistent with the underlying purpose of the workers’ compensation statute—“to benefit workers and their dependents insofar as the statute permits.”

While Iowa has long held physical/mental injuries are compensable, the unique problems posed with what Professor Larson recognizes as “mental/mental” claims have naturally been more difficult for the Iowa Supreme Court to resolve. However, in the 1995 opinion of Dunlavey v. Economy Fire & Casualty Co., the Iowa Supreme Court declared the distinction between mental injuries accompanied by physical injuries and purely mental injuries was irrelevant in regards to the definition of the term “personal injury” as used in the Iowa Workers’ Compensation Act.

Thus, nontraumatic mental injuries—“pure mental injuries”—are compensable as personal injuries under Iowa Code section 85.3(1). In order to prevail on a pure mental injury claim, a worker must establish factual or medical causation sufficiently connecting the mental condition to the “mental stimuli” from the workplace. The court has noted, as in heart attack cases, legal causation in mental/mental claims of this type is regularly interpreted to require that a claimant surpass a peculiar and somewhat heightened burden of proof as compared to other work-injury claims. The legal-causation burden in most mental/mental claims is met by establishing that “the mental injury ‘was caused by workplace stress 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.” This is Iowa’s “unusual stress” standard, which expressly indicates the comparison of workplace stress extends outside the particular worksite and includes an analysis of other employment settings involving similar work. This standard still places the burden on the employee to prove the stress was unusual in relation to his or her day-to-day work, but the phrase “regardless of their employer” does not force the employee to prove it was unusual with respect to the specific job held with his or her specific employer. As the appellate courts of Iowa indicated, a mental/mental standard limited to specific employment settings could post unnecessary obstacles to recovery and would afford too much protection to irresponsible and mentally abusive employers.

The Iowa Supreme Court has also recognized that, apart from the unusual stress standard in general mental illness cases, an employee may also prove a mental/mental injury by connecting a mental condition to a sudden and traumatic event. In Brown v. Quik Trip Corp., a convenience store employee claimed a mental/mental injury related to a shooting and robbery. The court determined an event of sudden and traumatic nature is proof of a readily identifiable workplace stress that

288. Id.
289. Id. at 850.
292. Id. at 857.
295. Id. at 726–27.
supersedes the need to adhere to the particular burdens of the formal legal-causation standard.\textsuperscript{296} In \textit{Dunlavey}, the court labored to create a gatekeeping standard preventing the development of a “slippery slope” that would allow for recoveries for mental conditions in general with little relationship to workplace factors.\textsuperscript{297} However, the court noted in \textit{Brown} that inherently traumatic events, such as robberies and shootings, essentially nullify those concerns and should be treated differently from other mental/mental claims.\textsuperscript{298} Thus, a workers’ compensation claimant who has been faced with such a traumatic event need not be burdened with anything more than showing the ultimate disability from the mental condition is related to that trauma.\textsuperscript{299}

Apart from the unique issues in purely mental claims overall, Iowa has also had a difficult time sorting out the many facets of suicides in the context of workers’ compensation. Originally, suicide cases were caught in the trappings of the exclusion for intentionally inflicted self-injuries provided in section 85.16.\textsuperscript{300} In the 1959 case of \textit{Schofield v. White}, the Iowa Supreme Court provided a special standard regarding compensability in suicide cases.\textsuperscript{301} The \textit{Schofield} test required proof the suicidal act was carried out without conscious volition and was “motivated by an uncontrollable impulse or [committed] in a delirium of frenzy.”\textsuperscript{302} This was an obviously harsh standard that placed an extreme burden on the workers’ compensation claimant. It was eventually replaced with a new test in \textit{Kostelac v. Feldman’s, Inc.} In \textit{Kostelac}, the Iowa Supreme Court lowered the burden of proof to “a chain of causation directly linking an employment injury to a worker’s ‘loss of normal judgment and domination by a disturbance of the mind, causing the suicide.’”\textsuperscript{303} The reference to disturbance of the mind, however, gave the court pause in its 1999 decision, \textit{Humboldt Community Schools v. Fleming}, in which the term was likened to other demeaning lay terminology for mental illness and deemed “too nebulous to adopt as a prerequisite to recovery.”\textsuperscript{304} Since 1999, Iowa has

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\textsuperscript{296} Id. at 729.
\textsuperscript{297} Dunlavey, 526 N.W.2d at 856.
\textsuperscript{298} Brown, 641 N.W.2d at 728–29.
\textsuperscript{299} Id.
\textsuperscript{300} Schofield v. White, 95 N.W.2d 40, 42 (Iowa 1959).
\textsuperscript{301} Id. at 46.
\textsuperscript{302} Id.
\textsuperscript{304} Humboldt Cmty. Schs. v. Fleming, 603 N.W.2d 759, 762 (Iowa 1999).
\end{flushleft}
applied a limited version of the *Kostelac* test, requiring “‘proof that but for an employment-related mental injury—however experienced—the employee would not have committed suicide.’”305 Thus, a suicide is compensable if it would not have occurred but for the existence of a mental injury.

It is noteworthy to acknowledge that the overall improved understanding of, and appreciation for, the seriousness of mental conditions and illnesses has developed progressively over the past several decades. In furtherance of the objectives of the Iowa Workers’ Compensation Act, along with the heightened understanding of mental issues overall, the law has progressed in an overall effort to protect workers from dealing with the devastating impact mental injuries can have on them and their families. As in heart attack cases—even considering the development and application of the more formal legal-causation tests by the Iowa Supreme Court—it remains evident that the essential and practical components of causation surround the establishment of causation in fact through medical and lay evidence. Once a showing has been made that there is a causal relationship between the employee’s work and his or her disabling mental condition, the true issue does not simply become fitting the causal connection into one of the formal legal tests previously accepted and applied in Iowa; rather, it regards the nature and sufficiency of that connection.306 Liberal construction of the Iowa Workers’ Compensation Act compels a broadly inclusive analysis that would not seek to disrupt an apparent causal relationship between work and a mental injury solely on legal theories that seem to contradict the spirit of the Act.307 Therefore, the formal legal tests the courts have continued to apply and modify are likely to continue to evolve and allow additional means of proving causation of mental injuries through a simplification of the standard. Such simplification would more appropriately reflect the ultimate purpose of the Act, which is to allow workers to recover for mental injuries that arise from the circumstances of their employment.

305. *Id.* at 763 (quoting *Kostelac*, 497 N.W.2d at 857).
XI. ADDITIONAL CONSIDERATIONS WITH CAUSATION DISPUTES: MEDICAL CARE COSTS AND PENALTIES

When an employer denies the causal connection of a work injury or resulting disability, the employer is able to avoid paying for the medical and monetary benefits of the workers’ compensation claim. Because this blocks the injured worker from receiving medical care or disability benefits, the law affords protections to the worker to help prevent unreasonable denials of workers’ compensation claims. Those protections include penalties on unreasonably delayed or denied benefits and the allowance of a worker to fully recover medical expenses incurred for care related to a compensable injury.

A. Penalties and the Affirmative Duty to Investigate

Penalty benefits shall be issued if there has been a delay in payment, unless the employer proves a reasonable cause or excuse. Once a denial or delay is shown, the burden shifts to the employer to show a reasonable basis for denying benefits at the time the denial decision was made. The focus is on the rationale for the denial at the time the decision was made, not whether the accumulation of evidence later in the process eventually justifies a denial. If no reason is provided, or the offered reason is not reasonable, a penalty is required under the “shall award” language in the statute. Iowa Code section 86.13 now requires a contemporaneous notice of denial, along with the rationale for the decision, to be communicated to the employee.

The employer and its insurance carrier have always had an

308. See IOWA CODE § 85.21(1) (2009) (allowing the Commissioner to order payment of benefits during disputed cases).
309. See id.; id. § 85.27 (listing the recoverable costs).
310. Id. § 86.13.
311. See Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (holding an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse); see also City of Madrid v. Blasnitz, 742 N.W.2d 77, 82–83 (Iowa 2007) (detailing a situation in which an employer successfully rebutted the presumption).
312. See Blasnitz, 742 N.W.2d at 83 (determining that, despite claimant’s contention “that many of the facts shown at the hearing were unknown to the insurer when it denied payment,” there were facts sufficient to provide a reasonable basis for denial known to the insurer when it decided to deny payment).
313. See Christensen, 554 N.W.2d at 261.
314. Compare 2009 Iowa Acts 800–01 (including the new requirements), with IOWA CODE § 86.13 (lacking requirements of notice and rationale).
affirmative duty to investigate claims and deny benefits only when denial is justified.\textsuperscript{315} Misunderstandings of law or fact are not sufficient to justify a failure to pay a compensable claim, as the deprivation of necessary medical and monetary benefits for compensable injuries is viewed as a very serious breach of the duties an employer and carrier hold.\textsuperscript{316} The affirmative duty to investigate claims is ongoing, meaning a claim cannot be denied without further consideration of medical opinions and other evidence that may relate to the compensability of a claim.\textsuperscript{317} Thus, employers must carefully evaluate claims and provide a reasonable basis—founded in fact and law—for denying benefits if a denial based on a causation issue is to be asserted.\textsuperscript{318}

### B. Medical Care: Recovery of Costs

When a workers’ compensation claim is accepted by an employer, the employer has the right to choose the care provider for the injured worker.\textsuperscript{319} That right is logically eliminated when the employer denies liability for the injury. This allows the worker to pursue treatment with doctors of his or her choosing, but it presents the issue of which party is ultimately responsible for the costs of that care. Additionally, while a workers’ compensation claim is in dispute, medical care providers are prohibited by law from engaging in collection efforts from injured workers until the liability issues are resolved.\textsuperscript{320} When the employer denies liability, the medical services paid by the employee’s health insurance plan are to be reimbursed and the employee is to be held “safe and harmless” from reimbursement claims should the employer ultimately be proven liable for the injury and care.\textsuperscript{321} As an employer is liable for the costs of reasonable, necessary, and beneficial care an employee receives for a work-related

\textsuperscript{315.} See McIlravy v. N. River Ins. Co., 653 N.W.2d 323, 334 (Iowa 2002) (holding the workers’ compensation carrier “did not have a reasonable basis for its denial of [the employee’s] workers’ compensation benefits”).

\textsuperscript{316.} See IOWA CODE § 85.21 (detailing procedures to ensure benefits are paid to injured employees); id. § 85.27 (enumerating all the benefits available to employees); id. § 86.13 (establishing penalties for employers who unreasonably withhold benefits); Christensen, 554 N.W.2d at 260 (discussing the requirements placed on employers).

\textsuperscript{317.} See IOWA CODE § 85.27 (detailing procedures for evaluating and choosing healthcare).

\textsuperscript{318.} See Christensen, 554 N.W.2d at 260 (discussing the standard for a reasonable denial).

\textsuperscript{319.} IOWA CODE § 85.27(4).

\textsuperscript{320.} Id. § 85.27(6).

\textsuperscript{321.} Id. § 85.38(2).
injury, it is conceivable an employee could amass substantial expenses while proceeding through a complex care regimen for a serious injury that could ultimately add huge expenses to the claim should the employee prevail on the disputed issue of causation.\footnote{322}{See Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010).}

The Iowa Supreme Court has clarified:

[T]he duty of the employer to furnish reasonable medical care supports all claims for care by an employee that are reasonable under the totality of the circumstances, even when the employee obtains unauthorized care, upon proof by a preponderance of the evidence that such care was reasonable and beneficial. In this context, unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. The allocation of this significant burden to the claimant maintains the employer’s statutory right to choose the care under section 85.27(4), while permitting a claimant to obtain reimbursement for alternative medical care upon proof by a preponderance of the evidence that such care was reasonable and beneficial.\footnote{323}{Id.}

Workers do not truly direct their own care; rather, they follow the recommendations and directions of their medical-care providers. It has been held in agency decisions, as well as in tort claims, that an injured individual’s testimony can be sufficient to show the care was reasonable and necessary, and medical bills themselves are based on medical opinions that care was medically reasonable and the costs were appropriate for the care provided.\footnote{324}{See Cloud v. Big Tomato Pizza, No. 5030143, 2010 WL 5577779, at *7 (Iowa Workers’ Comp. Comm’n Dec. 21, 2010) (citing Sister M. Benedict v. St. Mary’s Corp., 124 N.W.2d 548, 553 (Iowa 1963)); Jones v. U.S. Gypsum, No. 1254118, 2002 WL 32125501, at *6 (Iowa Workers’ Comp. Comm’n May 16, 2002) (citing Sister M. Benedict, 124 N.W.2d at 553); Kleinman v. BMS Contract Servs., Ltd., No. 1019099, 1994 WL 16029433, at *6–7 (Iowa Workers’ Comp. Comm’n May 5, 1994).}

This inference is obviously better supported by care providers specifically testifying to the reasonableness of the care and costs provided, but it is important to note the claimant’s burden is not steep in proving the compensable nature of care in a denied-injury claim that is eventually deemed compensable. The employer, by virtue of denying compensability, essentially runs the risk of being responsible for the full extent of the care undertaken regardless of the employer’s subjective...
impression the care was excessive. The employer’s opportunity to influence the care hinges on the decision to accept or deny the claim in the first place, and that decision has meaningful consequences for both the worker and the employer.

XII. CONCLUSION

Employers and insurance carriers should tread lightly in determining whether there are sufficient causation issues to justify a denial of benefits, while claimants must take care to ensure they can show sufficient medical causation apart from relying on a legal-causation argument. While the claimant bears the burden of proving his or her injuries are work related, the claimant’s legal burdens of proof for both the “arising out of” and the “in the course of” elements are not weighty and are designed to favor the compensability of work-injury claims when employment connections are present. As workers’ compensation benefits are generally the exclusive remedy for injured workers in respect to their employers, the law has followed the overall view that causation issues are to be resolved in favor of compensability, so long as the connection to work and work activities is identifiable. While the law in Iowa is not one-sided in favor of employees, as exemplified most clearly by the fact injured workers in Iowa do not have choice of care for their injuries, the Iowa Supreme Court has consistently and emphatically clarified that the law exists to protect and benefit injured workers and should be applied in furtherance of that purpose. The critical issue in most cases is whether the claimant meets his or her burden in proving medical causation rather than legal causation. The claimant must make sure medical opinions reflect the proper state of the law on causation, which does not require a showing to a reasonable degree of medical certainty that workplace hazards or work activities were the cause of an injury, but that those factors were probably related as a contributory factor in bringing about or worsening the condition at issue.

Throughout the years, when presented with first impression issues in workers’ compensation, the Iowa Supreme Court has applied Iowa’s causation standards to include cumulative injuries, purely mental injuries, aggravation injuries, and more. In determining whether injuries are sufficiently causally related to employment, the requirements in Iowa that an injury arise out of and in the course of employment continues to be an elastic standard designed to include rather than exclude broad legal causation theories and principles. Iowa’s workers’ compensation laws exist to provide workers with medical and monetary benefits when they sustain injuries related to their employment. It would frustrate the purpose to do
anything other than maximize the protections the law affords injured workers in weighing whether an injury or condition meets the “arising out of and in the course of” threshold for compensability.