

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SAYDI BORGES-TUN,

Claimant,

vs.

HOPE HAVEN, INC.,

Employer,

and

FIRST DAKOTA INDEMNITY COMPANY,

Insurance Carrier,
Defendants.File No's. 22007131.01
20007673.01

ARBITRATION DECISION

Headnotes: 1100; 2200; 2500;
3000; 3001; 1801

STATEMENT OF CASE

On June 6, 2022, claimant filed two petitions seeking workers' compensation benefits against Hope Haven, Inc., employer, First Dakota Indemnity Company, insurer, and Second Injury Fund of Iowa, arising out of a wrist injury, which occurred on January 26, 2020, for File No. 20007673.01 and February 8, 2021, for File No. 22007131.01. The cases were set for hearing on April 4, 2023. On or about March 30, 2023, the claimant filed a notice of settlement with the Second Injury Fund of Iowa. The case proceeded to hearing against defendant employer and insurer.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner, the hearing was held on April 4, 2023, via Zoom. The record was left open until May 4, 2023, to allow the parties to submit additional expert witness testimony, and the case was considered fully submitted on May 26, 2023, upon the simultaneous filing of post-hearing briefs.

The record consists of Joint Exhibits 1-5, Claimant's Exhibits 1-17, and Supplemental Exhibit 2, Defendants' Exhibits A-M, and the testimony of the claimant.

ISSUES

File No. 20007673.01, Date of Injury January 26, 2020:

1. Whether the injury was the cause of temporary disability from October 13, 2021, to June 19, 2022 less 1.5 days;

2. The commencement date of benefits, if any are awarded;
3. The appropriate rate;
4. Whether claimant is entitled to reimbursement of medical expenses;
5. Whether claimant is entitled to reimbursement of an IME pursuant to Iowa Code section 85.39;
6. Future medical treatment.

File No. 22007131.01, Date of Injury February 8, 2021:

1. Whether the injury was the cause of temporary disability from October 13, 2021, to June 19, 2022;
2. The commencement date of benefits, if any are awarded;
3. The appropriate rate;
4. Whether claimant is entitled to reimbursement of medical expenses;
5. Whether claimant is entitled to reimbursement of an IME pursuant to Iowa Code section 85.39;
6. Future medical treatment.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The parties stipulate claimant sustained a work-related injury to her right wrist on January 26, 2020, and February 8, 2021. They further agree that the injuries were the cause of some temporary and permanent disability.

While defendants do not concede that claimant is entitled to additional temporary disability, they do agree that claimant was off work from October 13, 2021, to June 19, 2022, with the exception of 1.5 days during which claimant underwent training for new employment.

At all times material hereto, claimant was single and entitled to four exemptions.

In regard to the medical bills, the parties agree the fees and prices charged by the providers are fair and reasonable.

Prior to the hearing, claimant was paid 6.8571 weeks of compensation at the rate of \$451.50 per week for a total of \$3,096.00. Of the foregoing, \$2,257.50 was payment for permanent partial disability to the right upper extremity and the remainder was for healing period benefits.

FINDINGS OF FACT

Claimant, Saydi Borges-Tun, was a forty-year-old person at the time of the hearing. At all relevant times hereto, she had three minor children living with her. Per the stipulations, claimant is single and entitled to four exemptions.

Beginning on June 14, 2006, claimant has worked for defendant employer for over 15 years. The defendant employer is in the business of working with developmentally disabled children with behavior issues. Claimant began as a direct care support person, which requires employees to be able to lift up to 50 pounds, assist residents with indoor and outdoor activities, transfer of residents, and physically be able to move freely. (Claimant's Exhibit 4:47) In addition to her duties as a DSP, she also oversaw the whole facility as a scheduler and trainer. She would look for people to work empty shifts, she would train new hires, and supervise others.

Her past medical history is significant for bilateral carpal tunnel syndrome, greater on the right than the left, and left knee arthroscopic surgery. On February 22, 2007, claimant was seen by Philip A. Deffer, M.D., for evaluation of a right knee injury that she suffered while working at Faith, Hope and Charity. (Joint Exhibit 1:1) While she was lowering someone to the ground, she twisted her knee resulting in a right knee lateral meniscus tear. Id. Dr. Deffer recommended she undergo a right knee arthroscopy. Id. Surgery took place on March 15, 2007. (JE 1:3) After surgery, claimant was sent to physical therapy to help with motion and strength. (JE 1:6)

She was returned to work on a limited basis on April 16, 2007, and placed at MMI on July 12, 2007. (JE 1:8, 9) Dr. Deffer assigned a 2 percent lower extremity impairment based on the partial lateral meniscectomy with no permanent restrictions. (JE 1:9)

On April 9, 2015, claimant was seen by David R. Archer, M.D., for complaints of numbness and tingling radiating up the right arm into the elbow. (JE 2:24) Dr. Archer suspected claimant was suffering from bilateral CTS and sent her for an EMG. (JE 2:24-25) On April 24, 2015, claimant underwent an EMG, which was positive for bilateral carpal tunnel syndrome, greater on the right than the left. (JE 3:143) On June 29, 2015, Dr. Archer referred claimant for an ortho consult due to ongoing symptoms. (JE 2:30)

On July 29, 2015, claimant was seen by Joshua C. Hamann, M.D. for evaluation of bilateral carpal tunnel syndrome. (JE 1:10, 4:144) Claimant had a positive carpal tunnel compression test, right worse than left, along with decreased sensation in the median

nerve distribution. Id. Dr. Hamann recommended surgical repair. Id. Surgery took place for the right wrist on September 1, 2015. (JE 4:145-46)

On October 24, 2016, claimant was seen by Dr. Archer for her complaints of left knee pain which began after injuries on Friday 10/21/2016 and Saturday 10/22/2016. (JE 5:242). While working for Faith, Hope and Charity, she was kicked in the left knee by one of the clients and another pulled on her shirt, bending her over. Id. Since then she had suffered problems. Id. On examination, she was tender inferolaterally over the LCL. Id. X-rays were taken but showed no abnormalities. Id.

On November 21, 2016, claimant was seen by Dr. Archer in follow up for the left knee. (JE 2:36) Claimant was placed on light duty as of November 21, 2016. (JE 2:37) By December 5, 2016, she had not improved and an MRI was ordered with concerns she had sustained a lateral meniscus injury. (JE 2:51)

On December 31, 2016, claimant was taken to the emergency room following reversing her car into a tree in her driveway. (JE 5:243) She complained of right shoulder and arm pain. Id.

On January 30, 2017, claimant was seen by Rick Wilkerson, D.O., for an evaluation of the left knee. (JE 1:13) The pain was mostly lateral with some intermittent swelling. An MRI showed a complex tear of the lateral meniscus with parameniscal cyst. Id. Dr. Wilkerson recommended a left knee scope with lateral meniscectomy. Id. Dr. Wilkerson recommended light duty for three weeks following the scope which took place on February 22, 2017. (JE 1:15; 5:245)

On March 21, 2017, she returned for follow up and reported she was healing well but had some difficulty running after a child at work. (JE 1:17) Dr. Wilkerson limited claimant from running, kneeling, or squatting for three weeks after which she could return to full activity without restrictions. (JE 4:147)

On May 22, 2017, claimant returned for a 3-month recheck. (JE 1:19) She was pregnant at the time and had not been able to take anti-inflammatories. Id. She continued to complain of pain with use of her knee. Id. Unfortunately due to the pregnancy, Dr. Wilkerson's treatment options were limited and they agreed she would limit herself at work in lieu of any formal treatment. Id.

On January 26, 2020, claimant was helping to lift a patient from the wheelchair to the bed when she felt pain in the wrist. (Defendants' Exhibit C:5) Because she had previous problems with CTS, she did not immediately register this as a work injury until she spoke with her supervisor. She reported the injury on January 30, 2020. (DE C:5)

On January 27, 2020, claimant presented to FDC Buena Vista Family Medicine with nasal congestion, drainage and hand and elbow pain on the right side. (JE 2:69) For treatment, Shelly J. Buse, ARNP, recommended a tennis elbow strap, Tylenol, Advil and heat. Id. Three days later, claimant was seen by Kyle J. Glienke, M.D., for the right wrist

pain located over the ulnar aspect. (JE 2:82) Claimant had significant tenderness and swelling over the ulnar aspect of the right wrist with limited extension but full flexion. (JE 2:83) Her grip strength was limited secondary to pain. Id. Dr. Glienke prescribed meloxicam and a Medrol dosepak for the wrist pain. (JE 2:80)

On February 21, 2020, claimant was seen by Dr. Archer for the right wrist. (JE 2:96) Her pain was 8 on a 10 scale. Id. Dr. Archer returned claimant to limited duty, refilled her meloxicam prescription and ordered physical therapy for three times a week for two weeks. (JE 2:97)

Claimant returned to Dr. Archer on March 6, 2020, for her right wrist pain. (JE 2:111) Her pain was unchanged and she exhibited considerable pain with active range of motion of the right wrist ulnocarpal area in the extensor mm. Id. She was returned to limited duty with a splint and a refilled meloxicam prescription. (JE 2:112) She was also ordered to undergo an MRI following 6 weeks of occupational therapy. Id.

Claimant missed several therapy appointments. (JE et. seq. 5:251-291) During the appointments she was able to attend, she reported pain in the ulnar wrist on the right. (JE 5:270, 272, 286) She expressed some improvement with occasional sharp pains. (JE 5:272)

On April 21, 2020, claimant was seen at CNOS Dunes Clinic by Kellie A. Crowl, N.P. at the referral of Dr. Archer for the right wrist TFC injury. (JE 4:148) Examination revealed mild swelling over the ulnar aspect of the wrist and tenderness over the ECU tendon sheath. (JE 4:149) She also had moderate to severe tenderness over the ulnar snuffbox, ulnar fovea and mild tenderness over the FCU. The TFC grind test was positive. N.P. Crowl recommended an arthroscopy with a possible TFC repair. (JE 4:149) In the meantime, an injection was administered for pain and discomfort. Id.

Surgery, which included right wrist arthroscopic debridement synovectomy, right wrist repair of peripheral type 1B triangular fibrocartilage complex injury, and application of a long-arm splint, took place on June 19, 2020. (JE 4:155) The long-arm cast was replaced with a Muenster splint on July 29, 2020, and claimant was sent for physical therapy. (JE 4:159) She was given work restrictions of no use of the right arm. Id.

On July 30, 2020, claimant returned for follow up and was seen by Yorell Manon-Matos, M.D. (JE 4:162) At this time she was continued on physical therapy for range of motion and light strengthening exercises. Id. Claimant was transitioned from the Muenster splint all day to a wrist brace during the daytime and nighttime use of the Muenster splint. Id. The work restrictions of no use of the right hand were continued. Id.

On August 27, 2020, claimant was 10 weeks post-surgery. (JE 4:167) She shared with Dr. Manon-Matos that she was feeling better overall, and only had pain in the morning with a sensation of tightness when she removed the splint. Id. She was instructed to continue therapy and home exercises but wean off the brace and splint as directed by

therapy. Her work restrictions were increased to less than 1 to 2 pounds maximum lifting with no repetitive pinch or grip and to use the brace as needed. Id.

On September 24, 2020, claimant was seen again for her right wrist by Dr. Manon-Matos. She had been doing well but experienced pain over the 6U portal site with scarring and mild swelling. (JE 4:170) Claimant was instructed to wean off the wrist brace, and instead use a wrist widget to provide necessary support on the ulnar side of the wrist, as well as to allow more motion of the wrist. For the residual pain and swelling, a corticosteroid injection was offered. Upon the agreement of the claimant, the injection was provided. Her work restrictions were revised to less than 5 pounds maximum lifting with no repetitive pinch or grip, no holds or restraining of children. Id.

Claimant returned on October 22, 2020 for follow up with Dr. Manon-Matos. (JE 4:174) At this appointment she reported ulnar-sided wrist pain which she rated a 10 on a 10 scale. The pain lessened throughout the day. Id. While she had improvement in her range of motion, she had bouts of pain on the ulnar side of the wrist, along with mild numbness and tingling along the ulnar nerve distribution. Id. On examination, she had significant tenderness at the 6R portal incision, some tenderness just volar to the TFC repair incision at the ulnar snuffbox and fovea and tenderness right at the repair site. Id. The impression was TFCC injury with probable disruption of the dorsal radioulnar ligament. Id. Dr. Manon-Matos felt that her symptoms were attributable to surgical scarring irritating the ulnocarpal tunnel joint capsule and ECU. (JE 4:175) Dr. Manon-Matos presented either a corticosteroid injection or revision surgery. Id. Claimant declined the surgery and the injection was administered. Id.

On November 19, 2020, claimant reported significant improvement in her pain. (JE 4:177) Formal physical therapy was continued and claimant was returned to regular duty. Id.

On January 15, 2021, Dr. Manon-Matos filled out a checkbox letter indicating that claimant reached MMI for her January 26, 2020, work incident as of November 19, 2020, and that she sustained a 2 percent permanent impairment to the right upper extremity as a result. (JE 4:180)

On February 8, 2021, a child twisted claimant's right arm and wrist causing pain to the previous surgical site. (DE C:5)

On February 18, 2021, claimant returned to Dr. Manon-Matos' office to report this new injury. (JE 4:183) Claimant was experiencing ulnar-sided wrist pain with bending and twisting motions of the wrist as well as with lifting. Id. Dr. Manon-Matos recommended immobilization with a prefabricated Muenster splint and a corticosteroid injection. (JE 4:184)

On March 18, 2021, claimant reported to Dr. Manon-Matos' office that the corticosteroid injection did help but the effects were wearing off. (JE 4:188) She had pain and weakness when holding things and other activities. Id. Claimant refused surgery but

another injection could not be administered due to possibility of a tendon rupture. Id. Claimant was to continue with therapy and the braces. Id.

Claimant was seen by Dr. Manon-Matos on April 15, 2021. (JE 4:193) Dr. Manon-Matos was concerned the claimant reinjured the ulnar aspect of the right wrist, specifically at the ECU and TCF. Id. Dr. Manon-Matos administered another corticosteroid shot and then sent claimant to therapy. Id. Claimant was continued on regular duty with the use of her braces but no physical holds or restraints. Id.

In the annual performance review dated May 5, 2021, claimant was graded as meeting expectations. (DE D) One of the areas in which her supervisor felt claimant could improve was "holding staff accountable." (DE D:8) Writing staff up and holding them accountable was a challenge for claimant per her supervisor. Id.

On May 18, 2021, claimant was seen by Dr. Archer for back pain, cough and general fatigue. (JE 2:137) Claimant reported the pain started on Friday with a cough and then the back pain started. She also reported that her fingers were tender and she was having a difficult time sleeping due to the pain. Id. Claimant requested a renewal of her Phentermine. Id. Dr. Archer refilled the Phentermine prescription and also prescribed a trial of Naprosyn, Flexeril, and physical therapy for the back. (JE 2:141)

On May 27, 2021, claimant returned for follow up. (JE 4:195) She had improved but had difficulty with day-to-day tasks such as using a broom. Id. She had no specific complaints of pain but did have numbness in the wrist in the morning that improved shortly thereafter. Id. Dr. Manon-Matos found claimant to have reached MMI, but that claimant had mild signs of peripheral nerve compression that would have to be watched. (JE 4:196) Claimant was returned to full duty with no restrictions. Id.

On June 2, 2021, December Witkowoski emailed claimant on behalf of the defendant insurer to inform her that her claim would be closed based on Dr. Manon-Matos placing claimant at MMI. (DE L) Claimant was paid a 2 percent impairment of the upper right extremity for a total of \$2,257.50. Id. Future treatment required pre-authorization. Id. Claimant testified that she reached out to her supervisor requesting additional care but was told the claim was closed.

On August 10, 2021, claimant was given a written warning for working excessive overtime hours, refusing to abide by scheduling requests with supervisor Bev Miller, and did not follow protocol for requesting PTO hours. (DE D:14) Claimant informed her supervisor that her child was sick and she could not come to work. (DE D:13)

On October 12, 2021, claimant was dismissed due to failure to schedule staff appropriately. (DE D:20)

Claimant presented on January 25, 2022, to N.P. Crowl, reporting that ever since she was placed on MMI on May 27, 2021, she continued to have significant pain. (JE

4:199) On examination, the right wrist was painful with swelling. Id. Claimant was sent for an MRI and EMG. Id.

The MRI was delayed because of authorization issues, but the EMG was carried out on February 8, 2022. (JE 4:202) The EMG study showed prolonged distal latency and mildly decreased amplitude on the right wrist. The conduction velocity from the palm to the wrist was decreased. The right ulnar motor responses were normal. The sensory study of median showed prolong latency when compared to radial and ulnar on the same side. Id. The MRI was conducted on February 13, 2022. (JE 4:207) The results were mild extensor carpi ulnaris tenosynovitis, enlargement of the median nerve at the level of the pisiform, and a very small distal radioulnar joint effusion. Id.

Because of the EMG results, Dr. Manon-Matos advised claimant to undergo surgical repair to which claimant agreed. (JE 4:210-11) On March 30, 2022, Dr. Manon-Matos performed “left”¹ wrist diagnostic arthroscopy, debridement synovectomy with debridement of the ulnocarpal joint, and debridement of extensor carpi ulnaris tendinosis. (JE 4:212)

Claimant was seen on June 17, 2022, by Carmel Berglin, PA-C, for follow up after the wrist surgery. (JE 4:219) Claimant reported ongoing pain with use such as folding clothes. Id. She was sensitive to temperature changes. Id. In the plan section, it stated that claimant would begin to look for a new job. (JE 4:220) She had only attended one therapy appointment prior to the visit, but would begin to attend occupational therapy regularly. Id. PA Berglin administered a corticosteroid injection and requested claimant follow up in five to six weeks. Id.

On September 23, 2022, claimant returned to see Ms. Berglin for the right wrist. (JE 4:223) At the visit claimant was tearful. Id. Any type of movement increased her pain throughout the wrist. Id. Paresthesias had returned. Id. She had not been able to attend therapy due to her work schedule and the therapist’s schedule. Id. PA Berglin recommended another injection along with use of a cockup wrist brace at night and an EMG study. (JE 4:224)

An EMG was conducted on January 10, 2023, which showed distal latency of the right median motor response at the wrist, borderline amplitude and the conduction velocity from the palm to the wrist was decreased. (JE 4:226) The right ulnar motor response was normal. The right ulnar deep branch was normal. The right radial motor response was normal. The sensory study shows prolonged latency of the median when compared to the radial and ulnar on the same side. Id.

She was seen by Dr. Manon-Matos on January 17, 2023, following the EMG. (JE 4:231) Claimant had been noncompliant with occupational therapy, with her last visit on September 23, 2022. Id. She had increased pain as well as a return of numbness and

¹ : The surgical notes say “left” but the problems were in the right wrist.

tingling in the dorsal and ulnar aspects of the right wrist. Id. Pain worsened with holding and gripping and she had numbness and tingling in the right ring and small fingers. Id. She was using her brace intermittently at night. Id.

Because claimant already had two diagnostic arthroscopies, Dr. Manon-Matos felt that the benefits did not outweigh the risks of further intervention. (JE 4:232) He wanted a second opinion from his partner, Tibor Warganich, M.D. Id.

Claimant was seen on February 6, 2023, by Dr. Warganich. (JE 4:233) She reported continued ulnar-sided wrist pain, particularly with ulnar deviation and clenched fist but no significant numbness and tingling. (JE 4:233) Dr. Warganich could not pinpoint the source of claimant's pain.

She has global pain on examination today. No red flags per se. She has global pain on the ulnar aspect of the right wrist, mostly at the ulnar soft spot and the TFCC. No gross instability, though it does appear to be mildly more loose than the contralateral side. With regard to the carpal tunnel, we do feel that she has either persistent versus recurrent mild carpal tunnel. This does not seem to be the main issue of complaint. As well as cubital tunnel, which does not appear to be her main complaint and issue today.

(JE 4:235)

Dr. Warganich recommended bracing as well as therapy or Voltaren gel. Id. He referred her for another MRI and recommended another injection. Id. The MRI of February 21, 2023, revealed a longitudinal split tear of the extensor carpi ulnaris tendon. (JE 4:236)

On March 3, 2023, Nicholas B. Bruggeman, M.D., issued an opinion letter based on a records review. (Defendants' Exhibit B) He found claimant sustained two separate injuries of a twisting type mechanism to the wrist and sustained an ulnocarpal wrist sprain on the right. (DE B:10) He did not believe she needed further medical care and that structurally her bones, joints, ligaments and cartilage in the right wrist were sound. (DE B:11) He did not recommend any further care and felt claimant was capable of working without restrictions. Id.

On March 7, 2023, Dr. Manon-Matos filled out a second checklist form wherein he opined that claimant reached MMI for her January 26, 2020, and February 8, 2021, injuries to her right wrist. (DE A:1) Dr. Manon-Matos did not add any additional impairment and set claimant's date of MMI as of March 2, 2023, per their last conversation. Id.

Claimant returned to Dr. Warganich on March 1, 2023, to discuss the MRI findings. (JE 4:239-40) They did an injection on the ECU tendon sheath and requested she return in six to eight weeks. Id.

Claimant was seen on January 23, 2023, by Sunil Bansal, M.D., for an independent medical examination. (CE 2) At that time she was able to lift about a gallon of milk with

her right hand but could not stay in her grip for long periods of time. Her fingers and hand fatigued easily. She had numbness and tingling in her ring and small fingers, and it was painful to turn and twist her hand and wrist.

For her knees, it was painful for her to kneel or squat, or to go up and down the stairs. Her knees continued to swell throughout the day.

For her right wrist, Dr. Bansal diagnosed claimant as suffering a right wrist triangular fibrocartilage complex injury, right wrist chronic ulnocarpal joint pain and synovitis, extensor carpi ulnaris tendinosis. (CE 2:30)

For her bilateral knees, Dr. Bansal diagnosed claimant with bilateral meniscus tears. (CE 2:31)

He placed claimant at maximum medical improvement on September 30, 2022, six months after her second right wrist surgery. (CE 2:31) He assigned 8 percent upper extremity impairment due to the loss of range of motion, 2 percent lower extremity for the right knee as she was status post right knee arthroscopy with resection of the lateral meniscus tear, and 2 percent lower extremity impairment for the left knee due her undergoing left knee arthroscopy, with lateral meniscectomy of complex radial and horizontal tears. (CE 2:32)

Dr. Bansal charged \$564.00 for the examination and \$3,409.00 for the report. (CE 2:33)

On May 4, 2023, Dr. Bansal issued a response to the 2 percent impairment issued by Dr. Manon-Matos for the right upper extremity. (CE 2:38) He opined that the care provided by CNOS through March 2023 was causally related to the work-related injuries to claimant's right wrist. (CE 2:39) It was his medical opinion that the February 8, 2021, injury resulted in a temporary aggravation, with a potential impact on some of the permanent disability. Id. As a result of the January 26, 2020 injury, claimant suffered a TFCC tear, which led to her surgery on June 26, 2020. After the February 8, 2021 injury, she had a second MRI on her wrist that noted a recurrent tear of the TFCC. Id. She then underwent a second surgery in March 2022 based on her ulnaris tendinitis which could have been aggravated by the February 2021 injury as there was potentially a new onset of carpi ulnar tenosynovitis. He conceded that this could be still caused by the ulnar impact resultant from the TFCC tear itself. Id.

As for his 8 percent impairment rating, he stated:

The majority of her impairment primarily stems from the TFCC tear caused by the June 26, 2020 injury. The contribution from the February 8, 2021 injury would be limited to the impact on the carpi ulnaris functionality, as the TFCC tear represents a more significant injury. Id. Therefore the 2% upper extremity impairment rating for the ulnar deviation that I assigned can

potentially be attributed to the February 8, 2021 injury, although it may also be affected by the TFCC tear.

In conclusion, I would apportion a 6% upper extremity impairment to the June 26, 2020 injury, and a 2% upper extremity impairment to the February 8, 2021 injury.

Id.

Claimant provided rate calculations in Exhibit 3. For the injury date of January 26, 2020, using the weeks from October 18, 2019, through February 7, 2020, claimant arrived at $\$11,427.43/14=\816.25 average weekly wage. (CE 3:41) Weeks of November 15, 2019, and February 7, 2020, were excluded as nonrepresentative due to reduced overtime hours. Id. For the injury date of February 9, 2021, claimant used weeks from November 13, 2020, through February 5, 2021, although it appears week of November 27, 2020, was counted twice. (CE 3:42) Claimant's Exhibit and brief states that the defendants' payroll records were the source of the calculations; however, the payroll records do not match the numbers in the worksheets of Exhibit 3.

For instance, the gross weekly wages paid on November 1, 2019, were \$2,106.67. (DE K:1) On the claimant's calculation, it is \$1,811.63. (CE 3:41) For wages paid on November 29, 2019, the defendants' payroll records indicate that \$1,644.73 but the Claimant's Exhibit lists \$1,497.31. (DE K:5; CE 3:41)

Based on the payroll records, in an ordinary week, claimant would work overtime. The pay period from October 27, 2019 through November 9, 2019, claimant worked no overtime but instead received PTO of 6.1330 hours. (DE K:3) This week is not a representative week and is therefore excluded. The gross weekly wages represented in Exhibit K for the injury date of January 26, 2020, includes the pay period beginning October 13, 2019, through January 18, 2020.

PAY PERIOD	GROSS WEEKLY WAGES
10/13/2019-10/26/2019	\$2,106.67
11/10/2019-11/23/2019	\$1,644.73
11/24/2019-12/7/2019	\$1,649.13
12/8/2019-12/21/2019	\$1,588.62
12/22/2019-1/4/2020	\$1,781.48
1/5/2020-1/18/2020	\$1,715.66
	$\$10,486.29/12=\873.86

The defendants' calculation of \$571.59 is adopted for the injury date of February 8, 2021.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Defendants argue that claimant has returned to her pre-injury baselines for both the January 26, 2020 injury and the February 8, 2021 injury to her right wrist. In support of their position, defendants lean on the opinions of Dr. Manon-Matos and Dr. Bruggeman. Claimant argues that she has ongoing symptomatology from both wrist injuries necessitating further care as well as entitlement to additional permanent disability payments. For her position, claimant relies upon the opinions of Dr. Bansal.

Defendants assert that Dr. Manon-Matos and Dr. Bruggeman are more reliable because they are both orthopedic surgeons specializing in upper extremities, their opinions are consistent with each other, and Dr. Manon-Matos was claimant's treating physician.

Dr. Manon-Matos' records present a somewhat disconcerting picture. The greatest error was identifying the claimant's injury as left-sided in the operative report rather than right-sided, but while that might have been a mere scrivener's error, there were a few

other circumstances where it appeared claimant's pain complaints may have been overlooked in the rush to return claimant to full duty, particularly after the second injury.

On May 27, 2021, claimant returned for follow-up for her right wrist with complaints that she had difficulty with day-to-day activities and some numbness. Dr. Manon-Matos placed claimant at MMI and returned claimant to full duty work with no restrictions although Dr. Manon-Matos was concerned that claimant had mild signs of peripheral nerve compression that needed to be watched.

Claimant continued to have problems in her right wrist throughout 2021 and 2022. She underwent left surgical repair on March 30, 2022, but continued to have pain. In September 2022, she said that any type of movement increased her pain throughout her wrist. When she returned to Dr. Manon-Matos' office on January 17, 2023, following an EMG, claimant reported increased pain as well as a return of numbness and tingling in the dorsal and ulnar aspects of the right wrist. Her pain was worse with activity, such as holding and gripping, and she had numbness and tingling in the right ring and small fingers.

Because claimant already had two diagnostic arthroscopies, Dr. Manon-Matos felt that the benefits did not outweigh the risks of further intervention. Dr. Manon-Matos did not question her symptoms nor suggest that claimant was malingering. He wanted a second opinion from his partner, Dr. Tibor Warganich. Dr. Warganich could not pinpoint the source of claimant's pain. "She has global pain on examination today. No red flags per se. She has global pain on the ulnar aspect of the right wrist, mostly at the ulnar soft spot and the TFCC. No gross instability, though it does appear to be mildly more loose than the contralateral side." (JE 4:235)

Dr. Warganich did not believe that the carpal tunnel was the primary issue. He referred her for another MRI and recommended another injection. The MRI of February 21, 2023, revealed a tiny longitudinal split tear of the extensor carpal ulnaris tendon. She returned to Dr. Warganich on March 17, 2023, and another injection was administered on the ECU tendon sheath. Claimant was to return in six to eight weeks.

Notably, on the same day, Dr. Manon-Matos filled out a second checklist form wherein he opined that claimant reached MMI for her January 26, 2020, and February 8, 2021, injuries to her right wrist. Dr. Manon-Matos did not add any additional impairment and set claimant's date of MMI as of March 2, 2023, per their last conversation. There is no record of the March 2, 2023, conversation. Their last encounter was on February 10, 2023, when claimant was receiving ongoing treatment to the extensor carpi ulnaris tendon sheath, which was the location of the pain going back to the original 2020 injury when she was first referred to Dr. Archer. At that time, she had mild swelling over the ulnar aspect of the wrist and tenderness over the ECU tendon sheath and the March 2022 surgery was to treat the right wrist ulnocarpal joint pain and synovitis and right wrist extensor carpi ulnaris tendinosis. This is the same area that caused her pain in 2023.

Dr. Manon-Matos' findings that claimant was at MMI and needed no additional care was in direct opposition to his partner's treatment of claimant. Because of this, as well as the other errors in the report, the fact that most of the visits were conducted with PAs in his office rather than his own personal observations, his opinions are given lower weight.

Dr. Bruggeman performed only a records review. He found that claimant had sustained two separate injuries of a twisting type mechanism to the wrist and sustained an ulnocarpal wrist sprain on the right, but did not believe she needed further medical care and that structurally her bones, joints, ligaments and cartilage in the right wrist were sound. He did not believe any further care or workup would be helpful and felt claimant was capable of working without restrictions despite writing "[A]lthough, it is not unusual for this type of scenario to develop after a seemingly innocuous event and injury with minimal changes on an MRI to go on to have continued symptoms and that would not be an unusual clinical scenario with respect to this diagnosis." (DE B:11)

In other words, claimant's symptoms were not unusual. This records review, performed March 3, 2023, was also in contradiction to the treatment that claimant was receiving from Dr. Warganich. Dr. Bruggeman's opinions are given lower weight as he did not personally examine claimant and admitted that the ongoing symptomatology similar to what claimant was suffering was not unusual.

Defendants argue that there is no medical evidence to support that the treatment from November 2021 onward was related to the work injuries of January 26, 2020, or February 8, 2021. However, Dr. Manon-Matos' medical records suggest otherwise as does report of Dr. Bruggeman where he wrote: "After initial relief (from the surgery)," claimant developed a recurrence of ulnar-sided wrist pain which led claimant to eventually elect for definitive surgical treatment. (DE B:10) Dr. Manon-Matos set claimant's MMI date for the injuries to her right wrist as of March 2, 2023, which suggests at the least that all the care provided by his office up to that date was related to the January 26, 2020 and February 8, 2021 injuries, as they are referenced in the letter. (DE A) Dr. Bruggeman wrote in his conclusion section "As consistent with her medical records, she reported two separate injuries of a twisting type mechanism to the wrist and sustained a wrist sprain. She has had two separate operations with her treating surgeon and continues to have symptoms." (DE B:10) This statement also implies that claimant's treatment in 2022 is related to her two separate injuries of a twisting type mechanism.

Defendants argue that no doctor has related the longitudinal split tear of the extensor carpal ulnaris to the two work incidents. In essence, defendants argue that the tear is the cause of the claimant's pain and because no doctor has connected the tear to the work incident, claimant's ongoing symptoms in the wrist are not related to any work injury. However, neither Dr. Manon-Matos nor Dr. Bruggeman identify the tear as the cause of claimant's current symptomatology. Dr. Warganich said that claimant's pain may be related to the tear but gave no specific opinion to a reasonable degree of medical certainty. Dr. Bruggeman goes so far as to state that there is nothing structurally wrong with claimant which supports that the tear is not responsible for claimant's current symptoms which means that the pain in claimant's wrist is related to something other than

the tear. The greater weight of the evidence supports a finding that the tear is not the cause of claimant's ongoing symptoms but rather that claimant's pain is the result of the twisting injuries arising out of the work incidents.

Dr. Bansal is the only other expert to provide causation testimony as to the nature and extent of claimant's injury. Defendants point out that the initial report of Dr. Bansal did not mention the February 8, 2021 work injury.

While Dr. Bansal's opinions are not without problems, they are not wholly inconsistent with the other expert opinions. Dr. Bruggeman admitted that the symptoms claimant currently suffers are not unusual. Dr. Manon-Matos signed off on a checklist statement that the care he provided up to March 2, 2023 was related to the two work related injuries that are the subject of this suit. Taken together, all these opinions provide that the greater weight of the evidence supports a finding that claimant sustained two work related injuries on January 26, 2020 and February 8, 2021 to her right wrist, which necessitated surgery, physical therapy, injections, and future medical care.

Accordingly, Dr. Bansal's impairment ratings are also adopted herein as his opinions are given greater weight and are more closely aligned with claimant's credible complaints of ongoing pain and discomfort along with the contemporaneous medical records. Dr. Bansal assessed a 6% impairment of the upper extremity for the June 26, 2020 injury and a 2% upper extremity impairment for the February 8, 2021 injury.

The next question is the issue of claimant's entitlement to temporary partial or temporary total disability. Claimant seeks PPD for October 13, 2021 to June 19, 2022, less 1.5 days for the February 26, 2020 injury.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. An employee is temporarily, partially disabled when the employee is not capable medically of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury but is able to perform other work consistent with the employee's disability. Temporary partial benefits are not payable upon termination of temporary disability, healing period, or permanent partial disability simply because the employee is

not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury. Section 85.33(2).

Temporary benefits are owed until such time as claimant has returned to work, capable of doing substantially similar employment, or at MMI. For the January 26, 2020 work injury, claimant was returned to full duty work on or about November 19, 2020. She did not seek additional medical care until February 18, 2021, after she sustained the second work injury. Thus, claimant is not entitled to any additional healing period benefits for the January 26, 2020 injury.

Claimant suffered a re-injury on February 8, 2021. She was returned to full duty work on May 27, 2021; however, continued to have symptomatology. On August 16, 2021, claimant gave notice that she was dropping down, which meant she was reducing her workload to 24 hours per month. (DE D:12) She was terminated from her employment on October 12, 2021, and then returned to new employment with Imagine the Possibilities on June 8, 2022. It is for the time period of October 13, 2021 to June 19, 2022 that she seeks additional temporary benefits.

Claimant testified that at the time of her termination, she was performing all of her job duties and that she was capable of performing those job duties. She had no formal restrictions at that time. Based on claimant's own testimony, she was capable of performing substantially similar work from the time of her termination on October 13, 2021 up to the date of her new hire at Imagine the Possibilities. If she was terminated for cause, this would be subject to an employment suit rather than impact her entitlement to temporary benefits. The end of her healing period was May 27, 2021 for the February 8, 2021 injury.

Claimant is not entitled to additional temporary partial benefits.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

The rate was previously determined to be \$575.50 for the January 26, 2020, injury and \$571.59 per week for the February 8, 2021 injury.

Claimant seeks reimbursement for the medical visits to CNOS.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for

those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

These medical visits are causally related to the work injuries as previously found.

Claimant seeks reimbursement for the IME bill of Dr. Bansal.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Defendants argue that some of the medical opinion of Dr. Bansal is related to the Second Injury Fund of Iowa claims that have since been resolved and that lack of detail or apportionment in the billing precludes an award of the IME.

A review of claimant's past medical history is a part of an independent examination and had Dr. Bansal failed to review the medical records of claimant's past or do a full examination, the report could have been targeted for being incomplete. However, part of the opinion portion of the report was devoted to the Fund issues and therefore, only a portion of the IME should be attributed to defendants. Based on the record review section, approximately five pages pertained to the knee and five to the wrist. Therefore, the full examination should be paid by defendants but only half of the report pursuant to 876 IAC 4.33.

ORDER

THEREFORE, IT IS ORDERED:

That defendants are to pay unto claimant 15 weeks of permanent partial disability benefits at the rate of five hundred seventy-five and 50/100 dollars (\$575.50) per week from November 19, 2020, for the injury date of January 26, 2020.

That defendants are to pay unto claimant 5 weeks of permanent partial disability benefits at the rate of five hundred seventy-one and 59/100 dollars (\$571.59) per week from May 27, 2021, for the injury date of February 8, 2021.

That defendants shall pay accrued weekly benefits in a lump sum.

That claimant is entitled to future medical care for the right upper extremity.

That claimant is entitled to reimbursement of medical bills incurred as a result of treatment or diagnosis of the right upper extremity injury included in Exhibit 1.

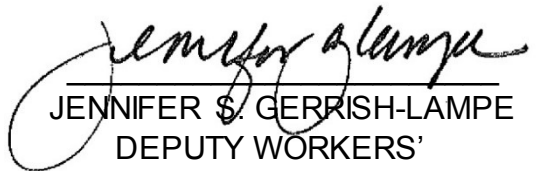
That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That defendants are to be given credit for benefits previously paid.

That defendants shall pay the full examination fee of Dr. Bansal but one half of the report fee.

That the cost of the transcript shall remain with defendants.

Signed and filed this 19th day of September, 2023.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mary Hamilton (via WCES)

Caroline Westerhold (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 10A) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.