BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER SHORT, Claimant, vs. RIVER BEND INDUSTRIES, Employer, and TRAVELERS, Insurance Carrier, Defendants.	FILED JAN 29 2019 WORKERS COMPENSATION	File No. 5057459 ARBITRATION DECISION Head Note Nos.: 1402.40, 1802, 1803 2501, 2701, 2907

STATEMENT OF THE CASE

Jennifer Short, claimant, filed a petition for arbitration against River Bend Industries, as the employer and Travelers, as the insurance carrier. An in-person hearing occurred in Des Moines on October 8, 2018.

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

The evidentiary record includes Joint Exhibits 1 through 11, Claimant's Exhibits 1 through 8, as well as Defendants' Exhibits A through D. All exhibits were received without objection.

Claimant testified on her own behalf. Defendants called Jillian Marie Brockhohn to testify. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. The parties filed post-hearing briefs on October 26, 2018, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's entitlement to healing period benefits, including a claim for a running healing period from October 27, 2016 through the date of the hearing and continuing into the future.

2. Whether the claim for permanent disability is ripe, and if so, the extent of claimant's entitlement to permanent disability benefits.

3. Whether claimant is entitled to alternate medical care into the future, including orthopaedic evaluation and possible further treatment of her left arm, left shoulder, and/or neck.

4. The extent of defendants' entitlement to credit for weekly benefits paid to date.

5. Whether costs should be assessed against any party and, if so, the extent to which costs should be assessed.

FINDINGS OF FACT

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

Jennifer Short worked as a floor person at River Bend Industries. As a result of her job duties, Ms. Short developed cumulative trauma injuries that manifested on December 1, 2013. (Hearing Report)

Claimant contends that the effects of the December 1, 2013 cumulative injuries continue through the date of the arbitration hearing. Ms. Short requests a running healing period be awarded until her conditions are fully treated and she achieves maximum medical improvement. (Hearing Report)

Defendants admit that claimant sustained injuries to her left arm and neck. Defendants dispute whether claimant sustained an injury to her left shoulder and whether her current left arm, left shoulder and neck conditions are causally related to the December 1, 2013 work injury. Defendants contend that claimant achieved maximum medical improvement, that she sustained both temporary and permanent disability and contend that the issues of healing period and permanent disability are both ripe for determination. (Hearing Report)

Ms. Short testified that she began developing symptoms in November 2013. However, her symptoms improved during a period of time away from employment.

Unfortunately, upon returning to the employment activities, her symptoms flared and she reported the injury to the employer.

Corinne Fogle, P.A., provided the initial care for claimant on January 23, 2014. Ms. Fogle noted the history that claimant's pain became constant in early December 2013. Ms. Fogle documented complaints in claimant's left hand, left elbow, left shoulder, and upper back. (Joint Exhibit 1, page 1) Claimant returned to Grinnell Regional Medical Center and Wendi Beck, PA-C, evaluated claimant on February 19, 2014. She ordered an MRI of claimant's neck, which was read as not demonstrating any significant acute changes but only degenerative changes. (Joint Ex. 1, p. 5; Joint Ex. 2) After further follow-up, Grinnell Regional Medical Center recommended that an orthopaedic evaluation be scheduled for claimant's neck. (Joint Ex. 1, p. 7)

Defendants ultimately authorized care and directed claimant for treatment with Kenneth L. Pollack, M.D., a pain specialist, at Des Moines Orthopaedic Surgeons, P.C. Dr. Pollack also noted the gradual onset of symptoms and recommended an MRI of claimant's left shoulder, EMG testing of claimant's left upper extremity and neck, and suggesting that a cervical epidural injection may be appropriate. (Joint Ex. 3, p. 3)

The EMG on May 21, 2014 demonstrated possible carpal tunnel syndrome and Dr. Pollack referred claimant to a hand surgeon, Jeffrey A. Rodgers, M.D. (Joint Ex. 4) Dr. Rodgers evaluated claimant on May 21, 2014 and noted left shoulder pain in addition to his diagnosis of left carpal tunnel syndrome. Dr. Rodgers performed a left carpal tunnel release on June 12, 2014. (Joint Ex. 5) He also referred claimant for evaluation with a shoulder surgeon, Nicholas J. Honkamp, M.D. (Joint Ex. 3, p. 12)

Dr. Honkamp evaluated claimant on June 24, 2014. He identified no significant pathology in claimant's left shoulder, stating, "I don't think there is anything significantly wrong with the shoulder, and I think most of the pain is referred pain from other areas." (Joint Ex. 3, p. 13)

After Dr. Honkamp's shoulder evaluation and in follow-up after the carpal tunnel release, claimant continued to complain of symptoms in her neck, left shoulder, and down her left arm. Dr. Rodgers concluded that the symptoms claimant reported in July 2014, were not likely related to the carpal tunnel syndrome he surgically treated. Instead, he concluded that claimant likely had radicular pain from the neck down her left arm. He recommended an evaluation by a spine surgeon, Lynn M. Nelson, M.D. (Joint Ex. 3, pp. 15-16)

Dr. Nelson evaluated Ms. Short on September 11, 2014. He confirmed her symptoms, noted the possibility of an epidural steroid injection or a more definitive treatment via cervical fusion at C6-7. Claimant desired to pursue the surgical option and Dr. Nelson ordered a diagnostic injection to confirm the necessity for surgery. (Joint Ex. 3, p. 22) Ultimately, Dr. Nelson opined the proposed neck surgery was causally related to the work injury and took claimant to surgery and performed a C6-7 fusion on November 26, 2014. (Joint Ex. 3, p. 22; Joint Ex. 6)

Claimant experienced some symptom resolution after surgery. However, upon returning to work for the employer, her symptoms flared and she sought additional treatment with Dr. Nelson on January 29, 2015. She indicated that her neck "feels the same as before surgery." (Joint Ex. 3, p. 28)

In the meantime, Dr. Rodgers declared claimant to have achieved maximum medical improvement from his carpal tunnel release on January 29, 2015. Dr. Rodgers opined that claimant required no further care for the left carpal tunnel syndrome and required no permanent restrictions. Dr. Rodgers also opined that claimant qualified for no permanent impairment. (Joint Ex. 3, pp. 27, 31)

Unfortunately, claimant continued to experience symptoms in the left arm and neck. She sought additional treatment with Dr. Nelson on May 5, 2015. She reported no loss of bowel or bladder control at this evaluation and Dr. Nelson recorded that claimant was "overall doing well." (Joint Ex. 3, p. 34) On July 9, 2015, Dr. Nelson noted that claimant was not pain free, but was doing well. He declared claimant to be at maximum medical improvement for her neck condition and released her from care. He opined that she did not need permanent work restrictions. (Joint Ex. 3, p. 36)

In a report dated July 14, 2015, Dr. Nelson reiterated that claimant achieved maximum medical improvement, confirmed that she required no permanent work restrictions, required no future medical care for the neck, but assigned a 15 percent permanent impairment of the whole person as a result of claimant's neck fusion. (Joint Ex. 3, p. 37) Unfortunately, claimant's symptoms persisted and she returned to Dr. Nelson for further evaluation on April 26, 2016. Dr. Nelson recorded left trapezius pain at this appointment and noted that claimant was developing some degenerative changes above the fusion site. (Joint Ex. 3, p. 38) Dr. Nelson never agreed to evaluate claimant again after April 26, 2016, despite requests from claimant and an attempt at a referral by a physician.

Instead, after Dr. Nelson declined further evaluation and defendants transferred care to an occupational medicine physician, Daniel C. Miller, D.O. Dr. Miller noted ongoing left arm symptoms. He obtained a repeat EMG on claimant's left arm on December 19, 2016, which demonstrated moderately severe left carpal tunnel syndrome, left cubital tunnel syndrome, but not acute radiculopathy from the neck. (Joint Ex. 8, pp. 1-2) Dr. Miller evaluated Ms. Short again on February 27, 2017. He believed claimant's symptoms were related to left carpal and cubital tunnel syndromes. He referred claimant to a hand specialist, Benjamin Paulson, M.D. (Joint Ex. 7, p. 3)

However, Dr. Miller continued to treat claimant for her neck symptoms. In May 2017, Dr. Miller noted that claimant's headaches were getting worse. (Joint Ex. 7, p. 6) In August 2013, he noted that claimant's neck symptoms were worse. (Joint Ex. 7, p. 8) She described the sensation of bumblebees under the skin of her neck, as well as burning and pinching in her neck. Dr. Miller believed that the primary diagnosis for claimant's ongoing symptoms was trapezius pain and declared it myofascial in nature but still related to the December 1, 2013 date of injury. Nevertheless, Dr. Miller

released claimant to return to work at full-duty status as of August 23, 2017. (Joint Ex. 7, pp. 8-9)

Dr. Miller evaluated claimant on September 20, 2017, reiterating his full duty release for the neck condition. However, on October 18, 2017, Dr. Miller noted claimant reported pain, burning, stabbing, tightness and stiffness in her neck and left shoulder with severe headaches. (Joint Ex. 7, p. 12) He attempted a referral back to Dr. Nelson for re-evaluation. (Joint Ex. 7, p. 13) However, as noted above, Dr. Nelson declined to re-evaluate claimant.

On November 13, 2017, Dr. Miller authored a report, declaring that claimant had achieved maximum medical improvement and concurring with Dr. Nelson's maximum medical improvement date, in spite of the subsequent treatment. Dr. Miller also opined that claimant did not require future treatment for the neck and concurred with the 15 percent permanent impairment rating offered by Dr. Nelson. Unfortunately, Dr. Miller also had to concede that the treatment rendered through that date had not resolved claimant's cervical pain. (Joint Ex. 7, p. 14)

Unfortunately, claimant's neck pain continued and defendants authorized a physiatrist, J. Wesley Rayburn, M.D., to evaluate Ms. Short. Dr. Rayburn initially evaluated Ms. Short on February 21, 2018. He noted that claimant's neck pain was constant and severe. He documented radicular symptoms into the left arm and hand. However, he documented no loss of bowel or bladder control. (Joint Ex. 9, p. 19)

Dr. Rayburn documented that most of claimant's symptoms appeared to be trigger points in the rhomboid region and recommended trigger point injections. (Joint Ex. 9, p. 20) On March 21, 2018, Dr. Rayburn noted no loss of bowel or bladder control and attempted trigger point injections for claimant. (Joint Ex. 9, p. 26) Dr. Rayburn re-evaluated claimant on April 25, 2018, again noting no loss of bowel or bladder control. (Joint Ex. 9, p. 40)

Defendants inquired of Dr. Rayburn whether the ongoing symptoms related to claimant's neck and trigger points was related to the December 1, 2013 work injury. In a report dated May 1, 2018, Dr. Rayburn opined that claimant aggravated her neck symptoms performing chores at home. He declared her to have achieved maximum medical improvement for the neck and opined that no further treatment of the neck would be related to the initial work injury. (Joint Ex. 9, p. 45)

Claimant's counsel sought a supplemental report from Dr. Rayburn. On May 22, 2018, Dr. Rayburn authored a second report. Considering claimant's limited performance of heavy animal chores at home, Dr. Rayburn opined that claimant still has underlying pathology from the work injury and that she did not sustain a significant aggravation at home. (Joint Ex. 9, p. 46) Dr. Rayburn treated claimant one additional time on June 13, 2018. He noted no loss of bowel or bladder control at that evaluation and declared maximum medical improvement from a pain management standpoint for the neck condition.

Concurrent with the ongoing neck treatment, claimant also continued to pursue treatment of her left arm. As noted above, Dr. Miller referred claimant to another hand surgeon, Dr. Paulson. Dr. Paulson evaluated claimant on May 19, 2017. He diagnosed carpal tunnel syndrome, cubital tunnel syndrome, and epicondylitis in claimant's left arm and elbow. (Joint Ex. 9, p. 1) Dr. Paulson recommended repeat carpal tunnel release as well as a cubital tunnel release in claimant's left arm. (Joint Ex. 9, p. 2) However, at his July 6, 2017 evaluation, Dr. Paulson imposed no work restrictions on claimant pending surgery. (Joint Ex. 9, p. 3)

Dr. Paulson took claimant to surgery and performed both a left carpal tunnel release and left cubital tunnel release on July 18, 2017. (Joint Ex. 10) In his post-surgical follow-up, Dr. Paulson opined that claimant required medical restrictions related to her left arm. (Joint Ex. 9, pp. 6-7, 12-13) Unfortunately, claimant's left arm symptoms persisted. Dr. Paulson obtained another EMG on March 30, 2018. That EMG demonstrated carpal tunnel syndrome findings, as well as ulnar nerve compression. (Joint Ex. 9, p. 33) On April 16, 2018, Dr. Paulson re-evaluated claimant and diagnosed her with left lateral epicondylitis and left cubital tunnel syndrome. (Joint Ex. 9, p. 37)

Defendants inquired of Dr. Paulson whether the ongoing left arm symptoms were causally related to the December 1, 2013 date of injury. Defendants specifically pointed out to Dr. Paulson that claimant had been doing animal chores at home. Dr. Paulson opined that he could not causally relate claimant's current symptoms to the work injury after reviewing her deposition testimony about doing animal chores at home. (Joint Ex. 9, p. 39) Defendants denied causal connection of claimant's left arm symptoms from this date forward and no additional treatment has been provided.

Ms. Short, through her attorney, obtained a functional capacity evaluation (FCE) on May 10, 2018. The FCE was declared valid and demonstrated that claimant has residual physical abilities that permit her to work in the sedentary to light work categories. Specifically, the FCE suggested claimant would be able to lift 10 to 15 pounds up to waist level and only on an occasional basis. The FCE also suggested that all material handling be performed by claimant only from chest level or below. (Claimant's Ex. 2)

Claimant also obtained an independent medical evaluation, performed by Robin L. Sassman, M.D., on July 17, 2018. Dr. Sassman diagnosed claimant with cervical pain with radiculopathy after her C6-7 fusion. Dr. Sassman diagnosed claimant with left shoulder impingement syndrome. She also rendered a diagnosis of left elbow pain, including left cubital tunnel syndrome. Finally, Dr. Sassman diagnosed ongoing left carpal tunnel syndrome. (Claimant's Ex. 1, p. 13)

Dr. Sassman causally connected each of her diagnoses to the December 1, 2013 work injury. She recommended referral to an upper extremity orthopaedic surgeon for further treatment of the cubital and carpal tunnel symptoms. She recommended referral to an orthopaedic surgeon specializing in treatment of the shoulder for claimant's

ongoing left shoulder symptoms. Finally, Dr. Sassman recommended referral to a pain specialist for a potential epidural injection in claimant's neck and potential attempt of Lyrica as a medication management for claimant's symptoms.

Dr. Sassman opined that claimant has not achieved maximum medical improvement. (Claimant's Ex. 1, p. 14) However, assuming that further care was not rendered, Dr. Sassman offered permanent impairment ratings for claimant's various ailments. She opined that claimant sustained a 25 percent whole person impairment as a result of her neck injury and cervical fusion. Dr. Sassman assigned an 8 percent permanent impairment of the left arm as a result of claimant's left shoulder condition, as well as an additional 3 percent permanent impairment of the left arm as a result of claimant's left elbow condition. Finally, Dr. Sassman assigned 2 percent permanent impairment of the left arm for claimant's ulnar neuropathy and 3 percent of the left arm for claimant's ongoing carpal tunnel syndrome. After combining these impairment ratings, Dr. Sassman opined that claimant sustained a 33 percent permanent impairment of the whole person as a result of the various injuries sustained on December 1, 2013. (Claimant's Ex. 1, pp. 14-15)

On September 21, 2018, claimant's initial treating physician assistant, Ms. Fogle, authored a report, encouraging a referral and evaluation by an orthopaedic surgeon. Ms. Fogle's report does not causally relate the referral to claimant's work injury and, interestingly, the report notes right knee pain as a reason for referral. (Joint Ex. 11) Clearly, there is no claim for a right knee injury related to claimant's December 1, 2018 work injury.

The initial disputed factual issue is whether claimant's current neck, left shoulder and left arm symptoms are causally related to the December 1, 2013 work injury. I find that they are related. Claimant has never experienced full resolution of symptoms in her left arm, left shoulder, or neck since the injury. Defendants put forth some evidence from claimant's deposition about claimant performing animal chores, such as feeding cattle and hogs. However, I find that claimant performs these duties only on a rare basis when no other members of her family are available to perform the chores.

Dr. Rayburn initially opined that these tasks substantially aggravated claimant's condition. However, after being informed about the infrequency of claimant's performance of these duties, he changed his opinion and opined that this was not causing a substantial aggravation and that claimant's neck symptoms continued to be related to the date of injury. Dr. Sassman also causally connected claimant's ongoing conditions to the work injury. I find these medical opinions to be the most credible opinions in the evidentiary record and concur with these medical opinions. Therefore, I specifically find that claimant's ongoing left arm, left shoulder, and neck symptoms are causally related to the December 1, 2013 work injury.

Having reached this finding, I note that Dr. Sassman recommends ongoing evaluation and treatment of claimant's neck, left shoulder, as well as her left arm. Dr. Miller also recommended further evaluation of claimant's neck, though Dr. Nelson declined to re-evaluate claimant.

Dr. Paulson ultimately terminated care, but he terminated care because he concluded that the ongoing symptoms were no longer related to the work injury. Having found to the contrary, I note that Dr. Paulson recommended additional treatment of claimant's cubital tunnel and epicondylitis. (Joint Ex. 9, p. 37) This corresponds closely with Dr. Sassman's recommendations for further evaluation of the left arm. I find that claimant requires further treatment of the left arm and that Dr. Sassman's recommendation for orthopaedic evaluation is appropriate, reasonable, and necessary.

Dr. Sassman also recommends evaluation of claimant's neck. She recommends evaluation by a pain specialist for purposes of a potential trial of Lyrica and a potential epidural injection. I note that Dr. Miller wanted a surgical re-evaluation, which was never performed. Claimant's latest treatment was through Dr. Rayburn, a physiatrist that provided injections.

Claimant testified at trial that she experiences loss of bowel and bladder control at the present time. No such reports are contained within the medical evidence in this record. This could represent an exaggeration by claimant, symptoms she failed to report to medical providers, or a significant change in her condition. At any rate, I find that additional evaluation and potential treatment of claimant's neck is reasonable, necessary and appropriate. I am not able to determine precisely what additional care is indicated, if any. However, having just completed care with a physiatrist in June 2018 and having never been provided re-evaluation by a spine surgeon, I find that it is reasonable to return to a spine specialist for further evaluation and determination of a course of future care, if any.

Finally, Dr. Sassman recommends orthopaedic evaluation of claimant's left shoulder. Dr. Honkamp did perform an early orthopaedic evaluation of claimant's left shoulder. Dr. Honkamp identified no significant pathology and opined that he believed that claimant's symptoms were originating elsewhere. However, Dr. Honkamp has not evaluated claimant since June 2014.

Many other treatment modalities have been attempted to other areas of potential pathology without full resolution of symptoms. Dr. Sassman's recommendation seems appropriate, reasonable, and necessary in light of the ongoing shoulder symptoms and lack of resolution with treatment of other potential symptom generating body parts. Therefore, I find that Dr. Sassman's recommendation for a shoulder surgeon to evaluate claimant's left shoulder is also reasonable, necessary and appropriate.

Having reached these findings of fact, I necessarily also find that Ms. Short has not achieved maximum medical improvement. I find that she remains in a healing period as of the date of the arbitration hearing and that the issue of permanent disability is not ripe for determination at this time.

With respect to Ms. Short's healing period claim, she seeks award of healing periods from October 27, 2016 through the date of hearing. (Hearing Report) Defendants concede healing period is owed from July 18, 2017 through April 30, 2018. However, they dispute healing period is owed from October 27, 2016 through July 17, 2017 or after April 30, 2018.

I find that claimant returned to work for the employer and was terminated due to excessive absences from work on October 5, 2016. (Claimant's testimony; Brockhohn testimony; Defendants' Exhibit A) However, at the time she was terminated, Ms. Short was not under any work restrictions for her neck, left shoulder, or left arm. She was medically capable of performing substantially similar employment at that time, as demonstrated by her actual return to work before her termination.

No medical restrictions were imposed on claimant between October 27, 2016 and July 17, 2017. In fact, Dr. Paulson specifically confirmed on July 6, 2017 that claimant required no medical restrictions while awaiting surgery. (Joint Ex. 9, p. 3) However, on July 18, 2017, Dr. Paulson performed left carpal and cubital tunnel releases on claimant. (Joint Ex. 10)

Claimant was medically unable to perform substantially similar work after her surgery and was not actually working after her surgery. Dr. Paulson confirmed claimant required medical restrictions at claimant's post-operative visits on July 27, 2017, August 18, 2017, and October 16, 2017. (Joint Ex. 9, pp. 6-7, 12-13) Dr. Paulson confirmed as of his last evaluation on April 16, 2018, that claimant continues to require medical restrictions for her left arm. (Joint Ex. 9, p. 37) Although Dr. Paulson opined that the ongoing symptoms were not related to the work injury, he never lifted those medical restrictions. Having found that the ongoing left arm symptoms are related to the December 1, 2013 work injury, I find that claimant continues to require ongoing medical restrictions for her left arm, that she is not medically capable of returning to substantially similar work, and that she has not actually returned to work. Obviously, claimant is not yet at maximum medical improvement for her left arm, left shoulder, or neck conditions.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa

1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

In this case, defendants concede that Ms. Short sustained injuries to her neck and left arm. However, defendants dispute causal connection of claimant's left shoulder symptoms and her current left arm and neck symptoms. Therefore, I must determine whether claimant's current symptoms and conditions are causally related to the stipulated December 1, 2013 work injury.

Having found that claimant's current left arm, left shoulder, and neck conditions and symptoms all remain causally connected to the December 1, 2013 work injury; I conclude that claimant has proven by a preponderance of the evidence that her current conditions remain compensable as work injuries.

However, I found that claimant has not yet achieved maximum medical improvement and that she requires further medical treatment. I conclude that the claim for permanent disability is not ripe for determination at this time.

Ms. Short has asserted a claim for temporary disability as well. In this case, claimant has submitted to surgical procedures and permanent impairment ratings have been offered by treating medical providers. Defendants stipulated that the work injury caused permanent disability. Therefore, I will analyze claimant's claim for temporary disability as a request for a running healing period.

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

Ms. Short seeks an award of healing period benefits from October 27, 2016 through the date of the hearing and "running" into the future until the first factor of Iowa Code section 85.34(1) occurs. Having found that claimant was under no medical restrictions and remained medically capable of performing substantially similar employment between October 27, 2016 and April 17, 2017, I conclude that claimant failed to prove entitlement to healing period benefits during this period.

However, Dr. Paulson performed carpal and cubital tunnel releases on claimant's left arm on April 18, 2017. I found that claimant did not return to work after this date and was not medically capable of performing substantially similar work between April 18, 2017 and the date of the arbitration hearing. Having also found that claimant has not achieved maximum medical improvement, I conclude that claimant proved entitlement to healing period benefits from April 18, 2017 through the date of the hearing and continuing into the future until the first factor outlined in Iowa Code section 85.34(1) occurs.

Ms. Short also seeks an award of alternate medical care. Specifically, she seeks an order requiring defendants to authorize an orthopaedic surgeon at the University of Iowa Hospitals and Clinics to evaluate and further treat her left arm, including her left carpal tunnel syndrome, left cubital tunnel syndrome, and epicondylitis. Claimant also seeks an order compelling defendants to authorize and provide another surgical consultation for her neck condition and symptoms. Finally, claimant seeks an order compelling defendants to provide an orthopaedic evaluation of her shoulder.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

"Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

In this case, the treating physicians essentially concluded their care and declared no further causal connection or maximum medical improvement had been achieved. Having found that Ms. Short has not yet achieved maximum medical improvement for her various injuries and having found that the treatment recommendations made by Dr. Sassman were reasonable and necessary, I conclude claimant has proven the treatments offered by defendants to date have not been effective and that other potential treatment options exist to improve or resolve claimant's ongoing conditions and symptoms. Therefore, I conclude that claimant has proven entitlement to alternate medical care.

Specifically, I conclude that claimant has proven entitlement to be re-evaluated by a spine surgeon for her neck injury. I conclude that claimant has proven entitlement to be re-evaluated by a shoulder surgeon and that she has proven entitlement to be evaluated by another hand and elbow surgeon.

Defendants have provided reasonable and ongoing care throughout this case. They relied upon the opinions of treating surgeons and physicians when stopping further care. Their actions have been reasonable to date. I conclude that, although claimant has proven entitlement to alternate medical care, defendants should retain the right to select the authorized treating physicians. Therefore, defendants will be ordered to schedule claimant to be evaluated by orthopaedic surgeons of their choosing, who have not already treated claimant, to evaluate her hand, wrist, elbow, shoulder, and neck conditions. Any orthopaedic or spine surgeon selected should be board certified or board eligible and should specialize in treatment of the particular body part to be evaluated.

The parties also had a dispute about defendants' entitlement to credit. The parties indicated that there is not necessarily a dispute about what benefits were paid. In fact, it is relatively straight forward that claimant was paid those weekly benefits documented in Defendants' Exhibit D. The dispute between the parties is how those benefits should be categorized, whether healing period or permanent disability benefits. The undersigned believes that this decision adequately delineates what benefits were payable during which period of time. The parties are expected to work together to confirm the applicable credits based upon this decision. However, to the extent that the parties cannot amicably determine this issue, they should file a timely request for rehearing and offer briefing as to the applicable credit.

Finally, claimant seeks an award of costs. Costs are awarded at the discretion of this agency. Iowa Code section 86.40. In this case, claimant has prevailed. I conclude that it is appropriate to assess costs in some amount against the employer and insurance carrier.

Claimant seeks assessment of two filing fees. (Claimant's Ex. 8, pp. 6, 7) This case involved only one date of injury. The case was initially filed in October 2016. That filing was likely premature and was dismissed without prejudice before the scheduled trial. Claimant re-filed the petition in August 2017. Again, that appears to have been a

premature filing, as the case had to be continued because it was not ready for trial when scheduled again. I perceive no legal authority and no good reason to assess a filing fee for a premature filing of this petition. However, claimant has prevailed and I conclude that it is proper to assess one filing fee ($100.00) is pursuant to 876 IAC 4.33(7).

Ms. Short seeks assessment of her vocational report. The vocational expert charged a total of $1,523.10. Review of the vocational expert's invoice at Claimant's Exhibit 8, page 5 reveals that the expert did not break down his charges for drafting his report. Instead, he included several charges into one large billing block. Pursuant to Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), I conclude that only charges related to drafting of a report to avoid the necessity of trial testimony are legitimately taxed as costs. I cannot decipher, and I am not willing to speculate, on the charges specifically attributed to the vocational expert's drafting of a report. Moreover, having determined that claimant is entitled to a running award, I did not rely upon the vocational expert's report. I conclude that it would be inappropriate to assess any of the vocational expert's charges as a cost.

Ms. Short next seeks assessment of her functional capacity evaluation charges. The physical therapist did provide a breakdown of his charges for conducting the functional capacity evaluation and separate charges for drafting the written report. However, in this instance, I did not rely upon the FCE in rendering my decision. No physician recommended, adopted, or relied upon the FCE and it was not a significant factor in my decision-making process. Therefore, I conclude that it would be inappropriate to assess the FCE charges as a cost in this case.

Next, claimant seeks assessment of a $250.00 charge for a report from Dr. Miller. Dr. Miller's billing statement for this charge notes that it was for a letter authored on December 21, 2017. I find this is a legitimate cost that should be assessed pursuant to 876 IAC 4.33(6).

Ms. Short seeks assessment for charges incurred for a conference with and a report from Dr. Rayburn. These charges are contained at Claimant's Exhibit 8, pages 3 and 4. Claimant's Exhibit 8, page 3 reflects charges for a conference with Dr. Rayburn. These charges are not taxable as a cost. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015).

However, Claimant's Exhibit 8, page 4 includes charges for the letter drafted by Dr. Rayburn in May 2018. This is an appropriate and taxable cost pursuant to 876 IAC 4.33(6). I conclude this cost, totaling $175.00, should be taxed against defendants. In total, I conclude that it is appropriate to tax defendants for costs totaling $525.00.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay healing period benefits from July 18, 2017 through the date of the arbitration hearing and into the future until the first factor outlined in Iowa Code section 85.34(1) occurs.

All weekly benefits shall be paid at the stipulated rate of three hundred thirty-nine and 83/100 dollars ($339.83).

Defendants employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall be entitled to a credit for all weekly benefits paid to date and documented in Defendants' Exhibit D.

The parties shall work together to accurately categorize whether weekly benefits paid to date should be categorized as healing period or permanent disability based upon the findings and conclusions in this decision.

If the parties cannot reach consensus on defendants' credit entitlement, the parties shall file a timely request for rehearing on this issue and brief their specific disputes and contentions regarding credit.

Defendants shall authorize further evaluation and treatment with a board certified or board eligible surgeon that specializes in hand and elbow treatment for claimant's carpal tunnel, cubital tunnel, and epicondylitis conditions.

Defendants shall authorize further evaluation and treatment with a board certified or board eligible surgeon that specializes in shoulder treatment for claimant's left shoulder.

Defendants shall authorize further evaluation and treatment with a board certified or board eligible surgeon that specializes in spine surgery for claimant's neck.

Defendants shall reimburse claimant's costs in the amount of five hundred twenty-five dollars ($525.00).

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

Signed and filed this 29th day of January, 2019.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/kjw

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.