



Post-hearing briefs were filed on September 16, 2019. The case was deemed fully submitted on that date.

### STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the injury;
2. Claimant sustained an injury on April 21, 2015 which arose out of and in the course of her employment;
3. The parties agree the injury resulted in both temporary and permanent disability;
4. Temporary or healing period benefits are no longer in dispute;
5. The parties agree the weekly benefit rate is \$268.02 per week;
6. The parties agree the commencement date for any permanent partial disability benefits is February 1, 2019;
7. Defendants have waived any affirmative defenses;
8. Medical benefits detailed in exhibit 12 will be paid by defendants per statements made at the time of the arbitration hearing;
9. Prior to the hearing date, defendants have paid twenty-seven (27) weeks of permanent partial disability benefits in the amount of \$268.02 per week;
10. Claimant has paid certain costs and defendants do not dispute those costs have been paid.

### ISSUES

The issues presented are:

1. Whether claimant is entitled to permanent partial disability benefits in the form of an industrial disability; and
2. If so, the extent of permanent disability to which claimant is entitled.

### FINDINGS OF FACT

This deputy, after listening to the testimony of claimant at hearing, after judging the credibility of claimant, and after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

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

Claimant is 43 years old. She is the single mother of two daughters. At the time of her arbitration hearing, claimant was a two-month resident of Sioux Falls, South Dakota. Prior to her move, she had been a life-long resident of Spirit Lake, Iowa. Claimant graduated from high school in 1994. She has no formal education beyond the high school level.

Claimant worked as a waitress for two establishments before her employment at Spirit Lake Auto Parts City. Sam Noel, the owner of the auto parts store, hired claimant as a part time delivery driver. After three months, claimant was promoted to a full time counter sales person. Claimant waited on customers, looked up parts, processed freight, assisted with returns, performed bookkeeping duties, worked as a back-up person for the delivery driver, and performed other duties as assigned. (Transcript, page 13) Claimant testified the owner of the business trusted her to perform the work properly. (Tr., pp. 14-15)

On April 21, 2015, claimant was unpacking freight when an engine hoist fell onto her right foot. (Tr., pp. 17-18) Claimant verbally notified the employer but continued to work for a period of time.

On April 22, 2015, claimant presented to the emergency room at Lakes Regional Healthcare. (Joint Exhibit 3, page 7) James A. Gamache, M.D., examined claimant's right foot. The physician found:

**Foot Exam** right foot bone tenderness (2-3+ TENDER OVER MOST OF THE RIGHT FOOT, BUT SEEMS MOST OVER THE DISTAL 1 METATARSAL AND MID FOOT AREA MOD TENDER IN THE TALOTARSAL AREA), ecchymosis (SLIGHT BRUISING OF THE DORSUM OF THE FOOT), pain, soft tissue tenderness (GENERAL TENDERNESS OF THE RIGHT FOREFOOT AND MID-FOOT), swelling (SLIGHT SWELLING OF THE MID AND FOREFOOT)

(Jt. Ex. 3, pp. 9, 10)

Dr. Gamache instructed claimant as follows:

1. REST, ICE, ELEVATE SEVERAL TIMES A DAY ELASTIC BANDAGE AS NEEDED

NAPROXEN (ALEVE) 2 TABS WITH FOOD 2 TIMES A DAY REGULARLY  
UNTIL FEELING BETTER,

THEN AS NEEDED

TYLENOL AS NEEDED FOR DISCOMFORT

GRADUALLY INCREASE ACTIVITY AS DIRECTED

USE CRUTCHES IF NOT ABLE TO BEAR WEIGHT COMFORTABLY

2. LIGHT DUTY AT WORK UNTIL RECHECK

3. SEE WORKMAN'S [sic] COMP DR IN 5-7 DAYS

Return IMMEDIATELY to the Emergency Department for any new symptoms or  
worsening of your current symptoms.

(Jt. Ex. 33, pp. 10-11)

Timothy D. Blankers, DPM, from NWIA Bone, Joint, & Sports Surgeons in  
Spencer, Iowa examined claimant on April 24, 2015. (Jt. Ex. 4, p. 12) Dr. Blankers  
examined claimant's right foot. The podiatrist found:

EXAMINATION: Examination reveals tenderness over the midfoot at the  
2<sup>nd</sup> metatarsal and 3<sup>rd</sup> metatarsocuneiform joints. The forefoot also  
reveals tenderness at the 4<sup>th</sup> metatarsal and mildly at the 3<sup>rd</sup> metatarsal  
heads. There is ecchymosis at this level. No open lesions are seen  
today. Moderate swelling is seen to the forefoot.

(Jt. Ex. 4, p. 12)

Dr. Blankers diagnosed claimant with "Right midfoot pain following injury with  
possible fracture versus joint disruption." (Jt. Ex. 4, p. 12) Dr. Blankers ordered a CAM  
boot for claimant as well as magnetic resonance imaging (MRI). (Jt. Ex. 4, p. 12) MRI  
test results did not show signs of a contusion or a stress fracture. (Jt. Ex. 4, p. 13) Dr.  
Blankers suspected there was some bruising. (Jt. Ex. 4, p. 13) Dr. Blankers  
recommended a bone scan. (Jt. Ex. 4, p. 14)

The bone scan was performed. It showed a "suggestion of chronic regional pain  
syndrome." (Jt. Ex. 4, p. 15) Dr. Blankers recommended physical therapy. (Ex. 4, p.  
15) Claimant reported the physical therapy was of minimal assistance in resolving her  
pain. Dr. Blankers recommended a consultation with a neurologist. (Jt. Ex. 4, p. 16)  
There were some scheduling difficulties. As a result, Dr. Blankers recommended an  
appointment with a pain specialist. (Jt. Ex. 4, p. 17)

Defendants requested claimant to submit to an independent medical examination with Douglas W. Martin, M.D., a specialist in occupational medicine. The examination occurred on August 26, 2015. Dr. Martin physically examined claimant's right foot. The physician found:

O: Examination done today reveals a lady who is 66 inches tall and weighs 180 pounds. Inspection of her right foot and ankle reveals that there is no obvious discoloration, swelling or ecchymosis noted. She has global tenderness about the mid foot area. She seems quite hesitant and pain inhibited, with respect to attempts at strength; but, at least it is initially thought to be 5/5. Her Achilles and gastrocnemius function are intact. She has a negative Homan's sign. Thompson testing is normal. There is no joint asymmetry noted. There are no ankle motion deficits noted. There is no ankle mortis instability, as the AP and circumduction laxity tests are both solid. There does not appear to be any substantial abnormality in the arena of the location of the previous bunionectomy. She has a palpable dorsalis pedis and posterior tibial pulse. There is no skin sweating. There is no hair distribution loss. There are no skin color changes. The foot does not feel necessarily cooler to me than the other parts of her body.

A:

(1) Right foot/mid foot contusion

(2) Disuse atrophy

(Jt. Ex. 6, p. 24)

Dr. Martin adamantly disagreed with the opinions expressed by Dr. Blankers. Dr. Martin opined, claimant did not have a diagnosis of complex regional pain syndrome. The evaluating physician stated, "The entire concept of that disorder is not valid." (Jt. Ex. 6, p. 24) Dr. Martin continued:

...This has recently been under a significant degree of review in the medical literature. I would point to both an article in *Autoimmunity Reviews* by Borchers, as well as the recent compendium textbook written on the subject, supported by Veritas Medicus, the Certified Evaluator of Disability and Impairment Rating Foundation, of which I was the primary author.

(Jt. Ex. 6, p. 24)

Dr. Martin recommended "functional restoration and recovery." (Jt. Ex. 6, p. 24) Dr. Martin opined claimant had a possible "opioid hypersensitivity situation." (Jt. Ex. 6, p. 24) Dr. Martin advised claimant to alternate sitting and standing. (Jt. Ex. 6, p. 25)

Dr. Martin set another appointment for claimant on September 9, 2015. She did not appear for the appointment. Dr. Martin believed he was the authorized treating physician. (Jt. Ex. 6, p. 26) Claimant held a different opinion. In a chart note bearing the date of September 9, 2015, Dr. Martin wrote in relevant portion:

I stand by the information contained within my August 26, 2015 report regarding the so-called implication of the term, "Complex Regional Pain Syndrome." Again, this is a construct that is no longer valid. I would recommend to both Dr. Blankers and anyone also involved in this case, to actually get a hold of the article by Borchers in *Autoimmunity Reviews*. Even better would be to get a hold of the textbook entitled, "Complex Regional Pain Syndrome- What is the Evidence?" which is available and published by Veritas Medicus at the majority of the book retailers, such as Amazon, Barnes and Noble, etc.

I would also welcome the physical therapist to review these evidence based documents that I just discussed.

Ultimately, this lady is dealing with a disuse atrophy situation because the lady was in a CAM walker and immobilized for quite a lengthy period of time. This is the reason why she is having problems.

(Jt. Ex. 6, p. 26)

Additionally, Dr. Martin continued:

As an Occupational Medicine Specialist who has, obviously, a fair degree of experience with these chronic pain issues, I really do not understand what a Pain Management Specialist or a Neurologist is going to add to this situation. I would point out that, in many cases that I have been involved with before, these Specialists sometimes harm the patient, as opposed to help them.

(Jt. Ex. 6, p. 27)

Timothy J. Metz, M.D., a pain specialist, initially examined claimant on September 25, 2015. (Jt. Ex. 7, p. 29) Dr. Metz conducted a physical examination of claimant's right foot. (Jt. Ex. 7, p. 29) The physician found:

**MUSCULOSKELETAL:** The right foot has a bluish gray discoloration to the left. There is an incision over the anteromedial aspect from an old bunion operation years ago. She is exquisitely tender to even light touch over the medial aspect and withdraws the foot with any contact.

**ASSESSMENT:**

1. Injury to the right foot, April 2015.

2. Complex regional pain syndrome of the right foot.
3. Smoking addiction.
4. Little improvement with pain despite walking boot, extensive physical therapy, nonsteroidal anti-inflammatory medications, and neuropathic pain medications (amitriptyline).

(Jt. Ex. 7, pp. 29, 30) The first injection occurred on the date of the first examination.  
(Jt. Ex. 7, p. 30)

Dr. Metz developed the subsequent treatment plans:

1. A right lumbar sympathetic blockade for diagnosis of sympathetic mediated pain and complex regional pain syndrome.
2. Continued physical therapy aggressively to maintain range of motion.
3. Prescription for gabapentin 300 mg 1 p.o. q.h.s. x7 days, then 1 p.o. b.i.d. x7 days, then 1 p.o. t.i.d. thereafter (discontinue amitriptyline).
4. Meloxicam 15 mg 1 p.o. q day p.r.n. (discontinue naproxen).
5. Return to clinic on Monday and Wednesday of next week for a series of 3 lumbar sympathetic blockades.

(Jt. Ex. 7, p. 30)

Claimant returned to Dr. Metz on September 28, 2015. The patient reported she had near complete resolution of her right foot pain following the first injection. Other symptoms had returned. The second injection was completed. (Jt. Ex. 7, pp. 30-31) On September 30, 2015, the third injection occurred. Dr. Metz assessed claimant's condition as:

**ASSESSMENT:**

1. Complex regional pain syndrome, right foot.
2. Status post 3 lumbar sympathetic blockades with definitive identification of sympathetic maintained pain and CRPS.
3. Initiation of gabapentin for neuropathic pain and CRPS treatment.
4. Decreased range of motion of the right foot and ankle.

(Jt. Ex. 7, p. 33) Dr. Metz recommended claimant continue with her physical therapy.  
(Jt. Ex. 7, p. 34)

On July 25, 2015, Dr. Metz evaluated claimant's right foot condition. Claimant reported any activity on her feet exacerbated her pain, but if she elevated her right foot

and leg on a pillow, her pain level would decrease. (Jt. Ex. 7, p. 35) Dr. Metz recommended the placement of a trial spinal cord stimulator subsequent to a psychological prescreening evaluation. (Jt. Ex. 7, p. 36)

Dr. Metz explained to defendants in his report of August 2, 2016, why a spinal cord stimulator was a reasonable medical treatment for claimant. The pain management physician opined in part:

1. ...Regarding Miss Hess's injury, she developed neuropathic pain following this, consistent with complex regional pain syndrome based on her description of the pain as well as the vasomotor changes and swelling and purplish to red color changes.
2. ...The injections in September confirmed neuropathic pain, particularly complex regional pain syndrome, with an autonomic component to her pain. Despite this short-term benefit, the neuropathic pain medications including gabapentin and Lyrica did not continue to control her pain reasonably and she was unable to benefit from physical therapy, and I do not think additional sympathetic blockade would be particularly helpful.
3. "Are there other diagnostic tests you would recommend at this time?" No, I would not.
4. ...Our clinic made the initial recommendations for gabapentin and meloxicam. We did not see Miss Hess following the September visit until July 25, 2016, appointment. During that time she was transitioned from gabapentin to Lyrica, which is a standard practice in treating neuropathic pain that has not responded to one agent.
5. "Based on your current recommendation and treatment plan, when it is [sic] reasonable to anticipate Miss Hess will reach MMI?" We do not do independent evaluations here and rate patients for any kind of disability and I am not familiar with the term MMI.

(Jt. Ex. 7, p. 37)

Claimant participated in a psychological evaluation on November 7, 2016. Donald Baum, PhD, LP, conducted the following procedures:

1. Minnesota Multiple Personality Inventory
2. Beck Depression Inventory
3. Beck Anxiety Inventory
4. Behavioral pain evaluation questionnaire



5. Diagnostic interview
6. Information gathered from previous medical records.

(Jt. Ex. 9, p. 89)

Dr. Baum diagnosed claimant with: Generalized Anxiety Disorder, Major Depressive Disorder, Posttraumatic Stress Disorder, and Complex Regional Pain Syndrome. (Jt. Ex. 9, p. 94) Dr. Baum recommended the placement of a neurostimulator. However, the psychologist also recommended claimant undergo psychotherapy. (Jt. Ex. 9, p. 95)

A trial spinal cord stimulator electrode was implanted by Dr. Metz on November 28, 2016. (Jt. Ex. 7, pp. 38-39) Claimant was quite pleased with the result of the trial stimulator. She reported at least a 50 percent improvement in her level of pain. Dr. Metz removed the trial stimulator. He recommended an insertion of a permanent stimulator. (Jt. Ex. 7, p. 40)

The permanent spinal cord stimulator was implanted on December 27, 2016. (Jt. Ex. 7, p. 41) Claimant followed up with Dr. Metz on January 3, 2017. Claimant reported at least 50 percent improvement in her right foot pain. (Jt. Ex. 7, p. 43)

On January 17, 2017, claimant returned to Dr. Metz's office. Claimant reported:

Immediately postop, she was having excellent coverage of her complex regional pain syndrome of the right foot and ankle. Unfortunately, she tripped over her cat while going to the bathroom late at night and felt a pop in her back and subsequent distinct change in her stimulator.

(Jt. Ex. 7, p. 45)

Dr. Metz attempted reprogramming the stimulator. However, the attempt was not as successful as Dr. Metz had anticipated. (Jt. Ex. 7, p. 46)

On April 10, 2018, Dr. Metz performed a surgical revision of claimant's spinal cord electrodes. (Jt. Ex. 7, p. 49) Claimant had a follow up appointment on May 2, 2018. She was pleased with her overall progress. (Jt. Ex. 7, p. 51) Dr. Metz released claimant to return to work with a 20-pound lifting restriction. (Jt. Ex. 7, p. 51) By June 12, 2018, claimant reported significant improvement in her overall activities of daily living with less restriction. (Jt. Ex. 7, p. 52)

Claimant had her 6-month appointment on December 5, 2018. She reported at least a 75 percent improvement in her symptoms. Claimant reported fatigue after she spent a long day on her feet. Claimant was advised to return to the clinic on an as-needed basis. (Jt. Ex. 7, p. 53)

On February 1, 2019, claimant presented to Thomas J, Ripperda, M.D., for an evaluation to determine whether claimant sustained any permanent impairment. Dr. Ripperda opined claimant did have a permanent impairment due to her complex regional pain syndrome. The evaluating physician calculated the impairment rating according to the AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition. Dr. Ripperda described his calculations as follows:

Impairment for complex regional pain syndrome is noted on page 343 last paragraph states if a lower extremity needs to be rated for a complex regional pain syndrome use the station and gait table 13-15. Page 336 table 13-15 he [sic] fits under a class I column is [sic] rises to standing position, walks but has difficulty with elevators, grades, stairs, deep chairs and long distances. This equates to 9% whole person impairment.

Her rating for a complex regional pain syndrome is 9% whole person impairment. This is calculated using the American Medical Association guides to evaluation of permanent [sic] fifth edition.

(Jt. Ex. 10, p. 97)

Dr. Ripperda discussed claimant's condition both before and after the implantation of the spinal cord stimulator. Dr. Ripperda explained:

Prior to the spinal cord stimulator her pain was 8-9 out of 10 now her pain is about a 3-4 out of 10. Character of the pain is throbbing and aching. The pain starts at her dorsal lateral foot will radiate up to her right hip. She has tingling within her leg constantly but varies in intensity. She has some weakness within her right foot and ankle that occurs intermittently and suddenly. She has fallen about 6-7 times over the past year secondary to her ankle giving out. Her symptoms are improved with a spinal cord stimulator as well as elevation. Her symptoms are worse with walking, standing, driving, cold weather. She has associated symptoms that her foot will turn blue at times. Becomes very sweaty on the right side. She initially had some alteration in hair growth but now does not generally grow hair as rapid on the right compared to left and she will developed [sic] some intermittent swelling in that right foot.

(Jt. Ex. 10, p. 98)

At her arbitration hearing, claimant testified about the symptoms she was experiencing in late summer of 2019. She stated during direct examination:

Q. (By Ms. Valentine) Okay. What are your current symptoms that you're having? And by "current" I don't mean it has to be at this very second.

A. Yeah.

Q. But on a day-to-day basis, what are your current symptoms?

A. I still get a lot of swelling and just a lot of pain. Like towards the end of a day, it just gets worse. There's a lot of throbbing. It just depends. Some days it's burning, some days it's throbbing. On good days it's, you know, not bad.

Q. I want to talk about - - and maybe I should focus on this too. Where is that pain?

A. It goes from my right hip to - - through my right foot.

Q. How does it impact, if at all, your ability to do certain activities?

A. It - - I just don't do them. I try to do - - if I need to get something done or I want to do something, I try to do it early in the morning.

Q. Does it impact your ability - - you've talked about standing.

A. Yes.

Q. How long is it comfortable for you to stand?

A. If I'm stuck in one spot, not very long. If I can move around - - so I'm trying to get it figured out different things I can do when I am at work so that way it's - - to make it a little better.

Q. Any difficulties with walking?

A. On a bad day, yes.

Q. Okay. What about sitting?

A. On bad days, but on good days it's not.

Q. How about driving?

A. Driving can be an issue. Long-distance driving is hard for me.

Q. And why?

A. I think probably because I don't like using the cruise control or anything, like I start getting stiff from sitting too long or, like, my foot having to be in that position without being able to do things makes it worse.

Q. Okay. Do you notice any change in your symptoms with the change in seasons?

A. yes. Winter is really bad for me.

Q. And tell me about that.

A. I don't know if it's - - like if it's from the cold or, like, if the snow gets on it, but then, you know, it's already cooler anyway, the foot is, so when it gets a little bit colder, it just becomes intense pain.

(Tr. pp. 46-48)

## CONCLUSIONS OF LAW AND RATIONALE

### PERMANENT PARTIAL DISABILITY BENEFITS

Claimant is currently working at O'Reilly's Auto Parts. The company purchased Spirit Lake Auto Parts City from Sam Noel, the owner of the company. Claimant later transferred to the O'Reilly's Auto Parts Store in Sioux Falls, South Dakota. Claimant stated she transferred stores so she could participate in group activities for patients with chronic pain. The activities are sponsored by Avera McKenna Hospital in Sioux Falls. Management at O'Reilly's promoted claimant to the position of assistant manager.

At the time of claimant's work injury, her gross earnings were \$384.72 per week. In 2017 claimant was earning \$14.00 per hour. At the time of her hearing, claimant was earning \$15.75 per hour. Claimant also has health and dental insurance. She was promoted to assistant manager of the store in Sioux Falls. (Tr., pp. 52-53)

As an assistant manager, claimant is required to work in excess of 40 hours per week. (Tr., p. 59) She works at both the Spirit Lake, Iowa and the Sioux Falls, South Dakota stores. Claimant supervises both the counter sales and the customer service departments. (Tr., p. 58) Claimant also trains members of her team. (Tr. p. 58) She engages in outside sales calls, is in charge of merchandising, and prepares for special sales. (Tr., p. 58) Claimant is involved in store operations, provides support to other managers, and engages in inventory matters. (Tr., p. 59)

Previously, claimant was allowed to work from home, take extended rest periods and sit at the auto parts counter. Since O'Reilly's purchased Spirit Lake Auto Parts City, none of those accommodations are available to claimant. A stool is not provided to claimant. She is allowed to take breaks when needed. (Tr., pp. 40-41)

Claimant has an injury affecting the body as a whole. As a result, any permanency is to be calculated by the industrial method. The parties stipulated the commencement date for permanency benefits was February 1, 2019. Defendants paid unto claimant twenty-seven (27) weeks of permanent partial disability benefits prior to the date of the hearing.

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 is 43 years old. She only has a high school diploma. With the exception of two part-time waitress jobs, claimant has spent her entire working life at Spirit Lake Auto Parts City, and its successor, O'Reilly Auto Parts. She has become a trusted employee who is now an assistant manager. However, with her increasing job duties, come additional work hours. She is now expected to work longer hours. She is engaged in standing and walking. The standing and walking aggravate her right foot and her CRPS. Claimant has a 20-pound lifting restriction. The restriction has never been removed. Because of the lifting restriction, claimant is precluded from holding a variety of unskilled or semi-skilled positions. Fortunately, Mr. Noel has been an understanding manager. He has accommodated claimant in the past. It is not known whether upper management at O'Reilly Auto Parts will be as accommodating as Mr. Noel had been when he owned and operated Spirit Lake Auto Parts City. Claimant testified she is no longer able to sit on a stool at the parts counter. She cannot work from home as she did previously. She cannot take extended rest breaks when she is experiencing difficulties managing her pain. Dr. Ripperda rated claimant as having a 9 percent permanent impairment to the body as a whole. (Jt. Ex. 10, p. 97)

After considering all of the factors affecting industrial disability, it is the determination of the undersigned; claimant has a twenty-five (25) percent permanent partial disability. Claimant is entitled to one hundred-twenty-five (125) weeks of permanent partial disability benefits commencing on February 1, 2019, and said benefits shall be paid at the weekly rate of \$268.02 per week.

Defendants shall pay all accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686.

## **MEDICAL BENEFITS**

The next issue is the matter of the cost of certain medical benefits. Those costs are detailed in joint exhibit 12. Also, the medical bills were discussed at the arbitration hearing. The discussion is contained on page 6 of the transcript.

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).

It is the determination of the undersigned; all causally connected medical expenses detailed in joint exhibit 12 shall be the responsibility of defendants.

The final issue for resolution is the matter of costs to litigate the claim. Iowa Code section 86.40 states:

Iowa Code section 86.40 states:

**Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

**Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is

unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010). The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Filing Fee	\$100.00
Service (certified mail)	13.18
Records of Dr. Blankers	50.00
Records of Avera Lakes Family	32.00
Conference with Dr. Metz and letter	750.00
Total:	\$945.18

Claimant is entitled to the costs detailed in the above paragraph

#### ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant one hundred twenty-five (125) weeks of permanent partial disability benefits commencing from February 1, 2019 and payable at the rate of two hundred sixty-eight and 02/100 dollars (\$268.02).

Accrued benefits, shall be paid in a lump sum together with interest as detailed in the body of the decision.

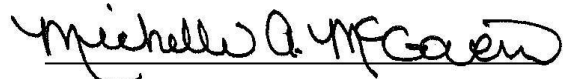
Defendants shall take credit for all benefits paid prior to the date of the hearing, including any benefits paid in excess of the weekly benefit rate;

Defendants shall pay the costs of any causally related medical expenses as detailed in joint exhibit 12.

Defendants shall pay the costs to litigate as detailed in the body of the decision.

Defendants shall file all reports as required by law.

Signed and filed this 24th day of February, 2020.



MICHELLE A. MCGOVERN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Lindsey Mills (via WCES)  
Janece Valentine (via WCES)

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.