

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MALINA TEGTMEIER,

Claimant,

vs.

BUCHANAN COUNTY HEALTH
CENTER,

Employer,

and

SFM MUTUAL INSURANCE CO.

Insurance Carrier,
Defendants.

FILE NO.: 5060404.03

ARBITRATION
DECISION

HEAD NOTES: 1801, 2601, 2907

STATEMENT OF THE CASE

Claimant Malina Tegtmeier filed a petition in arbitration seeking worker's compensation benefits against Buchanan County Health Center (BCHC), employer, and SFM Mutual Insurance Company, insurer, for an accepted work injury date of October 31, 2017. The case came before the undersigned for an arbitration hearing on February 20, 2023. Pursuant to an order of the Iowa Workers' Compensation Commissioner, this case proceeded to a live video hearing via Zoom, with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

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 10, Claimant's Exhibits 1 through 10, and Defendants' Exhibits A through K.

Claimant testified on her own behalf. The evidentiary record closed at the conclusion of the evidentiary hearing on February 20, 2023. The parties submitted post-hearing briefs on March 17, 2023, and the case was considered fully submitted on that date.

ISSUES

1. Whether claimant has reached maximum medical improvement related to the stipulated work injury on October 31, 2017;
2. If so, the nature and extent of permanent disability;
3. Payment of certain medical expenses; and
4. Taxation of costs.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record, and her demeanor at the time of hearing gave the undersigned no reason to doubt her veracity. Claimant is found credible.

At the time of hearing, claimant was a 51-year-old person. (Hearing Transcript, p. 13) She lives with her 13-year-old twin children, and another person, Maria Hodges. (Tr., p. 13) Ms. Hodges is the sister of claimant's former fiancé, who is confined to a wheelchair and requires in-home care. (Tr., p. 49) Claimant took Ms. Hodges in after the death of her mother, and currently receives payment from the state for taking care of her. (Tr., pp. 50-51) Claimant also has a third adult child who no longer lives at home. (Defendants' Exhibit I, p. 130; Deposition Transcript, p. 4)

Claimant attended Independence Christian Academy through 11th grade, when she dropped out. (Tr., p. 13) The school was connected to a church and run by a pastor. (Tr., p. 14) Claimant described the church as very strict with a lot of rules, including no makeup, jewelry, pants, movies or television, or premarital sex. Since leaving school, claimant has worked as a certified nursing assistant (CNA). (Claimant's Exhibit 3, pp. 33-34) Claimant did not complete a GED after leaving high school, but did attend Hawkeye Community College for her CNA training and license. (Def. Ex. F, p. 97)

Claimant began working as a CNA for defendant employer in 2008. Her job involved taking patients' vitals, bringing their breakfast, assisting with showers and dressing, assisting with walking, and other tasks as needed. (Tr., p. 15) Claimant testified that she loved her job. She said she loved working with the community, helping people and watching them get better and go home, and visiting with people throughout the day. She was planning to stay at her job. She believes she was good at her job and had always received good evaluations of her work. (Tr., pp. 15-16; Cl. Ex. 10, pp. 62-95)

On October 31, 2017, claimant was injured while working. On that date, claimant was scheduled to be off work early as she was taking her kids trick-or-treating that evening. (Tr., p. 18) Prior to the end of her shift, she was told the E.R. staff had requested she give one of their patients a shower. (Tr., pp. 18-19) The night prior

claimant had worked extra hours in the E.R., watching a psych patient with dementia who had become combative, and claimant was concerned that was the same patient who needed a shower, so she asked if he was combative. (Cl. Ex. 9, p. 52) She was told he was fine, and he was brought to the medical-surgical floor to be showered. Claimant testified that the shower room on that floor is very small, with room for a hamper but not much else. (Tr., p. 19) Claimant said the patient was seated on a shower bench while she started to bathe him, always explaining what she was doing as she cleaned him. When she squatted down to wash his feet, the patient became agitated and started to say, "don't make me have to hurt you." (Tr., p. 20; Def. Ex. I, p. 133; Depo. Tr., p. 17) At some point, he grabbed the shower head away from claimant and began hitting her with it in the face, while saying "I'm going to kill you, you Nazi." (Tr., pp. 20-21) Claimant pulled the call light for help, but no one came. (Tr., p. 21) Claimant testified that his eyes got really big, and he kept hitting her and repeating "I'm going to kill you, Nazi." (Tr., pp. 20-21) At some point he had his hand on her neck and throat, trying to choke her, and she remembers screaming. (Tr., pp. 21-22) His other hand was on her shoulder. (Tr., p. 22) Eventually a housekeeper heard her screaming and opened the door, and immediately went for help. Around that same time, the patient suddenly ended his attack, shoving claimant away, and walked into the hallway naked and wet from the shower and soap.

Once the patient had been subdued, he was placed in a wheelchair and claimant had to take him back to the E.R. (Cl. Ex. 9, p. 52) Claimant said everyone knew she had been hit and her face began to swell. She said she told the manager in the E.R. that her patient "beat the crap out of me," and the manager said, "that was not our intention, I guess we need to give him his meds now." When claimant reported the incident to her supervisor and human resources, they agreed that the incident should not have happened, and claimant should not have been left alone with him. (Cl. Ex. 9, pp. 52-53) Claimant said she was very upset because of the way he grabbed her neck and pinned her. (Cl. Ex. 9, p. 53)

Claimant testified at her deposition that she believes she was off work the day after the incident. (Def. Ex. I, p. 134; Depo. Tr., p. 20) Medical records indicate she saw Sarvenaz Jabbari, M.D., on November 1, 2017, at Allen Occupational Health. (Joint Exhibit 3, p. 13)¹ At the initial visit, she had complaints of neck pain, right shoulder pain, and pain where she was struck in the right cheek, as well as arm pain where her arm was pulled during the assault. She was diagnosed with neck and right shoulder pain and right zygomatic contusion.

When claimant returned to work the next day, she was giving a female patient a shower when she started shaking, got hot and sweaty, and her heart was racing. (Def. Ex. I, p. 134; Depo. Tr., p. 20) She reported the symptoms to her boss and human resources, and was sent back to Dr. Jabbari, who she saw on November 3, 2017. (Jt. Ex. 3, p. 3) She reported being fearful of being hurt again, along with feeling anxious and tearful. Dr. Jabbari prescribed medication and wanted her to follow up in a week.

¹ The record from this date is not in evidence, but it is summarized in a report authored by Kenneth McMains, M.D.

(Jt. Ex. 3, p. 4) Claimant saw Kenneth McMains, M.D. at Allen Occupational on November 10, 2017, and reported her neck and shoulder were better, and her anxiety was a little better with the medication. (Jt. Ex. 3, p. 13) Dr. McMains diagnosed acute PTSD (post-traumatic stress disorder), and recommended a psych evaluation and treatment. (Jt. Ex. 3, p. 5-6) She was allowed to return to work with “no exposure to unruly patients.” (Jt. Ex. 3, p. 6)

Claimant returned to Dr. Jabbari on November 17, 2017, still presenting with acute stress disorder and right shoulder pain. (Jt. Ex. 3, p. 13) Dr. Jabbari again recommended a psych consult “ASAP” and released claimant to work with the note that she avoid unruly patients. (Jt. Ex. 3, p. 8)

It is unclear when claimant was sent for counseling through workers’ compensation, but records reflect she also sought a referral through her employee assistance program. She saw Jake Schaefer, LMHC, on November 22, 2017. (Jt. Ex. 10, p. 2) His note indicates he had seen her for two sessions, and she met the criteria for acute stress disorder. She remained highly activated and triggered when entering similar working conditions on a daily basis. He recommended eye movement desensitization and reprocessing (EMDR) treatment, and also noted it would be beneficial for her to take some time off work to allow her to more effectively process what happened and utilize coping skills more effectively. Mr. Schaefer saw claimant again on December 4, 2017, at which time he noted she had begun to show symptoms of depression. (Jt. Ex. 10, p. 1) He recommended she see a psychiatrist.

Around this time, claimant was also seeing Kenneth Wernimont, LISW. (Jt. Ex. 8, p. 1) His record dated December 5, 2017 indicates Dr. Jabbari referred claimant to him, and she recommended he be the one to assign work restrictions due to claimant’s mental health needs. His record further reflects that claimant was struggling with insight at that time and was quite troubled with triggers to reexperiencing the traumatic events of the assault. She reported having “significant difficulty” obtaining the assistance she needed to help her stabilize, and Mr. Wernimont notes that despite the events being about 30 days in the past, claimant “has not progressed much beyond the initial impact in part because she apparently has not been given the opportunity to do so.” There was also discussion about how claimant loved her job and was feeling “mystified” by the reactions of her employer and the workers’ compensation people she had contact with. It is noted that claimant was off work at that time per Mr. Wernimont’s recommendation, “but apparently that is not being supported by her workers’ comp carrier.” (Jt. Ex. 8, p. 2) Mr. Wernimont’s diagnoses at that time were post-traumatic stress syndrome and adjustment disorder with mixed anxiety and depressed mood.

Claimant saw Dr. Jabbari on December 6, 2017, and reported no change in her neck and shoulder pain and was very emotional during the examination. (Jt. Ex. 3, p. 13) She did, however, feel that physical therapy was helping. On December 11, 2017, claimant saw her primary care provider, Rick McCormick, D.O. (Jt. Ex. 7, p. 1) She told Dr. McCormick about the assault, and her counseling through the employee assistance program. She stated she had been referred to psychiatry and for EMDR, but both had

been denied by workers' compensation. Dr. McCormick noted claimant had been struggling with paroxysmal panic attacks and complained of increasing depressed mood and irritability. She was also having trouble sleeping and concentrating and was avoiding people and events. Dr. McCormick's assessment was PTSD and panic attacks. (Jt. Ex. 7, p. 3) He recommended she continue with counseling, and strongly recommended she see psychiatry and a psychologist trained in EMDR. He also prescribed medications for acute anxiety.

Claimant returned to see Mr. Wernimont on December 15, 2017. (Jt. Ex. 8, p. 3) At that time, she was much more calm, and indicated the medication Dr. McCormick had prescribed had been helping. She was still somewhat anxious and depressed, and planned to continue with counseling and therapy.

On December 18, 2017, Deputy Workers' Compensation Commissioner James Elliott issued a decision granting claimant's petition for alternate medical care. The decision ordered defendants to provide claimant with mental health counseling and EMDR treatment. During this time period claimant also continued with physical therapy and regular follow up appointments with Dr. Jabbari. (Jt. Ex. 3, p. 13) On January 10, 2018, claimant returned to Mr. Wernimont, who noted her mood was very anxious, and she was also tearful and depressed. (Jt. Ex. 8, p. 5) He noted claimant became extremely anxious as she discussed the events that led to her beginning treatment with him, and particularly as she began to talk about returning to work. She also became frustrated when discussing that she had not yet been approved for EMDR, and Mr. Wernimont noted that she sometimes personalized the delays that had occurred in her treatment. He noted her anxiety and emotional intensity was higher than it had been on previous appointments, and that she had not been taking her medications because she had run out and was not sure she liked how they made her feel. Mr. Wernimont authored a short letter dated January 15, 2018, which stated that claimant remained under his care, and was concurrently scheduled with other mental health professionals. (Jt. Ex. 8, p. 7) He noted that a date of return to work remained uncertain at that time.²

Claimant saw Dr. Jabbari on January 22, 2018. (Jt. Ex. 3, p. 10) She was told she had normal strength and range of motion in her right shoulder and neck. It is noted that she had missed some physical therapy visits due to a death in the family and her children being ill, and her pain had increased. However, she was unsure if physical therapy was still helping. Dr. Jabbari released claimant to full duty for her physical injuries, to continue with a home exercise program, and placed claimant at maximum medical improvement that day. (Jt. Ex. 3, p. 11)

Also on January 22, 2018, claimant saw Patrick O'Conner, PhD. (Jt. Ex. 2, p. 1) Dr. O'Conner noted that claimant had no history of prior psychiatric treatment aside from some marital counseling by her pastor. Dr. O'Conner spent 120 minutes performing a psychological assessment to determine claimant's current functioning. (Jt.

² The December 18, 2017 alternate care decision indicates Mr. Wernimont took claimant off work on November 30, 2017, and completed FMLA paperwork stating she was not able to function in a setting where the assault occurred, which was work. (Alt. Care Dec., p. 2)

Ex. 2, p. 4) He noted that claimant did not believe that workers' compensation had been helpful at that time, and worried she was being portrayed as "crazy." She stated "a number of times" that she "is not crazy, but is struggling with coping with what happened to her." Dr. O'Conner completed a brief diagnostic interview and administered the Beck Depression Inventory (BDI) and the Millon Clinical Multiaxial Inventory – Third Edition (MCMI-III). Dr. O'Conner stated that the BDI is a "self-report measure about the symptoms of depression." (Jt. Ex. 2, p. 5) Claimant's score indicated a moderate level of depression. The MCMI-III is a psychological instrument used to provide a "snapshot" of a person's current emotional and social functioning. Dr. O'Conner noted that many of the items on the MCMI-III were confusing to claimant, and an effort was made to answer her questions about it. She was encouraged to approach it with the focus of "here and now."

Claimant's results on the MCMI-III indicated an individual who is "reluctant to share on an emotional level and wanting to maintain control wherever possible in her life." (Jt. Ex. 2, p. 7) It further reflected an individual who prefers to deny difficulties and problems and conform to authority. (Jt. Ex. 2, p. 8) The diagnosis based on the MCMI-III profile was major depression, recurrent, severe, without psychotic features, and generalized anxiety disorder. It was also noted that claimant hates to make mistakes or to appear unconventional and is probably quite defensive about admitting psychological problems. The treatment guide for claimant based on the MCMI-III results notes she is susceptible to "unanticipated attacks of anxiety, spells of immobilization and excessive fatigue." Dr. O'Conner noted that because the symptoms threaten claimant's "public style of efficiency and responsibility," it would be important to employ treatment techniques that are short term and be aware of her defensive armor. He noted that successful treatment could only proceed at a pace claimant could tolerate, and she would be more likely to respond better to short-term cognitive or interpersonal methods that are specific in their procedures rather than more expressive or nondirective techniques.

Dr. O'Conner also noted that claimant appeared highly motivated to return to work, and stated a successful treatment plan would involve a combination of professional intervention and coordination with the process of returning to work. He recommended she be seen weekly for psychotherapy, coordinated with EMDR sessions. He authored a letter after the appointment noting that claimant would require 6 to 8 weeks of intensive therapy before she would even be considered ready to return to work, and when she did return the starting point would be 1 to 2 hours per day for 2 to 3 days per week. (Jt. Ex. 2, p. 12) He also noted consideration should be given to allow her to work in a more "neutral" setting such as clerical at first. Claimant's return to full time work would progress only as she stabilized. He noted that she would experience anticipatory anxiety and would therefore require support not only through therapy but also at her work site, as she is "very sensitive to how she believes she is being perceived." (Jt. Ex. 2, p. 8) He noted she wants to be successful, feel competent, and be accepted by her peers at work, but she is naturally filled with self-doubt and wants to maintain a positive appearance in the eyes of those around her.

Claimant also started EMDR treatment with Kim Ellingson, LMHC, NCC, around this time. (Jt. Ex. 9) On January 25, 2018, she wrote a brief letter recommending claimant see a psychiatrist. (Jt. Ex. 9, p. 1) She indicated she diagnosed claimant with PTSD and adjustment disorder with depressed mood. At her visit on January 29, 2018, Ms. Ellingson addressed ways to cope with PTSD. (Jt. Ex. 9, p. 2) Ms. Ellingson noted the goal of therapy was to reduce PTSD and depressive symptoms with the use of EMDR. (Jt. Ex. 9, p. 3)

Defendants had claimant attend an independent neuropsychological evaluation with Bruce Jasper, Ph.D. (Def. Ex. B) The evaluation took place on December 8, 2017, but Dr. Jasper's report was issued February 5, 2018. (Def. Ex. B, p. 29) He noted claimant's self-reported symptoms at the time included physical symptoms of constant neck and shoulder pain; cognitive symptoms including difficulty concentrating and forgetfulness; and emotional symptoms including crying, feeling fearful, trouble sleeping, anxiety, and depression. Dr. Jasper reviewed medical records, however at the time he only had the initial reports from Dr. Jabbari in November 2017 related to the work incident. (Def. Ex. B, pp. 29-30)

Dr. Jasper then proceeded with neuropsychological testing, conducting about 14 different tests. (Def. Ex. B, p. 32) The score on the Modified Somatic Perception Questionnaire (MSPQ) was in the invalid/noncredible range consistent with malingering, somatization, or symptom exaggeration. The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) showed evidence of under-reporting of common minor faults or negative characteristics, faking good and exaggerating well-adjustment. Dr. Jasper noted that the clinical scales were not in the symptomatic range, likely because of intentional under-reporting, with the exception of her most elevated clinic scales, which were consistent with possible exaggerated, non-credible or invalid somatic/cognitive symptom reporting. Dr. Jasper stated that due to under-reporting, reliable and confident interpretation of the other MMPI-2 scales was compromised. (Def. Ex. B, p. 33) He quoted a narrative provided by the test publisher based on claimant's responses, which indicated that the test-taker "presented herself in an extremely positive light by denying many minor faults and shortcomings that most people acknowledge. This level of virtuous self-presentation is very uncommon even in individuals with a background stressing traditional values." It also indicates that claimant presented herself as very well-adjusted, at a level "relatively rare" in the general population.

Dr. Jasper indicated that claimant failed two standalone performance validity tests (PVTs), and failed two embedded PVTs. He stated that failing multiple PVTs is consistent with invalid/noncredible performance. He also noted atypical results in her grip strength testing, further indicating invalid/noncredible performance. Due to the results of the validity tests, Dr. Jasper indicated that the remaining test results had to be considered "potentially invalid for determining the claimant's true capacities and problems." (Def. Ex. B, p. 33) However, he still provided the results of those tests as follows:

- Pain Disability Index (PDI) was in the valid range;

- Life Events Checklist for DSM-5 (LEC-5) noted claimant identified difficult or stressful life events including a “small house fire,” a car accident, the 2017 assault at work, and being hit/slapped by her husband 23 to 24 years ago, and subsequent counseling;
- Clinician-Administered PTSD Scale for DSM-5, Past Month Version (CAPS-5), noted that claimant self-reported 17 out of the 20 possible DSM-5 PTSD symptoms, which would normally suggest a diagnosis of PTSD “if the claimant had not otherwise failed symptom validity and performance validity testing.”

The remaining tests included the Iowa Test of Temporal Orientation, which was intact; WAIS-IV Digit Span, which was borderline; Grip Strength, which was extremely low for the dominant hand and low/average for the nondominant hand; and Finger tapping, which was extremely low for the dominant hand and borderline for the nondominant hand. He also provided results for “outcome questionnaire 45.2 (OQ-45.2).” (Def. Ex. B, p. 34) The total score was interpreted as borderline; symptom distress/emotional symptoms were interpreted as extremely low; interpersonal relations were interpreted as superior; and social role/work was interpreted as borderline.

Dr. Jasper’s conclusions were that the evaluation resulted in objective evidence of symptom under-reporting (MMPI-2); invalid/noncredible somatic symptom over-reporting (MSPQ, MMPI-2); and invalid/noncredible cognitive and motor performance deficits (PVTs). (Def. Ex. B, p. 34) Therefore, Dr. Jasper opined that claimant was malingering work-related cognitive, physical, and emotional disability that she attributed to her October 31, 2017 work incident. He further stated that due to her malingering, it was not possible to confirm whether claimant had any level of legitimate mental disorders, and even if one could be identified, given the “pre-existing emotional and somatic problems” identified in her medical records, it was possible that any legitimate emotional symptoms could actually be longstanding in nature and pre-date the work incident. (Def. Ex. B, p. 34)

On March 2, 2018, Dr. Jasper responded to a letter from defendant insurer’s claims representative, indicating he had reviewed additional medical records, including Ms. Ellingson’s January 26, 2018 progress report and Dr. O’Conner’s report regarding the results of his January 22, 2018 evaluation. (Def. Ex. B, p. 35) He opined that the medical and mental health providers who had labeled claimant as having PTSD and adjustment disorder “did not employ well established symptom and performance validity measures.” Due to the results of the tests Dr. Jasper conducted during his evaluation, indicating symptom invalidity and performance invalidity, he disagreed with the diagnoses of PTSD and adjustment disorder. He did not believe any treatment was needed for claimant as “malingering is not a medical condition,” and he did not believe there was any objectively validated neuropsychological basis for claimant being unable to return to work. (Def. Ex. B, p. 36)

Despite Dr. Jasper’s opinions, claimant continued to receive authorized treatment with Dr. O’Conner and Ms. Ellingson quite frequently. (Jt. Ex. 2; Jt. Ex. 9) On February

25, 2018, Dr. O'Conner responded to a letter from the claims representative. (Jt. Ex. 2, p. 16) In his letter, he indicated again that claimant's treatment would involve at least 6 to 8 weeks of intensive therapy, along with EMDR. He also noted claimant was scheduled to see a provider from his office that would be able to prescribe medication to treat "her significant symptoms of anxiety and depression. These symptoms are entirely in response to her PTSD." He noted that he was aware claimant's employer was "anxious to have her return to work," and pointed out that claimant has voiced her desire to return to work full time at each visit. He then noted, however, that it was simply too soon for claimant to return to work, and that it was important for her to complete the treatment he previously recommended in order to achieve a successful recovery. (Jt. Ex. 2, p. 17)

Ms. Ellingson responded to a letter from the claims representative on March 8 2018, and indicated she would defer to Dr. O'Conner regarding claimant's return to work. (Jt. Ex. 9, p. 9) She recommended claimant continue weekly therapy and EMDR until she reported a significant decrease in PTSD symptoms, including nightmares, flashbacks, and hypervigilance.

Dr. O'Conner's treatment records are quite detailed. He advised claimant on March 9, 2018 that there would be a process of slowly working her back into her job by having her first visit the hospital, and then work for two hours a couple of times per week, gradually increasing her time until she is comfortable to resume full duty. (Jt. Ex. 2, p. 19) He also noted that continued treatment would be very important even when she is back to work full-time.

On March 15, 2018, claimant saw Mariah Fury-Swisher, ARNP in psychiatry, for a psychiatric evaluation. (Jt. Ex. 2, p. 20) After her evaluation, ARNP Fury-Swisher noted that claimant met the criteria for PTSD since her assault at work, and her diagnoses were PTSD; moderate single current episode of major depressive disorder; and adjustment disorder with mixed anxiety and depressed mood. (Jt. Ex. 2, pp. 23-24) Her treatment plan included medication and continued psychotherapy. (Jt. Ex. 2, p. 24)

At her next visit with Dr. O'Conner, claimant questioned whether she should go on a pre-scheduled family trip to Florida. (Jt. Ex. 2, p. 28) Dr. O'Conner encouraged her to look at the therapeutic aspect of the trip, and her need to regain her confidence by being in public. He further encouraged her to take time to return to the hospital to visit so she could begin to confront whatever anxiety existed by being there and seeing others who work there.

On March 19, 2018, Dr. O'Conner wrote a letter confirming that claimant continued to be actively involved in treatment with his clinic, including psychotherapy and medication monitoring, as well as EMDR with Ms. Ellingson. (Jt. Ex. 2, p. 29) He recommended claimant return to work in one month, on April 19, 2018. He recommended she work in an area that is not patient-oriented, and only work two hours per day, two or three days per week. He also noted her progress would need to be closely monitored by both her work and by her continued involvement with treatment.

He noted that claimant consistently described her work environment as “family,” and expressed her desire to return to work, and that she was hoping to be accepted by her coworkers upon her return. (Jt. Ex. 2, p. 30)

On March 26, 2018, Dr. O’Conner wrote an update to the claims representative regarding claimant’s status. (Jt. Ex. 2, p. 26) He noted that the symptoms claimant consistently exhibited clearly fit the criteria for PTSD. (Jt. Ex. 2, p. 27) He opined that the therapeutic relationship with claimant had developed in a positive direction, and she was openly discussing her feelings and was willing to follow through on recommendations. She continued to have intrusive memories of the traumatic event, and a significant level of depression, crying spells, fatigue, sleep disturbance, and intense anxiety. Dr. O’Conner also provided detailed information regarding claimant’s feelings about the assault, and the results of the tests he administered, the BDI and MCMH-III. With respect to his ongoing treatment plan, Dr. O’Conner noted that the initial step in treatment clearly established the presence of a significant emotional response consistent with the diagnoses of depression and generalized anxiety disorder. The goals of treatment were to continue to reduce the negative impact of the traumatic event and assist claimant in developing coping skills.

Dr. O’Conner also noted that claimant had returned to the hospital as a visitor with his encouragement. He explained that being there as a visitor is different than being there to work as a CNA and care for patients and would allow her to be reintroduced to the setting that creates anxiety in a more gradual way. He also noted that claimant’s withdrawal from the world and isolation from her normal activities had not been helpful in working through her emotions, and he had also encouraged her to take the trip to Disney World with her family that had been planned. (Jt. Ex. 2, pp. 27-28)

With respect to medication, Dr. O’Conner indicated that due to her significant anxiety and depression, he found it necessary to refer her to ARNP Fury-Swisher, who has the credentials to work as a mental health prescriber. (Jt. Ex. 2, p. 28) He noted that claimant did not find the medication her primary care physician previously prescribed to be beneficial. He opined that working with both himself and ARNP Fury-Swisher would allow claimant to receive appropriate psychiatric medications to help improve her mood and most importantly decrease her anxiety.

Finally, Dr. O’Conner indicated that it was still his plan to have claimant return to work on a part-time basis on April 19. He again pointed out that claimant had maintained that she loved her job, wanted to return to work, and thought of her coworkers as family based on her 10 years of employment there. He opined that claimant had a “genuine desire” to work at the hospital and “be back to herself.”

Claimant saw Dr. O’Conner again on April 9, 2018. (Jt. Ex. 2, p. 31) At that time, she had returned from Florida and received a letter indicating she no longer had a job at BCHC. Claimant was very upset, and time was spent helping her cope with the loss of her employment. (Jt. Ex. 2, pp. 31-32) Dr. O’Conner also wrote a letter that day opining that claimant would have been able to return to work earlier had she received the

appropriate treatment when first sought. (Jt. Ex. 2, p. 29) He stated claimant was making significant progress with consistent psychotherapy, EMDR, and the recently prescribed medications. In addition, she had been encouraged not to isolate herself, and had returned to the hospital to visit coworkers and took a vacation with her family. Finally, he pointed out that the plans for claimant's gradual return to work were recently being finalized, and again he stated that had appropriate treatment occurred sooner, claimant would already be back at her job working full time.

Claimant also saw Ms. Ellingson on April 9, 2018. (Jt. Ex. 9, p. 13) Ms. Ellingson's note indicates the letter from claimant's employer stated that FMLA had run out, and she no longer had a job there. Claimant was having difficulties coping with the loss of her job and was unable to do EMDR that day due to her PTSD symptoms. Rather, they worked on mood stabilization, along with coping skills and cognitive restructuring.

Claimant saw ARNP Fury-Swisher on April 23, 2018. (Jt. Ex. 2, p. 40) At that time she indicated that she had returned to work but not as a CNA. Rather, she was working part time in medical records. She was still having a lot of anxiety while at work and reported feeling "stuck" since finding out she lost her CNA position. (Jt. Ex. 2, pp. 40-41) She also reported that a coworker told her she was being monitored at work and others had been told to keep track of when she was coming and going. (Jt. Ex. 2, p. 41) She said she felt upset because after working for BCHC for ten years she felt they were treating her as though she is "a criminal and it's a slap in the face." She continued to report nightmares and flashbacks, as well as being withdrawn. She mentioned her recent trip to Florida and said it went well but she had difficulty with crowds. ARNP Fury-Swisher adjusted her medications and noted her symptoms of depression were worsening while her anxiety and nightmares were unchanged. (Jt. Ex. 2, p. 42)

Claimant continued to see Dr. O'Conner for therapy and frequently discussed feeling her frustration regarding how she believed she was being treated at work. (Jt. Ex. 2, pp. 44-49) She also discussed how the attack in October was different than any prior assault at work, because of the look in her assailant's eyes, and her belief she was going to die while he was choking her. (Jt. Ex. 2, pp. 45, 47) She also noted that she felt she was progressing overall with her treatment but was concerned it was not fast enough. (Jt. Ex. 2, p. 47) On May 25, 2018, Dr. O'Conner recommended claimant have a 3-day work schedule from 1:00 p.m. to 4:00 p.m. for two weeks, followed by an increase from noon to 4:00 for an additional two weeks. (Jt. Ex. 2, p. 56) After that, he would reconsider her hours based on her level of adjustment. He recommended she continue with her current level of treatment.

At her visit on June 4, 2018, claimant reported a recent increase in her level of anxiety. (Jt. Ex. 2, pp. 57-58) However, Dr. O'Conner noted that she appeared more confident that she could reach her goal of being back to 100 percent. (Jt. Ex. 2, p. 58) She continued with regular mental health treatments, reporting "ups and downs." (Jt. Ex. 2, p. 59) On June 13, 2018, Dr. O'Conner noted she was quite anxious, and she

indicated struggles at work. (Jt. Ex. 2, p. 62) She reported feeling her coworkers were distant from her, making her feel uncomfortable. (Jt. Ex. 2, pp. 62-63)

On June 26, 2018, claimant saw Farid Manshadi, M.D., for an EMG/NCV. (Jt. Ex. 4, p. 1) She was referred by Dr. McCormick, her primary care physician, due to numbness and tingling in her bilateral hands and fingers that started a few months prior. Dr. Manshadi noted claimant's work injury and that she had completed a course of physical therapy for her neck and right shoulder. The EMG/NCV indicated bilateral median nerve distal neuropathy consistent with severe bilateral carpal tunnel syndrome. Dr. Manshadi suggested surgery may be indicated if claimant failed conservative measures. Dr. Manshadi later advised Dr. McCormick's office, on July 27, 2018, that he had intended to recommend a right shoulder MRI at the conclusion of his EMG report. (Jt. Ex. 4, p. 4)

On July 9, 2018, Dr. O'Conner recommended that claimant continue with a 3-day work week of 15 hours per week for the next two weeks. (Jt. Ex. 2, p. 66) After that, he recommended 18 hours per week for two weeks, followed by 21 hours per week for 2 weeks. He again recommended she continue with her current level of treatment, and noted she was well motivated. She continued with her mental health treatment, and on August 8, 2018, she expressed concerns about her upcoming deposition, and ongoing feelings that she was being treated like a criminal at work. (Jt. Ex. 2, pp. 70-71)

Claimant's deposition was taken on August 9, 2018. (Def. Ex. I) At that time, she reported current symptoms including flashbacks, depression, right shoulder pain, and neck pain. (Def. Ex. I, p. 135; Depo. Tr., p. 22) She was still seeing Dr. O'Conner for talk therapy, Ms. Ellingson for EMDR therapy, and ARNP Fury-Swisher for medication management. (Def. Ex. I, p. 135; Depo. Tr., pp. 22-25) She also discussed her carpal tunnel diagnosis and Dr. Manshadi's recommendation for a right shoulder MRI. (Def. Ex. I, p. 136; Depo. Tr., p. 29)

Shortly after the deposition, claimant was hospitalized for psychiatric care. (Jt. Ex. 2, p. 72) She testified that she was feeling harassed at work. (Tr., p. 34) Claimant has ulcerative colitis, and requires frequent trips to the restroom. She was told she was going too many times, and needed a note from her doctor. She also testified she got in trouble for clocking in to work a minute or two early and filing incorrectly. One day, all of these stressors "pushed [claimant] to the edge," and she had to leave work. (Tr., p. 35) She testified she was driving around for about a half hour, and then voluntarily checked herself into the psychiatric ward at Covenant Hospital in Waterloo. (Tr., pp. 35-36) She was admitted for three days. (Tr., p. 36) The hospital records are not in evidence, but claimant discussed her admission with Dr. O'Conner and ARNP Fury-Swisher.

On August 20, 2018, Dr. O'Conner wrote that claimant's recent hospitalization for psychiatric care was due to her recent emotional and physical issues, which had intensified her symptoms of PTSD. (Jt. Ex. 2, p. 72) He advised that she would be following up with her EMDR and psychiatric care and would also be seeing a gastroenterologist for her ulcerative colitis. He recommended she not return to work

until after her next psychotherapy session. Claimant saw ARNP Fury-Swisher on August 23, 2018, and reported that she tried to see Ms. Ellingson before going inpatient but “was pushed to a breaking point.” (Jt. Ex. 2, p. 76) She said “they pushed me to the edge I wanted to take my car and hurt myself.” Claimant reported her stressors were the deposition, which went okay, followed by a bad dream. Then while at work she got in trouble for clocking in early, and that combined with other stressors led her to leave work and drive around, eventually checking in to the psychiatric ward at Covenant. ARNP Fury-Swisher noted claimant’s symptoms of PTSD, anxiety, and depression were improving minimally since her inpatient stay and warranted monitoring. (Jt. Ex. 2, p. 77) Claimant’s medication was increased during her hospitalization and was not changed further.

Claimant saw Dr. O’Conner on August 29, 2018. (Jt. Ex. 2, pp. 79-80) He noted claimant appeared overwhelmed by her current situation and felt going to the hospital was a failure on her part. (Jt. Ex. 2, p. 80) Claimant reported she had hoped to have made more progress by that time, but was struggling with the intensity of the reminders presented by her workplace setting at BCHC. Dr. O’Conner noted that continued treatment was “strongly indicated,” and that it was not acceptable for claimant to return to her workplace at that time. Her ongoing treatment related to her ulcerative colitis was also discussed.

Dr. O’Conner wrote a letter dated August 30, 2018, stating claimant’s “ability to function at her current place of employment, BCHC, has come to an end.” (Jt. Ex. 2, p. 84) He opined that claimant had made a sincere effort to be engaged in treatment to the best of her ability, including psychotherapy, psychiatric care, and EMDR. However, her continued association in the setting where she was assaulted had been detrimental. He explained that her functioning “has deteriorated to a point where she is constantly overwhelmed by her anxiety both emotionally and physically.” He noted her debilitating flare ups of the colitis, related to emotional distress. He further noted her “emotionally intense self-destructive impulses to the point she was hospitalized for psychiatric care last week.” While her self-destructive thoughts had subsided, “the intensity of her anxiety surrounding her continued association with BCHC has not lessened.” (Jt. Ex. 2, pp. 84-85) As such, Dr. O’Conner recommended that claimant “cease her employment at BCHC due to the many negative consequences for her.” (Jt. Ex. 2, p. 85) He also stressed that it was important for her to continue her mental health treatment until a successful resolution of her emotional and physical symptoms had occurred.

Claimant testified that she does not believe she was making progress on her mental health conditions while she was still working at BCHC. (Tr., p. 37) However, in the years since leaving, she has made progress, as discussed in more detail below. (Tr., pp. 51-52)

Dr. Manshadi wrote to Dr. McCormick on September 7, 2018. (Jt. Ex. 4, p. 5) At that time, he had reviewed claimant’s right shoulder MRI, which showed some bone marrow edema involving the distal clavicle and acromion. The question was whether that was the cause of the pain she was experiencing, and if so, whether it was related to

the assault at work. He also noted her fairly severe bilateral carpal tunnel syndrome, and indicated the numbness and tingling in her hands was likely related to that.

Claimant continued with her mental health treatment. On September 10, 2018, she reported to Dr. O'Conner that she felt as though a weight had been lifted off her shoulders. (Jt. Ex. 2, p. 86) Dr. O'Conner noted claimant was aware that her emotional reaction was heightened the longer she stayed at BCHC, and it was clear she was paying an emotional and physical price the longer she worked there. (Jt. Ex. 2, pp. 86-87) At her next visit on September 19, 2018, she was tearful as she discussed her situation with the loss of her job and her depression due to her lack of improvement. (Jt. Ex. 2, pp. 88-89) She continued to see Dr. O'Conner regularly. (Jt. Ex. 2, pp. 90-93) On October 1, 2018, she had a termination session with Ms. Ellingson, as she had not benefited "despite valiant effort" from EMDR. (Jt. Ex. 9, p. 15) Ms. Ellingson noted it was imperative for claimant to continue counseling, as she continued to endorse depressive symptoms, PTSD symptoms, and nightmares.

Claimant saw Dr. O'Conner on October 9, 2018, and reported an increased level of anxiety. (Jt. Ex. 2, p. 94) She discussed a lack of progress with EMDR, and her hope that she would be doing better by this time. She saw ARNP Fury-Swisher on October 18, 2018, and reported feeling stressed due to the unknown and uncertainty about her future. (Jt. Ex. 2, p. 96) She did report her anxiety was improving somewhat, and her depression had improved since she went to the hospital. Her nightmares had also improved. (Jt. Ex. 2, p. 97) On October 29, 2018, Dr. O'Conner described an "intense" session, as it was close to the one-year anniversary of the assault. (Jt. Ex. 2, p. 100) Claimant was feeling angry, depressed, embarrassed, and anxious. She was still having difficulty in crowds.

On October 31, 2018, claimant saw Dr. Manshadi for her ongoing right shoulder and neck pain. (Jt. Ex. 4, p. 6) Dr. Manshadi diagnosed right sided rotator cuff syndrome and levator scapula strain. He showed claimant some stretches to do at home, and provided an injection in her shoulder.

In a letter dated November 1, 2018, the human resources director at BCHC advised claimant that due to Dr. O'Conner's opinion that claimant was no longer able to work for BCHC, her employment was terminated effective October 31, 2018. (CI. Ex. 4, p. 35) Claimant returned to Dr. O'Conner on November 6, 2018, and he again described an "intense" session. (Jt. Ex. 2, p. 104) Much of the session focused on claimant's termination from employment, ongoing issues with her colitis, and her struggle to receive the medications she needed for her ongoing mental health treatment. (Jt. Ex. 2, p. 105) To that end, Dr. O'Conner authored a letter indicating his recommendation that claimant continue to be actively involved in continued mental health care as a result of the assault, and his concern regarding the costs of her psychiatric medication being covered. (Jt. Ex. 2, pp. 106-107)

Claimant saw Dr. McMains for an independent medical evaluation (IME) on November 14, 2018. (Jt. Ex. 3, p. 12) His report is dated November 15, 2018. His report

indicates he spent over four hours reviewing 900 pages of medical records, and spent an hour and fifteen minutes interviewing claimant, followed by an examination. At the time of Dr. McMains' evaluation, claimant was still seeing Dr. O'Conner once per week for ongoing counseling. (Jt. Ex. 3, p. 14) Dr. McMains noted that claimant was very "teary eyed" and quite emotional at times thought her exam. He noted that claimant had quit her job at BCHC in August due to "emotional issues that were worsened by continuing to be present" there. (Jt. Ex. 3, p. 15) She said that even though she was away from patients, she still had a feeling of anxiety, rapid heart rate, and other manifestations of anxiety when she would go to work or think about going to work.

After his review of the records and interview and examination of claimant, Dr. McMains answered a series of questions posed by defense counsel. (Jt. Ex. 3, pp. 16-21) His diagnoses related to claimant's cervical spine, right shoulder, and mental health conditions included acute/chronic cervical myofascial pain, resolving; right shoulder pain, resolving; and post-traumatic stress disorder.³ (Jt. Ex. 3, p. 16) He noted the serious problem she was having trouble dealing with on a day-to-day basis was the mental health condition. He opined that she was likely at MMI for her cervical spine and right shoulder on May 15, 2018, when Dr. Jabbari released her to full duty after normal examination. However, due to her ongoing symptoms of post-traumatic stress, she was not at MMI for her mental health condition. Dr. McMains then provided the diagnostic criteria for PTSD in the DSM-5, and noted that claimant met the criteria listed in each section, consistent with the diagnostic code for PTSD. (Jt. Ex. 3, pp. 16-19)

Dr. McMains did not believe claimant had any permanent impairment to her spine, right shoulder, or mental health. (Jt. Ex. 3, p. 20) However, he noted that she had not reached MMI for the PTSD, so he was not able to assign permanency at the time of his evaluation. He also stated that the treatment she was receiving for the PTSD was specifically and directly related to the event that occurred on October 31, 2017, and was ongoing. He advised that claimant needed to continue on medication and with counseling for the PTSD and recommended sending a letter to Dr. O'Conner asking for his best guess as to when he would complete formal therapy as part of her treatment. He also noted that claimant would be on medication for some time even after therapy was completed, as PTSD is "an ongoing condition that has a prognosis of recovering, and each case is slightly different in terms of recovery time." He noted that claimant had little benefit from EMDR or cognitive behavioral therapy, but was responding to medications and one-on-one counseling.

With respect to restrictions, Dr. McMains did not believe claimant needed any restrictions related to the physical injuries. However, with respect to the mental health issue, he opined that much would depend on her work environment. He said that claimant should be able to safely attempt any work activity in any environment once she is able to overcome her stressors and emotional fragility. He thought it would be safe to allow claimant to find employment and then deal with the consequences, if any. Finally, he opined that claimant had a good to excellent prognosis over time, but added that

³ He also provided a diagnosis of chronic bilateral thoracic outlet syndrome that does not appear to be related to the workers' compensation claim. (Jt. Ex. 3, pp. 15-16)

time was the issue. He explained that it is difficult to make predictions on mental health problems such as PTSD due to the individualization of recovery, but that claimant seemed sincere in her desire to get back to normal and had a good support group, which is helpful in her recovery process. (Jt. Ex. 3, pp. 20-21) Therefore, he stated if she were to find employment, it would benefit her emotionally and physically. (Jt. Ex. 3, p. 21) He again stressed that Dr. O'Conner would be in a better position to estimate expected MMI or treatment time, but that she did still need treatment "for some time, before she reaches MMI, with no expected permanent partial impairment based on her recovery."

Claimant continued with her therapy with Dr. O'Conner. On December 5, 2018, he noted that claimant had been helping the Conklins on an as-needed basis, which worked out to be limited part-time work. (Jt. Ex. 2, p. 109) Claimant testified that Marian Conklin was an elderly woman who she has known for many years, who she helped with showering, taking medication, and provided with companionship. (Tr., p. 44) She also assisted her husband. (Tr., p. 60) She also continued to discuss her feelings about the way she was treated following the work incident and her difficulty getting the medications she had been prescribed. (Jt. Ex. 2, pp. 109-113)

Claimant saw Dr. Manshadi on December 5, 2018, reporting right-sided neck and shoulder pain, as well as right hand numbness and weakness. (Jt. Ex. 4, p. 9) She reported the prior shoulder injection had provided temporary relief. Dr. Manshadi noted limited range of motion in the right shoulder, as well as weakness. Claimant denied any issues with right hand numbness or tingling prior to the work injury, and Dr. Manshadi felt the carpal tunnel syndrome probably lit up as a result of the work injury to the right shoulder. He provided medication and recommended physical therapy. On December 11, 2018, Dr. Manshadi authored a letter to claimant's attorney in response to his questions about claimant's treatment. (Jt. Ex. 4, p. 10) He opined that the right-sided rotator cuff syndrome and levator scapula strain were related to the work injury and recommended an MRI of the right shoulder. He did not believe claimant was at MMI for her right shoulder, and recommended she avoid activities that require reaching, shoulder height or overhead activities, and no lifting more than 5 to 10 pounds with the right upper extremity.

On December 12, 2018, Dr. Jabbari responded to questions posed by defense counsel. (Def. Ex. D, p. 80) Essentially, Dr. Jabbari concluded that claimant's carpal tunnel diagnosis was not likely related to her job duties, but to a personal, pre-existing condition.

On December 17, 2018, Dr. O'Conner responded to a letter authored by claimant's attorney. (Cl. Ex. 1) He indicated that claimant's mental health conditions, including PTSD, resulted from the assault she suffered at work on October 31, 2017, and how she was treated after the incident. (Cl. Ex. 1, p. 1) He did not believe claimant had reached MMI at that time, as she continued to experience many of the symptoms of PTSD, and her level of depression was almost debilitating at times. (Cl. Ex. 1, p. 2) Additionally, she continued to experience a variety of symptoms of anxiety. At that time,

Dr. O'Conner did not believe claimant was ready to return to full-time employment, and he recommended that she continue with outpatient counseling and medications to reach a more functional level.

Claimant returned to Dr. O'Conner on December 19, 2018. (Jt. Ex. 2, p. 114) At that time, her psychiatric medications had been approved. They also discussed the "next phase" of claimant's life, as she had contacted Iowa Vocational Rehabilitation Services (IVRS) and Iowa Workforce Development to discuss her employment options. (Jt. Ex. 2, pp. 114-115) At her visit on January 4, 2019, claimant discussed issues in her relationship, as she did not believe her significant other was understanding of her situation, including her unemployment and continued depression. (Jt. Ex. 2, p. 118) Dr. O'Conner noted that exposure therapy continued to be the best approach to help claimant successfully adjust to the trauma of the assault.

Claimant continued with therapy. (Jt. Ex. 2, pp. 119-123) On January 16, 2019, she had a right carpal tunnel release performed by Robert Bartelt, M.D. (Jt. Ex. 6, pp. 1-2) She had a left carpal tunnel release on February 6, 2019. (Jt. Ex. 6, pp. 3-4)

At her February 26, 2019 visit with Dr. O'Conner, she noted recent intense struggles. (Jt. Ex. 2, pp. 124-125) She had not been keeping up her grooming and was sleeping more. (Jt. Ex. 2, p. 125) She had recently experienced an issue with Mr. Conklin, in which he became angry as she was trying to change his shirt. He yelled at her, which resulted in her having a panic attack. She said that she knew he would not hurt her, but she reacted because she is still very fearful of being hurt. She expressed fear that she was moving backward and would never get better. At her visit on March 6, 2019, she was tearful at times and at other times irritated and angry. (Jt. Ex. 2, pp. 127-128) She told Dr. O'Conner she was being followed and was having difficulty staying positive. (Jt. Ex. 2, p. 128) She was very concerned about her future and still angry about how she was treated. (Jt. Ex. 2, pp. 128-129)

Claimant saw Dr. Manshadi on March 20, 2019. (Jt. Ex. 4, p. 12) He noted she had good relief following the bilateral carpal tunnel releases with Dr. Bartelt. She continued to have issues with her right shoulder. Dr. Manshadi also noted claimant still had the PTSD and started crying when discussing it with him. With respect to her shoulder, he recommended starting a physical therapy program again for stretching and strengthening.

At her session with Dr. O'Conner on April 17, 2019, claimant relayed that while getting a massage, the female massage therapist "grabbed" her neck, which triggered a panic reaction. (Jt. Ex. 2, p. 132) Claimant felt the incident was a setback and a sign she was not progressing. Dr. O'Conner explained that she will have trigger reactions at times, but overall, she was doing better.

Claimant followed up with Dr. Manshadi on April 29, 2019, for her shoulder. (Jt. Ex. 4, p. 13) Physical therapy had not provided any significant changes. She continued to have pain in her right shoulder and right neck. Dr. Manshadi provided fascial

distortion treatment and advised her to follow up in one week. Claimant returned on May 7, 2019, and reported the treatment was not helpful. (Jt. Ex. 4, p. 14) As such, Dr. Manshadi recommended an orthopedic consultation with Dr. Bartelt. (Jt. Ex. 4, p. 15)

Claimant saw Dr. O'Conner on May 29, 2019. (Jt. Ex. 2, p. 134) He noted that claimant was clearly emotionally struggling. His report indicates claimant's medication had again been delayed, which resulted in her mood and behavior deteriorating. (Jt. Ex. 2, p. 135) This created more tension in her relationship with her fiancé and her kids. She again discussed feeling angry, frustrated, and concerned about her future.

On June 5, 2019, claimant had right shoulder surgery with Dr. Bartelt. (Jt. Ex. 5, p. 1) He performed a right shoulder arthroscopy, subacromial decompression, and distal clavicle excision. On June 18, 2019, she followed up with ARNP Fury-Swisher, and reported her anxiety and depression had improved with medication and therapy. (Jt. Ex. 2, p. 137) She continued to see Dr. O'Conner as well. (Jt. Ex. 2, pp. 141-143)

On June 25, 2019, disability/vocational case manager Lana Sellner, MS, CRC, provided a vocational analysis for defendants based on a records review. (Def. Ex. F, p. 96) Ms. Sellner reviewed medical records and noted the claimant was not at MMI with respect to her mental health. She reviewed claimant's educational and work history as well. (Def. Ex. F, pp. 97-98) She concluded that prior to the work injury, claimant's work history fell into the medium physical demand category. (Def. Ex. F, p. 98) Based on Dr. McMains' November 15, 2018 IME, she did not believe claimant's mental health condition would have any vocational impact, as he did not anticipate any permanent restrictions or impairment following completion of her treatment. Based on Dr. Manshadi's opinion dated December 11, 2018, Ms. Sellner noted claimant was to avoid activity that required reaching, shoulder height or overhead activities, and lifting more than five to ten pounds with the right upper extremity. (Def. Ex. F, pp. 98-99) Therefore, she placed claimant in a sedentary to very selective medium physical demand category. (Def. Ex. F, p. 99) Overall, she concluded that claimant continued to be employable, and there would be positions available that may initially result in a loss of earnings, but would increase as she learned the new positions. (Def. Ex. F, p. 101)

Claimant saw Dr. Manshadi on July 2, 2019 for follow up regarding her right shoulder and neck pain. (Jt. Ex. 4, p. 17) She reported her shoulder feeling better since surgery, but she continued to have neck pain. Dr. Manshadi recommended a referral to Dr. Buchanan for evaluation of the disc disease at C6-C7. (Jt. Ex. 4, p. 16) Dr. Manshadi then responded to a letter from claimant's attorney, dated July 10, 2019, in which he stated his diagnosis for claimant's neck pain was cervical disc disease. (Jt. Ex. 4, p. 18) He further opined that claimant's ongoing neck pain was related to the October 31, 2017 work injury, as claimant had trauma to her neck at that time, and did have complaints of neck pain initially.

Claimant saw ARNP Fury-Swisher on July 23, 2019. (Jt. Ex. 2, p. 144) At that time, she was still having issues with her medications being covered by workers' compensation. However, she reported minimal flashbacks, and that her depression and

anxiety were stable, but not totally gone. She still had triggers at times and reported ups and downs.

Claimant continued her therapy with Dr. O'Conner. (Jt. Ex. 2, pp. 148-150) On September 10, 2019, he responded to a letter authored by claimant's attorney, and opined that claimant's ongoing diagnoses of PTSD, depression, and adjustment disorder with anxiety continued to be related to the October 31, 2017 work injury. (Jt. Ex. 2, p. 151) He further stated his belief that continued treatment could improve claimant's permanent outcome.

Claimant saw neurosurgeon Nikolay Martirosyan, M.D., on September 12, 2019, for neck and right shoulder pain. (Jt. Ex. 2, p. 153) Claimant told Dr. Martirosyan that her neck pain was constant and causing her difficulty sleeping. She denied numbness, tingling, or any pain on the left side or down her arms. (Jt. Ex. 2, pp. 153-154) Dr. Martirosyan reviewed claimant's prior MRI, and noted mild degenerative changes at C5-6 and C6-7, but identified no apparent neural element compression. (Jt. Ex. 2, p. 158) Dr. Martirosyan felt claimant's pain was likely related to arthritis in the neck and did not recommend surgery. (Jt. Ex. 2, p. 159) He suggested obtaining x-rays to rule out instability of the cervical spine, and a referral to the pain clinic for C5-6 and C6-7 facet injections.

Claimant saw Dr. O'Conner on September 16, 2019. (Jt. Ex. 2, p. 161) Dr. O'Conner noted several developments since he last saw claimant. (Jt. Ex. 2, p. 162) Claimant and her children and fiancé had recently returned from a trip to Hawaii; claimant's older son had also left for the Navy early. In addition, claimant had undergone surgery for appendicitis, and her boyfriend had recently proposed. Claimant and Dr. O'Conner also discussed claimant's "next career," and talked about her volunteering in the community to get herself back around people. She was not sure what she wanted to do but no longer wanted to be involved in healthcare. At her next visit with Dr. O'Conner on October 14, 2019, she was "quite anxious and at times. . . tearful." (Jt. Ex. 2, p. 165) She felt her increased anxiety and stress were due to the upcoming anniversary of the assault. (Jt. Ex. 2, pp. 165-166) She was still exploring volunteer opportunities at that time as well. (Jt. Ex. 2, p. 166)

On October 17, 2019, claimant saw Ashar Afzal, M.D., in pain management, related to her neck pain. (Jt. Ex. 2, p. 168) After examination and review of claimant's cervical MRI, Dr. Afzal's impression was cervical degenerative spondylosis without radiculopathy, cervical facet arthropathy, and cervical facet mediated pain. (Jt. Ex. 2, p. 169) He agreed with Dr. Martirosyan that cervical facet joint injections were appropriate, and noted an application would be sent to her insurance company for authorization.

Claimant returned to Dr. O'Conner on October 30, 2019, at which time she was again tearful, and said she was "emotionally beating herself up and feeling discouraged." (Jt. Ex. 2, pp. 172-173) She had volunteered at a food pantry and a church festival and was surprised at how much anxiety she experienced prior to each

event. (Jt. Ex. 2, p. 173) She continued to express her motivation to return to her old self.

On November 4, 2019, claimant returned to Dr. Afzal, and had right-sided cervical facet injections at C5-6 and C6-7. (Jt. Ex. 2, p. 175) She then continued with psychotherapy treatment with Dr. O'Conner, working on her anxiety and PTSD symptoms. (Jt. Ex. 2, pp. 176-181) On December 31, 2019, she saw ARNP Fury-Swisher, and reported increased anxiety. (Jt. Ex. 2, p. 182) She discussed her attempts to volunteer more and that she "freezes up and can't concentrate." She reported feeling down around the holidays, but indicated her anxiety was worse than her depression at that time. (Jt. Ex. 2, pp. 182-183)

Claimant returned to Dr. O'Conner on January 8, 2020. (Jt. Ex. 2, p. 186) She continued to have a lot of anxiety and was again experiencing nightmares. (Jt. Ex. 2, pp. 186-187) At her visit on January 22, 2020, they discussed claimant reentering the workforce. (Jt. Ex. 2, p. 189) She had been taking steps toward that goal by volunteering at the food pantry and was considering volunteering for the mentor program at the local public school where her twins were enrolled. By her next visit on February 5, 2020, she had interviewed for the volunteer position, but noted that she had a lot of anxiety going into the school. (Jt. Ex. 2, p. 191) However, by her next appointment on March 23, 2020, the COVID-19 pandemic had prevented her from starting the volunteer program. (Jt. Ex. 2, p. 197; Tr., p. 41)

On February 12, 2020, Dr. Jabbari authored a letter in response to questions from defense counsel regarding claimant's neck and shoulder conditions. (Def. Ex. D, p. 82) Dr. Jabbari noted that claimant was discharged from her clinic, so she would defer her diagnosis regarding her neck and shoulder conditions to her treating providers. (Def. Ex. D, p. 83) However, Dr. Jabbari also opined that the neck and shoulder conditions were not related to the work injury on October 31, 2017. She stated that claimant's mild AC joint arthritis would not be due to a one-time incident, nor due to cumulative trauma from work as a CNA. With respect to the incident on October 31, 2017, Dr. Jabbari opined that claimant sustained soft tissue injuries to her neck and shoulder, and reached MMI on January 22, 2018, when she released her from treatment. (Def. Ex. D, p. 84) She did not believe claimant had any permanent impairment to her neck or shoulder related to the work injury and did not believe any additional treatment was necessary related to the work injury. (Def. Ex. D, pp. 84-85)

Claimant continued to see Dr. O'Conner for regular psychotherapy, although some of her sessions took place via telephone due to the pandemic. (Jt. Ex. 2, pp. 199-205) During her session on May 7, 2020, she noted that she had up and down days. (Jt. Ex. 2, p. 207) She also noted frustration that she was not doing better, but continued to be "fully motivated" to achieve a level of complete functioning. On May 22, 2020, she was "overall in a positive mood" and indicated she had been helping a widow, Mary Conklin, since her husband passed away. (Jt. Ex. 2, p. 210) She helped with making breakfast and getting her ready for the day.

Claimant returned to Dr. Afzal on May 28, 2020, and reported the prior cervical facet injections helped her symptoms “tremendously.” (Jt. Ex. 2, p. 212) Dr. Afzal provided repeat injections, and told claimant to return to the clinic on an as-needed basis. (Jt. Ex. 2, p. 213)

Claimant returned to Dr. O’Conner on June 12, 2020, and reported that she continued to have periods of time in which she was quite anxious. (Jt. Ex. 2, pp. 214-215) On June 26, 2020, claimant told Dr. O’Conner she was having some emotional struggles as she had trouble trusting people since the assault. (Jt. Ex. 2, p. 217) She continued with regular psychotherapy sessions. (Jt. Ex. 2, pp. 218-225)

On July 19, 2020, Dr. O’Conner authored a letter regarding the status of claimant’s mental health condition. (Jt. Ex. 2, p. 226) He noted that claimant continued to see both himself and ARNP Fury-Swisher on a regular basis. She continued to carry the diagnoses of PTSD, moderate single current episode of major depressive disorder, adjustment disorder with anxiety, and grief reaction. He opined that claimant’s diagnoses were solely the result of the assault at work on October 31, 2017, and he noted that she continued to make “good use of her psychotherapy sessions and has benefited from her treatment.” Dr. O’Conner also noted that a frequent topic discussed in therapy was claimant’s future employment, and her desire to return to work outside the healthcare field. (Jt. Ex. 2, p. 227) He noted that she continued to work on tasks in therapy that will help her return to employment and concluded that given her history of success readjusting her life after her divorce, she will once again achieve her goals. (Jt. Ex. 2, pp. 227-228)

On August 4, 2020, claimant’s attorney wrote to Dr. O’Conner for clarification, asking whether he believed claimant needed continued care, and progress can be made to improve her outcome over the next year, or whether she needed continued care to maintain the progress she had achieved, but had likely plateaued in terms of outcome. (Cl. Ex. 1, p. 13) Dr. O’Conner responded that claimant needed continued care, and he believed that progress could be made over the course of the next year in order to improve her outcome. He also noted that her goal was full employment.

On August 10, 2020, Dr. Jasper provided updated opinions following a review of additional medical records since his initial evaluation of claimant. (Def. Ex. B, p. 37) Dr. Jasper critiqued Dr. O’Conner’s evaluation on January 22, 2018, stating that the quality of his psychological assessment was “non-standardized and inadequate for reliable diagnostic and treatment aims within the context of evaluating and treating a workers’ compensation claimant.” (Def. Ex. B, p. 38) He based this opinion on the fact that Dr. O’Conner only administered two psychological tests or questionnaires, and that his “non-standardized” instructions to claimant on the MCMI-III may have “fundamentally altered the reliability and validity” of the MCMI-III results.

Dr. Jasper then opined that “[n]o scientifically verifiable mental health/psychological diagnosis can reliably be made at this time” based on the records he reviewed. He stated that all medical and mental health providers who had labeled

the claimant as having PTSD or other psychiatric diagnoses had either not employed any well-established symptom and performance validity measures, or had employed “non-standard administration procedures” that rendered test results unreliable. To the contrary, he opined that the objective neuropsychological data, obtained from his own testing as outlined in his February 5, 2018 report, showed symptom invalidity and performance invalidity, and indicated that she most likely malingered work-related cognitive, physical, and emotional disability that she attributed to the work-related assault. In conclusion, he disagreed with other evaluators that concluded that claimant had mental health or psychological conditions attributable to the work incident. (Def. Ex. B, p. 38)

Dr. Jasper further opined that was possible claimant had pre-existing non-work-related factors impacting her condition. (Def. Ex. B, p. 39) He also opined that if claimant had been given a scientifically validated diagnosis for PTSD, the exposure therapy Dr. O’Conner provided would be appropriate, and would typically be expected to result in resolution of the PTSD diagnosis within several weeks or months. He opined that if claimant experienced any genuine mental health/psychological symptoms attributable to the work incident, she would have reached MMI on or before December 8, 2017. Finally, he opined that claimant did not need any additional treatment, did not have any permanent psychological, cognitive, or physical impairment from the work incident, and did not need any permanent work or activity restrictions. (Def. Ex. B, p. 40)

Overall, I do not find any of the opinions provided by Dr. Jasper persuasive. His initial face-to-face evaluation was conducted on December 8, 2017, and his conclusions are based entirely on the results of the neuropsychological testing he performed. However, Dr. Jasper does not seem to take claimant’s background and upbringing in a strict religious environment into account when evaluating her test results. In his supplemental reports, despite reviewing updated treatment records, there is little to no consideration for the opinions of the mental health providers who actually provided treatment to claimant, including Dr. McMains, Mr. Schaefer, Mr. Wernimont, Dr. O’Conner, and Ms. Ellingson. Instead, he attacks Dr. O’Conner’s evaluation based on his use of only two psychological tests and his “non-standardized” instructions for the MCMH-III. Dr. Jasper did not spend nearly as much time getting to know claimant, or any time treating her, as compared to other providers who have diagnosed mental health conditions. Additionally, his statements regarding possible pre-existing conditions are unsupported by the record. Finally, his opinion that claimant’s symptoms, if genuine, should have resolved within weeks or months, does not take into account several factors, including the initial delay in mental health treatment, the setbacks claimant experienced as she tried to return to BCHC for work and eventual loss of her job, and her ongoing physical ailments, including her ulcerative colitis, shoulder and neck pain, and bilateral carpal tunnel syndrome. Dr. Jasper’s opinions do not consider the evidence as a whole, are narrowly focused on a limited set of tests, and contrary to all of the treating providers’ opinions.

Despite Dr. Jasper’s opinions, claimant continued to receive authorized treatment with Dr. O’Conner. (Jt. Ex. 2, pp. 232-234) On October 2, 2020, Dr. O’Conner indicated

that it was an “emotionally intense” session, as claimant’s relationship with her fiancé had ended. (Jt. Ex. 2, p. 235) In addition, claimant was having difficulty due to her ex-husband quitting his job and therefore stopping child support payments. Dr. O’Conner noted that despite these events, claimant continued to push herself to recover from the PTSD. (Jt. Ex. 2, p. 236) By her December 28, 2020 session, she admitted to feeling down and sleeping more, but she continued to discuss her future and how to prepare for her future. (Jt. Ex. 2, p. 237) They discussed a gradual reintroduction to the workforce. They also discussed an emotional support dog, and Dr. O’Conner issued a letter on January 7, 2021, confirming that he thought such an animal would be of great benefit to claimant. (Jt. Ex. 2, p. 239) He also noted that claimant was already in possession of the animal, a dog.

Claimant continued regular psychotherapy with Dr. O’Conner. (Jt. Ex. 2, pp. 240-248) At her session on February 15, 2021, she noted that she had been in contact with a close friend, and they were planning a trip to Hawaii later in the month. (Jt. Ex. 2, p. 250) At her session on March 8, 2021, she had just returned from Hawaii, and claimant said the trip went well. (Jt. Ex. 2, p. 254) She continued to experience some symptoms of PTSD. She continued with regular psychotherapy sessions, noting good days and bad days over the course of several months. (Jt. Ex. 2, pp. 258-271) By July 7, 2021, Dr. O’Conner noted there were areas in which claimant believed she had improved, but she continued to have some nightmares and times of increased anxiety and panic attacks. (Jt. Ex. 2, pp. 272-273) She told Dr. O’Conner that overall she had “come a long way,” but she was not 100 percent. (Jt. Ex. 2, p. 273) Dr. O’Conner encouraged claimant to continue volunteering, but to go slow, and to contact vocational rehabilitation to see if she was eligible for any services.

On August 6, 2021, Dr. O’Conner authored a letter to claimant’s attorney regarding her condition. (Cl. Ex. 1, p. 17) He opined that claimant required continued care for at least the next 12 months. He noted that claimant could now see that she had been making progress and had been discussing returning to employment by the summer of 2022. He noted that claimant had responded well to his treatment techniques and wanted to continue psychotherapy. (Cl. Ex. 1, pp. 17-18)

By November 22, 2021, claimant reported that she had been in contact with vocational rehabilitation. (Jt. Ex. 2, pp. 279-280) She was again planning to volunteer at the school by mentoring a sixth-grade girl. (Jt. Ex. 2, p. 280) She noted some recent emotional struggles and panic involving her children and her relationship with her former fiancé. However, at her appointment on December 7, 2021, there was no mention of these issues, and claimant was still planning to work with vocational rehabilitation and start volunteering at the school. (Jt. Ex. 2, p. 287)

On December 10, 2021, John Brooke, PhD, authored a report following his review of claimant’s medical and psychological records. (Def. Ex. C) After his review, Dr. Brooke concluded that the records “do not contain much to support the diagnosis of PTSD or major depression.” (Def. Ex. C, p. 58) He stated that her “sense” that her life was in danger during the attack “seemed to be dominated by her interpretation of the

look in her 70-year-old, wheelchair-bound, attacker's eyes." He further stated that the treatment approach of relying on claimant to be "forthright and historically accurate is questionable." He stated that claimant was characterized as an "unreliable historian" by two separate psychological examinations early in her course of care, "one of which was done by her therapist." He also noted Dr. Jasper's testing indicated malingering. He felt a more complete history of her past medical treatment would be helpful to know, "as it would shed light on her ability to be factual and honest." He noted that records indicate "a past history of being treated medicinally for anxiety and depression, something she failed to mention on a number of occasions."

Dr. Brooke could not provide a diagnosis, and stated when testing indicates a person has not been honest and forthright, no diagnosis is offered. However, he concluded that her four-year course of mental health treatment had produced "minimal progress at best." He opined that claimant had reached MMI as of the date of his report, and no further treatment was appropriate beyond a reasonable time for claimant and Dr. O'Conner to terminate treatment, which he suggested could be done in four sessions over the following two months.

I do not find Dr. Brooke's opinions convincing. First, Dr. Brooke never met with or spoke to the claimant; his opinions are based entirely upon a records review. Additionally, he discounts and misrepresents many of the facts surrounding claimant's attack. For example, he refers to the patient involved as being "wheelchair bound," which is inaccurate. While the patient was transported to and from the ER in a wheelchair, he was not "wheelchair bound." Additionally, the medical records related to claimant's mental health treatment repeatedly reference the fact that claimant was convinced he was going to kill her, the look in his eyes, him telling her "I'm going to kill you, Nazi," and him choking her and her inability to free herself. (See Jt. Ex. 2) Claimant's perception that her life was in danger is supported by the facts and her repeated and consistent description of the attack since it occurred in 2017.

Additionally, Dr. Brooke states that claimant was characterized as an unreliable historian by two separate psychological examinations, one of which was done by her own therapist. It is unclear what he is referring to here, as it does not appear that anyone other than Dr. Jasper doubted claimant's credibility. Also, like Dr. Jasper, his statements regarding claimant's possible pre-existing condition are unsupported by the record. Finally, his opinion that claimant's years of treatment had produced "minimal progress at best" is not supported by the record. Claimant had clearly made a great deal of progress between the date of injury and the date of Dr. Brooke's report on December 10, 2021, and was continuing to improve, as evidenced by her volunteer work and work with vocational rehabilitation to attempt a return to employment. The fact that he reached this conclusion without personally evaluating claimant is further basis to find his opinion unconvincing.

Claimant saw Dr. O'Conner again on January 3, 2022. (Jt. Ex. 2, p. 289) At that time, claimant shared that she had recently volunteered for a Christmas project collecting donated items for Christmas and sharing them with members of the

community in need. (Jt. Ex. 2, p. 290) She indicated that she had to go outside for a time due to the crowd of people, but she was able to gather herself and return to the activity. She was also set to begin mentoring at the school that month. Finally, she had been contacted for jury duty, but did not feel she was ready for that, so Dr. O'Conner provided a note asking for her to be excused. (Jt. Ex. 2, pp. 288-290)

By her February 28, 2022 session, claimant had begun her volunteer work with the school, and had started working with vocational rehabilitation. (Jt. Ex. 2, p. 298) At her March 21, 2022 session, claimant and Dr. O'Conner reviewed Dr. Brooke's report. (Jt. Ex. 2, pp. 301-302) Dr. O'Conner stated that claimant "continues to clearly meet the criteria for a diagnosis of PTSD." (Jt. Ex. 2, p. 302) Claimant shared that she had started volunteering at a local grocery store called "Dollar Fresh," and she has felt very anxious there but found the staff to be supportive. She had also started mentoring a first-grade student at the local elementary school, which created anxiety for her. Additionally, she continued to work with vocational rehabilitation. She expressed that she still had difficulties in crowds, and when she attended church, she always sat in the back. (Jt. Ex. 2, p. 303)

On May 11, 2022, Dr. O'Conner noted that claimant had been accepted as a client with vocational rehabilitation and continued to volunteer at the elementary school and the Dollar Fresh store. (Jt. Ex. 2, p. 305) She also continued to help Mary Conklin in her home up to three times per week. While she continued to have a lot of anxiety, Dr. O'Conner encouraged these activities in an effort to reintroduce her to society and the workforce.

Dr. O'Conner again saw claimant on July 15, 2022, and appears to have incorporated his progress notes into a letter dated August 1, 2022. (Jt. Ex. 2, pp. 308-311; see also Cl. Ex. 1, pp. 20-24) Dr. O'Conner noted that he first saw claimant in January 2018, and his psychological assessment and ongoing psychotherapy had allowed him to become familiar with the assault at BCHC, as well as claimant's care. (Jt. Ex. 2, p. 308) He listed claimant's diagnoses as PTSD, major depression recurrent, severe, and generalized anxiety disorder. He also noted that the most recent MCMI-IV assessment, completed in May 2022, along with the clinic work he had done with claimant, indicated her personality disorder classifications as schizoid personality type, compulsive personality style, and paranoid personality style.

Moving on to the assault, Dr. O'Conner noted that claimant shared the individual who assaulted her had been very aggressive the day prior to the assault. He also pointed out that the individual was entirely mobile at the time of the assault; while he was transported to and from the shower area in a wheelchair, he was not in a wheelchair at the time of the assault. Dr. O'Conner also noted claimant's issues with BCHC staff and workers' compensation following the assault. He noted that it was "clear the staff at BCHC did not fully understand the level of trauma [claimant] had experienced."

With respect to prior mental health care, Dr. O'Conner noted that claimant did take an antidepressant medication for about a week when she was going through her divorce. However, prior to the work injury, she had never received formal counseling or psychotherapy.

Dr. O'Conner again went over the results of the MCMI-III claimant was administered in January 2018. (Jt. Ex. 2, p. 309) Again, at that time claimant was noted to be an individual who is reluctant to share on an emotional level and wants to maintain control wherever possible in her life. She was also noted to be someone who prefers to deny difficulties and conform to authority, in order to avoid mistakes or criticism. At the time of that evaluation, he noted that treatment could only proceed at a pace she could tolerate, and she appeared to have much defensive armor.

Dr. O'Conner then went over the outcome of the most recent MCMI-IV, completed in May 2022. That assessment noted the possibility that claimant was experiencing a "severe mental disorder." The suggested diagnosis was schizoid personality type, compulsive personality style, and paranoid personality style. In addition, the clinical syndromes were noted to be PTSD, major depression recurrent, severe, and generalized anxiety disorder. Claimant's approach in completing the MCMI-IV was considered to be average in the areas of disclosure, desirability, and debasement. He found claimant's self-deprecating comments, flat affect, and hesitation and fear about interpersonal matters to be notable. He believed her profile indicated low self-esteem and a perception that she lacks the competence for autonomous behavior, seeing herself as a weak and ineffectual person. She seemed to be preoccupied with matters of personal adequacy and chronic feelings of dejection and apathy, reflective of a major depressive disorder. The assessment also noted she appeared to have experienced a traumatic event in which she suffered intense fear and pain, the residuals of which appear to persistently recur through distressing recollections. Therefore, she was likely to avoid exposure to cues that resemble or symbolize aspects of the traumatic event. Finally, it was noted that claimant is preoccupied with physical fears and complaints that seem to be indicative of a somatic disorder. (Jt. Ex. 2, p. 309)

Dr. O'Conner noted that claimant had been seeking assistance through vocational rehabilitation and had also been volunteering in order to help her gradually work into the wider community environment. He noted that claimant had often shared how she had worked at BCHC for many years, had a good work history and loved to work there. It was her hope to retire from there. As a result of the assault and how she was "handled" after the assault, she believes she lost relationships with friends, as well as a job she loved. She believes BCHC allowed this to happen, and is angry, which has resulted in her difficulty trusting others. Additionally, she experiences a level of anxiety she did not have prior to the assault.

In terms of social functioning, Dr. O'Conner noted claimant struggles, and admitted she had withdrawn from interpersonal activities. (Jt. Ex. 2, p. 310) However with encouragement she had begun to volunteer in the community and participate in more social activities. With respect to her activities of daily living, claimant indicated that

her home upkeep and sleep habits had deteriorated. She also noted problems with her ability to concentrate since the assault, as well as distress in her personal relationships with her children and her significant other.

With respect to the issue of malingering, Dr. O'Conner noted that other individuals had raised the issue "who have not had the opportunity to know [claimant] in any depth." (Jt. Ex. 2, p. 311) Dr. O'Conner opined that claimant had "sincerely put forth an effort to be totally honest and to work on her condition to the best of her ability." He noted that the MCMI-III and MCMI-IV noted that claimant does not fully understand her situation, and her tendency would be to withdraw or disengage, and minimize or deny feelings. He also stated that the treatment goals of the MCMI noted claimant should not be pushed beyond tolerable limits, and she has a fear of being vulnerable in social and emotional situations. It is important for claimant to move at her own pace in treatment. Psychopharmacologic treatment was noted as something that could help. She was described as introversive and passive by nature, which would require ongoing efforts aimed at countering perpetual and recurring withdrawal tendencies. Historically she was observed as minimally introspective and exhibiting diminished affect and energy. She does not like to be uncomfortable and requires much reassurance.

Finally, Dr. O'Conner provided the following summary of impairment:

Activities of daily living: Class III – moderate impairment

Social functioning: Class IV – marked impairment in the area of employment

Social functioning: Class III – moderate impairment in the area of functioning with immediate family and some close friends

Concentrations: Class III – moderate impairment

Adaptation: Class IV – marked impairment in the area of making changes in her life.

(Jt. Ex. 2, p. 311)

On August 12, 2022, claimant's attorney sent Dr. O'Conner a letter seeking additional information. (Cl. Ex. 1, p. 26) Dr. O'Conner provided a handwritten response on August 20, 2022. (Cl. Ex. 1, pp. 26-27) He indicated that he believed claimant needed continued professional mental health care, and she had made progress since she was initially seen. (Cl. Ex. 1, p. 26) He further stated that with continued care, she would continue to improve over the next 12 months. (Cl. Ex. 1, p. 27) Finally, he indicated that without further mental health care, she would essentially remain at the level of impairment as expressed in his August 1, 2022 report.

Vocational case manager Lana Sellner met with claimant on August 30, 2022, to provide an updated vocational analysis. (Def. Ex. F, p. 102) In addition to meeting with claimant, she reviewed updated medical records and personnel records from BCHC, claimant's deposition testimony, and records from Iowa Vocational Rehabilitation Services (IVRS). She noted that at that time, claimant did not have any physical restrictions related to the work injury. (Def. Ex. F, p. 103) Claimant was also unaware of

any work restrictions given by Dr. O'Conner, but noted that she has panic and anxiety attacks, at times with no triggers. She also stated she does not do well with noisy or crowded environments and does not want to work in a hospital setting.

Ms. Sellner reviewed claimant's work history, including her recent volunteer work. She noted that since the spring of 2022, claimant had been working on her self-employment goal of housekeeping. She had 4 or 5 clients at the time and was charging \$20.00 per hour to clean a house. Based on claimant's work history, Ms. Sellner opined that prior to her work injury, she could perform work from light to medium physical demand levels. (Def. Ex. F, p. 104) She noted claimant had no formal restrictions regarding her mental health condition, but self-reported limitations. Ms. Sellner opined that claimant possesses many skills that would allow her to return to the workforce in an entry level job, but noted she has self-limitations regarding environments and her panic/anxiety attacks. She stated that claimant would be an asset in jobs such as entry level call center, patient service representative, hotel clerk, front desk, paraprofessional, cashier, hostess, and office worker, and could also work in housekeeping, manufacturing/assembly, and driving jobs.

Ms. Sellner again noted that claimant was working with IVRS toward her self-employment goal of house cleaning. She had an employment plan and was working to get a state license in order to expand her business. She already had cleaning supplies and reliable transportation. As such, Ms. Sellner felt it would be worthwhile to collaborate with IVRS.

The last record in evidence from Dr. O'Conner is dated September 6, 2022. (Jt. Ex. 2, p. 312) At that time, claimant indicated that she continued to think about the assault frequently, and question what she could have done differently. However, she had not been crying about it as often as she had in the past. She continued to experience feelings of anger and anxiety. (Jt. Ex. 2, p. 313) That being said, she continued to be actively involved with vocational rehabilitation, and was trying to start a business cleaning houses. At that time, she had five customers whose houses she cleaned. She also continued to volunteer at Dollar Fresh.

A second deposition was taken on November 17, 2022. (Def. Ex. I, p. 141) Claimant discussed her self-employment efforts, and noted that in addition to house cleaning, she also helped three of elderly clients with their showers. (Def. Ex. I, p. 143; Depo. Tr., p. 7) With respect to her treatment with Dr. O'Conner, she indicated that she had seen some improvement with his therapy, as well as with the medications she had been prescribed. (Def. Ex. I, pp. 143-144; Depo. Tr., pp. 9-10) She also stated that she had applied for Social Security Disability, but was waiting to hear back on her appeal. (Def. Ex. I, p. 145; Depo. Tr., p. 15)⁴

On November 22, 2022, Ms. Sellner issued a brief progress report, which indicates she continued to request consent to collaborate with IVRS on claimant's self-employment plan. (Def. Ex. F, p. 106) However, on December 22, 2022, she issued a

⁴ Claimant's SSDI application was denied on November 9, 2022. (Def. Ex. H, p. 125)

closure report, indicating that claimant had not provided the necessary consent, so she would close her file. (Def. Ex. F, p. 108)

On December 6, 2022, Martin Carpenter, M.D., a board-certified psychiatrist, performed an independent psychiatric evaluation of claimant. (Def. Ex. A) His report is dated December 14, 2022. (Def. Ex. A, p. 1) He reviewed medical records, and noted that claimant had been seen twice in 2013 for anxiety and depression and was prescribed Ambien for difficulty sleeping. (Def. Ex. A, p. 2) He provided a detailed review of medical records after the October 31, 2017 work injury. (Def. Ex. A, pp. 2-8) He also reviewed vocational records from Ms. Sellner as well as IVRS. (Def. Ex. A, pp. 7-8) He noted that the IVRS eligibility decision dated May 3, 2022 stated she had significant limitations with respect to interpersonal skills, difficulty controlling her anxiety, and having frequent panic attacks. (Def. Ex. A, p. 7) A later note dated June 10, 2022 indicated self-employment would be a good fit for claimant.

Dr. Carpenter provided a psychiatric review of systems. (Def. Ex. A, p. 8) He noted that moodiness and frequent mood swings were present. Claimant endorsed feeling depressed and anxious a lot of the time. When depressed she wants to sleep and is more irritable, but forces herself to get up and do things. When anxious she ruminates and replays the attack in her mind. She said she generally feels very on-guard. When triggered, she experiences feelings of panic and gets hot and sweaty. (Def. Ex. A, p. 9) She limits outings due to disliking crowds. She also expressed feeling angry and bitter a lot. She continued to have nightmares, and noted her chronic physical pain and ulcerative colitis, which flare up when she is stressed. She reported that her concentration is affected, and she has a harder time staying on top of tasks like paying bills and laundry.

Claimant denied a past psychiatric history with the exception of the brief depressive episode she experienced around the time of her divorce. At that time she took antidepressant medication for one or two weeks. Dr. Carpenter reviewed claimant's mental health treatment after the work injury, as well as other personal health conditions. (Def. Ex. A, pp. 9-10) They also discussed claimant's social history, including her upbringing, family life, and work history. (Def. Ex. A, pp. 10-11)

With respect to his examination, he noted that claimant was generally cooperative, but "appeared overly invested in my believing her." (Def. Ex. A, p. 11) She acknowledged that another psychologist had identified her as malingering. He found minimal evidence for significant depression, and no evidence of thoughts of harming herself or anyone else. She was cognitively intact with no impairment in orientation, but insight and judgment were below average.

Dr. Carpenter then answered several questions defendants presented. With respect to diagnosis, Dr. Carpenter indicated he saw significant symptom exaggeration, and diagnosed claimant as malingering. (Def. Ex. A, p. 12) He noted that the DSM describes malingering as the intentional production of false or grossly exaggerated physical or psychological symptoms motivated by external incentives. As evidence of

his diagnosis, he noted that claimant endorsed symptoms more strongly, for a longer duration, and from more categories than the norm. Additionally, he stated that he would not expect symptom intensity and duration to persist for this long, given that the injury occurred about five years prior to his evaluation. Finally, he stated “many of us who work in healthcare, me included, have been assaulted at work.” He then noted that while those experiences are traumatic, “most of us shake them off, chalk it up to part of the job and move on. For this to be reported as severely life altering this many years later is significantly outside the norm and is suggestive of malingering.”

Dr. Carpenter opined that claimant’s current mental health condition is not related to the original work injury, and noted that malingering is not a mental health condition, per se. He then explained that genetic and personal experiences create vulnerabilities and tendencies that under the right circumstances, can produce mental illness. In this case, he opined claimant’s condition is not mental illness, but “a set of beliefs about the world,” including that her work should have protected her, she is a victim, and she is “owed.”

With respect to treatment, Dr. Carpenter opined that claimant’s treatment had been relatively ineffective as had medications, which is consistent with malingering. (Def. Ex. A, p. 13) He suspected that when the workers’ compensation case is concluded or claimant’s financial situation has improved, the symptoms will improve dramatically. He opined that it would be inappropriate to continue the same treatment course that is producing minimal results. In fact, he stated that it is “more likely than not that the treatment provided by Dr. O’Conner is enabling the claimant.” He agreed with Dr. Jasper that claimant reached MMI as of December 8, 2017, had no further treatment recommendations, and did not find any permanent impairment. Finally, he did not recommend any restrictions and noted that claimant’s participation in vocational rehab and attempting to return to work is the most therapeutic course of action.

Dr. Carpenter’s report is problematic for several reasons. First, he dismisses claimant’s reaction to being assaulted at work because it was not the reaction he believes he would have had. His statement that most healthcare workers would just “shake it off” and move on is purely anecdotal and completely irrelevant. In addition, his outright denial of any mental health diagnosis whatsoever is not supported by the weight of the evidence and fails to explain claimant’s ongoing symptoms since the date of injury. Finally, like Dr. Brooke, his opinion that claimant’s treatment and medications have been ineffective is also contrary to the evidence. Dr. Carpenter met with claimant one time, and like those of Dr. Jasper and Dr. Brooke, his opinions are contrary to all other providers who have actually provided claimant with ongoing treatment for her mental health conditions. Therefore, I find Dr. Carpenter’s opinions unconvincing.

At hearing, claimant testified that Dr. O’Conner’s treatment has been and continues to be helpful to her. (Tr., p. 32) She said that he listens to her and helps her through the struggles with her depression and anxiety. He also provides her with reading materials and other resources to help her relax. She believes she has made progress over the course of her treatment with him. She also testified that while she was

still working at BCHC, she was not making progress with her PTSD, anxiety, and depression. (Tr., p. 37) However, at the time of hearing, she testified that she was not sleeping as much, getting out more, interacting with others more regularly, and trying to keep her house clean more. (Tr., pp. 51-52) She had also started to attend church again, although she sits in the back. (Tr., p. 52)

Claimant was still working on expanding her cleaning business at the time of hearing, with help from IVRS. (Tr., pp. 47-48) She testified that Dr. O'Conner is also supportive of her endeavors and wants her to continue working with him so the process does not become overwhelming. Her goal with treatment is "to get 100 percent better. If I don't, I'm making progress. I want my goal to be somewhat back to normal." (Tr., p. 52)

Dr. O'Conner has provided claimant with extensive treatment. His notes and opinions are detailed and accurate. I find his opinions regarding claimant's diagnoses and current status to be the most convincing. I find that based on the medical records and other evidence in the file, including claimant's credible testimony, she has not reached MMI as of the time of hearing. While she has made progress, Dr. O'Conner has provided the most reliable opinion regarding her current status, and he believes her condition will continue to improve. As such, claimant is entitled to ongoing temporary total disability benefits until such time as there is a basis for ending those benefits by law.

CONCLUSIONS OF LAW

The first issue to determine is whether claimant has reached MMI with respect to her mental health injury. Defendants allege claimant reached MMI on December 8, 2017. Claimant contends that she has not yet reached MMI and continues to make progress.

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

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

MMI refers to stabilization of the workers' condition or a finding that the condition is not likely to abate in the future despite medical treatment. Dunlap v. Action Warehouse, 824 N.W.2d 545, 557 (Iowa App. 2012) Stabilization of the employee's condition is the event that allows a physician to make the determination that a particular

medical condition is permanent. Id. at 556 (quoting Bell Bros. Heating and Air Conditioning. v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010))

The Iowa Supreme Court clarified the issue of maximum medical improvement, or medically indicated significant improvement, in Pitzer v. Rowley Interstate, 507 N.W.2d 389, 391-392 (Iowa 1993). The Court held:

the stability of condition referred to in Larson's treatise is a stability in industrial disability. Consequently, an anticipated improvement in continuing pain or depression, if medically indicated, may extend the length of the healing period if a substantial change in industrial disability is also expected to result. If, however, it is not likely that further treatment of continuing pain, however soothing to the claimant, will decrease the extent of permanent industrial disability, then continued pain management should not prolong the healing period.

In this case, the greater weight of the evidence supports a finding that claimant has not reached MMI. I rejected the opinions of Dr. Jasper, Dr. Brooke, and Dr. Carpenter, as none of those doctors had a treatment relationship with claimant, or met with her on more than one occasion, if at all. Their opinions were based primarily on the neuropsychological testing performed by Dr. Jasper in December of 2017, and his interpretation of the results. None of the doctors agreed with the mental health diagnoses, and each opined that claimant was malingering and/or exaggerating her symptoms. Given that none of these providers believe claimant has a diagnosable mental health condition, their opinions regarding MMI carry little weight.

To the contrary, in the initial months following the work incident, five other treating providers diagnosed claimant with PTSD and other mental health disorders. Dr. McMains, Mr. Wernimont, Mr. Schaefer, Ms. Ellingson, and Dr. O'Conner all agreed that claimant was suffering from PTSD, and some degree of anxiety and depression. Furthermore, none of the treating providers indicated any concern that claimant was malingering or otherwise exaggerating symptoms. Dr. O'Conner has been providing claimant with psychotherapy since January 2018, and has never expressed concerns regarding malingering or symptom magnification. Additionally, Dr. O'Conner has made documented progress with claimant over the course of his treatment and believes that claimant will continue to make progress with continued treatment. I found Dr. O'Conner's opinions to be the most credible. As such, I find that claimant has not reached MMI for her mental health injury at this time.

Both Iowa Code section 85.33(1) and section 85.34(1) provide that temporary benefits, whether temporary total disability (TTD) or healing period (HP), are to be paid until the employee has returned to work, has reached MMI, or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, whichever occurs first. Claimant has not met any of the legal standards for terminating temporary benefits. As such, I find claimant is

entitled to ongoing temporary total disability benefits until such time as there is a basis for ending such benefits by law.

Because claimant has not reached MMI, the issue of permanent disability benefits is not ripe for determination. The only other issues to consider involve claimant's claim for medical expenses and taxation of costs.

With respect to medical expenses, claimant has submitted a statement of medical costs in Exhibit 5. Defendants agree they are responsible for claimant's treatment with Dr. O'Conner and ARNP Fury-Swisher. (Def. Brief, p. 31) However, any medical expenses included in Exhibit 5 for other conditions are disputed. Claimant did not provide argument related to the medical expenses. Therefore, at this time, I find that defendants are responsible for medical expenses for treatment provided by Dr. O'Conner and ARNP Fury-Swisher and shall pay any outstanding bills from those providers or reimburse any liens accordingly. Defendants will also pay claimant's medical mileage expenses submitted in Exhibit 6, as stipulated in defendants' brief.

With respect to costs, claimant seeks reimbursement of \$100.00 for the filing fee; \$7.33 for the service fee; and \$50.60 for the deposition transcript. (Cl. Ex. 7) Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Defendants do not dispute that claimant is entitled to costs. Therefore, I award claimant total costs in the amount of \$157.93.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall continue to pay claimant temporary total disability benefits at the stipulated rate of three hundred fifty-seven and 84/100 dollars (\$357.84). Said benefits shall continue until such time as there is a basis for ending such benefits by law.

Defendants shall be entitled to a credit against accrued benefits pursuant to the stipulations of the parties.

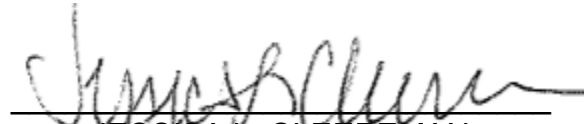
Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay any outstanding expenses associated with medical treatment for claimant's mental health injury, as outlined above, including medical mileage.

Defendants shall reimburse claimant's costs in the amount of one hundred fifty-seven and 93/100 dollars (\$157.93), as outlined above.

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

Signed and filed this 29th day of August, 2023.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nate Willems (via WCES)

Lindsey Mills (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.