BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LINDIE M. HUNTER, Claimant, vs. LAN SILVER PINES, LLC, Employer, and AMERICAN COMPENSATION INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 1656860.01 A R B I T R A T I O N D E C I S I O N
LINDIE HUNTER, Claimant, vs. SENIOR HOUSING MANAGEMENT, Employer, and WEST BEND MUTUAL INS. CO., Insurance Carrier, Defendants.	File No. 20700082.01 Head Note Nos.: 1402.30, 1402.40 1803, 2501, 2907

Claimant Lindie Hunter filed a petition in arbitration, File Number 1656860.01 on January 24, 2020, alleging she sustained injuries to her neck, back, right leg and body as a whole while working for Defendant Lan Silver Pines ("Silver Pines") on July 18, 2018. Silver Pines, and its insurer, Defendant American Compensation Insurance Company ("American Compensation") filed an answer on February 6, 2020, admitting Hunter sustained back injury, but denying she sustained any other injuries. On January 24, 2020, Hunter filed a second petition in arbitration, File Number 20700082.01, alleging she sustained an injury to her back and body as a whole while working for Defendant Senior Housing Management ("Senior Housing") on October 15, 2018. On

February 11, 2020, Senior Housing and its insurer, Defendant West Bend Mutual Insurance Company ("West Bend"), filed an answer denying Hunter sustained a work injury.

An arbitration hearing was held *via* CourtCall video conference on January 14, 2021. Attorney Thomas Wertz represented Hunter. Hunter appeared and testified. Attorney Jason Kidd represented Silver Pines and American Compensation. Attorney James Ballard represented Senior Housing and West Bend. Joint Exhibits ("JE") 1 through 9, and Exhibits 1 through 7, A through F, and AA were admitted into the record. The parties submitted hearing reports, listing stipulations and issues to be decided. Silver Pines, American Compensation, Senior Housing, and West Bend waived all affirmative defenses.

The record was held open through February 22, 2021, for the receipt of post-hearing briefs. The briefs were received and the record was closed. In her post-hearing brief, Hunter withdrew her claims for temporary benefits and penalty benefits from Senior Housing and West Bend for File Number 20700082.01.

FILE NUMBER 1656860.01

STIPULATIONS

1. An employer-employee relationship existed between Silver Pines and Hunter at the time of the alleged injury.

2. Hunter sustained an injury on July 18, 2018, which arose out of and in the course of her employment with Silver Pines.

3. Temporary benefits are no longer in dispute.

4. If the alleged injury is found to be a cause of permanent disability, the commencement date for permanent partial disability benefits, if any are awarded, is July 23, 2019.

5. At the time of the alleged injury, Hunter's gross earnings were $961.54 per week, she was single and entitled to five exemptions, and the parties believe the weekly rate is $630.82.

6. Prior to the hearing, Hunter was paid 3.57 weeks of temporary total disability benefits from October 15, 2018 through October 24, 2018 and January 13, 2019 through January 27, 2019, at the rate of $592.85 per week, for a total of $2,117.33, and she was paid an additional 11.43 weeks of temporary partial disability benefits from October 25, 2018 through January 12, 2019, at various rates, for a total of $3,790.92.

7. Costs have been paid.

ISSUES

1. Is the alleged injury a cause of temporary disability during a period of recovery?

2. Is the alleged injury a cause of permanent disability?

3. If the alleged injury is a cause of permanent disability, what is the nature of the disability?

4. If the alleged injury is a cause of permanent disability, what is the extent of disability?

5. Is Hunter entitled to payment of medical expenses set forth in Exhibit 5?

6. Should costs be assessed against either party?

FILE NUMBER 20700082.01

STIPULATIONS

1. An employer-employee relationship existed between Silver Pines and Hunter at the time of the alleged injury.

2. At the time of the alleged injury, Hunter's gross earnings were $961.54 per week, she was single and entitled to five exemptions, and the parties believe the weekly rate is $630.82.

3. Temporary benefits are no longer in dispute.

4. Costs have been paid.

ISSUES

1. Did Hunter sustain an injury, which arose out of and in the course of her employment with Silver Pines on October 15, 2018?

2. Is the alleged injury a cause of temporary disability during a period of recovery?

3. Is the alleged injury a cause of permanent disability?

4. If the alleged injury is a cause of permanent disability, what is the nature of the disability?

5. If the alleged injury is a cause of permanent disability, what is the extent of disability?

6. If the alleged injury is a cause of permanent disability, what is the commencement date for permanent partial disability benefits?

7. Is Hunter entitled to payment of medical expenses set forth in Exhibit 5?

8. Is Hunter entitled to costs related to the requests for admission?

9. Should costs be assessed against either party?

FINDINGS OF FACT

Hunter lives in Cedar Rapids with her children. (Exhibit D, page 10) Hunter graduated from high school in 1993. (Ex. D, p. 9) In 1993, Hunter obtained a nursing assistant certification and earned an associate of science degree in 2001. (Exs. D, p. 9; E, p. 29; Transcript, p. 12) In 2011, Hunter completed a practical nursing program at a community college and became a licensed practical nurse ("LPN"). (Exs. D, p. 9; E, p. 29; Tr., p. 12) At the time of the hearing Hunter was forty-six. (Tr., p. 12)

Hunter worked as a lead pharmacy technician from December 1997 through February 2002, a certified pharmacy technician from February 2003 through August 2004, and as a pharmacy technician from October 2004 through September 2006. (Ex. E, p. 29) In 2004 she also worked as a pharmacy technician instructor. (Ex. E, p. 29) Hunter worked as a sales agent from September 2007 through December 2009, and as an independent contractor/phone operator from May 2008 through December 2009. (Ex. E, p. 29)

From 2012 through 2015, Hunter worked as a charge nurse and provided direct patient care. (Ex. E, pp. 28-29) As a nurse Hunter used Microsoft office products. Hunter used Microsoft office products for both employers. (Ex. E, p. 29)

Hunter worked as a Care Manager for BrightStar Care in Fayetteville, Arkansas, from May 2015 through November 2017, coordinating care, care plan management, and implementing strategies for clients with dementia, intellectual disabilities, and mental illness to maintain staying in their homes. (Ex. E, p. 28) Hunter used a desktop computer and Microsoft Office products. (Ex. E, p. 28)

While working as a nurse, Hunter also worked for Jackson-Hewitt preparing taxes from 2007 through 2019. (Ex. E, p. 29) From 2011 through April 2014, worked as a tax preparer and store supervisor, and as a multi-unit supervisor from December 14, 2014 through April 2019. (Ex. E, p. 29)

Hunter has a history of headaches, neck pain, mid back pain, low back pain, and fibromyalgia preceding the alleged injuries in these cases. Hunter testified she was diagnosed with fibromyalgia in 1994 and she continues to experience problems with it occasionally. (Tr., pp. 39, 54) Hunter reported her fibromyalgia feels like muscle tension throughout her body and causes her to be tired and changes her mood. (Tr., pp. 39-40) Hunter experiences occasional flare-ups of fibromyalgia and she seeks chiropractic treatment, takes Tylenol or ibuprofen, and uses Biofreeze to combat her

flare-ups. (Tr., p. 40) At the time of the hearing she was not taking any prescription medication for fibromyalgia. (Tr., p. 40)

On May 14, 2015, Hunter attended a chiropractic appointment with David Strickler, D.C, reporting she had been diagnosed with fibromyalgia and complaining of headaches, neck pain, mid back pain, and low back pain. (JE 1, p. 1) Hunter described she was experiencing stiffness, and dull, aching, burning, and periodic throbbing sensations in all regions, noting excessive motion, heat therapy, and caffeine tended to increase her discomfort. (JE 1, p. 1) On exam, Dr. Strickler noted Hunter had decreased range of motion at C6, T5, L5, and decreased fluid motion of the right SI joint and he performed a chiropractic manipulation. (JE 1, pp. 1-2) Hunter returned to Dr. Strickler on May 18, 2015 and May 21, 2015, reporting she was feeling much better after treatment both days. (JE 1, pp. 3-4)

During an appointment with Dr. Strickler on October 28, 2015, Hunter reported experiencing elevated lumbosacral pain and groin pain for the last 24 hours. (JE 1, p. 5) During her next appointment, Hunter reported improvement in her low back pain. (JE 1, p. 6) Hunter returned to Dr. Strickler on November 3, 2015, complaining of tenderness in the left SI joint, and hypersensitivity during the range of motion evaluation of the cervical region. (JE 1, p. 7) Hunter attended a follow-up appointment with Dr. Strickler on November 10, 2015, complaining of lumbosacral pain, thoracic pain, and cervical discomfort. (JE 1, p. 8) On December 21, 2015, Hunter returned to Dr. Strickler complaining of elevated neck and low back pain. (JE 1, p. 9) She returned on February 23, 2016, complaining of neck, mid back, and low back pain. (JE 1, p. 10) During an appointment on March 1, 2016, Hunter reported minimal complaints regarding her mid back and low back pain. (JE 1, p. 11)

On May 20, 2016, Hunter was involved in an automobile accident when she was rear-ended at a stoplight when she was twenty-nine weeks pregnant. (Ex. D, p. 20; Tr., p. 38) Hunter sought emergency and chiropractic treatment and filed a lawsuit against the driver. (Tr., pp. 28, 38-39) Hunter complained of ongoing low back pain from her pregnancy with periodic radiation into her right gluteal and hamstring musculature following the motor vehicle accident during an appointment with Dr. Strickler on June 6, 2016. (JE 1, p. 12) During an appointment on June 10, 2016, Hunter relayed her low back pain had improved and she had no radicular symptoms into her lower right extremity. (JE 1, p. 14) Hunter returned to Dr. Strickler on June 15, 2016, complaining of soreness and achiness in the cervical and upper dorsal regions, reporting her range of motion and ability to sleep had improved. (JE 1, p. 15) During an appointment on June 17, 2016, Hunter reported continued improvements in her back and low back pain. (JE 1, p. 15)

On June 21, 2016, Hunter returned to Dr. Strickler, complaining of mildly elevated neck and low back pain upon waking, decreased range of motion in her cervical region with soreness and achiness. (JE 1, p. 16) During appointments on June 23, 2016 and June 27, 2016, Hunter reported improvement with her neck and low back pain. (JE 1, p. 17) When she returned on June 30, 2016, she reported slightly elevated neck and mid back pain due to repetitive coughing. (JE 1, p. 18) On July 6, 2016,

Hunter complained of slightly elevated neck pain. (JE 1, p. 18) During an appointment on July 11, 2016, she reported a reduction in her neck pain, but complained of elevated lumbar pelvic pain. (JE 1, p. 19) During appointments on June 13, 2016 and June 15, 2016, Hunter complained of temporary flare ups of neck and low back pain, describing her discomfort as a deep ache and sensation with sharpness in her cervical segments. (JE 1, pp. 19-20) Hunter relayed she believed her symptoms might be aggravated by her pregnancy and work-related obligations. (JE 1, pp. 19-20)

On August 1, 2016, Hunter returned to Dr. Strickler, reporting she was continuing to have right cervical pain since her motor vehicle accident. (JE 1, p. 21) During an appointment on August 31, 2016, Hunter complained of minor neck pain and lumbopelvic pain. (JE 1, p. 22) Dr. Strickler opined Hunter had mild dysfunction in the cervical and lumbosacral regions and that he believed she had reached maximum medical improvement from the motor vehicle accident and released her from care. (JE 1, pp. 22-23)

Hunter's care with Dr. Strickler became more sporadic. On October 24, 2016, Hunter returned to Dr. Strickler, complaining of neck and low back pain. (JE 1, p. 24) On February 3, 2017, Hunter returned to Dr. Strickler complaining of elevated neck and low back pain. (JE 1, p. 25) During an appointment on April 25, 2017, Hunter complained of neck, mid back, and low back pain. (JE 1, p. 26) She returned to Dr. Strickler on August 8, 2017, complaining of neck and low back pain. (JE 1, p. 27) During appointments on August 28, 2017, September 1, 2017, and September 5, 2017, Hunter reported her neck, mid back, and low back pain had improved. (JE 1, pp. 28-30) On September 18, 2017, Hunter attended an appointment with Dr. Strickler, complaining of elevated right hip pain. (JE 1, p. 31) During appointments on October 16, 2017, November 13, 2017, and January 12, 2018, she complained of neck and low back pain. (JE 1, pp. 32-34)

During an appointment with Dr. Strickler on March 7, 2018, Hunter complained of elevated left-sided neck, midback, and low back pain after falling out of a truck. (JE 1, p. 35) Hunter reported she was climbing down from a semi truck when she slipped and "fell directly on her left hand side." (JE 1, p.35) On March 21, 2018, Hunter attended an appointment with Dr. Strickler complaining of continued lower back pain. (JE 4, p. 1) Hunter returned to Dr. Strickler on April 20, 2018, complaining of elevated neck and upper back pain. (JE 1, p. 36)

In April 2018, Silver Pines hired Hunter as the director of nursing. (Tr., pp. 16-17; Ex. E, p. 28) Hunter was responsible for hiring staff, training staff, care plans, and working on the floor providing patient care, as needed. (Tr., p. 17) Hunter used a desktop computer and Microsoft Office products. (Ex. E, p. 28) Silver Pines paid Hunter a salary of $50,000.00 per year and she worked up to eighty hours per week. (Tr., p. 18) When Silver Pines hired Hunter she was not working under any physical limitations or restrictions. (Tr., p. 18)

On July 18, 2018, Hunter reported:

> I was in the bathroom with a resident transferring from the toilet to her wheelchair. And the resident had a walker in front of her, and stated that she was – felt like she was going to drop, gonna fall. And we were trying to get her into her wheelchair, and her legs gave out. And she was falling, she kicked my right leg out from underneath me.

(Tr., pp. 18-19) Hunter did not actually fall, but testified she experienced pain in her lower back and down her right leg, and then in her shoulders and neck after the incident. (Tr., p. 19) Hunter reported the incident to the administrator of Silver Pines and she worked the remainder of her shift. (Tr., pp. 19-20)

On July 19, 2018, Hunter attended an appointment with Cindy Hanawalt, M.D. with St. Luke's Work Well Clinic ("Work Well"), reporting the day before a resident she was assisting started to fall and the resident's legs came underneath her and hit her right ankle causing it to roll outward and she felt a strain in her low back. (JE 8, p. 1) Hunter complained of ankle pain, tightness and stiffness in her back, numbness coming down her legs without weakness, and a headache "mainly at the base of her neck with some stiffness in her upper trapezium." (JE 8, pp. 1-2) Hunter denied having any similar symptoms in the past. (JE 8, p. 1) Dr. Hanawalt documented Hunter was stiff and slow with standing, she needed to lean forward before rising, and she was limping. (JE 8, p. 2) On exam, Dr. Hanawalt documented Hunter had a general tenderness to palpation in the lower occipital ridge down into the trapezius, stiffness with chin to chest with full range of motion, limited forward flexion due to stiffness in the paraspinal region underneath her shoulder blades down into her sacral region, discomfort with extension, and noted she favored the right foot while standing and could not lead with her right foot. (JE 8, pp. 2-3) Dr. Hanawalt assessed Hunter with a low back strain and sprain of the right foot, applied an air cast, recommended ice for her ankle three times per day, encouraged Hunter to engage in general mobility alternating walking, standing, and sitting, as tolerated, and ordered physical therapy. (JE 8, pp. 3-4)

Hunter returned to Dr. Hanawalt on July 26, 2018, reporting relief from her back symptoms when using a TENS unit during physical therapy. (JE 8, p. 5) Hunter reported her back is stiff and noted she wondered if her fibromyalgia had also flared. (JE 8, p. 5) Hunter reported she was tight and stiff, but denied having numbness or pain in her legs. (JE 8, p. 5) Dr. Hanawalt assessed Hunter with neck stiffness, a low back strain, and right foot sprain, recommended she continue with physical therapy, discontinued the air cast, imposed restrictions of no stairs, ladders, bending, or squatting, and noted Hunter believed could modify her activities at work, as needed. (JE 8, pp. 6-7)

On August 21, 2018, Hunter attended a follow-up appointment with Dr. Hanawalt, reporting an improvement of forty percent with physical therapy. (JE 8, p. 8) Hunter complained of a significant amount of tightness in her low back and occasional sharp pain down her right hip into her leg without lower extremity weakness. (JE 8, p. 8) Hunter reported her legs go numb when sitting too long and when moving from

squatting to standing. (JE 8, p. 8) Dr. Hanawalt assessed Hunter with neck stiffness, upper trapezial tightness, generally poor posture with ongoing headaches, persistent low back pain, and a right ankle sprain, continued physical therapy, and ordered dry needling. (JE 8, p. 9) Dr. Hanawalt noted Hunter was working full-time and self-modifying her activity, and imposed restrictions of occasional bending and squatting, and to sit, stand, and ambulate for comfort. (JE 8, p. 9)

Hunter attended an appointment with Dr. Hanawalt on August 29, 2018, complaining of increased pain after working long hours and performing more patient care. (JE 8, pp. 10-11) Hunter complained of increased pain in her thoracic spine down to her lumbar spine, radicular symptoms down her right leg with weakness and numbness, and increased migraine headaches. (JE 8, p. 10) Hunter reported her neck pain had not improved, she had a generalized tightness, she felt very stiff when lifting her arms overhead, and she believed her fibromyalgia pain was also worse. (JE 8, p. 10) Dr. Hanawalt imposed restrictions of no lifting or carrying over fifteen pounds, to avoid bending, stooping, and prolonged standing and sitting, occasional kneeling and squatting, and to limit patient lifting and transfers, and she prescribed Flexeril. (JE 8, pp. 10-11)

Dr. Hanawalt ordered lumbosacral and thoracic spine x-rays. (JE 5, pp. 2-3) The radiologist listed findings of "[m]oderate facet arthropathy lower lumbar spine. Mild loss of disc interspace L5-S1. Mild endplate degenerative changes lower thoracic spine. No lumbar spine malalignment or vertebral compression fracture." (JE 5, p. 2) With respect to the thoracic spine, the radiologist listed findings of "[n]o thoracic spine malalignment or vertebral compression fracture. Mild-to-moderate mid thoracic spine degenerative changes seen." (JE 5, p. 3)

On September 18, 2018, Hunter attended a follow-up appointment with Dr. Hanawalt, reporting her pain was worse, which she described as a constant aching to tightness/gripping to a burning that was worse with prolonged sitting and standing. (JE 8, p. 12) Hunter reported she had not started taking Flexeril or using a TENS unit due to problems with workers' compensation benefits and noted dry needling provided some relief. (JE 8, p. 12) Dr. Hanawalt assessed Hunter with low back pain with cervicalgia, neck strain, and ankle sprain, continued her physical therapy, and had her staff contact the workers' compensation carrier regarding the Flexeril and TENS unit. (JE 8, p. 13)

On October 12, 2018, Hunter sought treatment at St. Luke's Emergency Department, complaining of increasing back pain, right leg numbness, and a severe headache with blurred vision and feeling of fogginess and cloudiness. (JE 5, p. 4) Hunter reported she could hardly feel her right leg, mostly in the thigh area, with a pins and needles sensation causing difficulty with standing. (JE 5, p. 4) Hunter denied right leg weakness and reported numbness in her left leg that was not as severe as the right, and reported problems with her bladder function. (JE 5, p. 4) Hospital staff documented Hunter complained of weakness, numbness and headaches and "[p]ositive for back pain and myalgias. Negative for neck pain." (JE 5, p. 7) On examination, hospital staff noted her neck had normal range of motion, and she exhibited tenderness and bony tenderness in her thoracic and lumbar spine. (JE 5, p. 8) Hospital staff

discharged Hunter, listing an impression of acute midline low back pain with bilateral sciatica and acute nonintractable headache, unspecified headache, prescribed Valium and Percocet, and told her to follow up with her family medicine provider. (JE 5, p. 12)

Hunter testified on October 15, 2018, a resident jerked toward the bed when she was rolling the resident and she felt a pop in the middle of her back with discomfort and that she became short of breath. (Tr., p. 22) Hunter testified her condition was different from her condition after the July 2018 injury because she was experiencing sharp pain in her mid back and difficulty breathing and she was experiencing sharp pain in her mid back. (Tr., pp. 22-23)

After the July 2018 incident and before the October 2018 incident, Senior Housing purchased Silver Pines. (Tr., pp. 24, 71) Hunter's position and salary remained the same. (Tr., p. 25) Hunter reported the October 15, 2018 work injury to the administrator and the administrator told her the incident was considered a continuation of the July 2018 injury and she was not going to file a claim. (Tr., pp. 23-24)

Following the October 2018 incident, Work Well sent Hunter to the emergency room, where she was examined by Brian Shedek, D.O. (Tr., p. 25; JE 5, p. 13) Dr. Shedek documented Hunter reported she had a prior lower back injury and that her current pain was unrelated. (JE 5, p. 13)

On October 17, 2018, Hunter returned to Dr. Hanawalt, reporting acute worsening symptoms over the past week and that she had been evaluated in the emergency room twice since her last appointment. (JE 8, p. 14) Hunter relayed she had not been able to follow her work restrictions due to the workload and that she had been working extra hours with increased pain throughout her back, increased headaches, and increased general stress. (JE 8, p. 14) Hunter reported when she returned to work on October 14, 2018 "she was rolling a patient towards her and she heard felt a pop in her mid back" with immediate back pain and spasm, noting she could not catch her breath and she was experiencing a pleuritic type of pain component. (JE 8, p. 14) Hunter complained of a significant discomfort in her neck and right upper trapezial area, pain through her mid thoracic area radiating around to her rib cage, increased pain in the low back limiting her ambulation, increased migraines, and reported she was not sleeping well due to stress. (JE 8, p. 14) Hunter also reported incontinence with difficulty getting to the commode and a general loss of control. (JE 8, p. 14)

Dr. Hanawalt ordered lumbar spine magnetic resonance imaging. (JE 5, p. 21) Dr. Hanawalt noted a prior head computerized tomography exam showed no acute intracranial abnormality and that Hunter's lumbar spine imaging showed a minimal right posterior disc bulge at L1-L2, a broad-based posterior disc bulge with hypertrophy of the bilateral posterior facet joints with mild encroachment at the ventral thecal sac and mild to moderate narrowing in both neural foramen at L4-L5. (JE 8, p. 14) Dr. Hanawalt assessed Hunter with worsening back pain, including exacerbation of migraine headaches due to acute stress reaction and poor sleep, mid thoracic upper trapezial

discomfort with myofascial component, and a "broad distal bulge and LE paresthesia and general poor ability to function due to pain and emotional distress. Worsening urinary incontinence." (JE 8, p. 15) Dr. Hanawalt restricted Hunter from working, directed her to sit, stand, and ambulate, as tolerated, referred her to a pain clinic to help with her disc and facet pathology, prescribed a Medrol dosepak and Skelaxin, and continued her physical therapy. (JE 8, p. 16)

On October 24, 2018, Hunter returned to Dr. Hanawalt regarding her back pain. (JE 8, p. 17) Dr. Hanawalt again referred Hunter to a pain clinic, continued her physical therapy, and reordered the TENS unit. (JE 8, p. 18) Dr. Hanawalt imposed work restrictions of light duty, with no lifting over ten pounds, no sweeping, or mopping, no bending, squatting, or patient transfers, and found she could work four hours per shift, twenty hours per week. (JE 8, p. 18)

Hunter attended fifteen physical therapy visits between July 25, 2018 and November 18, 2018. (JE 6) On December 12, 2018, Hunter was discharged from physical therapy. (JE 6, p. 19) The physical therapist documented Hunter did not return after her last appointment and had not returned calls to schedule further visits. (JE 6, p. 19)

On November 20, 2018, Hunter underwent a pain consultation with Mark Kline, M.D. (JE 5, p. 23) Dr. Kline documented:

> [s]he describes the pain as "constant ache, throbbing, pins/needles, at times worse than labor." She describes pain and muscle spasm in her neck, shoulders and upper back. These symptoms worsen with use of her upper extremities. She denies radicular-type symptoms in either upper extremity. She does describe some mild generalized weakness in her upper extremities when the pain is severe. Her low back pain worsens with bending, lifting, twisting. The pain radiates across the low back and into the lateral aspect of her right thigh to the knee. She also describes numbness in her right anterior thigh. She was initially experiencing severe shooting-type of pain in her right anterior thigh. However, she reports that this has improved significantly with physical therapy. A course of oral steroids was also helpful.

(JE 5, p. 23) Hunter complained of difficulties with sleeping, performing her job, lifting her children, performing housework, and standing for prolonged periods. (JE 5, p. 23) Hunter denied radiation of pain below her knees, reported some mild weakness with hip flexion on the right side, especially after sitting, numbness in her anterior high, and mild generalized weakness in her upper extremities. (JE 5, pp. 23-24) Dr. Kline listed an impression of low back pain radiating to the right lower extremity, myofascial pain in the trapezius muscles and thoracic paraspinous muscles, prescribed gabapentin for her low back pain, and opined Hunter may benefit from trigger point injections for her myofascial pain. (JE 5, p. 25)

On November 28, 2018, Hunter returned to Dr. Hanawalt reporting she had returned to work four hours per day, her neck pain and shoulder range of motion had improved "tremendously," her ankle pain had improved, but she was continuing to experience low back pain radiating down her thigh. (JE 8, p. 19) Dr. Hanawalt ordered Hunter continue physical therapy, imposed work restrictions of light duty with no lifting over ten pounds, no sweeping, mopping, bending, squatting, or patient transfers, and found she could work six hours per shift, thirty hours per week. (JE 8, p. 19)

On December 4, 2018, Hunter received a final warning counseling form from the Senior Housing Administrator. (Tr., pp. 26-27) Hunter testified she had not received any prior corrective action. (Tr., p. 27)

Hunter attended a follow-up appointment with Dr. Hanawalt on December 12, 2018, reporting she was attending physical therapy and she had received a TENS unit. (JE 8, p. 20) Dr. Hanawalt encouraged Hunter to walk each day and to use the TENS unit, continued her physical therapy, and imposed work restrictions of no lifting over ten pounds, no patient transfers, occasional bending and squatting, and found Hunter could work eight hours shifts, forty hours per week. (JE 8, p. 20)

David Field, M.D., conducted an independent medical examination of Hunter for Silver Pines and American Compensation and issued his report on January 4, 2019. (JE 9) Dr. Field examined Hunter and reviewed her medical records. (JE 9) Dr. Field noted Hunter had a history of fibromyalgia, obesity, peripheral neuropathy, an old neck injury caused by a motor vehicle accident, and documented she "denied any low back pain in the past." (JE 9, p. 3) On examination, Dr. Field found Hunter had full range of motion in her right ankle without any swelling or instability. (JE 9, p. 3) Dr. Field documented Hunter had full functional range of motion of her shoulders with:

> some tightness of her neck in terms of flexion/extension, lateral bend and rotation, all restricted perhaps about 50 degrees. She can stand erect. She can flex her fingertips to about 10 inches from the floor. She can extend her lumbar spine well. Lateral bend to the right is minimally restricted. She can heel and toe-up. There was no clinical deficit of the lower extremities noted on examination.

(JE 9, p. 3)

Dr. Field diagnosed Hunter with "a myofascial-type strain, mostly to her lumbar spine, possibly secondary thoracic area temporarily and ongoing complaints of neck pain with preexisting evidence of chronic fibromyalgia preexisting evidence of degenerative disc disease of the lumbar spine." (JE 9, p. 4) Dr. Field found many of Hunter's symptoms were of a myofascial nature, which he noted Dr. Hanawalt also recognized were unrelated to the July 2018 incident, and he believed the intertwining of her symptoms from her fibromyalgia made it difficult to separate some of the issues in terms of treatment, recommendations, and therapies. (JE 9, p. 4)

Dr. Field opined:

> [i]t is possible doing the activity which she performed, trying to stabilize a patient in a flexed/stooping position to certainly flare up one's back. Normally however, a ligamentous pattern of injury takes place at that time and is resolved with conservative treatment programs with modalities of physical therapy and appropriate anti-inflammatory medicines and muscle relaxants. Usually a ligamentous injury can take place and heal within perhaps a 6-8 week pattern. The longevity of the course of treatment, however, seems more atypical than most people would experience, and can well be perhaps in this case, associated with a diagnosis of chronic fibromyalgia as documented before.

(JE 9, p. 4) Dr. Field opined the work injury was temporary and resolved that the "work injury is probably more of a partial contributor to the patient's current treatment plan" and that the work injury "most likely related to an aggravation or a 'lighting up' of her fibromyalgia." (JE 9, p. 4) Dr. Field found Hunter's treatment was reasonable and necessary for evaluation, but was prolonged relative to her complaints and that her treatment "should have reached a level of maximum healing at about 3 months post injury." (JE 9, pp. 4-5) Dr. Field opined Hunter reached maximum medical improvement approximately at the end of October 2018, she should not be assigned a permanent impairment, she did not need any additional treatment, and she should not be assigned any restrictions. (JE 9, p. 5)

On January 4, 2019, Senior Housing demoted Hunter to a floor nurse position, stopped paying her a salary, and paid her $19.00 per hour. (Ex. 1, p. 8; Tr., pp. 29-30) Hunter reported after the demotion she was earning $5.00 less per hour. (Tr., p. 30)

On January 8, 2019, Hunter went to urgent care, complaining of a headache in the back of her head, worsening neck and shoulder pain, and worsening low back pain with muscle spasms and tingling and numbness she attributed to the July 2018 work injury. (JE 7, pp. 1-2) Hunter reported Dr. Klein had offered her an epidural, which she refused because she was doing better at that time and going to physical therapy. (JE 7, p. 2) Suzanne Baxter, PA-C, examined Hunter, assessed her with an occipital headache, acute right-sided low back pain with right-sided sciatica, and neck and shoulder pain, administered a Toradol injection, prescribed cyclobenzaprine, and scheduled an appointment for Hunter with Work Well. (JE 7, pp. 3-5)

On January 10, 2019, Hunter returned to Work Well and Ignatius Brady, M.D., examined her. (JE 8, pp. 21-22) Dr. Brady documented Hunter had complained of increasing pain throughout her back after her workload increased, causing "fairly severe upper back and neck pain," she had missed three days of work due to the pain, and she had received a Toradal injection from urgent care. (JE 8, p. 21) Dr. Brady assessed Hunter with chronic neck and back pain with a recent aggravation of pain, continued her Flexeril and physical therapy, restricted Hunter from working for two days, ordered her to work four hours per day the next week, increasing to six hours and then eight hours per day as directed by Dr. Hanawalt, and imposed work restrictions of no lifting over ten

pounds with no bending, stooping, squatting, kneeling, or patient transfers. (JE 8, pp. 21-23)

During her appointment with Dr. Hanawalt on January 15, 2019, Hunter reported she was not working because the facility had refused to accommodate the four-hour shifts. (JE 8, p. 24) Dr. Hanawalt encouraged daily walking, continued Hunter's physical therapy and TENS unit, found Hunter was capable of light-duty work transitioning from twenty hours per week to forty hours per week over the next two weeks while restricting activities that aggravate her neck and back. (JE 8, p. 25)

Hunter returned to Dr. Hanawalt on January 24, 2019, reporting she needed to be released without restrictions and that she was feeling better overall. (JE 8, p. 27) Dr. Hanawalt noted progress in physical therapy work conditioning, recommended a functional capacity evaluation, and imposed a thirty-pound lifting restriction with no limitation of work hours. (JE 8, p. 28)

Hunter was off work from January 13, 2019 through January 27, 2019. (Tr., p. 31) When Hunter returned to work on January 28, 2019 the Senior Housing Administrator terminated her employment for leaving insulin unrefrigerated. (Ex. 1, p. 16; Tr., p. 31) Hunter denied the medication was spoiled, and applied for and received unemployment benefits following her termination. (Tr., pp. 33-34) After her termination, Hunter worked for Jackson Hewitt preparing taxes during tax season. (Tr., pp. 34-35)

On February 27, 2019, Hunter attended a functional capacity evaluation for Dr. Hanawalt with Melissa White, OTR/L. (JE 2, p. 4) White found Hunter gave maximum effort and found she was unable to safely maintain a crouch position secondary to trunk and lower extremity strength/endurance. (JE 2, pp. 4-5) White noted Hunter was deconditioned in her upper and lower quadrant, stated she believed Hunter could perform a fifty pound lift and/or move on an occasional basis after regaining activity tolerance and stamina, recommended frequent positional changes between sitting, standing, and bending, and rare crouching and forward bending, finding Hunter could perform work in the light to medium category of work. (JE 2, pp. 7-8)

On March 19, 2019, Hunter attended an appointment with Dr. Brady for an impairment rating. (JE 8, pp. 29-30) Dr. Brady reviewed Hunter's Work Well clinic notes, an urgent care visit on January 8, 2019, a note from Dr. Kline, a magnetic resonance imaging report from October 17, 2018, and Dr. Field's independent medical examination report. (JE 8, p. 29) Dr. Brady opined Hunter's imaging showed changes consistent with age, with some foraminal narrowing due to facet hypertrophy at the L4-L5 level, that "would not account for the low back pain which radiates toward the neck and trapezius area." (JE 8, p. 29) Dr. Brady noted Hunter was much improved since he met with her in January, she was managing her pain with a TENS unit, Biofreeze and naproxen, she reported her last round of physical therapy was very helpful, and she had lost her job and was working as a tax preparer with light office physical demands. (JE 8, p. 29) Dr. Brady assessed Hunter with a "[l]ow back strain secondary to a loading injury at work on [July 18, 2018]." (JE 8, p. 30)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Brady assigned Hunter a zero percent permanent impairment rating, finding she has "no significant clinical findings, no observed muscle guarding or spasm, no documentable neurological impairment, no documented alteration in structural integrity," and no acute findings on her magnetic resonance imaging. (JE 8, p. 30) Dr. Brady noted Hunter had a baseline diagnosis of fibromyalgia, indicating she is unlikely to ever be free of pain in her back, found she did not need any treatment, and opined while her functional capacity evaluation made some suggestions regarding her abilities going forward, he did not believe any of the limitations she may have were due to the July 2018 work injury. (JE 8, p. 30)

In March 2019, Hunter sought additional treatment with Dr. Strickler on her own, where she continued to report improvement and worsening of her neck, mid back, and low back pain. (Tr., p. 77; JE 4, pp. 2-4; Ex. A, p. 1) On April 17, 2019, Hunter returned to Dr. Strickler complaining of acute, elevated low back pain she described as a sharpness, and noting her symptoms increased with movement and decreased with rest. (JE 4, p. 5) Hunter returned to Dr. Strickler on May 7, 2019, complaining of acute, elevated neck pain and headaches. (JE 4, p. 6) Hunter relayed she has increased symptoms with sleeping and cervical motion. (JE 4, p. 6)

In May 2019, C and S Staffing hired Hunter as care manager coordinating care, performing care plan management, and implementing strategies for clients with dementia, intellectual disabilities, and mental illness to remain in their homes. (Ex. E, p. 28; Tr., pp. 34-35) Hunter used a desktop computer and Microsoft Office products. (Ex. E, p. 28) Hunter worked for C and S Staffing through September 2019. (Ex. E, p. 28) Hunter reported the position with C and S Staffing required her to do a lot of driving and sitting, which was difficult. (Tr., p. 36)

After workers' compensation stopped paying for her medical care, Hunter sought treatment on her own from Cedar Rapids Pain Associates, which she testified was beneficial. (Tr., pp. 48-49, 77) Hunter attended her first appointment with Michelle Donohue, ARNP, on July 8, 2019, complaining of cervical, thoracic, and lumbar pain. (JE 3, p. 1) Hunter described her low back and mid back pain as "right greater than left, deep achy pain with intermittent stabbing/throbbing/shooting pain of her right lateral hip that increases with position change" and reported her pain interrupts her sleep and work. (JE 3, p. 1) Donohue noted lumbar magnetic resonance imaging from October 2018, provided an impression of "L5 is a transitional vertebra, Early degenerative arthritic change throughout and desiccated disc changes/degenerative disc disease at L4-5. Constellations of finding L4-5 results in mild encroachment of the thecal sac and moderate narrowing of both neural foramen." (JE 3, pp. 1-2) Donohue assessed Hunter with lumbago, lumbar disc degeneration L4-L5, bulging disc L1-L2 and L4-L5, lumbar radiculopathy, connective tissue and disc stenosis of intervertebral foramina of the lumbar region, pain in thoracic spine, and myofascial pain. (JE 3, p. 3) Donohue recommended thoracic and lumbar trigger point injections for myofascial pain, lumbar epidural steroid injections for radiculopathy, physical therapy, chiropractic care, and prescribed diclofenac and baclofen. (JE 3, pp. 3-4)

Hunter attended two appointments with chiropractors associated with Cedar Rapids Pain Associates, but she did not return for treatment because she found Dr. Strickler's treatment more beneficial. (JE 3; JE 4) She underwent thoracic and lumbar spine trigger point injections with Cedar Rapids Pain Associates and continued to complain of lumbar pain radiating into her right lateral thigh and intermittently down her left posterior thigh, exacerbated by activity. (JE 3, pp. 11-14, 22, 24-25) She reported relief from the injections, but also continued to experience pain and she received additional physical therapy. (JE 3, pp. 28-32)

John Kuhnlein, D.O., conducted an independent medical examination for Hunter on August 21, 2019, and issued his report on December 31, 2019. (Ex. 1, pp. 8-28) Dr. Kuhnlein reviewed Hunter's medical records and examined her. (Ex. 1, pp. 8-28) Hunter reported a preexisting history of fibromyalgia with some bilateral occasional neck pain, a neck injury from a motor vehicle accident, rare bitemporal headaches three times per year, periodic mid back pain when ill or stressed, occasional back pain, a prior episode of pain shooting down her right leg similar to her current pain, but not as severe, and intermittent problems with her right leg that did not limit her activities. (Ex. 1, pp. 9-10) Hunter reported before the accident she was not taking any medication for fibromyalgia and her treatment included chiropractic care and stretching exercises. (JE 1, p. 10)

Dr. Kuhnlein documented Hunter's current symptoms include occipital headaches from cervical myofascial pain, bitemporal area headaches with aura representing and aggravation of her preexisting migraines, cervical myofascial pain, low back pain with radiculitic right leg symptoms, and very rare right ankle symptoms. (Ex. 1, p. 23) Dr. Kuhnlein found Hunter's right foot/ankle strain resolved with conservative treatment, but she had ongoing waxing and waning problems with headaches, neck, mid back and low back pain with intermittent right leg symptoms. (Ex. 1, p. 23) Dr. Kuhnlein noted her records indicated there were issues with her medical care after her work injury because the insurer was not paying her bills, including prescriptions. (Ex. 1, p. 23). He also noted Hunter's overall symptom pattern changed and worsened after she returned to eight hour shifts and she was reassigned to working primarily as a floor nurse. (Ex. 1, pp. 24-25) Dr. Kuhnlein found:

> [t]hese symptoms are different than the previous fibromyalgia symptoms. While Dr. Hanawalt noted that Ms. Hunter felt that her fibromyalgia pain was worse on both July 26, 2018, and again on August 29, 2108, and Dr. Field felt that there was "certainly an overlying degree of myofascial pain which I do think is most likely related to an aggravation or 'lighting up' of her fibromyalgia," Ms. Hunter does not really describe changes in the pre-existing fibromyalgia type symptoms, she describes changes consistent with musculoskeletal injury, and the pattern of care for fibromyalgia did not change after this injury. The pattern of care changed in response to the acute musculoskeletal injuries she sustained while at work on these two dates, based on the information currently available in the record. It does not appear that either Dr. Field, or later Dr. Brady, asked Ms. Hunter how her symptoms before the injuries were different than after the injuries.

> She states, and I have no reason to disbelieve her at this time, that the symptom patterns were different. As a result, I believe that the fibromyalgia was an "innocent bystander" and unrelated to these musculoskeletal injuries.

(Ex. 1, p. 24)

Dr. Kuhnlein opined the July 2018 work injury caused Hunter to sustain a cervical strain, a low back strain with intermittent radiculitic symptoms, and a right ankle/foot strain. (Ex. 1, p. 22) Dr. Kuhnlein noted the day after the incident, Dr. Hanawalt documented Hunter exhibited tenderness to palpation from the lower occipital ridge extending into the trapezius and stiffness with cervical range of motion and objective findings in her ankle area, which ultimately resolved, and objective symptoms in her lumbar spine. (Ex. 1, p. 23) On examination, Dr. Kuhnlein noted tenderness to palpation in the right mid scapular area, the right occipital area, lumbar spine, paralumbar muscle areas, percussive tenderness with light touch in the lumbar area, positive piriformis palpation on the right with radiation into the right leg and negative in her left leg, and radiation into the right anterior thigh to the knee with right leg raising compared with no evidence or radiculopathy in the left leg. (Ex. 1, pp. 21-22) Dr. Kuhnlein noted the pattern of Hunter's fibromyalgia symptoms before and after the injury did not change, but her pattern of care changed, noting it did not appear Dr. Field or Dr. Brady asked her how her symptoms before the injury were different from her symptoms after the injury. (Ex. 1, p. 24)

Dr. Kuhnlein recommended Hunter continue taking NSAIDs and Tylenol, use a TENS unit, continue trigger point and epidural injections on a repeated and intermittent basis if they provided long-lasting benefit, but not if they only provide short-term benefit. (Ex. 1, p. 24) Dr. Kuhnlein did not recommend additional chiropractic care or use of a lumbar support brace, instead recommending Hunter work on core exercises for her low back pain. (Ex. 1, p. 24)

Dr. Kuhnlein opined Hunter reached maximum medical improvement for both injuries on July 23, 2019, when she underwent an epidural injection performed by Dr. Miller. (Ex. 1, p. 24) Using the AMA Guides, Dr. Kuhnlein assigned impairment, as follows:

> [t]he DRE method is indicated according to pages 379-380 for the cervical spine. Turning to Table 15-5, page 392, I would place Ms. Hunter into DRE Cervical Category II and assign 5% whole person impairment. This impairment would also cover the occipital headaches, as I believe they are related to the neck condition and are not a separate issue.
>
> The DRE method is indicated according to pages 379-380 for the lumbar spine. Turning to Table 15-3, page 384, I would place Ms. Hunter into DRE Lumbar Category II and assign 7% whole person impairment. This impairment would also account for the radiculitic features noted on physical examination.

> There would be no impairment for the foot/ankle injury. There will be no impairment related to this injury for the fibromyalgia. I would not assign impairment for the migraine headaches at this time.
>
> Turning to the Combined Values Chart on Page 604, when these values are combined (7% x5%) this is a 12% whole person impairment. This impairment would apply to the July 18, 2018, injury.
>
> The DRE method is indicated according to pages 379-380 for the thoracic spine. Turning to Table 15-4, page 389, I would place Ms. Hunter between DRE Thoracic Category I and II and assigned 3% whole person impairment. This impairment would apply to the October 15, 2018, injury.

(Ex. 1, p. 25)

Dr. Kuhnlein disagreed with Dr. Field's opinion Hunter was capable of working full-time and if she needed temporary work restrictions the restrictions would not be related to her work injury because Hunter was working without restrictions prior to the work injury, even with pre-existing fibromyalgia. (Ex. 1, p. 25) Dr. Kuhnlein found the functional capacity evaluation placed Hunter in the light-medium physical demand level, noting the functional capacity evaluation should have been conducted three months after her work conditioning program to more accurately reflect her overall long-term functional abilities. (Ex. 1, p. 25) Dr. Kuhnlein recommended material handling restrictions of occasionally lifting twenty pounds from floor to waist, twenty pounds from waist to shoulder, and ten pounds over the shoulder. (Ex. 1, p. 26) Dr. Kuhnlein recommended nonmaterial handling restrictions of sitting, standing, and walking occasionally with the ability to change positions for comfort, stooping, squatting, bending, crawling, and kneeling occasionally, occasionally work on ladders, frequently climb stairs, and work at or above shoulder height occasionally. (Ex. 1, p. 26)

On August 23, 2019, Hunter attended an appointment with Amy Freeman, DNP, ARNP, for her lumbar pain. (JE 3, p. 36) Freeman documented Hunter reported receiving seventy percent relief following her injections and following a hysterectomy, she resumed physical therapy and chiropractic treatment, which was helping. (JE 3, pp. 36-37) Hunter relayed she was experiencing flares of pain, but was doing much better and that her neck was actually bothering her more. (JE 3, p. 36)

On September 9, 2019, Hunter commenced employment with RightDose Pharmacy, as an account manager, serving as a liaison between the pharmacy and facilities. (Ex. E, p. 28; Tr., p. 36) Hunter used a desktop computer and Microsoft Office products. (Ex. E, p. 28) Hunter worked for RightDose Pharmacy until January 2020. (Ex. E, p. 28)

In October 2020, Higley Mansion, a residential care facility, hired Hunter as the director of nursing. (Tr., pp. 13-14) As the director of nursing, Hunter works forty to sixty hours per week and she supervises a staff of thirteen. (Tr., p. 14) Hunter is responsible for making sure the staff follow the schedule and oversees the

documentation, care plans, staff training, and admissions and discharges of residents. (Tr., pp. 14-15) Hunter testified the job involves a lot of moving around and she has to work on the floor occasionally, assisting residents with activities of daily living and passing medication. (Tr., p. 15) Hunter reported assisting some of the residents on the floor, getting down on the floor and standing back up, and pushing the medication cart is difficult, but the majority of her job is administrative. (Tr., p. 36) Higley Mansion pays Hunter a salary of $50,000.00 per year. (Tr., p. 14)

On September 20, 2019, Hunter returned to Freeman regarding her cervical and thoracic pain. (JE 3, p. 46) Freeman documented Hunter "presents today with a new complaint of cervical and thoracic pain," noting she "has had this pain intermittently for over ten years without known injury." (JE 3, p. 46) Freeman documented,

> over time her pain has worsened, especially with different injuries, including a MVA in 2016. Most recently, she was helping a resident at work when they fell and she tried to catch them, exacerbating her pain. This was approximately May, 2018. Since then her pain has been worsening. She reports migraines in her temples about twice per week. She denies radiculopathy but feels her arms are weak. Her pain is now constant and its worse with activity.

(JE 3, p. 46) Freeman assessed Hunter with cervical disc degeneration, cervical spondylosis, cervicalgia, pain in thoracic spine, and myofascial pain and recommended physical therapy and trigger point injections. (JE 3, p. 48) In the fall of 2019, Hunter continued to treat with Cedar Rapids Pain Associates, receiving additional injections and physical therapy, and with Dr. Strickler for her chronic neck pain, low back, mid back pain, and headaches, reporting improvement in her symptoms . (JE 3, pp. 53-55, 59-62, 66-69, 76-79, 84-85; JE 4, pp. 11-16)

On January 20, 2020, Hunter was discharged from physical therapy because she was a no call, no show for her last two appointments. (JE 3, p. 94) Cedar Rapids Pain Associates noted Hunter had attended thirty-three of the forty-three scheduled physical therapy appointments. (JE 3, p. 94)

In response to a request from counsel for Senior Housing and West Bend, Dr. Brady reviewed his notes, Dr. Hanawalt's notes, and an independent medical examination report performed by Dr. Kuhnlein. (JE 8, p. 32) In a letter dated April 21, 2020, Dr. Brady opined while he believed Hunter had thoracic pain, he did not believe the thoracic pain represented an injury when he examined her and that he could not comment on what Dr. Kuhnlein saw after he last saw her. (JE 8, p. 32)

The attorney for Senior Housing and West Bend requested an opinion from Dr. Field, proving him with Hunter's medical records, his independent medical examination report, and Dr. Kuhnlein's report. (JE 9, p. 6) Dr. Field sent a response letter on April 29, 2020, noting Hunter had preexisting lumbar disc disease and episodes of radicular pain or sciatica that went onto resolution. (JE 9, p. 6) With respect to her cervical spine, Dr. Field noted initial evaluations showed limited functional range of motion of her

neck, which became more stiff with time, noted he had not received a prior cervical x-ray or other imaging to rule out significant disc disease or spondylosis, noting at the time of her initial injury she had minimal complaints of her neck and therefore, the pattern of symptoms changed, including headache over time. (JE 9, pp. 6-7) With respect to her thoracic area, Dr. Field noted imaging showed mild degenerative changes, during an emergency room visit she complained of tenderness in the right lower rib cage, but there was nothing definitive from the examination she hurt a rib, a rib/spinal junction soreness or pattern, and not necessarily a definitive injury to the thoracic spine, noting not further studies were done. (JE 9, p. 7) Dr. Field opined,

> [i]n summary, it does not appear there was any definitive, objective evidence of injury to the thoracic spine through the course of evaluation, subsequent studies, and pattern of pain which has been described. We evaluated her spine in terms of spinal range of motion. She had no difficulty flexing her lumbar spine other than getting her fingers about 10 inches from the floor. She had good extension of her lumbar spine, and if she had problems with her thoracic spine, pain would have been evident on that examination as well.
>
> In summary, I do not think there is definitive clear evidence of injury to the thoracic spine based on the clinical evaluation which took place in the emergency room, follow-up evaluations by Dr. Hanawalt, and also the fact that no further definitive objective findings have been undertaken in the course of her management.

(JE 9, p. 7)

In late June Hunter was involved in another car accident when she was rear-ended. (Tr., pp. 41-42) Hunter testified she did not go to the emergency room and she sought chiropractic care. (Tr., p. 42) She again complained of neck pain, mid back pain, and low back pain, and hip pain and received treatment from June through October 2020. (JE 4, pp. 23-54) At the time of the hearing Hunter was not receiving treatment from the car accident. (Tr., p. 42)

Hunter testified her fibromyalgia affects her whole body, causing her whole back to be tense, whereas the July and October 2018 work injuries affect "specific spots, like in my neck and my shoulders and my mid to lower back, and then the shooting pain down my right leg." (Tr., p. 41)

Hunter testified since the July 2018 work injury her mobility has decreased and she has difficulty going up stairs, bending down, squatting, and bending forward. (Tr., p. 45) Hunter reported the July 2018 work injury effects her shoulders and neck and "causes some tension and the tightness, pain, and causes migraines," noting she experiences intermittent burning pain in her neck that is sometimes sharp and that movement and tension causes her to experience migraines. (Tr., p. 45) Hunter reported she has constant pain in her low back with intermittent flares of shooting pain that are more associated with activity. (Tr., p. 46) Hunter relayed her back condition

decreases mobility when she sits or stands too long and she starts having pain that is achy and sharp at times going down her legs. (Tr., p. 47)

Hunter testified the October 2018 work injury affected her mid back and still causes difficulty with breathing, causing a "wrapping around pain from the back to the front – to the rib area." (Tr., p. 48) Hunter relayed when she works on the floor more she experiences more issues later in the evening and if she sits too long she experiences discomfort. (Tr., p. 48)

Hunter does not claim the July 2018 incident affected her mid back or thoracic spine. (Tr., p. 68) On cross-examination, Hunter acknowledged she reported she was experiencing mid back or thoracic pain to Work Well on July 19, 2018, August 29, 2018, and September 18, 2018. (Tr., pp. 68-69) Counsel for Senior Housing inquired and Hunter responded, as follows:

> Q. So my question is, if you were experiencing mid back pain and thoracic pain to the degree that you felt it prudent to report it to your medical providers on those dates, and you didn't sustain an injury to that part of your body in July of '18, what are you attributing your back pain – mid back pain at that time to? Was that due to the motor vehicle accident in '16, the falling out of the semi in 2018, or is it your fibromyalgia, or a combination of the three?
>
> A. I don't - - I don't know.

(Tr., p. 69) Hunter denied that Dr. Kuhnlein's statement in his report that she only experienced periodic mid back pain is incorrect because her pain was periodic and not every day. (Tr., p. 70)

Hunter testified the July and October 2018 incidents have caused her to lose access to jobs in the nursing industry because "I'm not able to go into a full-blown long-term care facility. The best that I could do would be residential care or assisted living." (Tr., p. 51) Hunter reported because the incidents she is limited on the amount of lifting and movement she can do, and affects her ability to provide residents with assistance with all activities of daily living, which is an everyday occurrence in a long-term care facility. (Tr., p. 51)

Hunter acknowledged she works in the medical field and recognizes the history of a patient is significant in treating and diagnosing patients and if a physician does not have an accurate history, that could cause problems. (Tr., p. 67)

CONCLUSIONS OF LAW

I. Applicable Law

These cases involve the issues of nature of disability, extent of disability, recovery of the cost of an independent medical examination, and recovery of costs under Iowa Code sections 85.34, 85.39, and 86.40. In 2017, the Iowa Legislature

enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. This case involves alleged injuries occurring after July 1, 2017, therefore, the provisions of the new statute involving nature and extent of disability under Iowa Code section 85.34 and recovering the cost of an independent medical examination under Iowa Code section 85.39 apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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. Again, given this case concerns alleged injuries occurring after July 1, 2017, the new provision on interest applies to this case.

II. Nature of the Injury

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

> it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d at 156 (Iowa 1997). When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

A. July 2018 Work Injury

The parties stipulated Hunter sustained an injury while working for Silver Pines on July 18, 2018. Hunter contends she sustained permanent impairments to her cervical and lumbar spine caused by the work injury. Silver Pines and American Compensation deny Hunter sustained a temporary or permanent impairment.

Hunter had a history of cervical pain with headaches and low back pain and sought treatment for her conditions before the July 2018 work injury. Three physicians have given causation opinions in this case, Dr. Brady, an occupational medicine physician who provided minimal treatment to Hunter, Dr. Field, an orthopedic surgeon who conducted an independent medical examination for Silver Pines and American Compensation, and Dr. Kuhnlein, an occupational medicine physician who conducted an independent medical examination for Hunter. I find Dr. Kuhnlein's opinion to be the most persuasive.

Dr. Field examined Hunter and issued his report on January 4, 2019. (JE 9) Dr. Field diagnosed Hunter with "a myofascial-type strain, mostly to her lumbar spine, possibly secondary thoracic area temporarily and ongoing complaints of neck pain with preexisting evidence of chronic fibromyalgia preexisting evidence of degenerative disc disease of the lumbar spine." (JE 9, p. 4) On exam, Dr. Field found Hunter had full functional range of motion of her shoulders with:

> some tightness of her neck in terms of flexion/extension, lateral bend and rotation, all restricted perhaps about 50 degrees. She can stand erect. She can flex her fingertips to about 10 inches from the floor. She can extend her lumbar spine well. Lateral bend to the right is minimally restricted. She can heel and toe-up. There was no clinical deficit of the lower extremities noted on examination."

(JE 9, p. 3)

Dr. Field opined trying to stabilize a patient in a flexed/stooping position could "flare up one's back," noting normally the injury would resolve with conservative treatment within six to eight weeks, and that Hunter's longer course of treatment "seems more atypical than most people would experience, and can well be perhaps in this case, associated with a diagnostic chronic fibromyalgia as documented before." (JE 9, p. 4) Dr. Field opined the work injury was temporary and resolved and that the "work injury is probably more of a partial contributor to the patient's current treatment plan" and that the work injury "most likely related to an aggravation or a 'lighting up' of her fibromyalgia." (JE 9, p. 4) He then found Hunter reached maximum medical improvement approximately three months post-injury, or at the end of October 2018 and found she should not be assigned a permanent impairment, despite the fact that she continued to treat for the alleged work injury with Drs. Hanawalt and briefly, Dr. Brady. (JE 9, p. 5) I find Dr. Field's opinion equivocal.

After Dr. Field issued his opinion, Dr. Brady treated Hunter on January 10, 2019. He assessed Hunter with chronic neck and back pain, modified her work restrictions, decreasing the hours she worked per day, to be increased later, at Dr. Hanawalt's discretion, imposed work restrictions of no lifting over ten pounds with no bending, stooping, squatting, kneeling, or patient transfers, and continued her Flexeril at night and physical therapy. (JE 8, pp. 21-23) Hunter continued to treat with Dr. Hanawalt through February 27, 2019.

On March 19, 2019, Dr. Brady examined Hunter for purposes of providing an impairment rating. (JE 8, p. 9) Dr. Brady assessed Hunter with a low back strain, noted her back pain had improved but was not "entirely resolved," and assigned a zero percent permanent impairment rating, finding Hunter had "no significant clinical findings, no observed muscle guarding or spasm, no documentable neurological impairment, no documented alteration in structural integrity," and no acute findings on her magnetic resonance imaging. (JE 8, p. 30) Dr. Brady documented Hunter's neck pain, headaches, and left ankle "have all improved." (JE 8, p. 30) His opinion does not record any findings on examination of her cervical spine. (JE 8, pp. 30-31) The record

in this case does not support Hunter's low back symptoms had fully resolved as of Dr. Brady's examination. I do not find his opinion persuasive.

On August 21, 2019, Dr. Kuhnlein examined Hunter and diagnosed her with a neck strain with chronic myofascial neck pain, exacerbation of migraine headaches, occipital cervical myofascial headaches, thoracic strain with myofascial pain, low back strain related to facet hypertrophy and L4-L5 disc bulge, urinary insufficiency incontinence, right leg radiculitic pain, right ankle and foot strain, resolved, and fibromyalgia. (Ex. 1, p. 22) Dr. Kuhnlein documented Hunter had preexisting fibromyalgia with mild bilateral and occasional neck pain, rare headaches, intermittent right leg symptoms that did not limit her activities, and an episode of pain shooting into her right leg that was not severe. (Ex. 1, pp. 22-23)

Dr. Kuhnlein found the July 2018 work injury caused Hunter to sustain a cervical strain, a low back strain with intermittent radiculitic symptoms, and a right ankle/foot strain. (Ex. 1, p. 22) Dr. Kuhnlein noted the day after the incident, Dr. Hanawalt documented Hunter exhibited tenderness to palpation from the lower occipital ridge extending into the trapezius and stiffness with cervical range of motion and objective findings in her ankle area, which ultimately resolved, and objective symptoms in her lumbar spine. (Ex. 1, p. 23) On examination, Dr. Kuhnlein noted tenderness to palpation in the right mid scapular area, the right occipital area, lumbar spine, paralumbar muscle areas, percussive tenderness with light touch in the lumbar area, positive piriformis palpation on the right with radiation into the right leg and negative in her left leg, and radiation into the right anterior thigh to the knee with right leg raising compared with no evidence or radiculopathy in the left leg. (Ex. 1, pp. 21-22) Dr. Kuhnlein noted the pattern of Hunter's fibromyalgia symptoms before and after the injury did not change, but her pattern of care changed, noting it did not appear Dr. Field or Dr. Brady asked her how her symptoms before the injury were different than her symptoms after her injury. (Ex. 1, p. 24) Dr. Kuhnlein found Hunter's ankle/foot symptoms had resolved. He assigned Hunter a five percent permanent impairment for her cervical strain, which included the headaches, a seven percent whole person impairment for her low back strain with intermittent radiculitic symptoms, for a combined twelve percent whole person impairment. I also find Dr. Kuhnlein's restrictions to be Hunter's permanent restrictions.

B. October 2018 Work Injury

Hunter alleges she sustained a permanent impairment to her mid back or thoracic spine caused by a work injury on October 15, 2018, arising out of and in the course of her employment with Senior Housing. Senior Housing and American Compensation deny Hunter she sustained an injury to her mid back or thoracic spine arising out of and in the course of her employment with Senior Housing that caused a temporary or permanent impairment.

Dr. Kuhnlein opined Hunter sustained a thoracic strain when she felt a popping sensation in the thoracic spine and immediate thoracic pain. (Ex. 1, p. 23) Dr. Kuhnlein found Hunters' pattern of care changed in response to acute musculoskeletal injuries

she sustained in July 2018 and October 2018 "based on the information currently available in the record." (Ex. 1, p. 24) Dr. Kuhnlein noted Hunter reported having periodic mid back pain when she was ill or in stressful situations, but denied having any routine mid-back pain prior to the July 2018 incident. (Ex. 1, p. 10) He also noted while Hunter had preexisting fibromyalgia, she only had "periodic" mid back pain and only required "occasional" chiropractic care and stretching exercises, noting "I could not find anything in the currently available record that would suggest otherwise." (Ex. 1, pp. 22-23). Dr. Kuhnlein's independent medical examination report does not indicate he reviewed any of Hunter's chiropractic or medical records from 2015 until the July 2018 work injury. (Ex. 1) The letter sent to Dr. Kuhnlein by Hunter's counsel does not provide that Dr. Strickler's chiropractic records were provided to Dr. Kuhnlein. (Ex. 1, pp. 5-7)

Dr. Brady treated Hunter on one occasion, January 10, 2019, and he examined Hunter for purposes of providing an impairment rating on March 19, 2019. In a letter dated April 21, 2020, in response to an inquiry from Senior Housing and West Bend, Dr. Brady opined he did not believe the thoracic pain Hunter had represented an injury when he examined her and he stated he could not comment on what Dr. Kuhnlein saw when he examined her. (JE 8, p. 32)

Dr. Field examined Hunter for purposes of an independent medical examination January 2019. (JE 9) At that time he did not provide an opinion concerning Hunter's alleged thoracic spine or mid back injury. (JE 9) In a letter dated April 29, 2020, Dr. Field noted during an emergency room visit following the alleged work injury Hunter complained of tenderness in the right lower rib cage, but there was nothing definitive on examination showing she had a hurt rib or rib/spinal junction soreness, x-rays only showed mild degenerative changes, and no further studies were done. (JE 9, p. 7) Dr. Field opined:

> [i]n summary, it does not appear there was any definitive, objective evidence of injury to the thoracic spine through the course of evaluation, subsequent studies, and pattern of pain which has been described. We evaluated her spine in terms of spinal range of motion. She had no difficulty flexing her lumbar spine other than getting her fingers about 10 inches from the floor. She had good extension of her lumbar spine, and if she had problems with her thoracic spine, pain would have been evident on that examination as well.
>
> In summary, I do not think there is definitive clear evidence of injury to the thoracic spine based on the clinical evaluation which took place in the emergency room, follow-up evaluations by Dr. Hanawalt, and also the fact that no further definitive objective findings have been undertaken in the course of her management.

(JE 9, p. 7)

The evidence shows Hunter complained of mid back or thoracic symptoms before she worked for Silver Pines and Senior Housing, and that she sought chiropractic care for her mid back or thoracic symptoms with Dr. Strickler. Hunter complained of mid back pain and she received a chiropractic manipulation on May 14, 2015, May 18, 2015, May 21, 2015, November 10, 2015, February 23, 2016, and March 1, 2016. (JE 1, pp. 1-4, 8, 10-11) During an appointment on May 14, 2015, Dr. Strickler documented she had a decreased range of motion at T5. (JE 1, p. 1)

Following a car accident in May 2016, Hunter sought additional chiropractic care. (Ex. D, p. 20; Tr., pp. 28, 38) During an appointment on June 8, 2016, she complained of neck pain, upper back pain, and low back pain. (JE 1, p. 13) During a follow-up appointment on June 13, 2016, Hunter complained of soreness and achiness in her "upper dorsal regions." (JE 1, p. 15) She returned to Dr. Strickler on June 30, 2016, complaining of slightly elevated mid back pain. (JE 1, p. 18)

Hunter attended an appointment with Dr. Strickler on April 25, 2017, complaining of mid back pain. (JE 1, p. 26) During appointments on August 28, 2017 and September 1, 2017, she reported her mid back pain had improved. (JE 1, pp. 28-29) During an appointment on March 7, 2018, Hunter complained of mid back pain after falling out of a truck. (JE 1, p. 35) Hunter attended a total of thirteen appointments with Dr. Strickler between May 2015 and March 7, 2018, where he treated her for mid back symptoms.

Hunter sustained an injury while working for Silver Pines on July 18, 2018. Hunter alleges she sustained injuries to her neck with headaches and low back caused by the July 18, 2018 work injury. At hearing Hunter denied she injured her mid back or thoracic spine at hearing.

After treating with Dr. Hanawalt for just over a month, Hunter reported she was experiencing increased pain in her thoracic spine down to her lumbar spine on August 29, 2018. (JE 8, p. 10) Dr. Hanawalt ordered thoracic spine imaging, which did not show a compression fracture, now showed mild-to-moderate mid thoracic spine degenerative changes. (JE 5, p. 3) During an appointment on September 18, 2018, Hunter relayed her mid to low back pain had worsened since her last visit. (JE 8, p. 12) During a trip to the emergency room just days before the alleged October 15, 2018 work injury, on examination, Hunter exhibited tenderness and bony tenderness in both her thoracic and lumbar spine. (JE 5, p. 8)

While Dr. Kuhnlein received copies of Dr. Hanawalt's records and the October 12, 2018, emergency room visit, there is no evidence he received copies of Dr. Strickler's records, to opine whether he believed the treatment was occasional, and whether the records changed his opinions in any way. While Dr. Kuhnlein's exam and report is thorough, it is based on an incomplete medical record. I do not find his opinion persuasive that Hunter sustained an injury to her mid back or thoracic spine arising out of an in the course of her employment with Senior Housing and West Bend. See Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995) (noting "[w]hen an expert's opinion is based upon an incomplete history, the opinion is not

necessarily binding on the commissioner"). Based on this finding, the issues for File Number 20700082.01 are moot, with the exception of costs.

III. Extent of Disability – July 2018 Work Injury

Hunter alleges she sustained an industrial disability caused by the July 2018 work injury. Silver Pines and American Compensation deny Hunter sustained an industrial disability.

"Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(v).

At the time of the hearing Hunter was forty-six. (Tr., p. 12) She has graduated from high school, completed an associate of degree and is an LPN. (Exs. D, p. 9; E, p. 29; Tr. p. 12) I found her articulate at hearing and I believe she is capable of retraining.

Hunter has experience working as a nurse, a pharmacy technician and instructor, account manager serving as a liaison between a pharmacy and facilities, and tax preparer. (Ex. E, pp. 28-29) She has worked with Microsoft office products while working as a nurse for multiple employers. (Ex. E, pp. 28-29) Following her termination, Hunter worked as a tax preparer and in the nursing field. In October 2020, she secured a position as the director of nursing for Higley Mansion, where she performs many of the same duties she performed while working for Silver Pines and her salary is the same. (Tr., pp. 13-15) As discussed above, I adopted Dr. Kuhnlein's restrictions as Hunter's permanent restrictions. Considering all of the factors of industrial disability, I find Hunter has sustained a forty percent industrial disability attributable to the July 2018 work injury, entitling her to 200 weeks of permanent partial disability benefits at the stipulated weekly rate of $630.82, commencing on the stipulated commencement date of July 23, 2019.

IV. Medical Bills – July 2018 Work Injury

Exhibit 5 documents unpaid medical bills for treatment Hunter received from WorkWell and for therapy. Hunter also sought medical treatment on her own on January 8, 2019. After Silver Pines and American Compensation discontinued her

medical care after receiving Dr. Field's opinion, Hunter sought treatment from Cedar Rapids Pain Associates and Dr. Strickler, which was paid by Medicaid.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

While the employer retains the right to choose the employee's medical care under the statute, the employee is not prohibited from seeking her own care when the employer denies compensability for the injury or the employee "abandons the protections of section 85.27 or otherwise obtains his or her own medical care independent of the statutory scheme." Brewer Strong v. HNI Corp., 913 N.W.2d 235, 248 (Iowa 2018) (quoting Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). In Brewer-Strong and Gwinn, the court held the employer's duty to furnish reasonable medical care includes unauthorized care if the employee is able to prove "by a preponderance of the evidence that such care was reasonable and beneficial" under the totality of the circumstances. Id. (quoting Gwinn, 779 N.W.2d at 206). The court further held "unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id. I find the care Hunter sought on her own to be reasonable and beneficial. Silver Pines and American Compensation are responsible for all of the medical bills set forth in Exhibit 5, causally connected to the work injury. Silver Pines and American Compensation are not responsible for the cost of any injections Hunter received to the thoracic spine.

V. Costs Associated with the Responses to Requests for Admission from Senior Housing and West Bend

On the hearing report, Hunter noted she was seeking the assessment of costs as a sanction for Senior Housing and West Bend's denial of requests for admission. Hunter did not address the issue in her post-hearing brief.

Exhibit 3 includes responses to requests for admission and interrogatory answers from Senior Housing and West Bend. As noted above, I did not find Hunter met her burden of proof in her case against Senior Housing and West Bend. I do not perceive Defendants' responses to requests for admission egregious. I find Defendants had reasonable grounds and evidence upon which they relied on to believe they might prevail at hearing. I further conclude Defendants had sufficient grounds and reasons for their denials in their response to the requests for admission. Based on the foregoing, I conclude sanctions are not appropriate. Iowa R. Civ. P. 1.517(3)b).

VI. Costs

Hunter seeks to recover costs in both cases. Silver Pines, American Compensation, Senior Housing, and West Bend aver she should not be awarded costs in these cases.

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 Iowa Administrative Code 4.33(86), permits the deputy workers' compensation commissioner to assess: (1) the cost of attendance of a certified shorthand report for hearings and depositions; (2) transcript costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses in accord with Iowa Code sections 622.69 and 622.72; (5) the cost of doctors' and practitioners' deposition testimony in accord with Iowa Code sections 622.69 and 622.72; (6) the cost of obtaining no more than two doctors' or practitioners' reports, (7) filing fees; and (8) costs of persons reviewing health service disputes.

A. July 2018 Work Injury

In File Number 1656860.01, Hunter seeks to recover the $100.00 filing fee and the $13.60 cost of service from Silver Pines and American Compensation. (Ex. 6, p. 1) The administrative rule expressly allows for the recovery of these costs, which I find should be assessed to Silver Pines and American Compensation.

B. October 2018 Work Injury

In File Number 20700082.01, Hunter seeks to recover the $2,078.75 cost of Dr. Kuhnlein's independent medical examination, the $100.00 filing fee, and the $13.60 cost of service from Senior Housing and West Bend set forth in Exhibit 7. Senior Housing and West Bend contend Hunter is not entitled to recover costs in this case.

Iowa Code section 85.39(2), provides, in part,

> [i]f an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice,

> and reasonably necessary transportation expenses incurred for the examination. The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination. An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Under the express terms of the statute Hunter is not entitled to recover the cost of Dr. Kuhnlein's independent medical examination from Senior Housing and West Bend because he performed his independent medical examination for the October 2018 work injury before Senior Housing and West Bend sought opinions from Drs. Brady and Field regarding the October 2018 work injury and because she was not successful in proving her claim against Senior Housing and West Bend.

The administrative rule affords the deputy workers' compensation commissioner the discretion to award costs, including the cost of medical reports and other costs. Dr. Kuhnlein's bill is itemized. He charged $703.75 for the examination and $1,375.00 for the report. However, given Hunter was not successful in her claim against Senior Housing and West Bend, I find the parties should bear their own costs.

ORDER

IT IS THEREFORE ORDERED, THAT:

For File Number 1656860.01:

Defendants shall pay the claimant two hundred (200) weeks of permanent partial disability benefits at the stipulated weekly rate of six hundred thirty and 82/100 dollars ($630.82) per week, commencing on the stipulated commencement date of July 23, 2019.

Defendants are entitled to a credit for all benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants are responsible for all causally related medical bills as directed in this decision.

Defendants shall reimburse the claimant one hundred and 00/100 dollars ($100.00) for the filing fee and thirteen and 60/100 dollars ($13.60), for the cost of service.

For File Number 20700082.01:

Claimant shall take nothing.

For Both Files:

Defendants shall file subsequent reports of injury 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 July, 2021.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Jason Kidd (via WCES)

James Ballard (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.