

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEBRA K. HONTS,

Claimant,

vs.

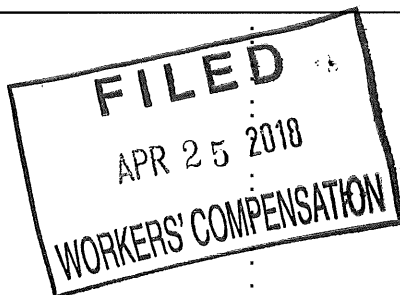
TMONE, LLC,

Employer,

and

TRAVELERS,

Insurance Carrier,
Defendants.



File No. 5060121

ARBITRATION
DECISION

Head Notes: 1802, 1803, 2500

STATEMENT OF THE CASE

Claimant, Debra Honts, filed a petition in arbitration seeking workers' compensation benefits from TMONE, LLC, employer, and Travelers, insurance carrier, both as defendants, as a result of a stipulated injury sustained on August 13, 2013. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on June 12, 2017, in Des Moines, Iowa.

The record in this case consists of joint exhibits 1 through 14, claimant's exhibits 1 through 23, defendants' exhibits A through F, and the testimony of the claimant and Bridgit Lauer Mims. At the time of evidentiary hearing, defendants objected to admission of claimant's exhibit 23, pages 4 and 5, as untimely and incomplete, as the Medicaid lien summary letter failed to itemize the included expenses. The undersigned reserved ruling on admission of the exhibit and left the record open to allow claimant the opportunity to obtain an itemization of the included medical expenses. Claimant obtained and supplied the itemization within the specified time period; defendants renewed the timeliness objection upon receipt of the itemization. The undersigned admitted claimant's exhibit 23, pages 4 through 9. Defendants were provided opportunity to secure rebuttal or further testimony regarding the itemization, but declined. The parties submitted post-hearing briefs, the matter being fully submitted on July 31, 2017.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant is entitled to temporary disability benefits during the periods of November 7, 2013 through February 11, 2014¹, February 15, 2014 through July 30, 2014, and August 2, 2014 through October 18, 2014.
2. Extent of industrial disability;
3. Commencement date for permanent disability benefits;
4. Whether defendants are responsible for claimed medical expenses;
5. Whether claimant is entitled to reimbursement of an independent medical examination under Iowa Code section 85.39;
6. Extent of credit to defendants for benefits paid; and
7. Specific taxation of costs.

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.

FINDINGS OF FACT

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

Claimant's demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant's physical presentation was consistent with an individual with right shoulder complaints, as she sat with her right arm supported upon her lap and with the right shoulder lower than the left. Claimant's testimony was generally consistent as compared to the evidentiary record and her deposition testimony; however, the evidentiary record does contain numerous inconsistencies in the medical records regarding the cause and etiology of claimant's various complaints. These inconsistencies do provide the undersigned some pause as to claimant's

¹ By post-hearing brief, claimant referred to this specific claimed period as commencing on August 17, 2013 and extending through February 11, 2014. The hearing report and discussion at hearing identified the claimed period as November 7, 2013 through February 11, 2014. To the extent claimant intended to seek healing period benefits prior to November 7, 2013, the undersigned finds claimant has waived her right to consideration of that issue, as it was not properly raised at hearing.

veracity. Following review of the entirety of the record, I find claimant is a credible witness, but the determination is equivocal with regard to statements which are not independently verified in the record.

Claimant was 61 years of age on the date of evidentiary hearing. (Claimant's testimony) Claimant is the mother of eight children: two biological and six adopted. (CE13, Depo. Tr. p. 5) She is right-hand dominant. (CE13, Depo. Tr. p. 9) Claimant graduated from high school. Thereafter, she obtained: an applied arts degree in fashion and textiles in 1976; an associate of arts degree in general studies in 1987; a bachelor's degree in general studies, with an aging studies certificate, in 1989; and a paraeducator certificate in 2007. (Claimant's testimony; CE13; Depo. Tr. pp. 7-8; CE14, p. 4; DEA, p. 1)

On the date of her injury in August 2013, claimant lived in North Liberty, Iowa. (Claimant's testimony) At the time of evidentiary hearing, claimant had resided in Iowa City, Iowa for approximately two years. Prior to Iowa City, claimant resided in Solon, Iowa. (CE13, Depo. Tr. p. 4) Iowa City is located approximately 12 miles from Solon and 9 miles from North Liberty.

Claimant's work history includes bakery assistant, library assistant, clothing store clerk, food preparation, customer service, cashier, stocker, production crew leader, commercial contracts expeditor, clothing store assistant manager, bar and grill assistant manager, secretary, assistant preschool teacher, activity assistant at a care center, assistant surveyor, counselor for adults with mental illness, counselor for adults and children with developmental disabilities or mental handicaps, child care, counselor/job coach, and housekeeper. (CE14, pp. 5-9) Claimant's resume identifies experience as a paraeducator, commercial cleaner, energy counselor, enumerator, and in-home daycare provider. She also lists a number of skills, including: accounts payable and receivable; computer literate; data entry; customer service; general office; quality control; retail sales; typing; warehouse/production; developmental disabilities; and mental illness. (DEA, p. 1)

Claimant's relevant medical history includes evaluation of right shoulder pain after a fall out of bed on July 25, 2011. The evaluating physician opined claimant likely suffered some degree of rotator cuff injury. Claimant was treated conservatively with prescription medications and a sling. (JE2, p. 1) On June 30, 2012, claimant was again treated for a fall at home on a wet floor. At that time, claimant complained of pain of her right side, from the hip into the shoulder. (JE2, p. 4) Claimant's medical history also includes diagnoses of right hand and thumb arthritis. (JE2, pp. 3, 5-6) Claimant underwent bilateral carpal tunnel releases at the University of Iowa Hospitals & Clinics (UIHC) in November 2012. (JE2, pp. 3, 5-6) On May 2, 2013, claimant returned to UIHC with complaints of carpal tunnel symptoms and neck pain which could radiate down to the right shoulder and arm. Claimant was also evaluated for a diagnosis of hypertension. (JE2, p. 8) On July 7, 2013, claimant returned to UIHC with complaints of right wrist pain. (JE2, p. 9)

Claimant applied for work at defendant-employer, a domestic process outsourcing firm which handles customer contacts for businesses. (Ms. Mims' testimony) Claimant began work on July 8, 2013 as a recruiter. Her duties involved working up lead for potential employees, such as contacting the individual to discuss qualifications, conducting background investigations, and scheduling testing. The majority of her duties were computer-based and utilized a headset. Claimant testified she worked 35 to 40 hours per week, on average. She earned \$8.00 per hour unless she worked 40 hours in a week; in these instances, she earned \$10.00 per hour. (Claimant's testimony; CE15, p. 6)

While at work on August 13, 2013, claimant testified she leaned down upon a tabletop surface and the surface gave way, resulting in claimant falling to the floor. Claimant experienced pain of her right shoulder, right wrist, low back, and right ankle. Claimant testified she continued working. (Claimant's testimony)

On August 13, 2013, Bridgit Lauer Mims served as associate director of training and recruiting for defendant-employer and in this capacity, worked as claimant's supervisor. Ms. Mims was not present at the time of claimant's fall, but claimant's injury was subsequently reported to her. (Ms. Mims' testimony) Claimant testified she subsequently requested medical evaluation, and on August 15, 2013, Ms. Mims advised her that a medical evaluation had been scheduled for claimant. (Claimant's testimony)

At defendants' referral, on August 15, 2013, claimant was seen by Ernest Perea, M.D. of Mercy Occupational Health. Claimant relayed complaints regarding her right shoulder, wrist, low back, and right ankle. (JE4, pp. 2-3) Following examination, Dr. Perea ordered x-rays which revealed no acute fractures. (JE4, pp. 3-8) Dr. Perea assessed pain and strains of each area and began a course of conservative measures, including cyclobenzaprine, physical therapy, and right wrist splinting at work. Dr. Perea released claimant to regular duties, without restrictions. (JE4, pp. 4-4A)

On August 15, 2013, claimant testified she was involved in a meeting regarding assistance for her special needs child. During the meeting, claimant experienced difficulty expressing herself verbally. (Claimant's testimony) Thereafter, she presented to the emergency department at UIHC and was evaluated by Ross Mathiasen, M.D. Claimant reported she had been involved in a meeting, when she felt "out of it" and unable to speak. Dr. Mathiasen noted claimant experienced difficulty finding words and expressing herself. Claimant expressed belief she had returned to baseline, but felt her heart was pounding and her blood pressure was high. (JE2, p. 11)

Dr. Mathiasen opined claimant presented following an event of expressive aphasia lasting a few seconds during a stressful conversation. He noted claimant's history of hypertension and several stressors, as well as her report she ceased taking clonazepam several days prior. (JE2, p. 11) Dr. Mathiasen performed a physical examination, which he found to be unremarkable. He ordered a series of laboratory studies, with normal results. (JE2, pp. 14-16)

Dr. Mathiasen also ordered a neurology consultation with Jeffry Ruff, D.O. Claimant informed Dr. Ruff she became aggravated and frustrated at work while filling out paperwork with a coworker. At that time, claimant experienced difficulty expressing words and got "stuck" for several seconds. Following the episode, claimant indicated she did not feel well. Claimant indicated she had been under a great deal of stress and was having difficulty coping. Dr. Ruff noted several familial issues and claimant's report that she recently ran out of clonazepam. (JE2, p. 23) Dr. Ruff performed a neurological examination and opined claimant most likely suffered a stress-related response. Out of caution, Dr. Ruff ordered a CT scan and MRI of claimant's brain; assuming the results were negative, Dr. Ruff opined claimant could follow up with her psychiatrist the following day, as scheduled. (JE2, pp. 26-27)

Claimant underwent the recommended CT scan and MRI. (JE2, pp. 15, 28-30) Thereafter, she returned to Dr. Mathiasen for evaluation. Dr. Mathiasen assessed expressive aphasia, resolved; and elevated blood pressure. He opined claimant suffered from a stress-related response. He advised claimant to follow up with her personal physician for these conditions. (JE2, p. 16)

Claimant testified she spoke with her supervisor, Ms. Mims, and was allowed to present to defendant-employer on Saturday, August 17, 2013, to work additional hours, given the time she missed during the prior work week. As a result, on August 17, 2013, claimant presented to work at 8:00 a.m. At approximately 8:30 a.m., claimant testified she became lightheaded. Claimant testified she believed the symptoms were blood pressure related, so she went to her car to try to relax. Claimant testified a coworker, Chelsea, spoke to a supervisor and then came to claimant's car; at that time, Chelsea informed claimant that an ambulance had been called on the supervisor's direction. (Claimant's testimony)

Johnson County Ambulance records dated August 17, 2013 note claimant's chief complaints as dizziness and weakness. The record further notes claimant felt dizzy and shaky, as if she would pass out. Claimant reported she was seen at UIHC the prior Thursday for similar complaints and had been diagnosed with stress; as a result, the ambulance transported claimant to UIHC for evaluation. (JE1, p. 1)

At the UIHC emergency department, claimant was examined by Jacqueline Kitchen, M.D. Dr. Kitchen noted claimant suffered an episode of lightheadedness at work following a stressful interaction with a coworker. She noted EMS personnel measured claimant's blood pressure at 170/92. Dr. Kitchen noted claimant had been seen for similar symptoms and expressive aphasia on August 15, 2013, at which time the complaints were treated as a stress response and hypertension. (JE2, pp. 31-32) Attending physician, Daniel Miller, M.D., also noted claimant complained of numerous familial stressors and, earlier in the week, had experienced difficulty expressing herself while filling out paperwork. (JE2, p. 36)

Dr. Kitchen performed a physical examination, which she described as unremarkable, and measured claimant's blood pressure as 148/92. Claimant also

underwent an EKG, with unremarkable results. Dr. Kitchen assessed transient hypertension and advised claimant to follow up with her personal provider for a cardiovascular risk assessment. (JE2, pp. 34-35) In the interim, Dr. Kitchen excused claimant from work until cleared by her physician. (JE3, p. 1)

Claimant did not return to work at defendant-employer after August 17, 2013. On the afternoon of August 19, 2013, claimant testified she presented to defendant-employer and spoke with Ms. Mims. Claimant testified she provided a copy of Dr. Kitchen's work excuse and Ms. Mims created a photocopy. Claimant testified Ms. Mims inquired when claimant would be capable of returning to work; claimant replied she was uncertain, as she did not know when a physician would clear her to return. (Claimant's testimony) Ms. Mims denied independent recollection of this conversation. (Ms. Mims' testimony)

On August 20, 2013, claimant presented to UIHC in follow up of her recent hospital evaluations. She was examined by her personal physician, Hussain Banu, M.D. (JE2, p. 41) Claimant reported experiencing stress since beginning a new job in July, conflicts with a coworker, familial stressors, and a work-related fall the prior week. (JE2, p. 42) Dr. Banu performed a physical examination. (JE2, pp. 44-45) She assessed hypertension, as well as anxiety, depression, stress, and benzodiazepine withdrawal. Dr. Banu related claimant's multiple symptoms to this combination of conditions, her struggle to cope with stressors at home and work, and attempts to self-wean from benzodiazepine. Dr. Banu recommended claimant continue to follow up with her psychiatrist and utilize prescribed medications. (JE2, pp. 45-46)

Claimant testified she was uncertain what coworker conflicts Dr. Banu was referencing. (Claimant's testimony)

Claimant testified she returned to defendant-employer on September 3, 2013 and requested to pick up her paycheck and a few personal items, money and photographs, from her work station. Claimant testified Ms. Mims met claimant in the entryway and inquired when claimant was intending to return to work. Claimant testified she replied that she had not yet been cleared to return. After the conversation and her personal items and paycheck were retrieved, claimant testified she left the building. Claimant testified at that time, she believed she remained an employee of defendant-employer and would return upon release by her physician. (Claimant's testimony)

Ms. Mims testified she recalled a conversation with claimant which took place on or about September 4, 2013. Ms. Mims recalled claimant presented to defendant-employer and requested her paycheck and personal items. When she learned of claimant's presence and request, Ms. Mims testified she went to the entryway to speak with claimant. Ms. Mims indicated she asked claimant how she was feeling and when she believed she would return to work. Ms. Mims testified claimant replied that she did not feel well enough to return and doubted she was capable of returning. Given claimant was retrieving her personal items and indicated she was unable to return, Ms. Mims testified she believed claimant intended to resign her employment. Ms. Mims

testified she felt the circumstances “implied” that claimant did not intend to return to work at any point. (Ms. Mims’ testimony)

Ms. Mims’ testimony at the time of evidentiary hearing was clear and direct. Her demeanor provided the undersigned with no reason to doubt her veracity. Ms. Mims is found credible.

On September 4, 2013, Ms. Mims completed a notice of termination form, identifying the reason for termination as a resignation without notice. (DEB, pp. 1-2) Ms. Mims testified “termination” is simply the field title used internally and is used as a synonym for separation of employment. (Ms. Mims’ testimony) Ms. Mims noted claimant had suffered a work injury, followed by other issues, which impacted her ability to work. Ms. Mims noted she had received a physician’s note excusing claimant from work relative to the work injury, but no such notes which indicated claimant would be unable to work for an extended period. The notation indicated that after two weeks off work, claimant realized she needed to resign. No formal exit interview was completed. (DEB, p. 2) Ms. Mims testified not all former employees participate in exit interviews; participation is now handled via email and is voluntary. (Ms. Mims’ testimony)

On September 5, 2013, claimant participated in a physical therapy session with Andy Gallo, PT. Mr. Gallo noted claimant reported she gave two-weeks’ notice and was “quitting secondary to thinking she [was] not able to do her job.” (JE6, p. 4)

Claimant returned to Dr. Perea on September 9, 2013 with complaints of worsened right shoulder and right wrist pain; she described improvement in low back and ankle complaints. Dr. Perea ordered MRIs of the right shoulder and wrist. He ordered further physical therapy and imposed work restrictions of a maximum lift of 20 pounds and occasional gripping, twisting, reaching, pushing, pulling, and fine manipulation. (JE4, pp. 9-11)

On September 9, 2013, claimant testified she spoke with Cheryl Hadley, a representative from defendant-insurance carrier. Claimant testified that as the two discussed her claim, including medical bills and medical mileage, Ms. Hadley informed claimant that she had been terminated by defendant-employer. Claimant testified this conversation was the first occasion she learned she had been terminated. Claimant indicated no one at defendant-employer informed her she had been fired. Claimant testified she telephoned Ms. Mims and a representative in human resources, without response. (Claimant’s testimony)

Claimant subsequently underwent the ordered MRIs. The radiologist read the right shoulder MRI as revealing a full thickness tear of the anterior supraspinatus tendon. The right wrist MRI was read as revealing tenosynovitis, tendinopathy, and degenerative joint disease. (JE 4, p. 10; JE5, pp. 1-2) Claimant presented to Dr. Perea for MRI interpretation on September 19, 2013. Following MRI review, Dr. Perea referred claimant’s right shoulder and right wrist care to Steindler Orthopedic Clinic (Steindler). He maintained care of claimant’s low back complaints and ordered

continued physical therapy. Dr. Perea indicated claimant's right ankle complaints had resolved. (JE4, p. 13)

On September 27, 2013, claimant returned to Dr. Perea for evaluation of her low back. At that visit, claimant reported she had been "let go" from defendant-employer. (JE4, p. 14) Dr. Perea ordered continued physical therapy for claimant's low back and recommended use of over the counter pain medication. He imposed a work restriction of a 30-pound maximum lift. (JE4, p. 15)

Claimant returned to Dr. Perea on October 11, 2013 with complaints of persistent low back pain with radiation to the left buttock. Dr. Perea noted claimant had been discharged from physical therapy due to a plateau in improvement. He ordered an MRI of claimant's lumbar spine and imposed work restrictions of a 30-pound lift and no bending at the waist. (JE4, pp. 16-17; see also JE6, p. 6)

On October 11, 2013, claimant also presented to Steindler for evaluation of her right shoulder and wrist by Mark Mysnyk, M.D. Dr. Mysnyk reviewed claimant's MRIs and opined the results revealed a full thickness tear of the distal anterior supraspinatus of the right shoulder and mild to moderate distal extensor carpi ulnaris tendinopathy and tenosynovitis of the right wrist. (JE7, p. 1) He recommended surgical intervention on the rotator cuff tear. With respect to the right wrist, Dr. Mysnyk opined the majority of claimant's symptoms were attributable to aggravation of underlying arthritis and prescribed Celebrex. (JE7, p. 2)

On October 24, 2013, claimant returned to Dr. Perea for review of the lumbar spine MRI. Dr. Perea opined the MRI revealed L5-S1 moderately severe central stenosis and mild left neural foraminal narrowing. Claimant refused additional physical therapy or an epidural injection. Accordingly, Dr. Perea referred claimant to Steindler for evaluation of her low back. (JE4, p. 19; JE5, pp. 4-5)

On November 7, 2013, claimant underwent right shoulder arthroscopy with Dr. Mysnyk. The procedure consisted of arthroscopy with subacromial decompression, rotator cuff repair, and debridement of the biceps tendon. Following surgery, claimant was removed from work pending follow up. (JE7, pp. 3A-3B; JE8, p. 1)

Following right shoulder surgery, claimant followed up with Dr. Mysnyk on November 19, 2013. At that time, Dr. Mysnyk noted excellent passive shoulder motion and ordered a course of physical therapy. Dr. Mysnyk released claimant to left-handed work duties. Claimant also complained her carpal tunnel syndrome symptoms were returning. (JE7, p. 4)

Claimant applied for and was determined eligible for unemployment benefits following her separation from defendant-employer. These decisions were appealed, but an administrative law judge ultimately ruled the appeal was untimely. (CE1, pp. 1, 3-7)

On December 13, 2013, claimant presented to Chad Abernathy, M.D. for neurosurgical consultation. Dr. Abernathy reviewed claimant's lumbar spine MRI and opined it revealed mild disc degeneration of L4-L5 or L5-S1, depending on the numbering system, with minimal stenosis and mild spondylolisthesis. He assessed a lumbosacral strain and opined claimant was not a surgical candidate. (JE9, p. 2)

On December 17, 2013, defendants' counsel authored correspondence to claimant's counsel with respect to claimant's entitlement to temporary disability benefits. Counsel represented defendants' position was that claimant voluntarily resigned her employment and had she not resigned, defendant-employer had work available within Dr. Mysnyk's restrictions, beginning on November 19, 2013. On these bases, counsel indicated defendants did not believe additional temporary benefits were due, but volunteered permanent partial disability benefits corresponding to a 10 percent industrial disability. (DEC, p. 1)

Claimant presented to the UIHC Orthopedic Department on December 18, 2013 and was evaluated by Brian Adams, M.D. Claimant reported she fell at work and sustained a right rotator cuff tear which had been surgically repaired at the Steindler Clinic. Thereafter, claimant expressed complaints of worsening paresthesias of the bilateral hands. (JE2, p. 47) Dr. Adams performed a physical examination and assessed symptoms most consistent with cubital tunnel syndrome. He issued a referral for an EMG and recommended claimant follow up with her personal provider and potentially a rheumatologist, as fluid retention and weight gain could be contributing to nerve compression. (JE2, pp. 49-50)

On December 31, 2013, claimant returned to Dr. Mysnyk. Claimant reported she had forgotten about his order for physical therapy and accordingly, had not begun that course of treatment. Dr. Mysnyk authored a physical therapy referral and a prescription for hydrocodone for claimant to take following therapy sessions. Dr. Mysnyk imposed restrictions of work with the right arm at her side and no lifting over 1 pound with the right arm. (JE7, p. 5)

Claimant participated in physical therapy sessions. At one such session on January 6, 2014, the therapist noted claimant experienced an episode of lightheadedness, apparent confusion, and excessive sweating. Claimant's blood pressure was measured at 160/90. Claimant relayed she had experienced similar episodes since her fall in August 2013. Claimant also reported she had forgotten to take her blood pressure medicine; she felt better after consuming crackers and juice. The therapist advised claimant to follow up with her personal provider. (JE10, pp. 2-3)

Dr. Mysnyk lessened the severity of claimant's work restrictions following an appointment on January 28, 2014. At that time, he imposed restrictions of a maximum 5-pound lift with the right arm at her side and maximum occasional lift of 1-pound with the right arm away from her body. (JE7, p. 8)

Claimant returned to Dr. Adams in follow up of bilateral hand numbness on February 12, 2014. Claimant reported intermittent numbness of her entire hands, but improved. (JE2, pp. 51-52) Dr. Adams performed a physical examination and reviewed claimant's EMG results, which he noted did not demonstrate evidence of cubital tunnel syndrome. (JE2, p. 54) Dr. Adams opined claimant's intermittent hand numbness did not appear to represent cubital tunnel syndrome or carpal tunnel syndrome. He noted the potential for claimant's symptoms to represent idiopathic neuropathy or be arising from the cervical spine. Due to claimant's improvement, however, Dr. Adams recommended continued monitoring. (JE2, pp. 54-55)

Claimant testified following right shoulder surgery, she sought employment within Dr. Mysnyk's restrictions. (Claimant's testimony) From February 12, 2014 through February 14, 2014, claimant performed flower delivery during a holiday rush. She earned \$10.00 per hour. (CE14, p. 23; CE15, pp. 6-7)

Claimant continued to periodically follow up with Dr. Mysnyk. On March 11, 2014, Dr. Mysnyk ordered continued physical therapy and imposed work restrictions of a 20-pound lift with the right arm at her side and 5-pound occasional lift with the right arm away from her body. (JE7, p. 11) On April 22, 2014, Dr. Mysnyk performed a corticosteroid subacromial injection due to continued complaints and imposed restrictions of a maximum 20-pound lift with bilateral hands. (JE7, p. 13) On June 6, 2014, claimant returned to Dr. Mysnyk and reported improvement following the injection. At that time, Dr. Mysnyk performed a repeat subacromial injection and released claimant without restrictions. (JE7, pp. 14-16)

From July 31, 2014 through August 1, 2014, claimant performed temporary work cleaning apartments. She earned \$13.00 per hour. (CE14, p. 23; CE 15, pp. 6-7)

Claimant returned to Dr. Mysnyk on September 9, 2014 and reported significant relief with the prior injection, but a return of pain in late July. Following x-rays, Dr. Mysnyk performed an acromioclavicular (AC) joint injection to address inflammation. He removed claimant from work for the remainder of the day, but released her to return to work the following day, without restrictions. (JE7, pp. 16-17)

On October 19, 2014, claimant began work as an independent contractor for Perfectly Posh. She sold bath and body beauty products; her earnings were commission-based. (CE14, p. 23; CE15, pp. 6-7)

Claimant returned to Dr. Mysnyk on December 12, 2014 and reported relief with the AC joint injection, but a return of pain within approximately two months. Dr. Mysnyk recommended an arthroscopy to assess the prior repair and perform a distal clavicle excision. (JE7, pp. 19-20)

On January 15, 2015, Dr. Mysnyk performed surgery, consisting of right shoulder arthroscopy, shaving of frayed cuff tissue, repeat rotator cuff repair of a re-tear, and distal clavicle excision. (JE7, p. 21; JE8, p. 2) Claimant was placed in a shoulder

immobilizer. Following surgery, claimant returned to Dr. Mysnyk on January 27, 2015. At that time, Dr. Mysnyk ordered continued immobilizer use until commencement of a course of physical therapy, scheduled to begin on February 26, 2015. He released claimant to one-handed work. (JE7, p. 21)

Claimant continued to follow up periodically with Dr. Mysnyk and participate in physical therapy. (JE7, p. 23) On May 15, 2015, claimant returned to Dr. Mysnyk for evaluation. He recommended claimant engage in a home exercise program and imposed work restrictions of no lifting over 20 pounds floor to waist; no lifting over 5 pounds overhead, occasionally; no repetitive (more than 50 times per hour) overhead work, with no weight in the right arm. (JE7, pp. 25-26)

Claimant returned to Dr. Mysnyk on August 14, 2015. At that time, Dr. Mysnyk advised claimant to contact him with any future complaints. He imposed restrictions of no lifting over 30 pounds floor to waist; no lifting over 10 pounds waist to overhead, occasionally; and a maximum of 50 times per hour of repetitive overhead work. (JE7, p. 28)

Defendant-insurance carrier contacted Dr. Mysnyk on August 26, 2015 and requested additional information with respect to the extent of claimant's permanent impairment, status of permanent restrictions, and need for further care. (JE11, p. 1) Dr. Mysnyk authored a responsive letter dated September 28, 2015. Dr. Mysnyk indicated claimant's condition could change and improve over a one-year period post-operatively and as a result, represented he would consider such issues one year following surgery. (JE12, p. 1)

On March 29, 2016, claimant returned to Dr. Mysnyk for evaluation. Dr. Mysnyk measured claimant's shoulder range of motion and strength. He thereafter placed claimant at maximum medical improvement (MMI) and made permanent the restrictions of: no lifting over 30 pounds floor to waist; no lifting over 10 pounds waist to overhead, occasionally; and a maximum of 50 times per hour of repetitive overhead work. (JE7, p. 30) Dr. Mysnyk subsequently authored a letter dated April 2, 2016 confirming claimant achieved MMI as of the last clinical visit on March 29, 2016. Dr. Mysnyk opined claimant sustained permanent impairment of 14 percent upper extremity: 10 percent upper extremity for distal clavicle excision; 2 percent upper extremity for decreased range of motion, computed by comparing the involved and uninvolved extremities; and 2 percent upper extremity for decreased strength. Dr. Mysnyk restated claimant's permanent restrictions as no lifting over 30 pounds floor to waist; no lifting over 10 pounds waist to overhead, occasionally; and no repetitive overhead work, greater than 50 times per hour. (JE13, p. 1)

Claimant's counsel arranged for claimant to be evaluated by board certified orthopedic surgeon, Richard Kreiter, M.D., for an independent medical examination (IME). (CE3; CE7, p. 2) Claimant's counsel authored a medical records summary to Dr. Kreiter dated September 8, 2016 and provided medical records from the following providers for Dr. Kreiter's review: Dr. Abernathey; Mercy Occupational Health from

August 15, 2013 through December 15, 2013; Corridor Radiology from August 15, 2013 and October 21, 2013; Progressive Rehabilitation from August 22, 2013 through October 9, 2013; Steindler from October 11, 2013 through December 31, 2013 and May 2, 2016; and UIHC from August 17, 2013 through December 18, 2013. (CE3, p. 3)

On September 21, 2016, claimant presented to Dr. Kreiter; Dr. Kreiter authored a report that same date. Dr. Kreiter reviewed the provided records and summarized claimant's medical treatment. Claimant reported that prior to the work injury, she never received treatment of her right shoulder. Dr. Kreiter noted claimant's second operative note had not been provided for review, but relevant details had been gleaned from a follow up medical note. He also performed a physical examination of claimant. (CE4, pp. 1, 3-4)

Following records review, history, and examination, Dr. Kreiter assessed adhesive capsulitis of the right shoulder, post two rotator cuff repairs, with resection of the lateral clavicle; and chronic pain and weakness. Dr. Kreiter opined claimant's low back and wrist had returned to baseline levels. He opined claimant achieved MMI in approximately December 2015, as her condition had then stabilized. Dr. Kreiter did not recommend surgical intervention, but advised additional conservative measures could prove beneficial. With respect to the extent of claimant's permanent impairment, Dr. Kreiter opined a total combined impairment of 17 percent upper extremity: 8 percent upper extremity for decreased range of motion and 10 percent upper extremity for distal clavicle excision. He converted this 17 percent upper extremity into a 10 percent whole person impairment. Dr. Kreiter recommended permanent restrictions as follows: no or very rare overhead work with right arm and never to exceed 5 pounds; maximum lifting of 30 to 35 pounds occasionally in two-handed floor to bench lift with arms at her sides; and avoidance of firm and sudden pulling with the right arm, i.e. starting an engine. Dr. Kreiter also noted Dr. Mysnyk had issued restrictions as well. (CE4, pp. 1-2, 4)

On November 3, 2016, claimant returned to Dr. Perea for resumption of care given Dr. Kreiter's recommendations for further treatment. Following examination, Dr. Perea assessed chronic intermittent right shoulder pain and diminished right shoulder range of motion, which he described as somewhat consistent with Dr. Kreiter's findings. Dr. Perea referred claimant for physical therapy focusing on right shoulder range of motion and strength; he opined claimant should continue with medications per Dr. Banu. (JE4, pp. 21-22)

On January 4, 2017, claimant was discharged from physical therapy and directed to perform a home exercise program. (JE14, pp. 6-7)

Defendants retained vocational rehabilitation counselor, Amanda Ruhland, to complete a vocational assessment. (DEF, p. 1) Ms. Ruhland authored a vocational assessment report dated March 15, 2017. In completing her assessment, Ms. Ruhland noted she did not personally interview claimant; rather, her opinions were based upon review of various records, including medical reports, answers to interrogatories, a job description, and wage information. (DED, p. 1) Based upon this records review, Ms.

Ruhland noted claimant as a 60 year old resident of Solon, Iowa. (DED, p. 5) She reviewed the impairment ratings and restrictions proposed by both Drs. Mysnyk and Kreiter. (DED, p. 2) Ms. Ruhland also summarized claimant's education and past work experience. (DED, pp. 3, 5)

Ms. Ruhland completed an employment analysis and classified claimant's past work experience as follows: recruiting assistant as sedentary, skilled work; cleaner/housekeeper as light, unskilled work; counselor/job coach as light, skilled work; child care provider as medium, semi-skilled work; and social services aide as light, skilled work. (DED, pp. 3-4) Ms. Ruhland opined the restrictions of Drs. Mysnyk and Kreiter would preclude returning to positions as a childcare provider and to certain positions as a cleaner/housekeeper, as certain employers require overhead work. She opined claimant was capable of returning to former positions as a recruiting assistant, counselor/job coach, and social services aide. (DED, p. 6)

Utilizing this information in connection with an OASYS computerized analysis, Ms. Ruhland opined claimant's loss of access to jobs in the Iowa City metropolitan area would be minimal or less than 10 percent. Ms. Ruhland performed labor market research in the Solon, Iowa area. Within this area, she located available positions as cashier, retail sales clerk, customer service representative, telemarketer, general office clerk, and hotel clerk. She noted such positions carried a wage range of \$320.00 to \$440.00 per week in the Solon area. Compared to claimant's pre-injury wage at defendant-employer, Ms. Ruhland found no initial wage loss. (DED, p. 6) Ms. Ruhland ultimately opined claimant suffered a loss of earning capacity in the range of 10 percent. (DED, p. 7)

Claimant retained vocational consultant, Barbara Laughlin, M.A., to perform an employability assessment. As elements of her assessment, Ms. Laughlin interviewed claimant and reviewed select medical records and answers to interrogatories. (CE8, p. 1) Ms. Laughlin authored a report containing her opinions on April 5, 2017. Therein, Ms. Laughlin summarized claimant's medical records. (CE8, pp. 2-3) She also reviewed claimant's employment history. Ms. Laughlin classified claimant's work history as follows: energy assistance intake worker as sedentary, skilled work; child care as medium, semi-skilled work; job coach as light, skilled work; teacher's aide as light, semi-skilled work; census enumerator as light, unskilled work; janitor as unskilled, heavy work; foster parent as medium, semi-skilled work; recruiter as sedentary, skilled work; and independent consultant for Perfectly Posh as light, semi-skilled work. (CE8, pp. 4-6)

Ms. Laughlin performed a transferrable skills analysis utilizing the OASYS database system. Utilizing Dr. Mysnyk's restrictions, Ms. Laughlin identified the following percentage losses in access: 6.9 percent of closest matches; 10.5 percent of good matches; and 45 percent of unskilled occupations. She then performed labor market research and located positions in assembly and production which qualified as occupations within claimant's post-injury profile. (CE8, pp. 8-10) Ms. Laughlin also offered various critiques of Ms. Ruhland's report; most notably, that Ms. Ruhland did not

interview claimant and therefore, did not have an accurate work history or knowledge of transferrable skills. Ms. Laughlin also noted claimant resided in Iowa City, not Solon, as noted by Ms. Ruhland. Additional critiques included an allegation Ms. Ruhland utilized an outdated OASYS system, did not attempt to return claimant to employment at defendant-employer, did not consider claimant's age as a disadvantage in the labor market, and did not list any jobs which were open and available to claimant. Ms. Laughlin also disputed the wage range cited by Ms. Ruhland; Ms. Laughlin provided examples, with wages ranging from \$356.00 to \$699.00 per week. (CE8, pp. 10-12)

Following her analysis, Ms. Laughlin opined claimant sustained a significant occupational loss. She opined claimant was unable to do the full range of medium physical demand work. Ms. Laughlin opined claimant was capable of performing light demand work, with some lifting to waist level beyond the light physical demand category. Ms. Laughlin opined Dr. Mysnyk's restrictions precluded claimant from acting as a foster parent or janitor. (CE8, p. 13)

On March 22, 2017, claimant's counsel authored a letter to Dr. Kreiter and inquired if claimant was or should be restricted as follows: claimant should not reach out in any direction repetitively and should not reach repetitively in front of her. (CE5, p. 1) Counsel wrote: "I ask that you please add this to her IME report as it is imperative" to claimant's vocational evaluation. (CE5, p. 2)

Dr. Kreiter authored a supplemental IME report dated April 5, 2017. Thereby, Dr. Kreiter identified the following additional permanent restriction recommendations: claimant should not reach out in any direction repetitively with the right upper extremity and should not reach repetitively in front of her body. (CE6, p. 1)

Upon receipt of Dr. Kreiter's updated report and restrictions, Ms. Laughlin authored a supplemental vocational assessment, dated April 10, 2017. (CE9, p. 1) Utilizing Dr. Kreiter's restrictions, Ms. Laughlin opined claimant was unable to perform the full range of medium demand work. She opined claimant was capable of functioning in the light demand category, with some ability to function in some medium demand duties. Ms. Laughlin performed an OASYS analysis and identified the following percentage losses: 63.8 percent of closest matches; 80.2 percent of good matches; and 98.7 percent of unskilled occupations. (CE9, p. 2) Ms. Laughlin performed labor market research and identified available positions as a collections clerk and accounts receivable clerk. (CE9, p. 3) Ms. Laughlin again offered critiques of Ms. Ruhland's report. In this instance, Ms. Laughlin opined the job recommendations noted by Ms. Ruhland were inappropriate given Dr. Kreiter's restrictions with respect to reaching, except for the positions of hotel clerk and telemarketer. Ms. Laughlin also expressed belief claimant's ability to work as a hotel clerk was questionable, as such clerks often have additional duties of cleaning, laundry, and breakfast set-up. (CE9, p. 6)

Defendants provided Ms. Ruhland with a copy of Ms. Laughlin's report for review. After doing so, Ms. Ruhland authored a supplemental report dated April 25, 2017. Ms. Ruhland indicated her prior report had been based on the assumption that claimant

provided accurate answers to interrogatories. She also noted she had not been requested to provide job placement services. Ms. Ruhland noted she had updated her OASYS database in May 2016 and anticipated another update in May 2017. She took issue with Ms. Laughlin's reference to her system as outdated, noting a difference between the program copyright date and the utilized version of the database. Ms. Ruhland indicated her wage information had been garnered from a labor market survey and an ERI-Salary Assessor, which was updated on January 1, 2017. (DEE, pp. 1-2) Following these responses, Ms. Ruhland indicated her prior opinions remained unchanged. Ms. Ruhland opined claimant possessed transferable skills and a strong work history, which would allow claimant to obtain employment in several positions in the labor market. Ms. Ruhland again opined claimant sustained an approximate 10 percent loss of earning capacity. (DEE, p. 2)

Claimant provided Ms. Laughlin with Ms. Ruhland's April 25, 2017 report for review. She continued to offer critiques of Ms. Ruhland's report and highlighted that the tool utilized by Ms. Ruhland to predict wages would provide estimates, even if no such positions were available in the geographical area. (CE10, pp. 1-2)

The evidentiary record contains claimant's job search log for 2017. Review of the listings shows claimant sought 10 positions from January 5, 2017 through April 21, 2017. Positions of interest included: garden assistant; floral delivery driver; customer service; cashier; receptionist; and merchandiser. (CE16, pp. 1-5) On April 22, 2017, claimant was hired as a merchandiser for American Greeting. Her duties involve stocking greeting cards at retailers. Claimant testified she is capable of performing her duties, although she uses her left hand with overhead reaching and breaks down boxes of product into smaller, more manageable, amounts. Claimant earns \$10.60 per hour for her efforts. Her hours vary from 14 to 30 hours per week, depending on the holiday season; she averages approximately 20 hours per week. Claimant testified she enjoys her job and intends to remain employed in this position. (Claimant's testimony; CE15, p. 7) Claimant testified she has also worked intermittently making blankets since her date of injury. (Claimant's testimony)

Following an inquiry from claimant's counsel, Dr. Mysnyk authored an opinion as to when he anticipated claimant would have been capable of returning to work as a recruiter or in a similar position. (CE18, p. 1) Dr. Mysnyk opined that following both surgeries, he would have anticipated claimant could resume recruiter work after the initial postoperative visits on November 19, 2013 and January 27, 2015. (CE19, p. 1)

Claimant testified she complains only of ongoing right shoulder difficulties related to the August 13, 2013 work injury. Claimant testified her medical condition improved greatly following the second surgery with Dr. Mysnyk. Despite improvement, claimant testified to ongoing difficulties and pain of her right shoulder; she utilizes Tramadol for pain. Claimant testified she is unable to keyboard for a prolonged period of time, as she must extend her arms in front of her body. Claimant testified to impact upon activities of daily living, such as an inability to vacuum, shovel, mow, lift household items, or walk the dog. Claimant also relayed an inability to provide some of the specialized care

required by her special needs son. She now relies upon her other children for assistance with activities. Claimant also alters the manner in which she engages in daily and recreational activities, by requiring assistance or breaking larger lifting tasks into smaller amounts. Claimant's primary difficulties involve lifting, pushing, and pulling with the right arm. (Claimant's testimony)

Defendants paid indemnity benefits to claimant. Defendants' records denote temporary total disability benefits were paid from November 7, 2013 through November 19, 2013. (CE22, pp. 1, 7) Thereafter, defendants continued weekly benefits through March 22, 2016, which defendants classified as permanent partial disability benefits. (CE22, pp. 1-7)

The evidentiary record contains a selection of claimant's tax records from 2006 and 2008 through 2016. In 2006, claimant earned \$24,315.00: \$10,070.00 from alimony; \$22,960.00 from pension/annuities; and \$8,733.00 as a business loss. (CE12, p. 2) In 2008, claimant earned \$36,642.00: \$11,116.00 from wages; \$19,526.00 from alimony; and \$6,000.00 from an IRA distribution. (CE12, p. 3) In 2009, claimant earned \$35,582.00: \$11,382.00 from wages; \$12,000.00 from alimony; and \$12,200.00 from an IRA distribution. (CE12, p. 4) In 2010, claimant earned \$38,715.00: \$11,637.00 from wages; \$9,500.00 from alimony; \$8,849.00 from an IRA distribution; \$5,311.00 from pension/annuities; and \$3,186.00 in unemployment benefits. (CE12, p. 5) In 2011, claimant earned \$16,866.00: \$378.00 in wages; \$10,670.00 from alimony; and \$5,696.00 in unemployment benefits. (CE12, p. 6) In 2012, claimant earned \$24,524.00; the sources are not itemized. (CE12, p. 7) In 2013, claimant earned \$1,786.00 in wages; \$11,410.00 from alimony; and \$5,753.00 in unemployment benefits. (CE12, p. 8) In 2014, claimant earned \$15,370.00: \$129.00 in wages; \$10,116.00 from alimony; \$3,961.00 from pension/annuities; and \$1,164.00 in unemployment benefits. (CE12, p. 10) In 2015, claimant earned \$11,928.00, all from alimony. (CE12, pp. 11-12) In 2016, claimant earned \$10,494.00, all from alimony. (CE12, p. 16)

Claimant requests defendants be found responsible for various claimed medical expenses. Claimant's request includes charges by Johnson County Ambulance, UIHC, and a Medicaid lien. The Johnson County Ambulance expense is related to August 17, 2013 emergency room transportation. (CE23, p. 3) A statement from UIHC identifies four dates of service which utilized a diagnosis code related to the right shoulder: November 21, 2013; November 27, 2013; October 27, 2014; and December 19, 2014. (CE23, pp. 1-2) The Medicaid lien includes charges at UIHC on November 21, 2013, November 27, 2013, December 4, 2013, December 18, 2013, January 15, 2014, January 22, 2014, and February 12, 2014; as well as Walgreens pharmacy on February 17, 2014, March 24, 2014, April 21, 2014, May 1, 2014, May 27, 2014, and May 30, 2014. (CE23, pp. 4-9)

CONCLUSIONS OF LAW

The first issue for determination is whether claimant is entitled to temporary disability benefits during the periods of November 7, 2013 through February 11, 2014, February 15, 2014 through July 30, 2014, and August 2, 2014 through October 18, 2014.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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

Claimant underwent right shoulder arthroscopy with Dr. Mysnyk on November 7, 2013. Thereafter, Dr. Mysnyk removed claimant from work pending follow up. That follow up appointment occurred on November 19, 2013, at which time Dr. Mysnyk released claimant to return to work on left-handed duties. Claimant's counsel subsequently inquired of Dr. Mysnyk on what date Dr. Mysnyk would have anticipated claimant would have been capable of returning to her pre-injury or similar work; Dr. Mysnyk replied claimant would have been so capable following the postoperative visit on November 19, 2013. Dr. Mysnyk's statements in this respect are unrebutted. During the remainder of the claimed period, claimant was not restricted any more severely, nor removed from work. Based upon Dr. Mysnyk's opinion, I find claimant was capable of performance of substantially similar employment as of November 19, 2013. Therefore, under section 85.34(1), claimant's healing period terminated on November 19, 2013.

Claimant is entitled to healing period benefits from November 7, 2013 through November 19, 2013. Defendants have paid healing period benefits for this period. No additional healing period benefits are ordered by this decision.

The next issue for determination is the extent of claimant's industrial disability. The next issue for determination is the commencement date for permanent disability benefits. These issues will be considered together.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. 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).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant was 61 years of age on the date of evidentiary hearing. Claimant earned her high school diploma, as well as a number of postsecondary degrees and certifications, including an applied arts degree, associate's degree, bachelor's degree with an aging studies certificate, and a paraeducator certificate. Claimant's course of study was varied, but her success in the educational realm demonstrates claimant possesses the intelligence and capability to learn new skills. Claimant's work history is similarly varied and includes work in multiple fields, with exertion levels ranging from sedentary to medium work in unskilled to skilled occupations. As a result, claimant possesses a number of skills in a number of fields.

Claimant suffered an admitted work related injury on August 13, 2013. While claimant's claim initially involved complaints in multiple body parts, she alleges permanent disability only on the basis of a right shoulder injury. As a result of the stipulated right shoulder injury, claimant sustained a full thickness rotator cuff tear and underwent two surgical procedures. On November 7, 2013, claimant underwent arthroscopy with subacromial decompression, rotator cuff repair, and debridement of the biceps tendon. Due to continued complaints and discovery of a re-tear, on January 15, 2015, claimant underwent arthroscopy with shaving of frayed cuff tissue, repeat rotator cuff repair, and distal clavicle excision. Both procedures were performed by Dr. Mysnyk.

Dr. Mysnyk ultimately opined claimant sustained a 14 percent upper extremity or 8 percent whole person impairment as a result of the shoulder injury, based upon the distal clavicle excision and decreased range of motion and strength. Claimant's IME physician, Dr. Kreiter, provided a generally consistent rating of 17 percent upper extremity or 10 percent whole person, based upon the distal clavicle excision and decreased range of motion. Given the similarity in rating methodology and ultimate rating reached, I award weight to the ratings of both physicians.

Dr. Mysnyk imposed permanent work restrictions of no lifting over 30 pounds floor to waist; no lifting over 10 pounds waist to overhead, occasionally; and a limitation of repetitive overhead work to 50 times per hour. Dr. Kreiter recommended more stringent work restrictions than those imposed by Dr. Mysnyk. I award greater weight to the opinions of Dr. Mysnyk, who served as claimant's treating surgeon and possessed the opportunity to examine claimant on multiple occasions, including intra-operatively. More importantly, however, I find Dr. Mysnyk's restrictions to be more credible given the circumstances under which those restrictions were imposed. Specifically, Dr. Kreiter issued an opinion recommending certain restrictions and subsequently adopted additional restrictions at the urging of claimant's counsel, without explanation as to the basis for which these restrictions were added. For this reason, I award no weight to Dr. Kreiter's recommended restrictions and instead, adopt the restrictions imposed by Dr. Mysnyk.

Two vocational experts considered the impact of Dr. Mysnyk's restrictions upon claimant's vocational profile. Ms. Ruhland opined claimant was precluded from returning to positions in childcare and some cleaning/housekeeping; she opined claimant was capable of returning to pre-injury positions as a recruiting assistant, counselor, life coach, and social services aide. Mr. Ruhland ultimately opined claimant sustained a loss of access of approximately 10 percent, utilizing the Iowa City metropolitan area. Ms. Ruhland generally identified positions available to claimant and found that within the labor market, claimant sustained no wage loss in these positions as compared to her pre-injury wage at defendant-employer. Ms. Laughlin opined claimant was not capable of performing the full range of medium demand work, but fell within the light physical demand category. Ms. Laughlin found the following loss of access as a result of Dr. Mysnyk's restrictions: 6.9 percent of closest matches; 10.5 percent of good matches; and 45 percent of unskilled matches. Ms. Laughlin was able to locate available positions within claimant's post-injury vocational profile.

Ms. Laughlin offered critiques of Ms. Ruhland's report. I find these critiques unpersuasive, as generally inconsequential in the scheme of my industrial disability analysis. For example, Ms. Laughlin critiqued Ms. Ruhland for using inaccurate information due to Ms. Ruhland's lack of interview of claimant. However, I ultimately find Ms. Ruhland and Ms. Laughlin reached similar conclusions with respect to claimant's loss of access and wage loss, using Dr. Mysnyk's restrictions. I also note Ms. Laughlin critiqued Ms. Ruhland's reference to claimant's outdated address in Solon, Iowa; yet this is irrelevant, as Solon is located less than 15 miles from claimant's current

city of residence and within the same Iowa City geographical area referenced by Ms. Ruhland.

Claimant injured her dominant right upper extremity, and I find claimant's restrictions have resulted in a loss of access to the labor market, particularly with respect to heavier-natured, medium and above levels of physical demands. At the time of her work injury, claimant was performing sedentary employment and remains capable of performing such work. Claimant did not return to work at defendant-employer, despite opinions claimant was capable of returning to work on multiple occasions. I find this failure to return to work was complicated by a number of reasons personal to claimant, as opposed to defendant-employer's refusal to offer claimant employment.

I am unconvinced claimant has demonstrated motivation to return to the labor market following her work injury. Claimant's post-injury work search is sporadic. Following the injury of August 13, 2013, claimant worked two positions of temporary duration in 2014, as well as acting as an independent contractor for Perfectly Posh. The evidentiary record lacks specific details regarding a work search until 2017. From January through April 2017, claimant applied for 10 distinct positions and successfully obtained one of the positions. This position as a merchandiser falls within her restrictions and carries a higher rate of pay than either rate available to claimant at defendant-employer. Claimant works fewer hours in this new role, yet the record is unclear as to whether further hours would be available to claimant, should she desire additional hours. Further review of claimant's wage income prior to the work injury reveals she earned approximately \$11,000.00 to \$12,000.00 annually, during the 2008 to 2010 time period. Claimant earned less than \$400.00 from wages in 2011 and her 2012 wages are not established in the record. In 2013, presumably with defendant-employer, claimant earned shy of \$2,000.00. Following the work injury, claimant reported wages of \$129.00 in 2014 and zero dollars in 2015 or 2016. During each of the years identified in the evidentiary record, the majority of claimant's income has come in forms unrelated to her personal wages. Given this background and claimant's lack of employment search, I find claimant is not convincingly motivated to continued employment.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 25 percent industrial disability as a result of the stipulated work-related injury of August 13, 2013. Such an award entitles claimant to 125 weeks of permanent partial disability benefits (25 percent x 500 weeks = 125 weeks). Such benefits shall commence on November 20, 2013, the date following conclusion of claimant's healing period, as determined *supra*. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were \$320.00, and claimant was single and entitled to 5 exemptions. The proper rate of compensation is therefore, \$232.98.

The next issue for determination is whether defendants are responsible for claimed medical expenses.

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).

Claimant seeks an order finding defendants responsible for various claimed medical expenses incurred at Johnson County Ambulance, UIHC, and a Medicaid lien. The Johnson County Ambulance expense is related to August 17, 2013 emergency room transportation. (CE23, p. 3) A statement from UIHC identifies four dates of service which utilized a diagnosis code related to the right shoulder: November 21, 2013; November 27, 2013; October 27, 2014; and December 19, 2014. (CE23, pp. 1-2) The Medicaid lien includes charges at UIHC on November 21, 2013, November 27, 2013, December 4, 2013, December 18, 2013, January 15, 2014, January 22, 2014, and February 12, 2014; as well as Walgreens pharmacy on February 17, 2014, March 24, 2014, April 21, 2014, May 1, 2014, May 27, 2014, and May 30, 2014. (CE23, pp. 4-9)

Defendants dispute responsibility for the ambulance service expenses dated August 17, 2013, as the conditions giving rise to the transportation and treatment were not work-related. Claimant offered no medical opinions causally relating claimant's need for this transportation and treatment to the work injury of August 13, 2013. Accordingly, defendants are not responsible for the claimed expense from Johnson County Ambulance.

Defendants also dispute responsibility for claimant's care at UIHC, as any such expenses were not authorized.

When dealing with unauthorized care, to be entitled to payment, claimant must establish the care was rendered on a compensable claim. That being established, claimant must establish that the care provided on the compensable claim was both reasonable and the outcome more beneficial than the care offered by the defendants. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010).

The UIHC statement indicates claimant received care under a diagnosis related to her right shoulder on four dates: November 21, 2013; November 27, 2013; October 27, 2014; and December 19, 2014. The evidentiary record contains no medical records associated with these dates of injury. As a result, I am unable to determine that claimant's care on these dates was causally related to the work-related injury of August 13, 2013. I am also unable to find that any care offered on these dates was more beneficial than the care offered by providers authorized by defendants. Accordingly, defendants are not responsible for the claimed expenses at UIHC on the dates specified in the invoice.

With respect to the Medicaid lien, the lien includes charges at UIHC on November 21, 2013, November 27, 2013, December 4, 2013, December 18, 2013, January 15, 2014, January 22, 2014, and February 12, 2014; as well as Walgreens pharmacy on February 17, 2014, March 24, 2014, April 21, 2014, May 1, 2014, May 27, 2014, and May 30, 2014. As set forth above, defendants are not responsible for unauthorized expenses incurred in treatment of claimant's right shoulder at UIHC. The remainder of the dates in question are either not supported with substantiating documents in the evidentiary record or pertain to care with Dr. Adams relative to bilateral hand numbness, a condition not found or alleged to be work-related. Accordingly, defendants are not responsible for the Medicaid lien as it pertains to the identified expenses at UIHC. Similarly, the Medicaid lien includes charges for prescription expenses on February 17, 2014, March 24, 2014, April 21, 2014, May 1, 2014, May 27, 2014, and May 30, 2014. Claimant has failed to prove any of these expenses were incurred in treatment of the work injury of August 13, 2013. Accordingly, defendants are not responsible for the Medicaid lien as it pertains to any of the identified expenses at Walgreens.

The next issue for determination is whether claimant is entitled to reimbursement of an independent medical examination under Iowa Code section 85.39. At the time of hearing, defendants stipulated reimbursement would be made for the requested \$600.00 expense. As a result, no independent determination is required on this issue.

The next issue for determination is the extent of credit to defendants for benefits paid. By this decision, the undersigned determined claimant was entitled to healing period benefits from November 7, 2013 through November 19, 2013, with permanent partial disability benefits commencing thereafter, on November 20, 2013. No further issues were raised with respect to claimant's right to additional healing period benefits after October 18, 2014. Accordingly, defendants are entitled to credit for healing period benefits paid from November 7, 2013 through November 20, 2013, and for permanent partial disability benefits paid following commencement of such benefits on November 20, 2013.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: \$100.00 filing fee and \$600.00 cost of Dr. Kreiter's report. Defendants agreed claimant would be reimbursed for the requested portion of Dr. Kreiter's fee under section 85.39; as a result, taxation of the report expense as a cost is moot. The cost of filing fee is an allowable cost and is taxed to defendants. Defendants are taxed with costs in the amount of \$100.00.

ORDER

THEREFORE, IT IS ORDERED:

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant healing period benefits at the weekly rate of two hundred thirty-two and 98/100 dollars (\$232.98) for the period of November 7, 2013 through November 19, 2013.

Defendants shall pay unto claimant one hundred twenty-five (125) weeks of permanent partial disability benefits commencing November 20, 2013 at the weekly rate of two hundred thirty-two and 98/100 dollars (\$232.98).

Defendants shall pay accrued weekly benefits in a lump sum.

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

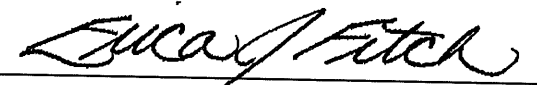
Defendants shall receive credit for benefits paid as set forth in the decision.

Defendants shall reimburse claimant for the claimed portion of Dr. Kreiter's IME expense, as stipulated at evidentiary hearing.

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

Costs are taxed to defendants pursuant to 876 IAC 4.33 in the amount of one hundred dollars (\$100.00).

Signed and filed this 25th day of April, 2018.


ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Paul J. McAndrew, Jr.
Attorney at Law
2771 Oakdale Blvd., Ste. 6
Coralville, IA 52241
paulm@paulmcandrew.com

Tonya A. Oetken
Attorney at Law
1089 Jordan Creek Pkwy., Ste. 360
West Des Moines, IA 50266
Toetken@travelers.com

EJF/sam

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.