BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ASHLEY HEINRICH, Claimant, vs. AREA AMBULANCE AUTHORITY, INC., Employer, and ACCIDENT FUND INSURANCE CO. OF AMERICA, Insurance Carrier, Defendants.	:	File No. 5061839 A R B I T R A T I O N D E C I S I O N Head Notes: 1402.20, 1802, 2501, 2907

STATEMENT OF THE CASE

Claimant, Ashley Heinrich, filed a petition in arbitration for workers' compensation benefits against Area Ambulance Authority, Inc., employer, and its insurer, Accident Fund Insurance Company of America, both as defendants. The undersigned heard this case on November 4, 2019, in Des Moines, Iowa.

The parties filed a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 5, and Defendants' Exhibits A through E. Claimant testified on her own behalf. The evidentiary record closed at the conclusion of the arbitration hearing.

Counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. All parties filed their post-hearing briefs on November 25, 2019, at which time the case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained a right hip injury, which arose out of and in the course of employment on February 8, 2016;

2. Whether the alleged injury caused temporary disability and, if so, the extent of claimant's entitlement to temporary disability benefits, if any;

3. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits, if any;

4. Whether claimant is entitled to medical benefits, including payment of medical expenses, reimbursement for an independent medical examination pursuant to Iowa Code section 85.39, and alternate medical care;

5. Whether claimant is entitled to penalty benefits; and

6. Costs.

FINDINGS OF FACT

Ashley Heinrich was born in August 1986, making her 33 years old on the date of the evidentiary hearing. (Hearing Transcript, page 14) She is a high school graduate. (Hr. Tr., p. 15) Claimant obtained EMT certification from Kirkwood Community College in December 2014. (Id.).

Claimant began working for the defendant employer as an EMT in March 2015. (Hr. Tr., pp. 16-17) At the time she was hired, claimant had no restrictions. As an EMT, claimant responded to calls and provided care to individuals in emergency situations. (Hr. Tr., p. 17) Claimant resigned in January 2018 to pursue a new career with the Cedar Rapids Community School District. (Hr. Tr., p. 16)

On February 8, 2016, claimant was responding to a call for assistance in Cedar Rapids, Iowa. (Hr. Tr., p. 19) This particular patient needed to be lifted onto a gurney and transported to the hospital for further treatment. (See Id.) Claimant participated in a team lift of the patient. The patient was placed on a stretcher and buckled in place. According to claimant, she experienced shooting pain in her lower back when she attempted to lift the gurney into the ambulance. (Id.)

Defendants do not dispute that claimant sustained an injury to her low back on February 8, 2016, arising out of and in the course of her employment with Area Ambulance. However, defendants assert the injury to claimant's low back was temporary in nature. Defendants further assert claimant did not sustain an injury to the right hip on the date of injury or as a sequela injury.

The medical records in evidence do not demonstrate that claimant received any medical treatment for low back or hip pain prior to the alleged date of injury. Claimant testified to the same at hearing. (Hr. Tr., pp. 17-18)

After claimant reported the injury, defendants authorized medical treatment and sent claimant to St. Luke's WorkWell Clinic. (Joint Exhibit 1, p. 1) Claimant reported acute low back pain, with radiating pain in the right posterior thigh. (Id.) Edward Ford, M.D. opined claimant likely sustained a lumbar strain. Given the fact claimant was, at the time, five months pregnant, Dr. Ford provided that he would avoid imaging studies if at all possible, and pursue conservative treatment. (Id.) Dr. Ford further explained that claimant may be slightly more apt to sustain a back strain than a non-pregnant person given the laxity of pelvic and supporting ligaments during pregnancy. (Id.) Dr. Ford closed his medical record by taking claimant off work and prescribing pain medication. (JE1, pp. 1-2)

Claimant presented to Shirley Pospisil, M.D. on February 10, 2016. (JE1, p. 3) Claimant continued to complain of pain in her lumbar region. (Id.) After her examination, Dr. Pospisil returned claimant to work with a 25-pound lifting restriction. It was also recommended that claimant alternate walking, standing, and sitting as needed. (Id.)

Claimant began presenting to physical therapy on or about February 16, 2016. The physical therapist diagnosed claimant with sacrococcygeal discomfort and low back pain. Physical therapy records note claimant presented with pelvic rotation. (See Ex. E, p. 1)

Claimant returned to Dr. Pospisil on February 24, 2016, with complaints of occasional tingling in the lateral aspect of her right thigh. (JE1, p. 4) It is noted that physical therapy was helping to mitigate claimant's complaints. (Id.) Dr. Pospisil continued claimant's 25-pound lifting restriction, but provided claimant could return to driving an ambulance for the defendant employer if the same was cleared by her OB/GYN. (Id.)

Claimant reported minimal pain and requested a trial return to regular duty work on March 9, 2016. (JE1, p. 5)

Unfortunately, claimant's low back pain had returned by June 6, 2016. (See JE1, p. 6) She described low back pain, and the occasional pain in her left buttocks. (Id.) Claimant was 36 weeks pregnant at the time of her medical appointment with Dr. Pospisil. (Id.) Dr. Pospisil opined it was hard to determine whether claimant's then-current pain stemmed from the original work injury or her pregnancy. (Id.) Dr. Pospisil's medical record notes claimant had not yet picked up her TENS unit by the March 9, 2016, appointment. (Id.) It is unclear from the evidentiary record exactly when a medical professional recommended claimant obtain a TENS unit for her symptoms.

Claimant gave birth to a daughter on July 4, 2016. (See JE1, p. 7)

When she returned to Dr. Pospisil's office on August 9, 2016, claimant was not experiencing any pain; however, the medical record notes that claimant "[had] a problem when she was at work for a meeting." (JE1, p. 7) The medical record does not elaborate on the problems claimant experienced. (Id.) Dr. Pospisil subsequently returned claimant to work without restrictions. (Id.)

Claimant returned to full duty work on or about September 5, 2016. (See JE1, p. 7) She worked on a full-time, full duty basis from approximately September 2016, to January 2018. (Hr. Tr., p. 21)

Due to claimant's ongoing complaints of intermittent back pain and difficulty sitting, a MRI was ordered on October 4, 2016. (See Ex. E, p. 2)

Claimant presented for a MRI, secondary to long-term pain, on October 12, 2016. (See JE1, p. 8) The MRI revealed a shallow, right paracentral broad-based disk protrusion at L5-S1, which abutted the descending right S1 nerve root. (JE2, p. 15; See JE1, p. 8)

Dr. Pospisil reviewed the diagnostic imaging and scheduled claimant for a reevaluation of her low back pain on October 18, 2016. (JE1, p. 8) At the time of the appointment, claimant was not experiencing pain in her low back. She was not experiencing tingling down her leg or into her foot. (Id.) However, claimant reported she would occasionally experience pain when moving in certain directions. (Id.) Dr. Pospisil gave claimant a prescription for a TENS unit and returned her to work without restrictions. (JE1, p. 8) Dr. Pospisil estimated that claimant would soon be at maximum medical improvement (MMI). (Id.)

Claimant continued to report no radiating pain at her November 29, 2016, appointment. (JE1, p. 10) She did, however, report that her back pain was still quite painful on occasion. (Id) On examination, Dr. Pospisil noted pain in the paraspinal muscles on the left, and detailed how claimant's muscles were palpably tighter on the left than on the right. (Id.) Dr. Pospisil prescribed a short course of physical therapy, "as a last measure." (Id.) It is noted claimant had not presented for any physical therapy since having her child in July 2016. (Id.)

Claimant returned to Dr. Pospisil on December 20, 2016, reporting that the pain in her low back would increase following her physical therapy appointments. (JE1, p. 13) Despite this increase in pain, claimant was optimistic that her symptoms would get better with time and she wanted to continue on with physical therapy. (Id.) Claimant relayed that the pain in her back did not radiate to any other body parts or extremities. (Id.) Claimant's lower lumbar region remained tender to palpation. (Id.) Dr. Pospisil provided that the protrusion abutting claimant's descending S1 nerve root did not appear to bother her. (Id.) Dr. Pospisil recommended claimant continue with physical therapy and her TENS unit. (Id.)

Following the recommendation for additional physical therapy, defendants produced a letter to Dr. Pospisil on December 20, 2016[1] requesting her opinion as to whether claimant's ongoing physical therapy and recommendation for a TENS unit was directly and causally related to the lifting incident at work on February 8, 2016. (JE1, pp. 11-12) Dr. Pospisil checked "yes" and explained claimant has reported intense pain with work. (JE1, p. 12) Despite opining claimant required additional treatment, Dr. Pospisil estimated it would be reasonable to place claimant at MMI following her upcoming January 7, 2017, medical appointment. (Id.)

Physical therapy records from January 2017 note claimant continued to work on a full duty basis, however, she experienced pain with work activities. (JE5, p. 35) Claimant provided that prolonged sitting and some lifting activities aggravated her condition. (Id.)

In the February 8, 2017, medical record from Dr. Pospisil's office, claimant continued to report that she occasionally experienced pain in her low back. (JE1, p. 14) It is noted that physical therapy, "pulled on her legs" to relieve her pain. (Id.) Following her examination, Dr. Pospisil discontinued physical therapy and recommended claimant continue to utilize her home exercise program. Dr. Pospisil returned claimant to work without restrictions and provided she had not sustained any permanent impairment. (Id.)

Nicholas Bingham, M.D. of MercyCare Occupational Health took over as claimant's authorized treating physician on August 31, 2017. (JE4, p. 18) In detailing claimant's injury history, Dr. Bingham notes that claimant's physical therapist had initially diagnosed her with SI joint dysfunction. Claimant reported that despite her release from Dr. Pospisil's care, the pain in her low back never completely resolved. (Id.) Claimant relayed that if she sat for too long she would experience symptoms from the right low back down her posterior thigh. Claimant estimated that she could ride in a car for 60 to 90 minutes before her condition became painful. (Id.) On examination, Dr. Bingham observed tenderness over the right lumbosacral area and a slight leg length discrepancy. (JE4, p. 19)

With the understanding that claimant's symptoms never completely resolved, and the fact claimant denied experiencing any intervening incidents, Dr. Bingham expressed his belief that claimant's then current condition was related to the original lifting incident on February 8, 2016. (JE4, p. 20)

Dr. Bingham felt that claimant's symptoms stemmed from the SI joint area. He explained posterior thigh symptoms would be consistent with an S1 lesion, and the weakness in claimant's knee flexion, while subtle, was concerning. (Id.) Dr. Bingham provided that SI joint dysfunction can be long-lasting if the condition is not appropriately treated. (Id.) Dr. Bingham further opined SI joint dysfunction does not show up reliably on MRI, particularly if dedicated pelvic images are not ordered. (Id.) According to Dr.

[1] The letter is dated, "December 02, 2016." It is likely the "02" is a typo. In the letter, Dr. Pospisil provides it would be reasonable to place claimant at MMI at her next appointment, "which is 1/7/17." On December 2, 2016, claimant's next appointment would have been December 20, 2016, not January 7, 2017.

Bingham, most cases of SI joint dysfunction are diagnosed clinically and by treating presumptively for it in physical therapy. (Id.) Dr. Bingham recommended claimant present to a physical therapist who possessed extensive experience in SI joint dysfunction presumptive treatment. (Id.) He did not feel as though claimant was a surgical candidate. (Id.) Following his examination, Dr. Bingham returned claimant to work without restrictions. (Id.)

Claimant returned to Dr. Bingham's office on September 18, 2017, with complaints of pain and a burning sensation at the right SI joint. (JE4, p. 21) Claimant's physical therapist found claimant to be very limited with hip extension. (See JE4, p. 21) Dr. Bingham again observed a slight leg length discrepancy and noted that claimant's FABER test, which evaluates pathology of the sacroiliac joint, induced SI joint pain. (JE4, p. 22)

Claimant's physical therapist felt that claimant's SI joint was out of place in October 2017. (See JE4, p. 23) Claimant's physical therapist recommended increasing the frequency in which claimant presented for physical therapy. The physical therapist also recommended limiting claimant's work activities. (See JE4, p. 24) Claimant was resistant to limitations on her job duties, as she felt work restrictions would pull her out of work altogether. (JE4, p. 24) Dr. Bingham agreed to increase the frequency in which claimant presented to physical therapy; however, he did not place restrictions on claimant's work activities. (Id.)

Claimant had issues committing to or making three physical therapy appointments per week because of conflicts with her work schedule and the fact she was presenting for physical therapy at a satellite location with limited hours. (See JE4, p. 23)

Claimant noted minimal improvement at her October 24, 2017, appointment with Dr. Bingham. (JE4, p. 25) She continued to present with right SI joint pain. (Id.) On examination, Dr. Bingham noted tenderness over the right and left SI joints, greater on the right. (Id.) Claimant's FABER test remained positive. (Id.)

In the notes section of his report, Dr. Bingham provides, "Both myself and the physical therapist think that the SI joint dysfunction diagnosis is accurate." (JE4, p. 26) Due to his belief that the SI joint was somewhat dislocated, he declined to offer claimant SI joint injections. (Id.) However, claimant would eventually receive SI joint injections on November 17, 2017, after her physical therapist expressed her belief that the joint was "in [place]" immediately prior to Dr. Bingham's November 17, 2017, appointment. (JE4, p. 27) The medical record provides claimant's physical therapist had been successful in putting the joint back in place in the past; however, it would routinely slip back out of place at some point thereafter. (Id.)

Pain specialist Julie Saddler, M.D. diagnosed claimant with bilateral SI joint dysfunction and administered ESIs for the same on December 6, 2017. (See Ex. E, p. 4) Dr. Saddler agreed with Dr. Bingham that an MRI is of little utility for claimant's condition, and requested only a recent plain pelvis x-ray. (See JE4, p. 28) Said x-ray

was obtained on December 4, 2017. (JE4, p. 29) The radiologist determined the x-ray was negative for fracture, dislocation, or malignant bone destruction. (Id.) Both hip and SI joints appeared to be well-maintained. (Id.)

Following the December x-ray, claimant's physical therapist no longer believed that the SI joint occasionally popped out of place; rather, the physical therapist now believed that claimant's sacrum moved bilaterally in relation to her iliac. (See JE4, p. 30)

Claimant presented to Dr. Bingham for a follow-up appointment in the beginning of January, 2018. (See Ex. E, p. 4; Ex. 1, p. 3) Claimant presented with pain in her lower back and right hip. (See Ex. 1, p. 3)

Physical therapy records from February 2018, note claimant would benefit from a physical therapy program consisting of manual interventions to aid with SI joint mobility and piriformis restrictions, in conjunction with hip strengthening, core stabilization, and work-simulation tasks while maintaining a stable core. (JE6, p. 42) In discussing her limitations, claimant provided that her pain did not prevent her from walking, but it did make walking more difficult. She further provided sitting and standing present similar issues. (See Id.)

Claimant returned to Dr. Bingham's office on February 19, 2018. (JE4, p. 30) It is noted that claimant was now working in a new position for a school district without much difficulty. (Id.) Claimant's pain complaints ranged from 0 to 4 out of 10. (Id.) Dr. Bingham was unsure whether an additional SI joint injection would be in order, despite the fact claimant received near complete relief for a short period of time following her last injection. (Id.) After his February 19, 2018, examination, Dr. Bingham opined he would not recommend claimant pursue an SI joint fusion at that time. (JE4, p. 31) Dr. Bingham felt an additional medical opinion could be beneficial. (Id.)

Claimant apparently experienced an increase in her symptoms when she did not present for or receive physical therapy between February and April 2018. (See Ex. E, p. 4) Dr. Bingham did not feel there was anything he could offer claimant and recommended she consult a surgeon. (See Ex. E, p. 4)

Neurosurgeon Chad Abernathey, M.D. examined claimant on June 4, 2018. (JE7, p. 48) He diagnosed claimant with a chronic subjective lumbosacral strain and opined there was no need for any additional medical or surgical treatment due to the paucity of claimant's clinical and radiographic findings. (Id.) He further opined claimant had reached MMI as of August 8, 2016. (JE7, p. 49) Dr. Abernathey did not feel claimant's condition required an impairment rating or permanent restrictions. (Id.)

Claimant presented for an independent medical examination, performed by Farid Manshadi, M.D., on August 2, 2018. (See Ex. 1, p. 5) Claimant complained of ongoing pain across her lower back into the area above the buttocks. (Ex. 1, p. 7) After performing a physical examination and reviewing claimant's medical records, Dr. Manshadi assessed claimant with a lumbosacral strain, as well as bilateral sacroiliac joint strains. (Id.) Dr. Manshadi causally related the conditions to claimant's work injury.

(Id.) Dr. Manshadi placed claimant at MMI as of August 2, 2018, and assessed permanent impairment. (Id.) Dr. Manshadi placed claimant in DRE Lumbar Category II and assigned six percent impairment to the whole person as a result of her injury. (Id.) In terms of restrictions, Dr. Manshadi recommended claimant be able to sit, stand, and walk on an as needed basis. He further recommended she avoid lifting anything heavier than 30 to 40 pounds, and repetitious bending, stooping, or twisting at the waist. (Id.) Lastly, Dr. Manshadi discussed the possibility of claimant undergoing an SI joint fusion, should conservative treatment fail to alleviate claimant's symptoms. (Id.)

On August 21, 2018, Molly Berger, PA-C, examined claimant at Mercy Medical Center and documented pelvic tilting. (Ex. E, p. 4)

Claimant requested additional medical treatment on January 10, 2019. (Ex. 3, p. 27) Defendants denied authorization of the medical care requested by claimant on January 14, 2019. (See Ex. 3, p. 28)

Following defendants' denial, claimant presented to primary care physician, Malhar Gore, M.D. on January 23, 2019. (JE8, p. 52) She reported intermittent, chronic pain in her low back and right hip. (JE8, p. 52) Dr. Gore diagnosed claimant with chronic right hip pain or strain. (JE8, p. 53) Following his examination, Dr. Gore obtained an x-ray of claimant's right hip. (See JE8, p. 57) The attending radiologist found no acute fracture or dislocation. Claimant's SI joint appeared unremarkable. (JE8, pp. 57-58) Dr. Gore agreed that the right hip and pelvis x-ray appeared normal. (JE8, p. 60)

It appears defendants authorized a return visit to Dr. Bingham sometime after their January 14, 2019, denial.

Claimant returned to Dr. Bingham on March 6, 2019, complaining of pain in the right lumbosacral area that occasionally radiated around the hip. (JE4, p. 32) Claimant reported her condition had gone downhill steadily since her physical therapy was discontinued in March 2018. (Id.) Claimant told Dr. Bingham that she had recently presented for physical therapy through her own health insurance. (JE4, p. 33) Following his examination, Dr. Bingham relayed claimant could continue with physical therapy to treat her ongoing back pain; however, he did not expressly recommend the same given that physical therapy would not be curative this late into claimant's condition. (JE4, pp. 33-34)

Dr. Bingham opined that for any other disorder, he would be skeptical of its relatedness to a two-year-old injury; however, he explained sacroiliitis can have a chronic course, such as the one claimant presents with. (JE4, pp. 33-34) Dr. Bingham further opined claimant exhibited three positive physical signs for sacroiliitis (positive Gaenslen's Test, positive Faber's test, and positive SI joint compression tests), in addition to the fact claimant experienced a positive response to SI joint injection. (Id.)

An MRI of claimant's lumbar spine, ordered by Dr. Gore and dated April 17, 2019, was not markedly different from the October 2016, MRI report. (See JE3, pp. 16-17)

Claimant presented to Thomas Paynter, M.D. on April 30, 2019. (JE9, p. 65) Dr. Paynter opined claimant's MRI was concerning for a possible labral tear. (JE9, p. 66) Dr. Paynter ordered an MR Arthrogram of the right hip to further elucidate the labral tear. (Id.) It is later noted in the medical records that claimant received relief from the arthrogram injection. (JE9, p. 69)

According to Dr. Paynter, the MR arthrogram of claimant's right hip, dated May 21, 2019, revealed a superior labral tear. (JE9, p. 67) Dr. Paynter opined claimant's physical examination history was consistent with the same, and diagnosed claimant with a tear of the right acetabular labrum. (Id.) Dr. Paynter referred claimant to Matthew White, D.O. for further evaluation and consideration of surgical intervention. (Id.)

Dr. White confirmed the presence of a labral tear after reviewing claimant's MR arthrogram on June 6, 2019. (JE9, pp. 69-70) ("She clearly has an anterior superior labral tear.") Dr. White was not able to explain claimant's low back pain in relation to the labral tear. (JE9, p. 70) Dr. White determined claimant would be a candidate for a right hip arthroscopy with labral repair. (Id.)

Dr. White performed a right hip arthroscopy with labral repair on July 1, 2019. (JE9, p. 73) During surgery, Dr. White determined claimant's labrum was significant for a tear. (JE9, p. 74) Dr. White's pre-operative and post-operative diagnoses remained constant. (JE9, p. 73)

Claimant's counsel conducted a conference call with Dr. White on July 2, 2019. (See Ex. 2, p. 25) He subsequently produced a set of pre-written opinions to Dr. White for his review and approval. (Ex. 2, pp. 25-26) On July 29, 2019, Dr. White signed off on the pre-written report, indicating he adopted the pre-written opinions as his own. (Ex. 2, p. 26) Importantly, Dr. White agreed that the February 8, 2016, work injury more likely than not caused the labral tear he addressed surgically on July 1, 2019. (Ex. 2, p. 25) He further agreed that claimant would likely reach MMI within six months of undergoing the corrective surgery. (Id.)

At the request of defendants, William Boulden, M.D. examined claimant on September 19, 2019. (Ex. E) Claimant's chief complaint was low back pain, right greater than left, specifically in the right SI joint area. (Ex. E, p. 1) Dr. Boulden did not examine claimant's hip flexors, abduction strength, or range of motion because of her recent surgical intervention. (Ex. E, pp. 7-8) Dr. Boulden diagnosed claimant with myofascial pain and mechanical back pain, with a lack of proper rehabilitation. (Ex. E, p. 8) He opined the pathology identified at L5-S1 was pre-existing. Dr. Boulden disagreed with Dr. White's opinion that the alleged right labral tear was causally related to the February 8, 2016, work injury. As justification for his disagreement, Dr. Boulden explained that claimant, "never really complained … of having a lot of groin pain at all." (Id.) He further discussed the lack of any physician discussing any impingement signs

on plain x-ray or on an MRI. It is important to note Dr. Boulden expressly provides he did not review any of claimant's diagnostic imaging prior to rendering his causation opinions. (Id.) In his report, Dr. Boulden acknowledged it would be important for him to review claimant's diagnostic imaging to, "make sure that my opinions will not change." (Id.)

Dr. Boulden produced a one paragraph addendum to his September 19, 2019, IME report on September 30, 2019. (Ex. E, p. 10) Dr. Boulden reviewed the MRI of the hip and provided that the opinions expressed in his initial report did not change. The addendum also provides that Dr. Boulden had still not reviewed the MRI of claimant's lumbar spine. (Id.) The addendum is silent as to the x-rays of claimant's right hip, as well as the MR arthrogram of claimant's right hip.

Claimant provided Dr. Boulden's report, amongst other medical records, to Dr. Manshadi and requested he provide an updated opinion in September 2019. (Ex. 1, pp. 9-10) Dr. Manshadi obliged claimant's request and drafted an updated report on October 2, 2019. (Ex. 1, p. 11) Dr. Manshadi disagreed with Dr. Boulden's causation opinions. (Ex. 1, p. 12) Rather, Dr. Manshadi agreed with Dr. White's conclusion that the labral tear in claimant's right hip was causally related to the February 8, 2016, work injury. Dr. Manshadi opined he was unsure as to how Dr. Boulden came to the conclusion that claimant did not exhibit SI joint dysfunction or a leg length discrepancy given the medical record. (Ex. 1, p. 12) Dr. Manshadi provided, "[I]t is well documented in the records and also by Ms. Heinrich's report that she initially experienced pain in her low back as well as pain radiating down into her right posterior thigh and hip area." (Ex. 1, p. 11) Dr. Manshadi further opined the mechanism of injury described by claimant could cause a labral tear. (Id.) In support of his opinion, Dr. Manshadi also discussed the fact claimant had no issues with her right hip joint prior to the February 2016 work injury. Lastly, Dr. Manshadi disagreed with Dr. Boulden's opinion that claimant will not require any surgical treatment for her low back complaints. Dr. Manshadi opined an SI joint fusion remains an avenue for treatment. (Ex. 1, p. 12)

At hearing, claimant credibly testified that she experienced the same symptoms, intermittently, in her low back, buttocks, and right side throughout all of her medical treatment. Claimant testified that the right hip arthroscopy with labral repair helped her symptoms. (Hr. Tr., p. 33) Claimant can now lay down on her back and side; something she could not do prior to surgery. (See Hr. Tr., p. 33) Claimant walks between six and ten miles per day as a school safety official for Community College School District. (Hr. Tr., p. 32) Claimant continues to experience tightness and discomfort in her low back; however, claimant testified her symptoms have improved. (See Hr. Tr., pp. 32-33)

Claimant returned to full duty work for the defendant employer on Labor Day weekend, 2016. She remained in a full-time, full duty position from Labor Day 2016 to January 2018, when she voluntarily resigned from her position as an EMT. Claimant applied for and obtained a position with Cedar Rapids Community School District. She worked for CRCSD from January to August 2018. (See Ex. C, pp. 2-3) She subsequently took a job as a school safety official at College Community School District. Claimant remained in this position through the date of the evidentiary hearing. (Hr. Tr.,

p. 16) College Community School District does not accommodate claimant in any way. (Hr. Tr., p. 38) As a school safety official, claimant works with students that have issues with missing or skipping class. Claimant works with these individuals to try to develop a plan that will get them back in the classroom. (See Hr. Tr., p. 36) Claimant participates in a mandated training seminar where she learns how to properly restrain an unruly student. (Hr. Tr., p. 40) Claimant testified she has never had to restrain or call the police on a student. (Hr. Tr., p. 38)

The first issue to be addressed is whether claimant's hip symptoms and need for surgical intervention are related to the February 8, 2016, work injury. The parties stipulate that claimant sustained an injury to the low back on February 8, 2016; however, defendants dispute whether claimant sustained an injury to the right hip on February 8, 2016.

An important distinction needs to be made, as it is not entirely clear from either party's post-hearing brief. Defendants repeatedly assert that claimant did not complain of right hip pain until March 2019. This is somewhat misleading. It is clear from the evidentiary record that claimant reported and was diagnosed with SI joint dysfunction well before March 2019. This joint connects the spine to the hip. So, in a broad sense, claimant's hip has been involved in this claim since the very beginning. Claimant repeatedly, and correctly, hammers this point home in her post-hearing brief. For purposes of this arbitration decision, the right hip injury can be broken down into an injury to the SI joint, and an injury to the acetabular labrum.

Given that it is virtually indisputable that claimant presented with issues in her SI joint on or shortly after the date of injury, it is more likely defendants are asserting the tear of the right acetabular labrum is not related to the original work injury. The acetabular labrum and the SI joint are two different things; one connects the spine to the hip, while the other is part of the hip socket, which connects the hip to the leg. By asserting claimant did not complain of hip pain prior to March 2019, it appears defendants more narrowly mean claimant did not complain of pain in her groin, or any symptoms they believe would be associated with a tear of the acetabular labrum, until March 2019.

There are three expert opinions that address causation with respect to claimant's right hip condition. While there are technically four expert reports in the evidentiary record, only Drs. White, Manshadi, and Boulden address causation of the labral tear.

In total, there are two expert opinions that provide claimant's right hip condition, including the labral tear, and the resulting surgical intervention are causally related to the February 8, 2016, work injury.

Dr. White, who had the opportunity to examine claimant intra-operatively, opined the February 8, 2016, work injury more likely than not caused the labral tear that he surgically repaired. (Ex. 2, pp. 25-26) After reviewing updated medical records, including the IME report of Dr. Boulden, Dr. Manshadi agreed with Dr. White and found claimant sustained a right hip anterior superior labral tear as a result of her February 8,

2016, work injury. (Ex. 1, p. 11) Dr. Manshadi further opined it is well documented in the medical records and in claimant's own reports that she initially experienced pain in her low back as well as pain radiating down into her right posterior thigh and hip area. (Id.) In his initial IME report, Dr. Manshadi opined that claimant's SI joint dysfunction was causally related to the February 8, 2016, work injury.

Dr. Boulden is the only expert physician to find claimant's right hip condition, including the labral tear, and the need for surgical intervention were not causally related to the February 8, 2016, work injury.

The undersigned has a difficult time assigning any weight to the expert opinions of Dr. Boulden in this case. This is largely due to the fact that he made his causation opinions based on an incomplete record. Dr. Boulden did not review any of claimant's diagnostic imaging prior to rendering his causation opinions. While I feel this alone would be enough for any deputy commissioner to reject the causation opinions of Dr. Boulden in this case, it is also worth noting Dr. Boulden did not physically examine claimant's right hip due to the fact claimant had recently undergone surgical intervention. Essentially, Dr. Boulden conducted an independent records review without the most important records.

Dr. Boulden's IME report reads more like a critique of claimant's treating physicians than an IME report. Dr. Boulden's critiques are unhelpful and largely unnecessary. Dr. Boulden critiques the expert opinions of Drs. White, Bingham, and Manshadi – which, in part, were based on their respective reviews of claimant's diagnostic imaging – without having actually reviewed claimant's MRIs and x-rays, himself.

In discussing causation for claimant's low back and SI joint pain, Dr. Boulden provides:

> I see no indication to even consider an SI joint fusion. I have not had a chance to review the MRIs that she has had, so I cannot comment, but there was no mention of the SI joints in those reports. The pathology identified at L5-S1, in my opinion, was pre-existing based on the alleged report.

(Ex. E, p. 8) Further comment on the futility of this statement seems unnecessary.

In discussing causation of the labral tear, Dr. Boulden provides that he does not agree with the causation opinions of Dr. White. Dr. Boulden provides at least two reasons for his disagreement. First, he explains, "[claimant] has never really complained, by her own history, of having a lot of groin pain at all. Most of her pain was in the right lower back area[.]" (Id.) Stated another way, claimant has complained of having some groin pain. Second, Dr. Boulden discusses what he believes to be key details missing from Dr. White's analysis of claimant's x-rays, MRIs, and MR arthrogram. Dr. Boulden then stresses the importance of reviewing and analyzing claimant's diagnostic imaging. This is not a convincing argument. Again, Dr. Boulden

critiques Dr. White's findings and conclusions, and holds the February 18, 2016, injury had nothing to do with the right hip pathology or labral tear, prior to reviewing any of claimant's diagnostic imaging.

Dr. Boulden's September 30, 2019, addendum does little to mitigate the damage done through his initial report. First, the addendum only provides Dr. Boulden reviewed the MRI of claimant's right hip. There is no indication Dr. Boulden reviewed the MR arthrogram of the right hip, the x-rays of claimant's right hip, or the MRI of claimant's lumbar spine. (See Ex. E, p. 10) Second, the addendum does not take away from the fact Dr. Boulden rendered his initial causation opinions prior to reviewing any of claimant's diagnostic imaging. Dr. Boulden's addendum provides no additional analysis other than to say his initial opinions regarding causation remain the same. It cannot be said that the brief addendum report mitigates the significant credibility issues presented by Dr. Boulden's initial IME report.

For all of the above reasons, I do not find Dr. Boulden's opinion to be insightful or persuasive in this matter.

The evidentiary record as a whole does not support defendants' assertion claimant did not complain of symptoms in the right hip until March 4, 2019. Rather, the evidentiary record shows claimant consistently complained of pain and discomfort in her low back, buttocks, and thigh throughout her medical treatment. Claimant acknowledged at hearing that her symptoms would wax and wane in terms of severity, but they were always present to some degree.

Initially, claimant's medical treatment was limited by the fact she was pregnant on the date of injury. After claimant had her daughter in July 2016, and returned to work in September 2016, additional treatment measures, including diagnostic imaging, were conducted. An MRI of claimant's lumbar spine was ordered in October 2016. Physical therapy was continued in December 2016. Shortly thereafter, claimant told Dr. Pospisil that physical therapy increased her pain complaints. (JE1, p. 13) It is noted claimant's physical therapists pulled on her legs to relieve some of her pain. (JE1, p. 14) Despite her complaints of ongoing, intermittent pain, Dr. Pospisil released claimant from care in February 2017. (Id.) When claimant presented to Dr. Bingham in August 2017, she relayed that her pain never resolved. (JE4, p. 1)

In his initial medical record, Dr. Bingham notes that physical therapy originally diagnosed claimant with SI joint dysfunction. (JE4, p. 18) Claimant's pain drawing showed the area of the right SI joint as the source of her pain. (JE4, p. 19) She was tender over the right lumbosacral area. (Id.) Dr. Bingham noted a slight leg length discrepancy, which was later confirmed by claimant's physical therapist. (Id.; See JE6, p. 43) After his initial examination, Dr. Bingham expressed his opinion that claimant's complaints were related to the right SI joint. (JE4, p. 20) He further explained how SI joint dysfunction can be long lasting if not treated properly. (Id.) Similarly, Dr. Saddler diagnosed claimant with bilateral SI joint dysfunction and performed injections in December 2017. (See Ex. E, p. 4)

In March 2019, Dr. Bingham noted claimant's condition had gone downhill after physical therapy was discontinued. (JE4, p. 32) Claimant continued to exhibit a leg length discrepancy and a positive Faber's test on examination. (JE4, p. 33) An April 2019 MRI was concerning for a possible labral tear. (See JE9, p. 66) In response, Dr. Paynter ordered an MR arthrogram of the right hip. (JE9, p. 66) After the MR arthrogram confirmed the labral tear, Dr. Paynter referred claimant to Dr. White, who ultimately performed surgery on July 1, 2019. (See JE9, pp. 73-75) Dr. White opined claimant's labral tear was related to the February 8, 2016, work injury. (Ex. 2, pp. 25-26) Dr. Manshadi concurred with Dr. White's opinion. (Ex. 1, pp. 11-12)

This case is complicated by the fact claimant's labral tear was not diagnosed until May of 2019, over three years after the date of injury. This case highlights the importance of persistence and seeking second opinions. For essentially three years claimant presented to various medical professionals complaining of low back pain and SI joint dysfunction. Initially, claimant's treatment focused on the low back. When claimant's MRI of the lumbar spine returned essentially normal, the focus shifted to the SI joint pain and discomfort. When x-rays and MRIs of the hip returned unremarkable, the focus shifted to a potential tear in claimant's acetabular labrum.

Although claimant's pain waxed and waned over the years, it never completely resolved. Claimant was persistent in seeking additional treatment. Fortunately, claimant's treating physicians were equally as persistent and they eventually determined at least one cause of claimant's ongoing complaints. Once repaired, claimant's symptoms and range of motion improved. Again, the expert opinions, coupled with claimant's credible testimony and the evidentiary record as a whole supports the finding that claimant sustained an injury to her right hip on February 8, 2016.

In this particular case, I find the opinions of Dr. White and Dr. Manshadi to be the most persuasive. Dr. White reviewed claimant's MRIs and MR arthrogram. Dr. White had the unique opportunity to examine claimant in-person and intra-operatively. The undersigned is cognizant of defendants' argument that there is no indication Dr. White reviewed all of claimant's medical records prior to rendering his ultimate opinion on causation. This is a valid argument; however, while we do not know if Dr. White reviewed all of claimant's medical records, we do know that defendants' expert, Dr. Boulden, did not. At the very least, Dr. White was able to review claimant's diagnostic imaging. He was aware of the mechanism of injury, the date of injury, that claimant did not have any complaints of pain or discomfort in her low back and hip prior to the date of injury, and the fact claimant had failed conservative treatment, including physical therapy and injections. Moreover, his opinions are bolstered by those of Dr. Manshadi. For these reasons, I continue to find Dr. White's causation opinion reliable and convincing.

Dr. Manshadi possessed a complete history and articulated a thorough, convincing rationale for his initial opinions. After it was determined that claimant had sustained a labral tear, Dr. Manshadi reviewed updated medical records and provided an updated opinion specifically addressing claimant's labral tear.

Having accepted the causation opinions of Dr. White and Dr. Manshadi, I find the preponderance of the evidence shows the right hip injury, including the labral tear, is causally related to the February 8, 2016, work injury. I find Ms. Heinrich has met her burden of proof to establish a causal connection between the February 8, 2016, work incident and the right hip injury. I further find claimant is entitled to reimbursement for all medical expenses causally related to the right hip injury, including the July 1, 2019, surgery performed by Dr. White.

Claimant is seeking temporary disability benefits for the time period of July 1, 2019, to August 18, 2019. I find claimant was in a period of recovery during this time. This period of recovery is not affected by claimant's voluntary quit from the defendant employer.

Claimant is seeking a running award of healing period benefits. Dr. White is the only physician to address permanency related to claimant's right hip condition subsequent to the diagnosis of the labral tear and surgical intervention. Dr. White opined claimant would likely achieve MMI within six months of her July 1, 2019, surgery. (Ex. 2, p. 25) Dr. Manshadi addressed permanency in his original IME report, dated August 2, 2018; however, he did not provide an updated opinion on permanency in his October 2019 addendum. (See Ex. 1, p. 7)

No physician had placed claimant at MMI for the right hip condition prior to the November 4, 2019, evidentiary hearing. Given this information, I find that claimant had not yet reached MMI at the time of the arbitration hearing. However, I also find that claimant has returned to full-time employment without restrictions. This is a unique position where claimant is not entitled to a running award of temporary benefits at this time, and there is no indication or expert opinion that claimant has reached MMI.

With respect to penalty benefits, while I ultimately rejected Dr. Boulden's causation opinion, its existence renders claimant's claim of a right hip injury fairly debatable. I find defendants were successful in proving a reasonable basis existed to contest claimant's entitlement to benefits. As such, I find claimant is not entitled to penalty benefits.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a

period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

In this case, the parties stipulated to the fact Ms. Heinrich sustained an injury to her low back that arose out of and in the course of her employment with the defendant employer on February 8, 2016. I found that Ms. Heinrich carried her burden of proof to establish that she also sustained a compensable injury to her right hip on the date of injury.

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).

I found the causation opinions of Dr. White and Dr. Manshadi were more credible and convincing than the opinions of Dr. Boulden. As such, I found Ms. Heinrich met her burden of proof to establish a causal connection between the February 8, 2016, work incident and the right hip injury.

However, I found that claimant has not yet reached maximum medical improvement. I conclude that the claim for permanent disability benefits is not ripe for determination at this time.

Claimant seeks an order for the payment of past medical expenses contained in Exhibit 5. Specifically, claimant is seeking reimbursement for medical treatment she received at Physicians Clinic of Iowa, Kepros Physical Therapy, and Mercy Medical Center. (Ex. 5, pp. 55-77)

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 16, 1975).

All medical expenses appear to be for the treatment of claimant's low back and right hip conditions. Defendants denied the compensability of the right hip condition. Claimant is also seeking reimbursement for the surgery Dr. White performed at Surgery Center Cedar Rapids. (Ex. 5, p. 54) I find the medical treatment claimant received was reasonable, necessary, and causally related to the February 8, 2016, work injury. When the employer abandons care through the denial of compensability of an injury the injured employee may select his own medical care. If the injury is deemed to be compensable then the claimant may recover the costs of the reasonable medical care. See Bell Bros. Heating and Air Conditioning v. Gwynn, 779 N.W.2d 193 (Iowa 2010). I conclude defendants are liable for all causally related and reasonable medical expenses outlined in Exhibit 5.

Claimant asserts she is entitled to a running award of healing period benefits.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

According to the medical evidence, Ms. Heinrich had not achieved maximum medical improvement prior to the evidentiary hearing. However, claimant returned to full duty work in August 2019, following her surgical intervention and period of recovery. Claimant is not operating under any restrictions at this time. No physician is currently recommending any additional medical treatment. Claimant's status as of the date of the evidentiary hearing does not qualify for temporary total, temporary partial, or healing period benefits. Claimant has failed to prove she is entitled to a running award of healing period or temporary disability benefits.

Claimant seeks an order for alternate medical care and specifically requests an order requiring defendants to authorize Dr. White as claimant's authorized treating physician for the right hip condition. Defendants denied liability for the care claimant now seeks.

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).

The employer has no right to choose the medical care when compensability is contested. Bell Bros Heating v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). "The statute contemplates that an injured employee may select his or her own medical care when the employer abandons the injured employee through the denial of compensability of the injury." Id. Therefore, given defendants' denial of liability for the right hip condition, I conclude that the defendant employer has no right to assert the authorization defense or challenge claimant's assertion of a claim for alternate medical care.

In this case, defendants have not provided any medical care for claimant's right hip condition since the March 2019 appointment with Dr. Bingham. Defendants' lack of care is not reasonable nor compliant with Iowa Code section 85.27. Claimant's request for alternate medical care will be granted and defendants will be ordered to provide and pay for causally related future medical care.

Claimant's request for alternate medical care is reasonable. Having found that the right hip condition and medical treatment recommended and performed by Dr. White arose out of and in the course of claimant's employment as a result of the February 8, 2016, work injury, I conclude that claimant's request for alternate medical care is reasonable. Defendants will be ordered to provide ongoing treatment when and if such care is recommended by Dr. White.

Claimant asserts she is entitled to penalty benefits under Iowa Code section 86.13. Claimant asserts the defendants had no reasonable basis to deny the causal relationship of claimant's right hip injury, and her resulting surgery. Claimant further asserts defendants had no reasonable basis to deny her temporary disability benefits for the seven weeks of work she missed while recovering from the July 1, 2019, surgery.

Iowa Code section 86.13(4) provides:

> a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
>
> b. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:
>
> (1) The employee has demonstrated a denial, delay in payment, or termination in benefits.

(2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.

c. In order to be considered a reasonable or probable cause or excuse under paragraph "*b*", an excuse shall satisfy all of the following criteria:

(1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.

(2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

(3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

> Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."

Christensen, 554 N.W.2d at 260.

An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Defendants denied the compensability of claimant's right hip claim, and, as such, have not paid claimant temporary benefits for her period of recovery following her July 1, 2019, surgical intervention. Thus, unpaid weekly benefits exist. Claimant has established a delay in payment of benefits as required by section 86.13(4).

Pursuant to section 86.13(4)(b)(2), the burden therefore shifts to defendants to establish a reasonable or probable cause or excuse for the delay. Section 86.13(4)(c) sets forth the elements defendants must satisfy in order to establish the existence of a reasonable or probable cause or excuse for the delay.

Neither party provided a substantial amount of analysis with respect to penalty.

It appears as though defendants initially used Dr. Abernathey's medical opinion to deny additional medical treatment was necessary, as claimant did not present to an authorized treating physician between June 2018 and March 2019. (See JE7, p. 48; JE2, p. 32)

Claimant requested additional medical treatment on January 10, 2019. (Ex. 3, p. 27) That request was subsequently denied by defendants on January 14, 2019. (See Ex. 3, p. 28) Claimant then obtained a medical opinion from her primary care physician, recommending she receive additional physical therapy to treat her ongoing low back and hip pain. (See Ex. 3, p. 28) While not confirmed, it appears as though defendants scheduled claimant to return to Dr. Bingham on March 4, 2019. (See Ex. 3, p. 29) Dr. Bingham did not recommend or refer claimant on to physical therapy, but said claimant could continue presenting to physical therapy if she so desired. (JE4, p. 34) On April 15, 2019, claimant requested an updated MRI of the lumbar spine, as recommended by her primary care physician. (Ex. 3, p. 30) On May 9, 2019, claimant requested authorization for an MRI of her right hip. (Ex. 3, p. 31) On June 12, 2019, claimant requested authorization of the surgical intervention recommended by Dr. White. (Ex. 3, p. 32) Claimant provided defendants with Dr. White's operative report and requested reimbursement or authorization of the surgical intervention on July 29, 2019. (Ex. 3, p. 33)

Defendants assert two main arguments with respect to whether they possessed a reasonable cause or excuse to deny benefits. First, defendants assert that once they obtained medical records for claimant's right hip treatment, they arranged an independent medical examination with Dr. Boulden. Said IME took place on September 19, 2019. (Ex. E) Defendants assert their good faith investigation of the right hip injury generated credible evidence supporting a denial of the claim.

The insurer is not required to accept the evidence most favorable to the claimant and ignore contrary evidence. City of Madrid v. Blasnitz, 742 N.W.2d 77, 83 (Iowa 2007).

Second, in a much broader sense, defendants assert they rightfully questioned causation, as claimant's medical records reveal no mention of right hip pain or a right hip injury for more than three years after the injury to claimant's low back. I do not find

this argument overwhelmingly convincing. As previously stated, the SI joint has been a focal point in claimant's medical treatment since the date of injury. SI joint dysfunction elicits pain and discomfort in the low back and buttocks. Claimant's failure to describe her pain as hip pain has little relevance to her ultimate diagnosis. However, I find that at the time of their denial of benefits, defendants had a reasonable basis to deny causation with respect to the SI joint, as Dr. Abernathey opined no additional treatment was necessary and diagnostic imaging existed that reflected the SI joint was stable.

After learning that claimant was diagnosed with a labral tear, a definitively different diagnosis compared to SI joint and general hip pain, defendants conducted a reasonable investigation of the claim, as required by Iowa Code section 86.13(4). Dr. White opined claimant's labral tear and need for surgery was more likely than not related to the original work injury, in a letter, dated July 23, 2019. Defendants subsequently scheduled claimant to present for an IME with Dr. Boulden on September 19, 2019. Dr. Boulden opined claimant's right hip condition was not causally related to the February 8, 2016, work injury. I find defendants were successful in proving a reasonable or probable cause, or excuse. Claimant is not entitled to penalty benefits on defendants' denial of benefits for the weeks claimant was recovering from her July 1, 2019, surgery.

Claimant seeks reimbursement for an independent medical evaluation performed by Dr. Manshadi on August 2, 2018. (Ex. 1) Defendants had claimant evaluated by Dr. Abernathey in June 2018 for purposes of assessing permanency.

Iowa Code 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).

Having found claimant proved defendants obtained an evaluation of permanent disability from a physician of their choosing in June 2018, I conclude claimant is entitled to reimbursement of his independent medical examination occurring in August 2018. (Iowa Code section 85.39) That being said, while it is not specified in the hearing report or in either party's post-hearing brief, it appears as though claimant is seeking reimbursement for Dr. Manshadi's addendum report, dated October 2, 2019, under Iowa Code section 85.39. The original IME report appears to have already been paid by defendants. (See Ex. A, p. 1) I do not find it appropriate to require defendants to pay for Dr. Manshadi's addendum report under Iowa Code section 85.39.

Lastly, claimant is seeking costs under rule 876 IAC 4.33. Costs are assessed at the discretion of the agency. Claimant was generally successful in her claims. Therefore, exercising the agency's discretion, I conclude that it is appropriate to assess some of claimant's costs pursuant to rule 876 IAC 4.33.

Claimant is seeking her filing fee in the amount of $100.00. This is a permissible cost pursuant to rule 876 IAC 4.33(7). I conclude defendants are liable for this cost.

Claimant is seeking reimbursement in the amount of $1,000.00 for the cost of a July 2, 2019, telephone conference with Dr. White. (Ex. 4, pp. 45-46) While Dr. White produced a report subsequent to the July 2, 2019, telephone conference, the evidentiary record is void of an expense for the same. Claimant's Exhibit 4 only provides the cost of the telephone conference. This cost cannot be assessed pursuant to rule 876 IAC 4.33(6). I conclude defendants are not liable for this cost.

Claimant is seeking reimbursement in the amount of $750.00 for the cost of Dr. Manshadi's IME addendum letter, dated September 30, 2019. (Ex. 4, pp. 43-44) This cost can be and is assessed pursuant to rule 876 IAC 4.33(6), not Iowa Code section 85.39. I conclude defendants are liable for this cost.

Claimant is seeking reimbursement in the amount of $100.00 for a September 17, 2018, report from Dr. Abernathey. (Ex. 4, pp. 37-38) Said report is not contained in the evidentiary record; however it is referenced by defendants in a follow-up report from Dr. Abernathey, and in their post-hearing brief. Therefore, this cost can be and is assessed pursuant to rule 876 4.33(6). I conclude defendants are liable for this cost.

Lastly, claimant is seeking reimbursement in the amount of $92.10 for the production of medical records from a number of different medical facilities. These costs are recoverable under rule 876 IAC 4.33(6); however, having awarded two prior practitioners' expenses for records, I do not believe that Rule 4.33(6) permits additional awards. Claimant's request for assessment of costs attributable to records requests is denied.

ORDER

Defendants shall pay temporary total disability benefits from July 1, 2019, through August 18, 2019, at the weekly rate of three hundred thirty-seven and 73/100 dollars ($337.73).

Defendants 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 Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay directly to the medical provider, reimburse claimant for any out-of-pocket expenses, and hold claimant harmless, for all causally related medical expenses contained in Claimant's Exhibit 5.

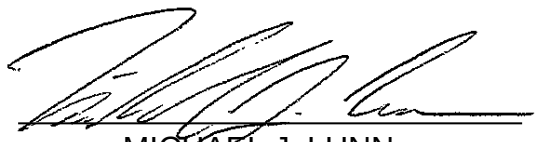
Defendants shall provide claimant ongoing medical care of her right hip.

Defendants shall authorize further evaluation and treatment with Matthew White, M.D. as claimant’s authorized treating physician for the right hip condition.

Defendants shall reimburse claimant's costs in the amount of nine hundred fifty and 00/100 dollars ($950.00).

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed this 5th day of June, 2020.



MICHAEL J. LUNN
DEPUTY WORKERS’
COMPENSATION COMMISSIONER

The parties have been served as follows:

Gary Nelson (via WCES)
Laura Ostrander (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, 86) 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.