BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BOUATHONG KHAMBANOUN,

Claimant,

vs.

ORTIZ CORP. d/b/a SWAN PACKING, INC.,

Employer,

and

THE STANDARD FIRE INS. CO.,

Insurance Carrier,
Defendants.

File No. 5052943

ARBITRATION

DECISION

Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Bouathong Khambanoun, filed a petition in arbitration seeking workers' compensation benefits from Ortiz Corporation d/b/a Swan Packing, Inc., employer, and The Standard Fire Insurance Company, insurance carrier, both as defendants, as a result of an alleged injury sustained on March 24, 2015. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on January 27, 2017, in Des Moines, Iowa. The proceedings were interpreted by Phensy Pane.

The record in this case consists of claimant's Exhibits 1 through 30, defendants' Exhibits A through G, and the testimony of the claimant, Thao Quang, and Kathy Bockheim. The parties submitted post-hearing briefs, the matter being fully submitted on March 3, 2017. Prior to issuance of the arbitration decision, an appeal decision was entered in the case of Bluml v. Dee Jays, Inc., File No. 5047125 (App. Dec. Jan. 13, 2016). Due to the potential precedential value of the appeal decision, defendants filed a motion requesting the undersigned take notice of the Bluml appeal decision. Defendants' motion is granted.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on March 24, 2015 which arose out of and in the course of her employment;

2. Whether the alleged injury is a cause of temporary disability;

3. Whether claimant is entitled to temporary disability benefits from March 25, 2015 through April 20, 2015;

4. Whether the alleged injury is a cause of permanent disability;

5. The extent of claimant's permanent disability, including whether claimant is permanently and totally disabled under industrial disability principles or the odd-lot doctrine;

6. Whether defendants are responsible for medical expenses detailed in Exhibit 27;

7. Whether claimant is entitled to reimbursement for an independent medical examination under Iowa Code section 85.39;

8. Whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and if so, how much; and

9. 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 was 58 years of age at the time of hearing. She was born in Laos, where she attended school through the 6th grade. While she remained in Laos, claimant worked as a farmer and raised chickens. Claimant immigrated to the United States in September 2006. She originally resided in California, but moved to Iowa in February 2007. She initially resided in Des Moines; she did not work during this time. In October 2010, claimant moved to Storm Lake, where she worked in meat production at a Tyson plant. Claimant earned $12.50 per hour and worked full time. In 2014, claimant was laid off by Tyson. (Claimant's testimony; Exhibit 17, page 94)

Following her layoff, claimant returned to Des Moines and in October 2014, claimant began work at defendant-employer. Claimant worked as a "trimmer," cutting

bone from meat and tendon utilizing a knife and hook. After she finished trimming at her station, she placed the meat on a nearby conveyor. The conveyor was located approximately two to three steps from her work station. She earned $8.00 per hour. (Claimant's testimony; Ex. 17, p. 94) Claimant testified there are cameras on the production floor, although she is not certain what areas, if any, are recorded or photographed. (Claimant's testimony) Her personnel file contains a notice indicating the production floor is monitored by camera. (Ex. 11)

On Monday, March 23, 2015, claimant called in sick and did not present to work at defendant-employer. (Claimant's testimony; Ex. 14, p. 84) Claimant testified she had not been sick over the weekend, but on Monday awoke with a cough and itchy throat. Claimant denied experiencing any dizziness or vomiting. She attributed any stomach complaints or diarrhea symptoms to eating spicy food. (Claimant's testimony)

On Tuesday, March 24, 2015, claimant testified she awoke and no longer felt ill. As a result, she presented to work for her normal shift at 6:00 a.m. She clocked in and began working at her work station, a table in the pepper room. Her work station was located in a small area between a wall and conveyor belt. (Claimant's testimony) Claimant is a woman of very petite stature.

Generally, another employee would bring claimant meat to cut at her station. However, on March 24, 2015, claimant testified her supervisor directed claimant to retrieve the meat from the conveyor herself. She would retrieve the meat, return to her table to cut the meat, and then return the meat back to the conveyor. While at her station, claimant stood upon a thin mat; she would then step from the mat onto a cement floor, walk to the conveyor, and step onto a slightly raised platform to return or retrieve meat. Claimant testified she performed her duties in this fashion, but began to feel dizzy due to walking back and forth while carrying the meat. She also noted her table was not sturdy; it moved about as if it were loose. (Claimant's testimony)

Claimant testified after she became dizzy, she passed out. She recalls only the sensation of falling and then being on the floor. Claimant testified when she came to, people were surrounding her and telling her not to fall asleep. She testified her teeth were painful, she felt a lump on her head, and had cuts on her forehead and in her mouth. She did not recall the manner in which she fell or how she sustained her injuries. Claimant was helped by coworkers and a supervisor into the lunchroom area. She indicated she did not want to go to the hospital, as she did not have health insurance. Claimant testified someone in the group informed her that since she was hurt at work, defendant-employer would pay for her care. (Claimant's testimony)

An ambulance was called and the Des Moines Fire Department EMS service responded to defendant-employer's facility. Fire department records note EMS personnel were notified at 7:26 a.m. regarding a fall victim. The record notes claimant had experienced vomiting and diarrhea since the prior day, had presented to work and passed out. Claimant was evaluated and observed to have sustained a small abrasion/hematoma on her forehead. EMS noted a chief complaint of nausea and

vomiting, with an additional complaint of a sore throat. The EMS provider indicated an impression of stomach influenza. Claimant was transported to Broadlawns Medical Center (Broadlawns). (Ex. 3, pp. 28-29) A supervisor, Nong Luong, travelled with claimant to act as an interpreter. (Claimant's testimony)

Upon arrival at Broadlawns at 8:03 a.m., claimant was evaluated by David Cornelder, D.O. Dr. Cornelder noted claimant had passed out at work and struck her head. He further noted claimant had experienced nausea, vomiting, and diarrhea for the last three days; an additional complaint of abdominal cramping was also noted. (Ex. 4, p. 34) Dr. Cornelder performed a physical examination, noting a forehead abrasion and two loose upper teeth. (Ex. 4, p. 35) Claimant underwent a head CT, which the radiologist read as revealing a small 5 millimeter right insula parenchymal hemorrhage. (Ex. 4, pp. 37-38) Dr. Cornelder recommended hospital admission for neurosurgical evaluation. Claimant requested her care be transferred to UnityPoint Health/Iowa Methodist Medical Center (IMMC). Dr. Cornelder approved the transfer to IMMC and noted a departure diagnosis of closed head injury with petechial brain hemorrhage. (Ex. 4, p. 37)

Upon arrival at IMMC, Sheryl Sahr, M.D. of the trauma surgery service evaluated claimant. Dr. Sahr noted claimant had been admitted to the hospital for observation after a fall, with a "tiny" intracranial parenchymal bleed. (Ex. 5, p. 39) Dr. Sahr's history notes claimant had experienced diarrhea and poor oral intake since the prior weekend, with numerous presyncopal events. While at work that day, Dr. Sahr noted claimant felt lightheaded and fell, striking her head and briefly losing consciousness. (Ex. 5, p. 39) Dr. Sahr commented claimant appeared to have experienced some sort of gastroenteritis for several days, with presyncopal events over the last day or so. (Ex. 5, pp. 42, 65)

Dr. Sahr indicated claimant's head CT from Broadlawns revealed a 5 millimeter right insula parenchymal hemorrhage. (Ex. 5, p. 39) Dr. Sahr performed a physical examination and noted claimant's past medical history included chronic back pain. Dr. Sahr diagnosed claimant with an intraparenchymal hemorrhage of the brain. She admitted claimant to the hospital for observation and neurosurgical consultation. (Ex. 5, pp. 40-41)

Defendant-employer drafted an accident investigation form on March 24, 2015. The report noted that Thao Quang observed claimant standing at a trimming table, when claimant placed her knife and hook on the table, grabbed the table, and began to fall. Mr. Quang described claimant as seeming to have fainted. Mr. Quang moved toward claimant, but was unable to reach her before she fell and struck her head on the floor. (Ex. 15, pp. 86, 88)

Mr. Quang testified at evidentiary hearing. He confirmed the details of the written report, indicating he informed office manager, Kathy Bockheim, of what he observed and she completed the form. Mr. Quang is a 26-year employee of defendant-employer and served as one of claimant's supervisors on the date of her fall. Mr. Quang testified

he was present and witnessed claimant fall on March 24, 2015. (Mr. Quang's testimony)

Mr. Quang testified that at approximately 7:15 or 7:30 a.m., claimant was working at her station. He testified he observed claimant begin to fall and he ran over to attempt to catch her, but was unable to reach her before she struck the floor. Mr. Quang testified claimant fell to her left side, away from the conveyor. He did not observe claimant strike anything as she fell; she simply fell to the floor and her helmet was knocked from her head. He admitted, however, that he observed claimant from approximately 15 feet behind and at an angle, so he may not have necessarily seen if she struck any other objects during the fall. (Mr. Quang's testimony)

At the time of evidentiary hearing, Mr. Quang attempted to answer the questions posed to him in a clear and direct manner. His testimony was as clear and responsive as could be expected, given he did not utilize an interpreter and English was not his first language. He demonstrated excellent demeanor and the undersigned was presented with no reason to doubt Mr. Quang's veracity. Mr. Quang is found credible.

Kathy Bockheim also testified at evidentiary hearing. Ms. Bockheim testified she serves as defendant-employer's accountant, office manager, human resources representative, and workers' compensation contact. Ms. Bockheim testified she was advised of claimant's fall immediately upon her arrival at work on March 24, 2015. She then proceeded to complete accident form paperwork, as supervisor, Mr. Luong, had accompanied claimant to the hospital. She immediately took the witness statement of Mr. Quang; she subsequently completed additional claim paperwork. Ms. Bockheim testified claimant's claim was submitted to defendant-insurance carrier. (Ms. Bockheim's testimony)

Ms. Bockheim testified that while defendant-employer does have cameras on the production floor, no camera viewed claimant's specific work station. Thus, Ms. Bockheim testified defendant-employer does not possess any video of claimant's fall. (Ms. Bockheim's testimony)

Ms. Bockheim's testimony was clear, direct, and professional. She was quite personable and her demeanor gave the undersigned no reason to doubt her veracity. Ms. Bockheim is found credible.

While claimant remained hospitalized, Dr. Sahr reevaluated claimant on March 25, 2015. Dr. Sahr noted that while claimant initially did not complain of nausea, she had vomited earlier that morning. Dr. Sahr noted claimant complained of head pain, as well as looseness and pain of her front teeth. Complaints of diarrhea were noted as improved. (Ex. 5, pp. 43, 59) Dr. Sahr noted claimant complained of some post-concussive syndrome symptoms, including vertigo and nausea. Dr. Sahr ordered a repeat head CT, which she later opined was negative. (Ex. 5, pp. 44, 60) The radiologist read claimant's repeat head CT as revealing no acute intracranial process, but a small left frontal scalp hematoma without calvarial fracture. (Ex. 7, p. 71)

On March 26, 2015, claimant complained to a nurse of abdominal pain, diarrhea, and dizziness with ambulation. (Ex. 5, p. 56) Dr. Sahr reevaluated claimant and noted claimant continued to experience persistent dizziness and diarrhea. Dr. Sahr noted claimant had received a 1 liter bolus during the evening hours due to hypotension. She opined claimant demonstrated a good response to the fluids. (Ex. 5, pp. 46, 56) Dr. Sahr recommended further testing for common causes of epigastric pain and diarrhea, given negative test results to date. (Ex. 5, pp. 47-48)

On March 27, 2015, IMMC discharged claimant to home. Discharge records note an admission diagnosis of possible small intracranial hemorrhage and gastroenteritis. The record notes claimant was admitted following a syncopal fall at work, resulting in claimant striking her head. Per the record, claimant reported she experienced vomiting and diarrhea "leading up to" the fall. Claimant was accordingly, admitted for monitoring and neurosurgical consult. (Ex. 5, p. 50; Ex. A, p. 1)

While hospitalized, claimant experienced continued issues with nausea, vomiting, and diarrhea, as well as dizziness on standing. Claimant also experienced hypotension, which responded to fluid resuscitation. A head CT did not reveal any evidence of intracranial hemorrhage and claimant improved to the point she could ambulate without dizziness. Claimant was ultimately discharged from care with a noted discharge diagnosis of gastroenteritis. (Ex. 5, p. 50; Ex. A, p. 1) Claimant received prescriptions for naproxen and baclofen; she was advised to follow up with her primary care provider. (Ex. 5, p. 51; Ex. A, p. 2) The discharge records were subsequently amended to note claimant experienced some symptoms of post-concussive syndrome, including vertigo and nausea, thus warranting a discharge diagnosis of post-concussive syndrome. (Ex. 5, p. 49)

On March 31, 2015, claimant presented to her primary care provider, Brandon Madson, M.D. Dr. Madson noted claimant presented in follow up of a recent hospitalization due to an event where claimant passed out and fell at work. Dr. Madson noted claimant had experienced a diarrheal illness and was thought to have been slightly dehydrated. Claimant expressed complaints of mild headaches, soreness and looseness of three teeth, and soreness of her breastbone, neck and back. Dr. Madson authored a work excuse, issued prescriptions for Naprosyn and Cyclobenzaprine, and suggested evaluation by a dentist. (Ex. 9, pp. 76-77)

On April 6, 2015, defendant-insurance carrier directed a letter to claimant, indicating her workers' compensation claim was denied. Defendant-insurance carrier based the denial upon medical evidence and gathered statements, which led it to conclude that it appeared claimant suffered from an episode of syncope caused by a preexisting illness, and the injuries sustained in the fall were not related to being at a greater risk in the workplace. (Ex. 18, p. 95; Ex. E, p. 1)

On April 8, 2015, claimant presented to the IMMC emergency department with complaints of headaches, neck pain, decreased focus, and lightheadedness after a fall. (Ex. 5, p. 67) Whitney Vogt, PA, examined claimant and ordered CT scans of

claimant's head and neck. (Ex. 5, pp. 68-69) The repeat head CT revealed no acute intracranial process and a resolving small left frontal scalp hematoma without calvarial fracture. (Ex. 7, p. 72) The cervical spine CT revealed no acute fracture subluxation of the cervical spine. (Ex. 8, p. 73) Ms. Vogt issued diagnoses of headaches and neck pain; she also noted claimant likely suffered with post-concussive syndrome. Ms. Vogt authored a work excuse and recommended claimant follow up with her primary care provider. (Ex. 8, pp. 73-74)

Claimant returned to Dr. Madson on April 9, 2015 with complaints of headaches and neck pain. Dr. Madson assessed post-concussion syndrome, tooth loosening, and neck pain and stiffness. He extended claimant's work excuse until April 20, 2015 and indicated he expected gradual improvement. Dr. Madson continued claimant's prescriptions and ordered a course of physical therapy for claimant's neck. (Ex. 9, pp. 78-79; Ex. 10, p. 80)

Claimant returned to work at defendant-employer on or about April 20, 2015. When she returned, claimant did not return to the trimmer position. Instead, she worked sorting meat on the production line. (Claimant's testimony)

In early September 2015, claimant testified she requested approval of four weeks of vacation. She testified she sought to visit her children, including her daughter who was pregnant. (Claimant's testimony) Defendant-employer's records indicate claimant requested time off in order to attend her son's wedding in Laos. (Ms. Bockheim's testimony; Ex. 14, p. 85)

Defendant-employer granted claimant's request; however, as claimant had no accrued time, defendant-employer limited her to two weeks of unpaid time. Claimant was notified that if she did not return to work on September 28, 2015, she would no longer have a job. (Claimant's testimony; Ex. 14, p. 85) Claimant testified she did not return to Iowa until after this date, so she did not attempt to return to work at defendant-employer. She admitted that had she returned to work on September 28, 2015, she would have had a job at defendant-employer. (Claimant's testimony) Ms. Bockheim testified that defendant-employer considers claimant a voluntary quit, no call-no show. (Ms. Bockheim's testimony)

Claimant provided deposition testimony on November 20, 2015. At that time, she testified she did not "know what happened" on the date of her fall and "just fainted." (Ex. G, p. 3) Claimant explained that she was cutting meat at her work station, suddenly felt dizzy, and fell to the ground. She did not recall how she fell to the ground. (Ex. G, p. 5)

At the arranging of her attorney, on August 12, 2016, claimant presented for an independent medical examination (IME) with board-certified occupational medicine physician, Sunil Bansal, M.D. Dr. Bansal issued a report containing his findings and opinions dated October 24, 2016. As an element of his IME, Dr. Bansal performed a medical records review. (Ex. 1, pp. 1-4) He also interviewed claimant, who indicated

on the date of her fall, she was working quickly, cutting meat and placing the meat on another station. Dr. Bansal indicated that while performing this task, claimant became dizzy and lightheaded "from exhaustion." Claimant then fell and struck her head. (Ex. 1, p. 4) Claimant reported complaints of: neck pain and spasms, with radiation to her arms; difficulty eating due to dislodged teeth; difficulty sleeping; frequent headaches; and affected memory and concentration. (Ex. 1, pp. 4-5) Dr. Bansal also performed a physical examination. (Ex. A, pp. 5-6)

Following records review, interview and examination, Dr. Bansal opined claimant achieved maximum medical improvement (MMI) for her conditions on April 9, 2015, the date of her final examination by Dr. Madson. Dr. Bansal opined claimant sustained injuries to her head and neck which resulted in permanent impairment. With respect to claimant's head, Dr. Bansal opined claimant experienced a number of neurological impairments falling under the general descriptor of traumatic brain injury, with affected memory and concentration. Dr. Bansal issued a diagnosis of closed head injury with a brain hemorrhage and a loss of consciousness. He opined claimant sustained permanent impairment of 3 percent whole person as a result of the head injury. With respect to claimant's neck, Dr. Bansal opined claimant fell within DRE Cervical Category II, warranting a permanent impairment rating of 5 percent whole person. (Ex. 1, pp. 6-7)

Dr. Bansal opined claimant's fall was "work-related," as it coincided with claimant's clinical presentation, medical records, and subjective reporting. (Ex. 1, p. 9) Dr. Bansal opined claimant struck her head "violently" in the fall, pointing to the CT results showing an intra-brain bleed. (Ex. 1, p. 7) He opined claimant developed traumatic brain injury sequela as a result of the fall and accordingly, opined claimant's head and neurological pathology were a result of the fall. (Ex. 1, pp. 7-8) Dr. Bansal opined the mechanism of the fall and claimant's clinical presentation were also consistent with a diagnosis of cervical myofascial pain syndrome, characterized by trigger points. He opined claimant's neck pathology and symptoms were causally related to the fall. (Ex. 1, pp. 8-9)

Dr. Bansal opined claimant was unable to return to her former work at defendant-employer. He recommended permanent work restrictions of a 25-pound lift, avoidance of repetitive neck motion, and avoidance of flexed neck position for greater than 15 minute intervals. Dr. Bansal also recommended maintenance medical care, which would include medication use, trigger point injections, TENS unit, and a home exercise program. (Ex. 1, p. 9)

At defendants' arranging, on September 2, 2016, claimant presented for IME with board-certified occupational medicine physician, John Kuhnlein, D.O. (Ex. B, p. 2; Ex. C) Dr. Kuhnlein authored a report containing his findings and opinions dated October 31, 2016. Dr. Kuhnlein reviewed claimant's medical records and noted she had informed a treating physician that on March 24, 2015, she suddenly felt dizzy and fell, while working her regular job. Dr. Kuhnlein stated the emergency department records noted claimant had experienced nausea, vomiting, diarrhea and abdominal cramping for

three days prior to the fall. Claimant disputed this history to Dr. Kuhnlein. She specifically denied experiencing vomiting and diarrhea; she attributed any loose stools to eating hot food. Claimant informed Dr. Kuhnlein that prior to the injury, she suffered only with a cough and itchy throat. (Ex. 2, p. 15; Ex. C, p. 2)

Claimant informed Dr. Kuhnlein she continued to suffer with neck and impact site pain, low back pain, forgetfulness, blurry vision, and dizziness with prolonged activity. (Ex. 2, p. 18; Ex. C, p. 5) Dr. Kuhnlein performed a physical examination. (Ex. 2, pp. 20-21; Ex. C, pp. 7-8) Following records review, interview and examination, Dr. Kuhnlein issued the following diagnoses: (1) closed head trauma related to head contusion with concussion, headache complaints, "tiny" right insular hemorrhage, and complaints of mental status changes unsupported by his examination; (2) probable gastroenteritis; (3) neck strain; (4) complaints of low back pain with onset one year post-injury and with records describing chronic low back pain; and (5) dental injury to two upper incisors. (Ex. 2, p. 21; Ex. C, p. 8)

Dr. Kuhnlein opined claimant sustained a head contusion, concussion, cervical strain, and dental injury directly related to the fall at work. (Ex. 2, pp. 21, 23; Ex. C, pp. 8, 10) However, Dr. Kuhnlein indicated it would be reasonable for one to ask whether the "fall was in greater part related to the gastroenteritis induced hypotension" than to work-related factors. Dr. Kuhnlein noted claimant had called in sick to work the day prior to the alleged work injury, multiple providers documented symptoms consistent with gastroenteritis, and records also described numerous presyncopal episodes prior to the fall at work. (Ex. 2, p. 21; Ex. C, p. 8) Dr. Kuhnlein noted claimant disagreed with medical records indicating pre-fall symptoms of nausea, vomiting, and diarrhea, but offered no medical records supporting her own account of the symptoms. He also noted that the records indicated nursing staff observed claimant vomiting and experiencing diarrhea. Dr. Kuhnlein opined claimant's response to fluids while hospitalized demonstrated she was clearly dehydrated, a finding more consistent with gastroenteritis than a sequela of the fall. (Ex. 2, p. 22; Ex. C, p. 9)

Claimant related her symptom of dizziness prior to the fall to repetitive turning while working. Dr. Kuhnlein opined it was unlikely that the turning itself caused claimant to pass out, given how quickly he opined claimant would have needed to turn in order to induce dizziness. Rather, Dr. Kuhnlein opined it was more likely than not that claimant had a form of gastroenteritis that "significantly contributed" to the fall, by way of dehydration causing claimant to faint. He acknowledged claimant was performing work duties at the time of her fall, but opined it was medically uncertain if the fall occurred "arising from her work duties or the gastroenteritis." Dr. Kuhnlein expressed belief the fall appeared to have arisen more due to the gastroenteritis than the work duties, but noted this determination may be more of a legal than medical issue. He ultimately opined he was unable to state that the fall occurred as a "substantial more than minor factor related to her work activities." (Ex. 2, p. 22; Ex. C, p. 9)

Dr. Kuhnlein also offered opinions with respect to any causal relationship between the fall and the conditions of right insular hemorrhage, cognitive deficits, and

back pain. He opined the right insular hemorrhage was not causally associated with claimant's fall and the injury to the left side of her head. He opined had the force of the injury to the left side of her head been sufficient enough to cause the right-sided hemorrhage, other brain damage would also have been visible on the CT. Dr. Kuhnlein opined no other such damage was noted on claimant's head CT. (Ex. 2, p. 22; Ex. C, p. 9) With respect to claimed cognitive deficits, Dr. Kuhnlein opined the type of injury sustained by claimant typically caused greater cognitive deficits near the time of injury, with those symptoms diminishing over time. He noted claimant's record indicated normal cognitive function two days post-injury. Due to a lack of objective support, Dr. Kuhnlein opined he was unable to associate claimant's complaints of cognitive difficulties to the work injury. Dr. Kuhnlein also opined he found no evidence of a change in claimant's back condition as a result of the fall, noting claimant's symptoms began approximately one year after the fall. He opined it was not possible to relate claimant's current back complaints to the fall at work. (Ex. 2, pp. 22-23; Ex. C, pp. 9-10)

In the event claimant's conditions were found work-related, Dr. Kuhnlein recommended the following care: neurocognitive testing to evaluate claimant for cognitive deficits and determine appropriate treatment; evaluation by a dentist; and potentially medication and/or physical therapy for the neck condition. Pending completion of this treatment and evaluation, Dr. Kuhnlein opined claimant had not achieved maximum medical improvement (MMI). As he believed claimant had not achieved MMI, Dr. Kuhnlein provided opinions regarding the extent of claimant's permanent impairment for administrative purposes only. Dr. Kuhnlein opined claimant fell within DRE Lumbar Category II, warranting a permanent impairment rating of 5 percent whole person relative to the neck; and 2 percent whole person relative to dental injuries, absent further treatment. In total, he found a combined permanent impairment of 7 percent whole person. (Ex. 2, pp. 23-24; Ex. C, pp. 10-11)

With respect to claimant's need for work restrictions, Dr. Kuhnlein opined he lacked objective support for any cognitive deficits, but should those deficits be found and be determined work-related, work restrictions would be required. Dr. Kuhnlein also recommended work restrictions relative to claimant's neck. He opined the restrictions were temporary in nature, attributable to deconditioning. The restrictions limited claimant to occasional lifting of 20 pounds floor to waist, 40 pounds waist to shoulder, and 20 pounds above shoulder height. (Ex. 2, pp. 24-25; Ex. C, pp. 11-12)

Claimant's counsel provided Dr. Bansal with Dr. Kuhnlein's IME report for review and comment. Following review, Dr. Bansal authored a supplemental report dated November 7, 2016. Dr. Bansal opined it was inaccurate for Dr. Kuhnlein to state an injury to one side of a person's head should cause bleeding on only that side of the head. Dr. Bansal indicated that most head traumas result in contralateral-sided bleeding, a medical tenet known as the coup countercoup mechanism. Based upon this mechanism, Dr. Bansal opined claimant's head imaging demonstrated pathology consistent with claimant's fall at work. (Ex. 1, pp. 10-11)

Defendants' counsel provided Dr. Kuhnlein with Dr. Bansal's IME reports for review. After doing so, Dr. Kuhnlein issued a responsive letter dated November 9, 2016. Dr. Kuhnlein opined Dr. Bansal's references to a contrecoup injury did not apply to claimant's injury, given the extent of damage, literature on the topic, and common sense. Dr. Kuhnlein opined Dr. Bansal's report did not change his previously expressed opinions. (Ex. D, p. 1)

Claimant's counsel provided Dr. Bansal with a copy of Dr. Kuhnlein's November 19, 2016 opinion for review. Dr. Bansal indicated he was confused by Dr. Kuhnlein's expressed opinions and found his position unclear. (Ex. 1, pp. 12-13)

Claimant testified she continues to suffer with symptoms she relates to the fall at work on March 24, 2015. Claimant complained of pain in her back, hand, wrist, finger, left leg, head, teeth, and neck. Claimant located her head pain at near her hairline, where her skull meets her neck. As a result of this pain, claimant testified she can become dizzy. She also complained of pain and looseness of her teeth, leading her to often eat porridge due to difficulty eating. Claimant also indicated her low back and left hip are painful, impacting her ability to stand and resulting in radiating pain down her left leg. In addition to her physical complaints, claimant testified she has become forgetful and experiences difficulty with her memory. (Claimant's testimony)

Claimant remained unemployed on the date of evidentiary hearing. With the assistance of her daughter, claimant testified she performed an online job search and completed several applications. (Claimant's testimony) From October 2015 through December 2016, claimant applied for work with 18 different employers in 21 different positions. She applied for positions as a server, cook, housekeeper, stocker, sewing machine operator, janitor, and production worker. Claimant testified she received no call backs. (Claimant's testimony; Ex. 25, pp. 108-108a)

At the time of evidentiary hearing, claimant did not appear to be in obvious pain and was capable of bending and moving freely. Claimant's testimony was interpreted and she delivered her testimony in a fashion that appeared as if she were engaged in a conversation with the interpreter. Claimant's testimony was not smoothly delivered, was sometimes delayed, and was unresponsive on occasion. It was not immediately clear to the undersigned whether these difficulties were the result of a language barrier or should raise doubts regarding claimant's credibility.

As a result, the undersigned relies more upon the content of the evidentiary record than upon claimant's demeanor in considering whether claimant is a credible witness. Both parties admit claimant called in sick to work the day prior to her fall. Claimant's contemporaneous medical records reveal claimant, through an interpreter, relayed suffering with symptoms of vomiting, nausea, diarrhea, and presyncopal episodes in the days prior to her fall at work. Claimant denies such symptoms and testified she suffered only with a cough and itchy throat, and further that those symptoms were present on only a single date. Medical records from claimant's post-fall hospitalization indicate claimant continued to suffer with vomiting and diarrhea while

admitted. Claimant denied any vomiting and attributed her loose stools to eating spicy food.

Following review of claimant's contemporaneous medical records, I am unable to find claimant a credible witness. Although interpretation issues could lead to misunderstanding with respect to claimant's symptoms, I am unconvinced such a misunderstanding occurred in this instance. Multiple medical records, from EMS, Broadlawns, and IMMC, all note claimant as suffering with this array of symptoms in the days prior to her fall. I find it unlikely all of these providers received inaccurate histories. Furthermore, claimant denied suffering with symptoms observed by medical personnel, including vomiting and diarrhea. Quite simply, I find the unbiased observations of medical providers more convincing than claimant's testimony. Given this factual backdrop and coupled with claimant's equivocal demeanor, I find claimant was not a credible witness.

CONCLUSIONS OF LAW

The first issue for determination is whether claimant sustained an injury on March 24, 2015 which arose out of and in the course of her employment.

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).

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 Electric 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.

The workers' compensation commissioner recently addressed the topic of idiopathic falls in the case of Bluml v. Dee Jays, Inc., File No. 5047125 (App. Dec. July 20, 2017). The commissioner stated:

> In Iowa, the general rule is that idiopathic injuries, or injuries personal to an employee, are not compensable. However, as with any general rule, there are certain exceptions. In Koehler Electric v. Wills, 608 N.W.2d 1, (Iowa 2000), the claimant fell from a ladder while working on a customer's

> air conditioning unit. The claimant injured his head and bilateral shoulders as a result of that fall. Evidence was presented that the claimant in Koehler fell four to five feet from a ladder onto concrete. The evidence also suggested that the claimant fell from the ladder due to a risk personal to the claimant, which was withdrawal from alcohol. Despite the fact that the general rule in Iowa states that injuries to an employee due to personal risks are not compensable, the Iowa Supreme Court held that the claimant's injuries in Koehler were compensable. The Iowa Supreme Court said, "We hold that it is not necessary for a claimant injured in an idiopathic fall to prove that his injuries were worse because he fell from a height. It is only required that he prove that a condition of his employment increased the risk of Injury." (*Citation omitted)*
>
> An idiopathic fall which causes an injured worker to hit his or her head on an object or structure as he or she falls to the floor is compensable under the Iowa workers' compensation law consistent with Koehler. However, an idiopathic fall on a level floor generally is not compensable. In Benco Manufacturing v. Albertson, No. 08-0746, filed February 4, 2009 (Iowa Ct. App.) Unpublished, 764 N.W. 2d 783 (Table), the workers' compensation commissioner applied the Koehler decision in addressing a case where a worker went to the restroom and may have passed out or blacked out, falling and hitting her head on a concrete wall. The evidence was conflicting whether the worker passed out or was hit on the back of the head by the rest room door. The court noted that idiopathic falls, falls due to personal conditions, onto level surfaces, generally are not compensable.

(Bluml, p. 3)

Following an extensive analysis, the commissioner ultimately adopted the rule followed by a majority of jurisdictions and held that "idiopathic falls on a level floor are not compensable regardless of the hardness of the floor on the theory that a floor presents a risk or a hazard encountered everywhere and that such risks and hazards presented by a level floor are the same risks which confront all members of the public." (Bluml, p. 4)

Claimant's contemporaneous medical records establish claimant was diagnosed with gastroenteritis following the fall at work on March 24, 2015. The medical histories gathered by multiple providers indicate claimant suffered with symptoms, including nausea, vomiting, and diarrhea, in the days prior to the fall; the records also establish those symptoms persisted during claimant's post-fall hospitalization. Certain medical records also indicated claimant suffered with presyncopal events in the days prior to her fall. While hospitalized, claimant was also successfully treated for dehydration.

Drs. Bansal and Kuhnlein offered opinions with respect to the issue of causal connection between claimant's work activities and the fall at work. Claimant relies upon

the opinion of Dr. Bansal, who opined claimant's fall was work-related, as it coincided with claimant's clinical presentation, medical records, and subjective reporting. Defendants rely upon the opinion of Dr. Kuhnlein, who questioned the causal connection between claimant's work duties and the fall at work. Dr. Kuhnlein specifically questioned whether claimant's fall was more likely due to the personal condition of gastroenteritis than to any work-related factors. Dr. Kuhnlein opined it was unlikely any repetitive turning at work caused claimant to pass out, given the speed with which claimant would have needed to turn in order to induce dizziness. Dr. Kuhnlein ultimately expressed belief that gastroenteritis had significantly contributed to the fall and that the fall appeared to have arisen more as a result of the gastroenteritis than to claimant's work duties. He also opined he was unable to state that claimant's work activities played a substantial role in the fall.

Following review of the entirety of the medical record, as well as the expert opinions of Drs. Bansal and Kuhnlein, I find the opinions of Dr. Kuhnlein entitled to the greatest weight. Both Dr. Bansal and Dr. Kuhnlein acted as one-time, IME evaluators. Both men are board-certified occupational medicine physicians. Accordingly, both evaluators are in similar positions to assess the question of causal relationship between claimant's fall and her work activities. I ultimately provide the greatest weight to the opinions of Dr. Kuhnlein based upon the extent and breadth of Dr. Kuhnlein's analysis of this question. Dr. Kuhnlein provided far more extensive discussion of claimant's work duties with respect to any role those duties may have played in inducing dizziness. Dr. Kuhnlein also provided a more extensive analysis of claimant's pre-injury condition, addressing contemporaneous medical records and any role those symptoms may have played in causing claimant's fall. Given the breadth and detail of Dr. Kuhnlein's report, I find Dr. Kuhnlein's opinions entitled to the greatest probative value.

As outlined *supra*, the undersigned found claimant was not a credible witness. Given I find claimant was not a credible witness, I provide no weight to claimant's testimony that she developed dizziness as a result of moving rapidly between her work station and the nearby conveyor. Furthermore, I award Dr. Kuhnlein's opinions the greatest weight, specifically including his opinion that claimant's duties were not rapid enough to cause dizziness. I am also unconvinced that claimant's movements between the mat, cement floor, and conveyor step, played any role in claimant's dizziness or fall. There is no allegation claimant tripped or stumbled on these surfaces, and the movements were so limited in nature that it is unlikely they played any role in causing claimant's dizziness. Claimant has certainly offered no medical evidence supporting this specific argument. It is determined claimant's fall on March 24, 2015 was idiopathic in nature and due to a personal condition, specifically non-work related gastroenteritis.

Having determined claimant's fall is idiopathic in nature, the undersigned must consider whether a condition of claimant's employment increased her risk of injury. As set forth *supra*, idiopathic falls onto level surfaces are generally not compensable. Claimant has argued her work area was not level, as it involved a cement floor, thin floor mat, and stepped platform to the conveyor belt. The stepped platform played no immediate role in claimant's fall and thus, need not be considered as a factor in this

analysis. Claimant fell while standing at her work station, atop a thin mat sitting upon a cement floor. The mat was thin and designed to serve the purpose of a cushion for employees to stand upon. The height of the mat is negligible and is not akin to falling from a ladder. I am unconvinced falling from the added height of a mat would increase claimant's risk of injury any more than had she been standing solely upon the cement floor.

Undoubtedly, had claimant fallen upon a softer material, such as the mat, her injuries would have been less severe than with falling upon cement. However, this likelihood is insufficient to transform claimant's fall into a compensable claim which arose out of her employment. The agency precedent set forth in Bluml clearly holds a fall upon a level floor is not compensable, regardless of the hardness of the floor. In this case, claimant fell upon a level, cement floor.

While claimant raises the possibility that she struck another item or object while she fell, this argument is pure speculation. Claimant does not recall the details of her fall. The eyewitness, Mr. Quang, did not observe claimant strike anything during her fall. There is further, no evidence that any equipment was damaged or disturbed, evidencing that it had been struck. Claimant asks the undersigned to draw a negative inference from defendants' failure to produce video or photographic evidence of claimant's work station during the fall, despite evidence the production floor was under camera review. I find Ms. Bockheim credibly and convincingly explained that the production floor is under camera review, but the cameras are focused upon another part of the production line. I, therefore, decline to draw any negative inference, as defendants cannot produce video of claimant's work station that does not exist.

As claimant suffered an idiopathic fall onto a level surface and did not strike any objects or items as she fell, it is determined claimant has failed to carry her burden that she sustained an injury arising out of her employment. As claimant has failed to carry her burden that she sustained as injury arising out of and in the course of her employment, claimant's claim for benefits is not compensable. As claimant has failed to carry her burden of establishing the fall of March 24, 2015 arose out of and in the course of her employment, consideration of the issues pertaining to entitlement to temporary and permanent disability benefits, defendants' responsibility for claimed medical expenses, and claimant's entitlement to penalty benefits is unnecessary.

The next issue for determination is whether claimant is entitled to reimbursement for an independent medical examination under Iowa Code section 85.39.

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

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

Claimant seeks reimbursement for Dr. Bansal's IME expense in the amount of $2,450.00. (Ex. 26, p. 109) At the time of Dr. Bansal's August 12, 2016 IME, no employer-retained physician had offered an opinion regarding claimant's permanent disability. As such, claimant's right to a section 85.39 IME had not been triggered and defendants are not responsible for reimbursement of Dr. Bansal's IME fees under section 85.39.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. As claimant failed to prevail on the merits of her claim, none of the costs requested by claimant are taxed to defendants.

ORDER

THEREFORE, IT IS ORDERED:

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

Claimant shall take nothing from these proceedings.

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

Costs are taxed to claimant pursuant to 876 IAC 4.33.

Signed and filed this 7th day of December, 2017.

Erica J. Fitch

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.