BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CECELIA BONILLA,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,

and

SECOND INJURY FUND OF IOWA,

Defendant.

FILED

MAY 28 2019

WORKERS COMPENSATION

File No. 5060444

ARBITRATION DECISION

CECELIA BONILLA,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5060445

ARBITRATION DECISION

Head Notes: 1108.50, 1402.40, 1402.60, 1803, 2502, 2907, 3202

STATEMENT OF THE CASE

Cecelia Bonilla, claimant, filed a petition in arbitration seeking workers' compensation benefits from Tyson Fresh Meats, Inc., self-insured employer and the Second Injury Fund of Iowa, as defendants. Hearing was held on April 15, 2019 in Des Moines, Iowa.

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.

Claimant, Cecelia Bonilla, was the only witness to testify live at trial. The evidentiary record also includes Joint Exhibits JE1-JE7, Claimant's Exhibits 1-9, and Defendant's Exhibits A-F. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on May 3, 2019, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

File No. 5060444 (Date of Injury: March 13, 2017 and Second Injury Fund Date of Injury: May 18, 2015)

1. Whether claimant sustained an injury that arose out of and in the course of her employment on March 13, 2017.

2. Whether claimant sustained permanent disability as a result of the March 13, 2017 work injury. If so, the nature and extent of permanent disability claimant sustained.

3. Whether claimant is entitled to benefits from the Second Injury Fund of Iowa.

4. Whether claimant is entitled to payment of past medical expenses.

5. Whether claimant is entitled to be reimbursed pursuant to Iowa Code section 85.39 for the independent medical evaluation (IME).

6. Whether claimant is entitled to ongoing mental health treatment.

7. Assessment of costs.

File No. 5060445 (Date of Injury: May 18, 2015)

1. Whether claimant sustained permanent disability as a result of the May 18, 2015 work injury. If so, the nature and extent of permanent disability claimant sustained.

2. Whether claimant is entitled to payment of past medical expenses.

3. Whether claimant is entitled to be reimbursed pursuant to Iowa Code section 85.39 for the IME.

4. Whether claimant is entitled to ongoing mental health treatment.

5. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant, Cecelia Bonilla, began working for Tyson Foods in October of 2001. She continued working at Tyson until she voluntarily resigned her employment on November 3, 2017. Ms. Bonilla asserts a cumulative May 18, 2015 injury to her right upper extremity with mental sequela. She also asserts a cumulative March 13, 2017 injury to her left upper extremity with mental sequela. Additionally, Ms. Bonilla asserts a claim for benefits from the Second Injury Fund of Iowa (SIF).

The first job Ms. Bonilla performed at Tyson was a knife job on the ham line. Meat came to her on a conveyor belt, she would use her left hand to grab the meat with a hook, and then use her right hand to cut the meat with a manual knife. She used the knife to take a ball of meat out of the bigger piece of meat. (Testimony)

The next job Ms. Bonilla performed was called the main break. This job involved holding a carcass in her left hand, while she utilized a Whizard knife with her right hand to cut out the diaphragm. The Whizard knife had a round, electric blade. (Testimony)

Ms. Bonilla also worked in the box room where she ran machines that made boxes. She was required to lift multiple cardboard boxes to put into the machine. (Testimony)

Additionally, Ms. Bonilla performed a job on the belly line. Meat came to her on a conveyor belt. Her job was to scrape fat off of the meat. She used both hands to grab and pull the meat which weighed approximately 10-15 pounds. (Testimony)

Ms. Bonilla also worked baby back ribs. In this position she used a manual knife to clean and trim the diaphragm. (Testimony)

The last job Ms. Bonilla performed at Tyson was on the butt line. She performed this job for the last five years of her employment. She began using a manual knife, but then moved to using a Whizard knife. On this line, she worked with what she described as second quality meat. She used a Whizard knife to remove fat from the meat that came to her on a conveyor belt. There were times when the fat was frozen; this resulted in the frozen fat dulling the knife. Ms. Bonilla made the cuts with her right hand. She used her left hand to reach across the line to grab the piece of meat and place it in front of her. The butts weight approximately 10 pounds. (Testimony)

Ms. Bonilla has alleged a May 18, 2015 injury to her right upper extremity with a mental sequela. She believes that her right upper extremity was injured because she had to work with a Whizard knife with a dull blade. When her blade was dull she had to apply more pressure, especially when removing frozen fat. (Testimony)

On May 18, 2015, Ms. Bonilla was seen in the Tyson medical department. She reported a gradual onset of pain in her right fingers, wrist, forearm, elbow, upper arm, and shoulder. She was experiencing numbness in her fingers, pain in her right arm, and a tingling sensation in her right hand with light touch. She rated her pain as an eight out of ten. (JE1, page 1)

Ms. Bonilla was seen again at the Tyson medical department on June 3, 2015. The note states: "LMF lock; RRF stiff; lump on the wrist; and both arms hurt." (JE1, p. 2) She reported that the pain in her neck and shoulder had subsided since she was no longer using the vibrating Whizard knife. The notes stated that the ganglion cyst on the left wrist was not work related. (JE1, p. 2)

On June 3, 2015, Ms. Bonilla saw Kurt A. Smith, D.O. at Iowa Ortho. She reported that one month ago she had an onset of right and left hand pain. Her right ring finger had an aching and throbbing pain. She also had pain in her left middle finger which she described as aching and throbbing. Her pain was aggravated by the use of her hands. She also reported joint tenderness and numbness. The sensation on the right side was noted to be abnormal along with positive Phalen's and median nerve compression testing. However, on the left side Ms. Bonilla had normal sensation, Phalen's, and medial nerve compression. Dr. Smith's assessment was right hand probable carpal tunnel syndrome and ring finger metacarpophalangeal joint strain and left hand middle finger metacarpophalangeal joint strain. Dr. Smith did not diagnose left carpal tunnel syndrome. The treatment plan included injections, restrictions, EMG/NCV or the right upper extremity. (JE2, pp. 1-3)

An EMG/NCS was performed on June 22, 2015. The findings were abnormal right median nerve conduction studies with prolonged distal latencies, normal right ulnar nerve conduction studies, and normal EMG needle study of the right hand/forearm. Dr. Smith's conclusion was right median neuropathy localizing to the level of the wrist. He referred Ms. Bonilla to Benjamin Paulson, M.D., an orthopaedic doctor, in his office. (JE2, pp. 7-8)

Ms. Bonilla saw Dr. Paulson on June 24, 2015. He performed repeat right ring finger and left long finger trigger injections and first right carpal tunnel injection. Dr. Paulson also provided her with a brace. She was to return in one month. (JE2, pp. 9-11) She continued to treat with Dr. Paulson. His exam demonstrated abnormal and positive findings on the right side, but the left side was normal. Dr. Paulson's diagnoses included right carpal tunnel syndrome, right ring trigger finger. He recommended right carpal tunnel release and right ring finger trigger release. On August 18, 2015, Dr. Paulson performed right carpal tunnel release and right ring finger trigger release.

By the end of August, Ms. Bonilla reported she was doing well and her numbness was much improved. At hearing, Ms. Bonilla testified that during this timeframe she continued to have pain and that the surgery did not really help. After surgery she was on restricted duty. (JE2, pp. 12-16; JE3, p. 1; Testimony)

On October 27, 2015, Ms. Bonilla reported to the Tyson medical department. Her right shoulder was still a bit sore and her left middle finger was still triggering. However, she did not want to undergo another surgery because the surgery on her right hand caused her enough pain. (JE1, p. 3)

Dr. Paulson saw Ms. Bonilla on November 25, 2015. His notes state that Ms. Bonilla was doing great after her right carpal tunnel release and right ring finger trigger release. He placed her at maximum medical improvement (MMI) and stated that she had no restrictions. Ms. Bonilla returned to her Whizard knife position. (JE2, pp. 20-21; Testimony)

Dr. Paulson noted Ms. Bonilla had an uneventful recovery and said she recovered quite well. He addressed the issue of permanent impairment as follows:

> Using the AMA Guides to Evaluation of Permanent Impairment, 5th Edition and her range of motion testing on today's visit, her impairment is as follows: With the patient's DIP joint on the right ring finger and using figure 16-21, page 461, she gets a 5% impairment due to flexion to 60 degrees. At the PIP joint, she has 0-100 degrees and using Figure 16-23 on page 463, this is a 0% impairment. At the metacarpophalangeal joint, she has 20 degrees of hyperextension and flexion to 90 degrees, and using figure 16-25 on page 464, this is also a loss of range of motion. Using table 16-1 page 438 a 5% impairment of the ring finger corresponds to a 1% impairment of the hand and using table 16-2 on page 439, a 1% impairment of the hand corresponds to a 1% impairment of the upper extremity.
>
> In addition, with the patient's carpal tunnel syndrome, she is having minimal to no symptoms at this point. Using the section of carpal tunnel syndrome on page 495, first paragraph, I would put her in category 2 and give her a 1% impairment of the right upper extremity due to her minimal symptoms. Therefore, the patient's final impairment is 1% for loss of range of motion combined with 1% for carpal tunnel syndrome, which totals a 2% impairment of the right upper extremity. In addition, the patient has no permanent restrictions.

(JE2, p. 22)

Ms. Bonilla has also alleged a March 13, 2017, injury to her left upper extremity and mental sequela. It was around March 13, 2017 when Tyson placed her on a job

removing hide from pieces of lard. The pieces of lard came down the center line. She had to hold the lard in the air because she could not work with it on the line. Ms. Bonilla held the lard with her left hand and used a manual knife in her left hand. (Testimony)

On March 13, 2017, Ms. Bonilla was seen at the Tyson medical department. She reported pain in both hands that traveled into her shoulders and upper back. She also reported that she had surgery two years ago on her right ring finger and that still locked. She declined surgery on her left hand, fingers, and forearm. She also reported that her upper back hurt to touch it. She noted she was in a lot of pain, but she did not want to take any Tylenol or ibuprofen because she did not like medicine. The treatment plan included ice, Biofreeze, and Tylenol. (JE1, p. 4) On this same date, Ms. Bonilla completed a statement of injury which mentioned removing hide from pieces of fat. (JE1, p. 5)

Ms. Bonilla returned to the Tyson medical department on March 20, 2017. She was working on a different job for 2 days, not Whizard CT butts. She believes this is what caused her left wrist pain and left long finger locking. She feels she was injured on a job with a straight knife. Her pain was primarily in her right wrist, right ring fingers and ran up to her elbow. She also had a little pain in her left shoulder. She denied pain in the right hand, but stated that her right ring finger still locked. An EMG was recommended. (JE1, p. 7)

Ms. Bonilla was seen at Iowa Ortho in March of 2017. She reported left hand and long finger pain. She described triggering and locking symptoms. She also reported tingling of the left hand. Ms. Bonilla reported right ring finger triggering and pain. She had the right side released with Dr. Paulson in 2015. The notes indicate Ms. Bonilla was performing a different job than her own. Her left hand pain was greater than that of the right. Her left pain symptoms radiated toward her left elbow. Dr. Smith's assessment included left wrist pain; carpal tunnel syndrome, left; trigger finger, left middle finger, trigger finger, right ring finger. He prescribed Medrol Dosepak, work restrictions, and an EMG/NCV of the left upper extremity to rule out carpal tunnel syndrome. The EMG/NCV testing was carried out in March of 2017. ZeHui Han, M.D. assessed Ms. Bonilla with carpal tunnel syndrome, left; trigger finger, left middle finger; medial epicondylitis, left elbow; and lateral epicondylitis, left elbow. Left carpal tunnel release and long finger trigger release were performed on April 27, 2017. (JE2, pp. 28-32; JE3, p. 2)

Ms. Bonilla continued to follow-up with Dr. Han. The May 25, 2017 record states her symptoms were 7/10 daily. The symptoms were noted to be acute and unchanged. By mid-June Ms. Bonilla reported her symptoms were severe and constant. The notes also reflect that her symptoms were acute and improved. Dr. Han felt she was doing well and had improved. Ms. Bonilla reported continued tenderness. The June notes from the Tyson medical department indicate that Ms. Bonilla still experienced sharp pains in her left hand and swelling of her left hand. In July, Ms. Bonilla reported continued improvement. (JE2, pp. 35-40; JE1, p. 8)

Dr. Han released Ms. Bonilla to her regular work with no restrictions on July 13, 2017. Ms. Bonilla returned to her Whizard knife job. (JE2, pp. 39-40; Testimony) The July 27, 2017 notes from Tyson medical department state Ms. Bonilla reported pain in her left hand and wrist that shot up to her elbow. Ms. Bonilla had to sleep the prior night with her left hand between her legs because the pressure made the pain less. She reported she could not take Tylenol or ibuprofen because it irritated her stomach. Ms. Bonilla told Tyson she could not work like this and requested to see the doctor that same day. She was hoping the doctor could give her an injection. (JE1, p. 9)

On that same day, July 27, 2017, Ms. Bonilla saw Dr. Han. She complained of left hand pain that varied with activity. She rated her pain as 8 out of 10. She had pain with gripping. Dr. Han stated that her left carpal tunnel was doing well with no numbness or tingling. He closed her carpal tunnel case. Dr. Han seemed to attribute her symptoms to a 2nd carpometacarpal boss. He then discussed conservative treatment options available to Ms. Bonilla for her 2nd CMC Boss. He discussed a possible cortisone injection. (JE2, pp. 41-42)

On August 3, 2017, Dr. Han opined that the carpal boss was an incidental finding, not a diagnosis related to the left carpal tunnel syndrome. He further stated that the carpal boss was a personal condition, not the direct result of the work at Tyson. Dr. Han opined that the personal condition of the carpal boss was not aggravated by her work at Tyson. He placed Ms. Bonilla at MMI for her left carpal tunnel. He assigned one percent impairment of the left hand due to the left carpal tunnel. (JE2, pp. 43-44)

The last day Ms. Bonilla worked for Tyson was November 3, 2017. She decided to leave Tyson due to pain in her hands and arms. She felt she would not be able to perform her job. At hearing she explained that even after she used four weeks of vacation, her symptoms did not improve, so she decided to end her employment. Tyson did discuss the possibility of her working for them in an interpreter position. However, Ms. Bonilla testified she did not want to work as an interpreter. (Ex. 4, p. 36; Testimony)

After her employment with Tyson ended, Ms. Bonilla sought treatment at Broadlawns Medical Center. On March 19, 2018, she was seen at Broadlawns to establish care because she had moved to Des Moines from Perry. She was concerned about bilateral hand and arm pain that she had for the past three years related to her prior work at Tyson. Despite treatment, she continued to have shooting pain up her arms into her shoulders. Ms. Bonilla also reported that her mood was down. She felt this was mostly due to her constant pain. She also noted a prior abusive relationship with her ex-husband and an unfaithful boyfriend. Tara L. Brockman, D.O. assessed chronic arm pain, hypothyroidism, and depression. Dr. Brockman ordered an EMG of the upper extremities. She prescribed sertraline for depression. (JE5, pp. 1-4)

An EMG was performed on April 3, 2018. The assessment was moderate bilateral carpal tunnel syndrome. (JE5, pp. 5-8)

Ms. Bonilla returned to see Dr. Brockman on April 19, 2018. She reported increased feelings of depression and continued pain in her hands and arms. Ms. Bonilla was nervous about the possibility of seeing a surgeon or having a repeat surgery. She declined an orthopaedic referral and a referral for physical therapy. Dr. Brockman increased her medications. (JE5, pp. 9-12)

On June 19, 2018, Ms. Bonilla returned to Broadlawns. She reported her pain was getting more severe and she would now like the orthopedic referral. She also reported that more recently, her shoulders had been hurting. Ms. Bonilla noted that she was not sure if the increased medicine was helping. She was living with her son and daughter-in-law. She still isolated herself in her room. Dr. Brockman referred her to orthopaedic for her bilateral carpal tunnel. Ms. Bonilla declined a physical therapy referral for her scapulae pain. Dr. Brockman also increased her sertraline for depression. (JE5, pp. 13-17)

Ms. Bonilla saw Shane Cook, M.D. at DMOS on June 28, 2018. She reported her history of bilateral carpal tunnel release. She told the doctor that she was never any better or worse after the surgeries. Dr. Cook's assessment was bilateral mild carpal tunnel syndrome, bilateral lateral epicondylitis, and bilateral diffuse upper extremity pain. He felt she would benefit from therapy to work on generalized strengthening of her bilateral upper extremities and modalities for lateral epicondylitis and carpal tunnel syndrome. He also gave Ms. Bonilla bilateral tennis elbow braces and bilateral wrist splints. She was to follow-up on an as needed basis. Ms. Bonilla did attend three sessions of therapy at DMOS. However, the July 27, 2018 note states that her Medicaid was being taken away because she made too much money from her disability. Ms. Bonilla reported she would continue to perform the exercises on her own. (JE7)

Claimant exercised her right to an IME. At the request of her attorney, Ms. Bonilla underwent an IME with Sunil Bansal, M.D. on November 14, 2017. This was after the last date Ms. Bonilla physically worked at Tyson, but while she was still an employee of Tyson. Dr. Bansal noted that Ms. Bonilla continued to have pain and had used all of her vacation hoping that her hands and arms would feel better. However, now she was dreading returning to work. With respect to the May 18, 2015 alleged date of injury, Dr. Bansal diagnosed right carpal tunnel syndrome and right ring trigger finger. He noted she continued to be symptomatic and was a candidate for revision carpal tunnel surgery. He assigned five percent impairment of the right upper extremity. He restricted her to no lifting greater than five pounds with her right hand and no frequent squeezing, pinching, or grasping with her right hand. With regard to the left hand, Dr. Bansal diagnosed left carpal tunnel syndrome and left middle trigger finger release as the result of the March 13, 2017 injury. He felt she was a candidate for revision surgery on the left side. Dr. Bansal assigned six percent impairment of the left upper extremity. He restricted her to no lifting greater than five pounds with her left hand and no frequent squeezing, pinching, or grasping with her left hand. Dr. Bansal opined that as the result of her repetitive work activities, she sustained injuries to her bilateral wrists

and hands. He stated the right side culminated on May 18, 2015 and the left side on March 13, 2017. (Cl. Ex. 1)

Ms. Bonilla alleges a May 18, 2015 right upper extremity injury and a March 13, 2017 injury to her left upper extremity. The Fund contends that claimant has not demonstrated that she sustained two separate injuries. Rather, the Fund contends the injuries to her right and left upper extremity are actually a single bilateral arm injury. I do not find the Fund's argument to be persuasive. A review of the treatment records demonstrates that Ms. Bonilla sustained two separate and distinct injuries. Dr. Smith diagnosed probable carpal tunnel syndrome in her right hand in June of 2015. There was no diagnosis of carpal tunnel in her left hand until 2017. Additionally, the work Ms. Bonilla attributes to causing her left carpal tunnel syndrome was not performed by Ms. Bonilla until 2017. Dr. Bansal's opinion regarding the dates of injury is logical. I find that Ms. Bonilla sustained a work-related injury to her right upper extremity on May 18, 2015. I further find Ms. Bonilla sustained a work-related injury to her left upper extremity on March 13, 2017.

With regard to permanent functional impairment and restrictions for the right upper extremity, there are two expert opinions.

Dr. Paulson treated Ms. Bonilla's right carpal tunnel syndrome and right ring finger trigger finger. Pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Paulson assigned five percent impairment of the ring finger due to loss of range of motion. This equates to one percent impairment of the hand or one percent to the upper extremity. For the right carpal tunnel syndrome, Dr. Paulson assigned one percent impairment of the right upper extremity due to her minimal symptoms. He stated that her final impairment for both conditions was two percent of the right upper extremity. He stated that she did not have any permanent restrictions. (JE2, p. 22)

With respect to the May 18, 2015 alleged date of injury, Dr. Bansal diagnosed right carpal tunnel syndrome and right ring trigger finger. He noted she continued to be symptomatic and was a candidate for revision carpal tunnel surgery. He assigned five percent impairment of the right upper extremity. He restricted her to no lifting greater than five pounds with her right hand and no frequent squeezing, pinching, or grasping with her right hand. (Cl. Ex. 1)

I find the opinions of Dr. Bansal to be more persuasive than those of Dr. Paulson. Dr. Paulson noted minimal symptoms at the time he rendered his impairment rating. However, "minimal symptoms" is not consistent with Dr. Cook's clinical findings of June 2018. Dr. Paulson's description of symptoms is also not consistent with Dr. Bansal's findings. At hearing Ms. Bonilla disagreed with Dr. Paulson's assessment that she was doing great. The physical therapy records from October of 2015 indicate that she had a fair result. There was a lack of grip strength on the right compared to the left. (Testimony; JE4) I find Dr. Bansal's opinions are more consistent with the record as a

whole. I further find Ms. Bonilla has demonstrated that her right carpal tunnel syndrome and right ring trigger finger are related to her work injury of May 18, 2015. Thus, I find Ms. Bonilla sustained five percent functional impairment of her right upper extremity. I further find that she has restrictions for her right upper extremity as set forth by Dr. Bansal.

We now turn to the left upper extremity claim. Dr. Han assessed Ms. Bonilla with carpal tunnel syndrome, left; trigger finger, left middle finger; medial epicondylitis, left elbow; and lateral epicondylitis, left elbow. Left carpal tunnel release and long finger trigger release were performed on April 27, 2017. (JE2, pp. 28-32; JE3, p. 2)

On August 3, 2017, Dr. Han opined that the carpal boss was an incidental finding, not a diagnosis related to the left carpal tunnel syndrome. He further stated that the carpal boss was a personal condition, not the direct result of the work at Tyson. Dr. Han opined that the personal condition of the carpal boss was not aggravated by her work at Tyson. Dr. Han placed Ms. Bonilla at MMI for her left carpal tunnel. He assigned one percent impairment of the left hand due to the left carpal tunnel. He did not assign restrictions. (JE2, p. 43-44)

With regard to the left hand, Dr. Bansal diagnosed left carpal tunnel syndrome and left middle trigger finger release as the result of the March 13, 2017 injury. He felt she was a candidate for revision surgery on the left side. Dr. Bansal assigned six percent impairment of the left upper extremity. He restricted her to no lifting greater than five pounds with her left hand and no frequent squeezing, pinching, or grasping with her left hand. (Cl. Ex. 1)

I find the opinions of Dr. Bansal to carry the greatest weight. I further find claimant has shown that she sustained left carpal tunnel syndrome and left middle trigger finger release as the result of the March 13, 2017 injury. Additionally, I find Ms. Bonilla sustained six percent impairment of the left upper extremity. Also, she is restricted to no lifting greater than five pounds with her left hand and no frequent squeezing, pinching, or grasping with her left hand.

The next issue to be addressed is Ms. Bonilla's claim of a mental injury as sequela to the physical injuries she sustained.

As part of Ms. Bonilla's application for Social Security Disability she underwent an evaluation with Eva Christiansen, Ph.D. on April 20, 2018. Ms. Bonilla told Dr. Christiansen about several traumatic experiences in her life related to a difficult childhood, including a father who played a game of roulette with a gun to her head. Ms. Bonilla also discussed issues she had with past relationships with her ex-husband and more recently a now ex-boyfriend who cheated on her with a co-worker from Tyson. Ms. Bonilla also discussed her pain, difficulty sleeping, and decision to voluntarily resign from Tyson. Dr. Christiansen stated:

> Ms. Bonilla's current mental status includes a somatic symptom disorder with persistent pain (F45.1). She has a panic disorder (F41.0), with panic attacks less than weekly. Because of her childhood history, she also meets guidelines for an other specified trauma and stressor-related disorder (F43.80). That kind of childhood history with the multiple challenging circumstances of her life during those years, is associated with her having a more difficult time recovering from physical illness or injury as an adult.

(JE6, p. 4)

Dr. Christiansen stated Ms. Bonilla's ability to remember and understand instructions, procedures, and locations could be disrupted by panic attacks. She also felt that her ability to carry out instructions could be limited by emotional distractions, stress, or pain. Dr. Christiansen diagnosed Ms. Bonilla with somatic symptom disorder with persistent pain, a panic disorder, and other specified trauma, and stressor-related disorder. She felt Ms. Bonilla should be awarded disability benefits. Dr. Christensen did not state that Ms. Bonilla's mental status was causally connected to her work injuries. (JE6)

On September 12, 2018, at the request of Tyson, claimant underwent an IME with Philip L. Ascheman, Ph.D. of Psychology Associates. Dr. Ascheman performed a review of the records provided to him, a two-hour psychological interview with Ms. Bonilla, and completion of the Minnesota Multiphasic Personality Inventory Second Edition (MMPI-2). Dr. Ascheman's diagnoses for Ms. Bonilla included major depressive disorder, moderate recurrent with anxious distress and somatic symptom disorder with predominant pain, persistent moderate.

Dr. Ascheman stated:

> There are substantial personal stressors unrelated to the work injury that explain her current mental health status. She reported that she recently separated from her common law partner of 20 years after his infidelity. This separation and issues related to the other partner being a coworker were central to her complaints of depression, anxiety, panic, and social disengagement. Additionally, she disclosed a childhood history of physical and emotional abuse. She has experienced recurrent depression due to situational factors throughout her life. She also advised that she has a thyroid condition treated with levothyroxine, noting problems with attention and concentration associated with her use of this medication.

(Defendant's Exhibit C, p. 7)

Dr. Ascheman opined that Ms. Bonilla's work injury at Tyson was a factor in the development to her somatic symptom disorder. He did not recommend any treatment of

the somatic symptom disorder. Dr. Ascheman felt that her depressive disorder was not related to her work injury. He did recommend that Ms. Bonilla seek personal psychotherapy for her depression. Dr. Ascheman noted that Ms. Bonilla did not have any significant work-related limitations affecting her ability to maintain gainful employment on a full-time basis. He also felt that her symptoms were situationally driven and thus, temporary in nature. He did not assign any permanent functional impairment. (Def. Ex. C)

At the request of her own attorney, Ms. Bonilla was evaluated by Frank Gersh, Ph.D. on December 20, 2018. Dr. Gersh listed Ms. Bonilla's acute stresses as unemployment, reduced income, relationship problems, and chronic pain. He diagnosed her with major depressive disorder, recurrent, moderate; and somatic symptom disorder, with predominant pain, persistent, moderate. Dr. Gersh noted that the major depressive disorder existed prior to the workplace injury, but the somatic symptom disorder did not. The major depressive disorder was initially diagnosed in 1986 and the present episode began in 2007 when Ms. Bonilla first suspected her boyfriend of cheating on her. Dr. Gersh opined that the workplace injury caused the somatic symptom disorder. He further opined that the major depressive disorder was exacerbated by the workplace injury. He felt Ms. Bonilla would likely have difficulty getting through a work day without interruptions from psychologically-based symptoms. Dr. Gersh sensed that if Ms. Bonilla had a job that did not exacerbate her pain she would be able to get along with peers. He noted it would likely be difficult for Ms. Bonilla to accept instructions and respond appropriately to criticism from any supervisors. Dr. Gersh opined that she would not be able to return to the work she performed prior to the work injury due to her level of pain, energy level, and poor concentration. He recommended Ms. Bonilla see a psychiatrist who was knowledgeable about the treatment of depression and chronic pain. He also mentioned that she had never been seen by a psychologist who specialized in treating patients with chronic pain. Dr. Gersh stated that he would defer to the medical doctors' recommendations with regard to work limitations. However, he did not see her as capable of working a normal workweek of 20-40 hours. Based on Dr. Gersh's report, it is not clear if he feels any limitations on her ability to work is related or not related to the work injury. Dr. Gersh did not address the issue of permanent impairment. (Cl. Ex. 2)

I find the opinions of Dr. Ascheman to be most persuasive. I find his opinions to be well-reasoned and consistent with the record as a whole. As such, I find Ms. Bonilla has failed to demonstrate that her major depressive disorder was related to her work injuries. I further find that Ms. Bonilla has demonstrated that her somatic symptom disorder is the result of her workplace injuries. However, Ms. Bonilla has failed to demonstrate that she has any permanent disability as the result of the somatic symptom disorder. Therefore, I find claimant has failed to prove that she sustained any permanent injury to her body as a whole as the result of the alleged mental sequela. I further find Ms. Bonilla has not shown defendant is responsible for any additional mental health treatment.

Although Ms. Bonilla did not demonstrate an injury to her body as a whole, I find she did demonstrate entitlement to industrial disability benefits from the Fund. At the time of hearing she was 59 years old. She has her GED. In the 1970s she did attend a secretarial school. (Testimony)

From 1999 to 2001 Ms. Bonilla worked at Midland International Tile Works. She was a machine operator on a ceramic tile line. Her duties were to weigh paint that went on the line. If a tile fell off the line, she would have to shovel the broken tile. She also worked as an audit clerk for a few weeks in the mid to late 1990s. This involved going to stores and taking inventory of certain products. Ms. Bonilla also worked at Zimco, a clothing warehouse. At this job she received discontinued clothes for resale. This involved lifting large boxes, sometimes weighing as much as 50 pounds. For approximately one and a half years she worked at Household credit card where she processed paperwork and processed checks. This was in the early 1980s. (Testimony; Cl. Ex. 3; Def. Ex. B)

Her work history includes working at a restaurant as a waitress. She also has worked operating a cash register at a boutique for a couple of months.

Her work history does include some receptionist and clerical work, but she has never had a job which required any extensive computer work. She has worked reviewing credit card applications. This job required her to highlight any spaces on an application that needed to be completed or investigated.

There are two vastly different vocational opinions in evidence.

At the request of the claimant, Carma Mitchell, M.S., C.D.M.S., C.R.C. prepared a vocational evaluation. Ms. Mitchell concluded,

> Based on the limitations outlined by Dr. Bansal, Ms. Bonilla would not be able to return to any of the work she performed in the last 15 years. Her lifting capabilities are less than those required at the sedentary exertional level. The limitations regarding no frequent squeezing, pinching or grasping with the hands is also extremely limiting in that a majority of unskilled and entry-level jobs require good use of both hands. It would be my opinion with these limitations; Ms. Bonilla would not be able to sustain full-time competitive employment without accommodations. She has lost access to 100% of the occupations she had access to prior to her work related injuries and 100% of her earnings.

(Cl. Ex. 3, p. 34)

At the request of Tyson, Lana K. Sellner, M.S., C.R.C. prepared a vocational assessment. Ms. Sellner identified potential jobs in Ms. Bonilla's geographical area that would fall within the restrictions assigned by Dr. Bansal. These jobs included: front

desk associate at a hotel, receptionist at a plasma center or veterinary hospital, entry level office work, sales representative, guest services at a salon and spa, and restaurant hostess. Ms. Sellner concluded,

> Ms. Bonilla does have the work history, educational background, and functional capacity to obtain and maintain employment appropriate for her in the labor market in occupations classified as sedentary to light physical exertion level, with or without accommodations, which is not only demonstrated with current labor market research outline above, but is also demonstrated by the fact that she was gainfully employed by her employer and other employers following her voluntarily terminating her employment.

(Ex. B, p. 9)

Ms. Bonilla testified that at the time she resigned her employment with Tyson, her upper extremities were so symptomatic that she used four weeks of vacation in the hopes that the time away from work would improve her symptoms. At the end of those four weeks her condition did not improve, so she felt she had no choice but to resign. However, prior to resigning her employment, she did not talk to Tyson about whether there were any other positions she could perform. Tyson did suggest Ms. Bonilla apply for an interpreting job at Tyson. Ms. Bonilla admitted that she has been an interpreter for her friends before and that she has been paid for her interpreting services on a few occasions. However, for reasons that are not clear, Ms. Bonilla was not interested in this position. (Testimony)

Since leaving Tyson, Ms. Bonilla has not worked anywhere. She has not applied for any other jobs and has not looked for any work. She did apply for and was awarded Social Security Disability benefits. She was found to be disabled as of November 3, 2017; the last date she worked at Tyson. I find that Ms. Bonilla has not demonstrated motivation to be employed. She testified that if she was physically capable she would like to still be working at Tyson. However, she was not willing to even pursue the possibility of working at Tyson as an interpreter. Additionally, she admitted that she has not looked for work since resigning from Tyson. (Testimony)

I find that Ms. Bonilla's injuries do not prevent her from obtaining employment in any well-known branch of the labor market. I further find that the work available to her is not so limited in quality, quantity, and dependability that a reasonable stable market does not exist. Ms. Sellner has identified several potential categories of work that Ms. Bonilla could perform. I find claimant's restrictions preclude her from a significant number of jobs. However, I find that the preponderance of the evidence does not show that she is permanently and totally disabled. I find she has a work history with varied employment and skills that would enable her to pursue some sort of alternate employment if she were so motivated. Yet she has demonstrated no motivation to find alternate work or retraining.

I also find that Ms. Bonilla has sustained a significant loss of future earning capacity as a result of the work injury. Unfortunately, she has now been out of the labor market for over a year and she has significant restrictions. She has lost access to a significant portion of her pre-injury employment opportunities. However, she should be able to expand her employment opportunities with a willingness to work and/or retrain. Considering claimant's age, educational background, employment history, ability to retrain, lack of motivation, length of healing period, permanent impairment and permanent restrictions and the other industrial disability factors identified by the Iowa Supreme Court, I find that Ms. Bonilla has proven that she sustained a 60 percent loss of future earning capacity.

The next issue is payment of past medical expenses from Tyson. Claimant is seeking payment for past medical expenses as set forth in Claimant's Exhibit 9. These expenses were incurred when Ms. Bonilla sought treatment on her own at Broadlawns and DMOS in June and July of 2018 for her upper extremities. At hearing, Ms. Bonilla admitted that she did not request any additional care from Tyson prior to seeking treatment on her own. The record is void of any evidence to show that the care provided to Ms. Bonilla in June and July provided a more favorable outcome than treatment defendant would have provided to the claimant if given the opportunity. Therefore, I find claimant has not demonstrated entitlement to payment of the medical expenses contained in Claimant's Exhibit 9.

Claimant is also seeking reimbursement for two IMEs. First, she is seeking reimbursement in the amount of $2,962.00 for the IME of Dr. Bansal. Claimant contends the ratings of Dr. Paulson and Dr. Han were too low. Tyson offers no argument why claimant should not be reimbursed for the full amount of Dr. Bansal's IME. I find the impairment ratings of Dr. Paulson and Dr. Han both occurred before the IME of Dr. Bansal. I find the prerequisites of Iowa Code section 85.39 were met and claimant has demonstrated entitlement to reimbursement from Tyson for the full amount of Dr. Bansal's IME.

Second, claimant is seeking reimbursement pursuant to Iowa Code section 85.39 for the mental IME of Dr. Gersh. This code section allows the employee to obtain an evaluation of impairment at the expense of the employer, if the employer previously obtained a rating that the employee believes is too low. However, Dr. Gersh's report does not address the issue of an impairment rating. Because Dr. Gersh does not address the issue of impairment or provide a disability rating it does not meet the requirements of Iowa Code section 85.39.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6)(e).

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact-based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that 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 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Based on the above findings of fact, I conclude Ms. Bonilla sustained a May 18, 2015 work-related injury to her right upper extremity. I further conclude that Ms. Bonilla sustained a March 13, 2017 work-related injury to her left upper extremity.

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).

Based on the above findings of fact, I conclude Ms. Bonilla sustained permanent disability to each upper extremity as the result of the May 18, 2015 and the March 13, 2017 injuries.

Ms. Bonilla has alleged that she sustained a mental injury as the result of each of her injuries to her upper extremities. An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012). I conclude claimant failed to carry her burden of proof to demonstrate that she sustained any permanent disability as a result of the alleged mental sequela injuries. Because claimant failed to carry her burden of proof to show a mental injury, her injuries do not extend beyond scheduled member disabilities.

Ms. Bonilla has asserted a claim for benefits from the Second Injury Fund of Iowa. Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

Based on the above findings of fact, I conclude Ms. Bonilla lost the use of her right arm in the May 18, 2015 injury. In this instance, I found claimant sustained 5 percent permanent functional disability as the result of the May 18, 2015 right arm injury. Pursuant to Iowa Code section 85.34(2)(m), injuries to the arm are compensated on a 250 week schedule. Thus, Ms. Bonilla is entitled to 12.5 weeks of permanent partial disability for the May 18, 2015 injury to the right arm. The parties stipulated that Tyson already paid 5 weeks of such benefits. Therefore, Tyson owes an additional 7.5 weeks of permanent partial disability benefits. These benefits shall commence on the stipulated commencement date of May 19, 2015.

Based on the above findings of fact, I further conclude Ms. Bonilla sustained the loss of her left arm in the March 13, 2017 work-related injury. I found that claimant sustained 6 percent permanent functional disability as a result of the March 13, 2017 left arm injury. Pursuant to Iowa Code section 85.34(2)(m), injuries to the arm are compensated on a 250 week schedule. Thus, Ms. Bonilla is entitled to 15 weeks of permanent partial disability benefits for the March 13, 2017 injury to her left arm. The parties stipulated that Tyson already paid 2.5 weeks of such benefits. Therefore, Tyson owes an additional 12.5 weeks of permanent partial disability benefits. These benefits shall commence on the stipulated commencement date of March 14, 2017.

I conclude that the liability of the Fund has been triggered. The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries.

Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Claimant has alleged benefits under the odd-lot doctrine. In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee

include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

Based on the above findings of fact, I conclude Ms. Bonilla failed to prove a prima facie case of total disability by producing substantial evidence that she is not employable in the competitive labor market. Thus, I conclude the odd-lot doctrine does not apply to Ms. Bonilla.

Considering all of the industrial disability factors, I conclude Ms. Bonilla proved a 60 percent loss of future earning capacity as a result of the combined effects of her right arm and left arm injuries. Industrial disability benefits are paid in relation to 500 weeks. Iowa Code section 85.34(2)(v). Therefore, I conclude that claimant is entitled to an award of 300 weeks of permanent partial disability benefits as a result of her combined effects of the May 18, 2015 right arm injury and the March 13, 2017 left arm injury.

The next issue is the Second Injury Fund's entitlement to a credit against the permanent disability awarded. The Second Injury Fund is entitled to a credit for any permanent disability sustained to the separate scheduled members that constitute the first and second qualifying injuries. Iowa Code section 85.64(1).

In this instance, I found claimant sustained 5 percent permanent functional disability as the result of the May 18, 2015 right arm injury. Pursuant to Iowa Code section 85.34(2)(m), injuries to the arm are compensated on a 250 week schedule. Thus, Ms. Bonilla is entitled to 12.5 weeks of permanent partial disability for the May 18, 2015 injury to the right arm. I found that claimant sustained 6 percent permanent functional disability as a result of the March 13, 2017 left arm injury. Thus, Ms. Bonilla is entitled to 15 weeks of permanent partial disability for the March 13, 2017 injury to the left arm. Therefore, the fund is entitled to a credit totaling 27.5 weeks against the industrial disability award. Iowa Code section 85.64(1). Having determined that claimant is entitled to 300 weeks of permanent partial disability benefits as a result of the combined effects of these two injuries, I conclude that the Second Injury Fund is obligated, after its credits, to pay claimant an additional 272.5 weeks of benefits.

The parties have agreed that the Second Injury Fund's benefits commence upon the expiration of the employer's obligation to pay benefits for the second injury. Iowa Code section 85.64(1).

Claimant is seeking payment of past medical expenses from Tyson in connection with the March 13, 2017 injury. 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).

In this case, the medical expenses were incurred in connection with care that was not authorized by the defendant. Bell Bros. Heating v. Gwinn, 779 N.W. 2d 193 (Iowa 2010) sets for the standards under which unauthorized medical can be reimbursed. The Bell Brothers standard allows for medical bills to be reimbursed if the unauthorized care "provided a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 at 208 (Iowa 2010).

In the present case, Ms. Bonilla sought treatment on her own, without consulting Tyson. There is not sufficient evidence by the claimant to meet the Bell Brothers standard that the care she sought on her own provided a more favorable outcome than treatment defendant, Tyson, would have provided to the claimant if given the opportunity. Therefore, I conclude claimant has failed to carry her burden of proof to show entitlement to payment of the medical expenses contained in Claimant's Exhibit 9.

Claimant is also seeking reimbursement for two independent medical evaluations pursuant to Iowa Code section 85.39.

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).

Based on the above findings of fact, I conclude claimant has demonstrated by a preponderance of the evidence that she is entitled to reimbursement for the full amount

of Dr. Bansal's IME. However, I conclude claimant has failed to carry her burden of proof to show entitlement to reimbursement for the IME of Dr. Gersh.

Claimant is seeking an assessment of costs in the amount of $6,414.18.

The Second Injury Fund Act does not provide for costs to be paid from the Fund. (Iowa Code section 85.64). Additionally, subsection 2 of Iowa Code section 85.66, which codifies the creation of the Fund, specifically states, in pertinent part ". . . Moneys collected in the second injury fund shall be disbursed only for the purposes stated in this subchapter, and shall not at any time be appropriated or diverted to any other use or purpose." The plain language of Iowa Code section 85.66 does not allow for the assessment of costs against the Fund. Houseman v. Second Injury Fund, File No. 5052139 (Arb. Dec. Aug. 8, 2016); see also Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, at 845 (Iowa 2015) (declaring an agency's authority to tax costs cannot go beyond the scope of the powers delegated in the governing statute). The Fund cannot be assessed for any of the requested costs. Hannan v. Second Injury Fund of Iowa, File No. 5052402 (App. July 25, 2018). I conclude that costs cannot be assessed against the Second Injury Fund of Iowa.

Because claimant was at least partially successful in her claims against Tyson, I find an assessment of costs against Tyson is appropriate. Tyson makes no argument why the requested costs should not be assessed. I find the petition filing fee and costs of service are appropriate costs. Claimant is also seeking reimbursement for the deposition transcript which is contained in Defendant's Exhibit 1. I find these are appropriate costs. Defendant, Tyson, is assessed costs in the amount of $312.18.

Claimant is seeking reimbursement for the vocational report of Carma Mitchell in the amount of $390.00. Claimant is also seeking reimbursement for the report of Dr. Gersh in the amount of $2,750.00. Claimant contends these are the reasonable costs of obtaining no more than two doctor's or practitioner's reports. Tyson makes no argument why these costs should not be assessed.

The cost of two practitioner reports is allowed as costs pursuant to our rule 876 IAC 4.33. This agency has determined that reports from vocational counselors are considered practitioner reports as defined in our rule 876 IAC 4.17. The cost of Carma Mitchell's vocational report is assessed against Tyson in the amount of $390.00.

We now turn to the expenses claimant incurred in connection with Dr. Gersh. Pursuant to Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), I conclude that only charges related to drafting of a report to avoid the necessity of trial testimony are legitimately taxed as costs. Unfortunately, the billing statement from Dr. Gersh's office is not detailed enough for the undersigned to decipher which charges are specifically attributed to Dr. Gersh's drafting of a report. Therefore, defendants are not assessed costs with regard to Dr. Gersh's billing statement.

Tyson is assessed costs totaling $702.18.

ORDER

THEREFORE, IT IS ORDERED:

File No. 5060444 (Date of Injury: March 13, 2017 and Second Injury Fund Date of Injury: May 18, 2015):

All weekly benefits shall be paid at the stipulated rate of four hundred twenty-seven and 01/100 dollars ($427.01).

Defendant, Tyson, shall pay fifteen (15) weeks of permanent partial disability benefits commencing on the stipulated commencement date of March 14, 2017.

Defendant shall be entitled to credit for all weekly benefits paid to date.

Defendant, Second Injury Fund of Iowa, shall pay two hundred seventy-two point five (272.5) weeks of permanent partial disability benefits commencing upon the expiration of the employer's obligation to pay benefits for the second injury.

Defendant, Tyson, shall reimburse claimant for the IME of Dr. Bansal.

Defendant, Tyson, shall reimburse claimant costs as set forth above.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

File No. 5060445 (Date of Injury: May 18, 2015):

All weekly benefits shall be paid at the stipulated rate of three hundred seventy-eight and 55/100 dollars ($378.55).

Defendant, Tyson, shall pay twelve point five (12.5) weeks of permanent partial disability benefits commencing on the stipulated commencement date of May 19, 2015.

Defendant, Tyson, shall be entitled to credit for all weekly benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

Defendant, Tyson, shall reimburse claimant for the IME of Dr. Bansal.

Defendant, Tyson, shall reimburse claimant costs as set forth above.

Defendant, Tyson, shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 28th day of May, 2019.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EQP/srs

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, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.