BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DONNA COOK, Claimant, vs. NEWTON CORRECTIONAL FACILITY, Employer, and STATE OF IOWA, Insurance Carrier, Defendants.	:	File No. 5064180.01 REVIEW-REOPENING DECISION Head Note Nos.: 1803, 1803.1, 2905, 2907

STATEMENT OF THE CASE

Donna Cook, claimant, filed a petition for arbitration against Newton Correctional Facility, as the employer and subdivision of the State of Iowa. This case came before the undersigned for an arbitration hearing on November 18, 2021.

Pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using CourtCall. All participants appeared remotely via CourtCall.

The parties filed a hearing report prior to 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 4, Claimant's Exhibits 1 through 9, as well as Defendants' Exhibits A through H. All exhibits were received without objection.

Claimant testified on her own behalf. No other witnesses testified live at the hearing. The evidentiary record closed at the conclusion of the review-reopening hearing.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on December 20, 2021. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained a substantial change in condition since the arbitration hearing that would justify a change in the underlying arbitration award.

2. Whether claimant's permanent disability is limited to a bilateral scheduled member injury or should be compensated with industrial disability.

3. The extent of claimant's entitlement to permanent disability benefits, if different than at the time of the arbitration hearing.

4. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

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

Donna Cook, claimant, is a 61-year-old woman, who lives in Newton, Iowa. Ms. Cook sustained a work-related injury on June 30, 2017 when she tripped and fell while working as the director of nursing at the Newton Correctional Facility. The facts of that injury were previously determined and detailed in a December 31, 2019 arbitration decision (hereinafter "arbitration decision") and will not be reiterated in this decision. Similarly, the arbitration decision entered findings of fact about claimant's educational background, work history, and medical care through the date of the arbitration hearing. Those findings will not be reiterated.

The arbitration decision found that Ms. Cook sustained injuries to both knees as a result of the June 30, 2017 fall. The arbitration decision also found that "claimant's ongoing low back and bilateral hip symptoms are causally related to her June 30, 2017 fall at Newton Correctional Facility." (Arbitration Decision, page 4) The undersigned rejected a claim for a mental health injury, finding, "claimant failed to prove by a preponderance of the evidence that she sustained a permanent and material aggravation or worsening of her pre-existing mental health conditions as a result of the June 30, 2017 work injury." (Arbitration Decision, p. 10)

The arbitration decision found that claimant proved permanent disability to her bilateral knees and awarded permanent disability benefits for a bilateral knee injury. However, with respect to the bilateral hips and low back claims, the undersigned found "claimant proved symptoms exist in the bilateral hips and low back but not that she sustained permanent injuries or permanent disability at this time as a result of those conditions." (Arbitration Decision, p. 4) The rationale or explanation for this finding was that Dr. Kienker "recommended claimant see a podiatrist and/or orthotist to obtain shoe

or heel lifts due to a perceived limb length discrepancy. She also recommended claimant see a chiropractor to determine if manipulation could help even her leg lengths." (Arbitration Decision, p. 4)

Ms. Cook now seeks review-reopening. She makes no claim that her knee injuries are worsened or that she is entitled to additional permanent disability solely for her knee injuries. Neither of claimant's evaluating physicians opine that her knee injuries now qualify for additional permanent impairment or that significant changes are required to her permanent restrictions as a result of her knee injuries.

Instead, claimant asserts that her low back symptoms have continued, that she is now at maximum medical improvement, and that she has proven she sustained permanent disability as a result of her low back injury resulting from the June 30, 2017 work incident. Defendants assert that claimant is precluded from asserting a claim for permanent disability as a result of her low back or bilateral hip symptoms because she failed to prove this claim at the time of the underlying arbitration hearing.

Since the arbitration hearing, claimant has not sought or obtained significant additional medical treatment. She has not obtained an evaluation by a podiatrist or orthotist to determine if shoe or heel lifts would be helpful. Ms. Cook has sought some chiropractic care since the arbitration hearing. (Joint Exhibit 2) However, there has been minimal additional care and really no changes in claimant's symptoms in her knees.

Nevertheless, claimant returned to her evaluating physician, Karen Kienker, M.D., on February 5, 2020, less than six months after the arbitration hearing. Dr. Kienker did not opine at that time that Ms. Cook had achieved maximum medical improvement (MMI) for the low back sometime between the date of the arbitration hearing and the repeat evaluation in February 2020. Instead, Dr. Kienker noted, "At that time, she had not been treated for her hips or low back, so I could not say the hips or low back had permanent injuries, and did not rate them. Her attorney would like a rating for her hips and low back at this time." (Claimant's Ex. 1, p. 1)

Even though Dr. Kienker does not specifically opine claimant achieved MMI, she complies with claimant's attorney's request and offers a permanent impairment rating for Ms. Cook's low back. Moreover, Dr. Kienker opined that claimant "has had limited treatment for her back, and may benefit from more frequent chiropractic treatments, osteopathic manipulation, and/or physical therapy. Her back pain may decrease with such treatment, but her back is not expected to become pain-free." (Claimant's Ex. 1, p. 6) Dr. Kienker opines that claimant has a five percent permanent impairment of the whole person as a result of her low back injury. She opines that claimant has myofascial chronic low back and hip pains secondary to the quadratus lumborum muscle. (Claimant's Ex. 1, p. 5) However, Dr. Kienker also opines that claimant "does not have separate injuries" to the hips. (Claimant's Ex. 1, p. 6)

Defendants sought a responsive evaluation performed by Joseph Chen, M.D., on June 4, 2021. Dr. Chen opined that claimant achieved MMI on June 11, 2018.

(Defendants' Ex. A, p. 7) This was, of course, prior to the arbitration hearing. This finding of MMI relative to the hips and/or low back occurring prior to the arbitration hearing is contrary to the findings of the arbitration decision and is rejected.

Dr. Chen opines, consistent with Dr. Kienker's opinion, that claimant did not sustain hip injuries as a result of the June 30, 2017 fall at work. Dr. Chen addressed the low back injury, noting, "I did not see any medical records document that Ms. Cook had any complaints of lumbar spine pain while Ms. Cook was under the treatment of Dr. Doty or Dr. Mahoney." (Defendants' Ex. A, p. 8) Dr. Chen opined, "Ms. Cook did not sustain any injury to her lumbar spine or back as a result of her June 30, 2017 work injury." (Defendants' Ex. A, p. 8) Again, this is contrary to the findings of the arbitration decision, which specifically found claimant experienced symptoms in her low back and hips that were causally related to the June 2017 work injury. Again, since this issue was already definitively determined in the prior arbitration proceeding, Dr. Chen's opinion is rejected on the issue of whether claimant sustained a lumbar injury as a result of the June 30, 2017 work injury.

However, Dr. Chen does address Dr. Kienker's permanent impairment rating related to the low back. He opines, "I respectfully disagree with Dr. Kienker's assignment of a 5% impairment of the whole person according to Lumbar DRE Category II from Table 15-3 page 384. Ms. Cook does not report or have any evidence of non-verifiable radiating leg pain. The leg pain that Ms. Cook does complain of has already been rated according to her partial medical meniscectomy and aggravation of her knee osteoarthritis." (Defendants' Ex. A, p. 8)

Ms. Cook sought a second independent medical evaluation, performed by Sunil Bansal, M.D. on July 15, 2021. (Claimant's Ex. 2) Dr. Bansal concurred with both Dr. Kienker and Dr. Chen and opined that claimant has no permanent impairment related to her hips. (Claimant's Ex. 2, p. 15) However, Dr. Bansal diagnosed claimant with sacroiliitis and opines that claimant sustained a five percent permanent impairment of the body as a whole as a result of that diagnosis. (Claimant's Ex. 2, p. 16)

Dr. Bansal did not offer a specific opinion about MMI, and he recommended intermittent sacroiliac joint injections. (Claimant's Ex. 2, p. 16) Nor did he justify why he was offering a permanent impairment for the lumbar spine, or low back, if MMI had not been achieved. Although not asked to provide an opinion about MMI, I find that Dr. Bansal implicitly declared claimant at MMI. Specifically, Dr. Bansal opined, "As her bilateral knee pathology and pain is permanent, it follows that her back pathology is permanent, as it is being aggravated by her antalgic gait resulting from her bilateral knee conditions." (Claimant's Ex. 2, p. 15)

I find that Dr. Bansal was explaining that claimant's low back pain could be reduced with additional treatment, but that claimant's low back injury could not be "fixed" or resolved with additional treatment. Dr. Bansal further declared the low back condition to be "permanent." I accept Dr. Bansal's opinion as consistent with my prior decision, credible, and convincing on this issue. Therefore, consistent with the opinions of Dr. Kienker and Dr. Bansal, I find that claimant has achieved MMI for her low back condition

since the arbitration hearing and prior to the review-reopening hearing, that her low back condition is permanent, and that claimant's low back injury causes permanent disability.

Defendants asked Dr. Chen to review and comment upon Dr. Bansal's report. Dr. Chen authored a report dated September 11, 2021 in response to this request. He opined, "that Ms. Cook's chronic back pain cannot be further identified or defined as 'sacroiliitis.' Ms. Cook has been seen by multiple other expert musculoskeletal specialists, none whom have diagnosed her with sacroiliitis nor agreed with the need to perform additional testing or imaging of her pelvis over the past 4 years." (Defendants' Ex. B, p. 12) Dr. Chen noted that Dr. Bansal's opinions cause no change in his opinions. (Defendants' Ex. B, p. 12)

Having considered each of the medical experts' opinions, I reject the opinions of Dr. Chen. In at least a couple of respects, Dr. Chen's opinions and conclusions are contrary to the findings and conclusions already made in the arbitration decision. Instead, I find the opinions of Dr. Kienker to be most credible in this case. She has seen claimant both before and after the arbitration hearing. She initially recommended additional treatment and declined to offer a permanent impairment rating. She now concludes claimant's low back condition is permanent and results in a five percent permanent impairment of the whole person. I find this to be consistent with my prior decision and credible.

Dr. Kienker's opinion on claimant's low back injury being permanent and her permanent impairment rating are accepted. Specifically, I find that claimant proved a substantial change in her condition. Specifically, claimant's low back condition was not at MMI when the arbitration hearing occurred. She has now proven that her low back condition is at MMI and that she sustained a five percent permanent impairment of the whole person as a result of the low back injury. To the extent they correspond or concur with Dr. Kienker's opinions, I also accept Dr. Bansal's opinions.

Obviously, the arbitration decision entered findings and conclusions about claimant's permanent impairment and permanent disability related to claimant's knees. Nothing has changed with respect to the knees that would warrant a change in the findings or disability award specific to the claimant's knees. With respect to permanent restrictions, Dr. Kienker opines that restrictions for her back and knees, "include rarely bending and twisting, only occasionally standing and walking, and lifting up to 10 pounds occasionally and 20 pounds rarely. These are expected to be permanent restrictions." (Claimant's Ex. 1, p. 6)

At the time of the arbitration hearing, Dr. Kienker recommended restrictions that "include avoidance of kneeling, squatting and walking on uneven surfaces." At that time, Dr. Kienker also recommended "rare bending, twisting, or stair climbing" as well as lifting no more than ten pounds occasionally and up to 35 pounds rarely. (Arbitration Decision, pp. 4-5) I noted that Dr. Kienker's restrictions were much more restrictive than those offered by the treating orthopaedic surgeon at that time and much more

restrictive than the FCE performed before the arbitration hearing. I rejected Dr. Kienker's restrictions in the arbitration decision. (Arbitration Decision, p. 5)

Dr. Kienker's restrictions now appear to have changed and do not reference stair climbing, kneeling, or squatting. Dr. Kienker's restrictions now allow even less lifting on a rare basis. There is no demonstration that claimant's functional abilities have worsened since the arbitration hearing. She has not attempted to return to work. There was not a repeat FCE. Dr. Kienker's restrictions appear to have morphed a little, but also provided greater restrictions on claimant's abilities without justification. Once again, I do not find Dr. Kienker's restrictions persuasive.

Dr. Bansal offers an opinion about claimant's functional abilities. He imposes permanent restrictions that include:

> Avoid multiple stairs and climbing. No prolonged standing greater than two hours at a time, or walking greater than 30 minutes at a time. No prolonged sitting greater than one hour at a time. Avoid walking on uneven ground. No lifting greater than 20 pounds. No frequent bending or twisting.

(Claimant's Ex. 2, p. 16)

Similar to Dr. Kienker's restrictions, Dr. Bansal's restrictions are much more restrictive than the FCE findings and restrictions imposed by the treating orthopaedic surgeon. No explanation is offered why claimant's functional abilities have worsened since the arbitration hearing. She has obtained minimal medical care since that hearing. No additional FCE was obtained, and no explanation is provided why the restrictions found credible and applicable in the arbitration decision should be changed. I reject the restrictions offered by Dr. Kienker and Dr. Bansal and favor those identified by the FCE and the treating orthopaedic surgeon prior to the arbitration hearing. Those include the ability to work in the medium work category, including the ability to lift 35 pounds occasionally from 12 inches to waist level as well as the ability to stand, walk and bend frequently, squat occasionally and avoidance of sustained kneeling. (Arbitration Decision, pp. 3-4)

Claimant was terminated for disciplinary reasons after her work injury. Since her termination, claimant has made no efforts to retrain. She has made no efforts to apply for alternative positions within the nursing field. Ms. Cook failed to pursue recommendations made by Dr. Kienker prior to the arbitration hearing to consider alternate, office type positions as a nurse performing medical reviews. Although she has started a part-time, one-day per week job in a movie theater, she has not made a legitimate or concerted effort to identify alternative employment available to her. In fact, she has not applied for any full-time positions since her termination by Newton Correctional Facility, whether in the nursing field or otherwise. Claimant is found to be not motivated to return to full-time work.

I find that alternate work is likely available to claimant both in the nursing field as well as outside of the nursing field. Claimant is an educated individual that has demonstrated the ability to obtain additional training. She clearly does not wish to pursue retraining. Instead, claimant elects to draw her pension, work a very part-time position, and not seek full-time employment. While this is certainly her prerogative, her lack of effort and motivation cannot result in an increase of her industrial disability award.

I note claimant's educational background, including a bachelor's degree in nursing and the start of some master's level work in nursing. I note her employment background as primarily in the nursing field. I also note claimant's age as a factor that may increase her industrial disability.

Considering claimants' age, educational background, employment history, ability to retrain, permanent impairment, permanent restrictions, the situs and severity of her injuries, her lack of effort to pursue full-time employment, her lack of motivation, and all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Ms. Cook proved she sustained a 50 percent loss of future earning capacity as a result of the June 30, 2017 work injury at Newton Correctional Facility.

CONCLUSIONS OF LAW

Ms. Cook seeks review and reopening of the arbitration decision. Specifically, she seeks an increase in her permanent disability award, including an award of industrial disability for an unscheduled injury. Ms. Cook bears the burden to establish the requirements for review-reopening.

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. Rather, claimant's condition must have worsened or deteriorated since the arbitration hearing. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (1957). A failure of a condition to improve to the extent anticipated originally may also constitute a change of condition. Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24 (Iowa App. 1978). Any substantial change in condition related to the initial work injury is sufficient to justify an increase in a permanent disability award. The change needs to have been unforeseen or unexpected at the time of the arbitration hearing. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009).

Ms. Cook asserts that her low back condition has substantially changed since the arbitration hearing justifying an increase in her permanent disability award. 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, I accepted the opinions of Dr. Kienker as most credible and convincing. Dr. Kienker implicitly declared MMI for claimant's low back, which constituted a significant change in claimant's condition since the arbitration hearing. Having previously declined to offer a permanent impairment rating for the claimant's low back, Dr. Kienker now declares the low back injury to be permanent and opines that claimant sustained a permanent impairment relative to that injury. Having accepted Dr. Kienker's opinions, I conclude that claimant proved a substantial change in condition in her low back that justifies a review-reopening of the prior arbitration award.

The arbitration decision concluded that claimant was only entitled to permanent disability based upon two scheduled member injuries (her knees). See Iowa Code section 85.34(2)(s)(2016). However, the knee injuries caused claimant's low back pain and subsequently determined permanent injury. An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

In the arbitration decision, I found that claimant had not proven permanent disability in her low back at the time of the arbitration hearing. However, that was because claimant required additional treatment. She obtained some additional chiropractic care. However, the physicians I found most convincing now opine that claimant requires additional treatment but that it will not completely alleviate her symptoms. I found that claimant did achieve MMI for her low back by the date of the

review-reopening hearing and that the June 30, 2017 work injury caused permanent disability in claimant's low back.

I acknowledge defendants' argument that claimant cannot now assert or prove permanent disability under an estoppel theory. However, claimant's circumstances have substantially changed since the arbitration hearing. At the time of the arbitration hearing, claimant's low back condition was not at MMI for her low back injury. Claimant has subsequently reached MMI for her low back, and it is no longer expected that further treatment will improve her condition. I conclude that estoppel principles do not apply in this situation. An injury that resulted in temporary disability or that is not yet ripe (MMI) for determination of permanent disability may subsequently develop into permanent disability and review-reopening is appropriate under such circumstances. Cerda v. Oscar Mayer & Co., 2 Iowa Indus. Comm'r Rep. 77 (Appeal Dec. 1982); Gomez v. Blackhawk Foundry, File No. 5021291 (Review-Reopening March 2011). Therefore, it is appropriate to consider permanent disability related to claimant's low back at this time.

Having found that claimant proved she sustained five percent permanent impairment of the whole person as a result of the low back injury and having found no change in claimant's prior award for permanent disability of her knees, I find in this decision that claimant has proven permanent disability to both knees as well as her low back. Low back injuries are not scheduled injuries and are compensated industrially. Iowa Code section 85.35(2)(u) (2016).

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 Ry. Co. of Iowa, 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 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.

Having considered claimant's permanent impairment, permanent restrictions, educational background, employment history, ability to retrain, lack of motivation to return to full-time employment, age, as well as all other factors of industrial disability

identified by the Iowa Supreme Court, I found that Ms. Cook sustained a 50 percent loss of future earning capacity as a result of the combined effects of her bilateral knee injuries and low back injury resulting from the fall at work on June 30, 2017. This is equivalent to a 50 percent industrial disability and entitles claimant to an award of 250 weeks of permanent partial disability benefits. Iowa Code section 85.35(2)(u) (2016).

Defendants previously paid claimant 36.52 weeks of permanent partial disability benefits and are entitled to a credit for those benefits paid. (Hearing Report) Accordingly, claimant is entitled to an additional award of 213.48 weeks of permanent partial disability benefits as a result of the June 30, 2017 work injury at the Newton Correctional Facility.

The final disputed issue is whether costs should be assessed against either party. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. In this case, claimant is successful and recovers additional permanent disability benefits. Exercising the agency's discretion, I conclude that it is reasonable to assess claimant's costs in some amount.

Ms. Cook seeks assessment of her independent medical evaluators' fees as costs pursuant to 876 IAC 4.33(6). The Iowa Supreme Court clarified that only the charges related to preparing a written report are taxable costs pursuant to Rule 4.33(6). Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015).

Review of Dr. Kienker's billing statement demonstrates that she charged a flat fee of $1,200.00 for an IME, which included her examination, medical record review, and drafting of a report. Dr. Kienker did not specify or itemize charges for her time related solely to the drafting of her report. I am not inclined, or willing, to speculate what portion of her time and charges are related to this task. Therefore, I decline to assess Dr. Kienker's charges as a cost.

Dr. Bansal submitted a statement for his charges, which itemized $527.00 to his evaluation and assigned charges totaling $2,461.00 to drafting his report. Interestingly, Dr. Bansal did not include any charges for his record review. It seems unlikely that Dr. Bansal did not spend any time reviewing records in this case since he specifically references medical records he reviewed. I am somewhat skeptical of his billing statement and the claim that he charged $2,461.00 for drafting a report and submitted no charges for review of medical records. Nevertheless, this issue was not directly challenged. Taking Dr. Bansal's statement at face value, he charged $2,461.00 to draft his report. I find this is reasonable under the circumstances for IME evaluators in Dr. Bansal's geographic location and assess defendants $2,461.00 for Dr. Bansal's report fees. 876 IAC 4.33(6); Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant an additional 213.48 weeks of permanent partial disability benefits commencing on January 28, 2021.

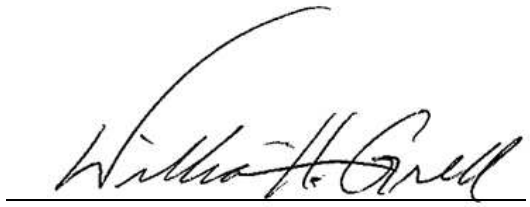
All benefits shall be payable at the stipulated weekly rate of one thousand forty-eight and 78/100 dollars ($1,048.78) per week.

Accrued weekly benefits shall be paid in lump sum and interest shall be payable on all accrued benefits 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 reimburse claimant's costs in the amount of two thousand four hundred sixty-one and 00/100 dollars ($2,461.00).

Defendant 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 7th day of April, 2022.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Tammy Gentry (via WCES)

Sarah Timko (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.