

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RAWDA MOHAMED,

Claimant,

vs.

ATRIUM HOLDING COMPANY,

Employer,

and

SOMPO/GALLAGHER BASSETT,

Insurance Carrier,
Defendants.

File No. 20700416.01

ARBITRATION DECISION

Head Note Nos.: 1402, 1402.40, 1800,
1801, 1802, 1803, 1804,
2500, 2700, 4100**STATEMENT OF THE CASE**

The claimant, Rawda Mohamed, filed a petition for arbitration seeking workers' compensation benefits from Atrium Holding Company ("Atrium"), and its insurer Gallagher Bassett/SOMPO. Samuel Aden appeared on behalf of the claimant. William Scherle appeared on behalf of the defendants.

The matter came on for hearing on June 29, 2021, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred via CourtCall. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-7, Claimant's Exhibit 1-12, and Defendants' Exhibits 1-7. The claimant testified on her own behalf via interpreter Bagad Aguak. Nibrar Abdalla and Brandon Danner also provided testimony under oath. Kira Stover was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on August 20, 2021, after briefing by the parties.

At the outset of the hearing, the employer was asked to file a first report of injury ("FROI"). As of the date of this decision, no FROI was on record.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.
2. The claimant sustained an injury arising out of, and in the course of, employment, on June 7, 2019.
3. Although entitlement to temporary disability and/or healing period benefits cannot be stipulated, the claimant was off work from August 24, 2020, to the present, and ongoing.
4. The claimant's gross earnings were five hundred and 21/100 dollars (\$500.21) per week, she was single, and entitled to 2 exemptions. This resulted in a weekly compensation rate of three hundred thirty-three and 72/100 dollars (\$333.72).
5. The costs requested by claimant have been paid.

The defendants waived their affirmative defenses. Whether the defendants are entitled to any credits is no longer in dispute. Additionally, the hearing report indicates that the claimant is seeking reimbursement for an independent medical examination ("IME") pursuant to Iowa Code section 85.39. At the outset of the hearing, on the record, the defendants indicated that they would stipulate to paying for the IME pursuant to Iowa Code section 85.39.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the alleged injury is a cause of temporary disability during a period of recovery.
2. Whether the alleged injury is a cause of permanent disability.
3. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from August 24, 2020, to the present and ongoing.
4. The extent of permanent partial disability benefits, if any are awarded.

5. Whether the disability is an industrial disability.
6. The commencement date for permanent partial disability benefits, if any are awarded.
7. Whether the claimant is entitled to alternate care pursuant to Iowa Code section 85.27.
8. Whether the claimant is entitled to a specific taxation of costs.

FINDINGS OF FACT

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

Rawda Mohamed, the claimant was 51 years old at the time of the hearing. (Testimony). She is single. (Testimony). She currently resides in Des Moines, Iowa, with her two daughters. (Testimony). Ms. Mohamed is originally from Sudan. (Testimony). She lived in Sudan until she was 21 years old. (Testimony). She graduated high school in 1991 in Madani, Sudan. (Testimony; Claimant's Exhibit 6:17). She also attended one year of college in Sudan. (Testimony). After leaving Sudan, she moved to Syria for about 12 years. (Testimony). After leaving Syria in 2007 she immigrated to Des Moines, Iowa. (Testimony).

Ms. Mohamed testified with the assistance of an interpreter. Ms. Mohamed's native language is Arabic. (Testimony). She speaks and understands some English thanks to an ESL class at Des Moines Area Community College. (Testimony). However, she is not fluent, and cannot read or write in English. (Testimony). Ms. Mohamed can use a computer, but only if it displays in Arabic. (Testimony). She does not know how to use programs like Microsoft Word or Excel. (Testimony).

While in Sudan and Syria, Ms. Mohamed did not work. (Testimony). Upon arriving in Des Moines, Ms. Mohamed obtained a job working in housekeeping at the Sheraton in West Des Moines, Iowa. (Testimony). The Sheraton in West Des Moines is owned and operated by Atrium. She worked in housekeeping for about one year before moving to Tyson. (Testimony).

At Tyson, Ms. Mohamed cut and packaged meat on a production line in Perry, Iowa, from 2009 to 2010. (Testimony). She stood and sat, at this job, and also needed to bend and twist on a routine basis. (Testimony).

In 2010, Ms. Mohamed left Tyson and opened an in home daycare. (Testimony). She provided care for children ranging from two months old to nine years old. (Testimony). She performed the tasks that one would expect of a daycare provider, such as: changing diapers, feeding children, playing with children, picking children up,

bathing children, and supervising them on the playground. (Testimony). She worked about six days per week running the daycare. (Testimony).

From 2014 to 2015, Ms. Mohamed worked as a janitorial worker at Service Master Cleaning. (CE 6:18). It was unclear from the testimony provided at hearing what Ms. Mohamed did from 2015 to 2017, but the evidence in the record shows a gap in employment between 2015 and 2017. Ms. Mohamed testified that she always maintained a job, and had no gaps in employment. (Testimony).

From 2017 to 2018, the claimant worked at Drake University in the dining department. (Testimony; CE 6:18). She worked in the kitchen and assisted the chef by cutting meats and vegetables, carried items from storage to the kitchen, and assisted with preparation of food. (Testimony; CE 6:18). This job entailed heavy lifting, standing, and using stairs on a regular basis. (Testimony). ‘

In 2018, Ms. Mohamed returned to employment with the Sheraton and Atrium. (Testimony). She worked in housekeeping. (Testimony; CE 6:18). She worked full time, and often worked six to seven days a week. (Testimony). During a normal day, she vacuumed, made beds, changed linens, removed trash, and cleaned bathrooms. (Testimony). This job required her to be on her feet all day, lifting mattresses, pushing a heavy housekeeping cart, bending, and twisting. (Testimony). She cleaned at least 17 rooms, but sometimes it could be up to 22 rooms. (Testimony). She worked for Atrium until her termination on October 31, 2020. (Testimony).

Ms. Mohamed’s job description included a requirement to completely clean and maintain hotel guest rooms and public areas within the hotel. (CE 4:6; Defendants’ Exhibit 1:1). This included making beds, cleaning bathrooms, replenishing all paper items, replacing soiled linens, cleaning glass and mirrors, replenishing supplies, replacing burnt out lightbulbs, emptying wastebaskets, and cleaning rugs using a vacuum cleaner. (CE 4:6; DE 1:1). Ms. Mohamed also needed to maintain cleanliness and organization in all applicable work areas. (CE 4:6; DE 1:1). Of note, there are no weight or lifting requirements listed in her job description from Atrium.

On June 7, 2019, Ms. Mohamed picked up towels and a replacement shower curtain in the laundry area at the Sheraton. (Testimony). The floor in the laundry area was wet, and there were bags of dirty laundry or trash in the area. (Testimony). Ms. Mohamed testified that she tripped over a bag and fell forwards. (Testimony). She then tried to get up, but her foot remained stuck in the bag. (Testimony). This caused her to fall again onto her back. (Testimony). She felt immediate pain and a coworker arrived to help her up. (Testimony). The claimant alleges that her knees immediately began to swell, and upon arrival at the office of her supervisor, ice was placed on her knees and back. (Testimony). Someone called Ms. Mohamed’s daughter, and she came to take her to the doctor. (Testimony).

Of note, the claimant’s exhibits contain photographs of the area in which Ms. Mohamed allegedly fell. (CE 1:1-3). It is unclear what these photos represent exactly,

when they were taken, and whether they indicate the specific conditions when Ms. Mohamed fell. I reviewed the photos, but they had no relevance to my decision.

Ms. Mohamed reported to Concentra for treatment to her back and left leg. (Testimony; Joint Exhibit 1:1-8). Richard Bratkiewicz, M.D., examined Ms. Mohamed. (JE 1:1-5). In her description of the injury, Ms. Mohamed indicated that she fell on her hands and knees and fell a second time on her back. (JE 1:3). Upon physical examination, Dr. Bratkiewicz noted joint pain, back pain, and joint stiffness. (JE 1:4). Ms. Mohamed also displayed bilateral muscle spasms in her lumbosacral spine. (JE 1:4). Dr. Bratkiewicz diagnosed Ms. Mohamed with a strain of her lumbar paraspinal muscles. (JE 1:4). He recommended that she start ibuprofen and metaxalone. (JE 1:4). He also referred her to physical therapy three times per week for two weeks. (JE 1:4). Dr. Bratkiewicz promulgated restrictions including: lifting up to 5 pounds occasionally, bending, standing, walking, and rotating her trunk occasionally. (JE 1:5). She may also bear weight as tolerated. (JE 1:5). Dr. Bratkiewicz told Ms. Mohamed not to squat, kneel, or climb ladders. (JE 1:5). He also indicated that she could return to modified duty that same day. (JE 1:5).

Ms. Mohamed started physical therapy on June 7, 2019, at Concentra. (JE 1:6-8). She rated her pain 8 out of 10. (JE 1:6). She denied any radiation down her legs, and noted the pain was to her lower back. (JE 1:6).

On June 10, 2019, Dr. Bratkiewicz examined Ms. Mohamed again. (JE 1:9-10). Ms. Mohamed indicated that her two sessions of physical therapy helped, and that she had no sciatic issues. (JE 1:9). Upon physical examination, Dr. Bratkiewicz observed tenderness in the left paraspinal and right paraspinal areas. (JE 1:9). Ms. Mohamed also displayed a limited range of motion in her lumbosacral spine. (JE 1:9). Dr. Bratkiewicz again diagnosed Ms. Mohamed with a strain of her lumbar paraspinal muscles. (JE 1:10). He opined that she was "approximately 25% of the way toward meeting the physical requirements of her job." (JE 1:10). The doctor recommended four more sessions of physical therapy and a home exercise plan. (JE 1:10). Dr. Bratkiewicz indicated that Ms. Mohamed could return to modified duty work on the same day. (JE 1:10). The doctor provided the following restrictions: lifting up to 5 pounds occasionally, pushing/pulling up to 5 pounds occasionally, and no squatting, kneeling or climbing ladders. (JE 1:10).

Ms. Mohamed had her fourth physical therapy visit at Concentra on June 14, 2019. (JE 1:11-13). She complained of increased low back pain since her previous visit. (JE 1:11). She especially noted pain when she rose from the toilet. (JE 1:11). She further mentioned that her feet would swell after working. (JE 1:11). Ms. Mohamed had difficulty completing certain physical therapy activities due to her pain. (JE 1:11). The therapist also observed Ms. Mohamed with significantly reduced gait speed and an antalgic gait. (JE 1:11). The therapist opined that Ms. Mohamed was progressing slower than expected, and that she also had difficulty tolerating light exercise. (JE 1:12). The therapist also noted that tracking Ms. Mohamed's progress across visits was

difficult. (JE 1:12). During her prior visit, Ms. Mohamed completed exercises with no issues, and then would suddenly begin crying in pain. (JE 1:12).

On June 18, 2019, Ms. Mohamed returned to Concentra for her fifth physical therapy visit. (JE 1:14-16). Ms. Mohamed told the therapist that she felt better after her last session and did not have any low back pain. (JE 1:14). She also performed her home exercise program on a daily basis. (JE 1:14). Her main complaint surrounded low back pain while folding laundry, pushing carts and bending over. (JE 1:15).

Afeera Aabida, M.D., examined Ms. Mohamed at Concentra on June 20, 2019, for continued follow up care. (JE 1:17-19). Ms. Mohamed indicated that she felt better, but that she had pain in her right knee. (JE 1:17). She also complained of swelling in her ankles. (JE 1:17). With regard to her lower back pain, Ms. Mohamed told Dr. Aabida that she had no radiation, but that her pain was constantly dull and aching. (JE 1:17). She described her pain as "mild." (JE 1:17). She described her right knee pain as sharp and moderate. (JE 1:18). Upon physical examination, Dr. Aabida found a full range of motion to the right knee with some pain. (JE 1:18). Dr. Aabida also found no tenderness, muscle spasms, or range of motion issues in the low back. (JE 1:18). Dr. Aabida opined that Ms. Mohamed had a strain of her lumbar paraspinal muscle, and pain in her right knee. (JE 1:18). The doctor felt that Ms. Mohamed was at about 50 percent of her anticipated healing. (JE 1:18). Dr. Aabida recommended physical therapy for her right knee three times per week for two weeks. (JE 1:19). Dr. Aabida allowed Ms. Mohamed to return to full work activity. (JE 1:20).

During her physical therapy on June 20, 2019, Ms. Mohamed told the therapist that she had no low back pain, and could perform all of her work duties. (JE 1:21). She could perform activities of daily living independently, and performed her home exercise program on a daily basis. (JE 1:21). The plan was to discharge Ms. Mohamed from therapy. (JE 1:22).

Ms. Mohamed continued her care with Concentra on June 27, 2019. (JE 1:25-28). She reported to Dr. Aabida that her back pain worsened, but that the pain in her right knee improved. (JE 1:25). Ms. Mohamed indicated that physical therapy helped alleviate her complaints. (JE 1:25). She told Dr. Aabida that she had significant difficulties with the physical requirements of her job. (JE 1:25). Dr. Aabida diagnosed Ms. Mohamed with right knee pain, back pain with radiation, and a strain of the lumbar paraspinal muscles. (JE 1:26). Dr. Aabida ordered an MRI of the lumbar spine and recommended that Ms. Mohamed pause her physical therapy. (JE 1:26). Dr. Aabida allowed Ms. Mohamed to return to work with no restrictions. (JE 1:27-28).

Ms. Mohamed had another visit of physical therapy on June 27, 2019. (JE 1:29-31). It is unclear if this therapy occurred prior to, or subsequent to her visit with Dr. Aabida. Ms. Mohamed reported feeling slight low back pain after work that day. (JE 1:29).

On July 5, 2019, Dr. Aabida at Concentra reexamined Ms. Mohamed. (JE 1:32-34). Ms. Mohamed reported that physical therapy helped, but continued to report worsening back pain. (JE 1:32). She also noted that her knee pain was better. (JE 1:32). Upon physical examination, Dr. Aabida found issues with the right knee and lumbosacral spine. (JE 1:33). Dr. Aabida opined that Ms. Mohamed had roughly 50 percent healing. (JE 1:33). Dr. Aabida recommended that Ms. Mohamed continue to pause physical therapy, and ordered an MRI. (JE 1:33). Dr. Aabida gave Ms. Mohamed some restrictions including that she could only work 6 hours per day. (JE 1:34). Ms. Mohamed could also occasionally do the following: lift up to 10 pounds, push/pull up to 10 pounds, bend, stand, and rotate her trunk. (JE 1:34).

Ms. Mohamed had an MRI of her lumbar spine on July 10, 2019, at Alliance Healthcare Radiology. (JE 2:38). George Brown, M.D., interpreted the MRI results. (JE 2:38). The MRI showed no fractures. (JE 2:38). The L5-S1 level showed advanced internal derangement on the right that minimally contacted both the right S1 nerve root sleeves and the exiting right L5 nerve root within the neural foramina. (JE 2:38). The L3-4 level showed minimal right far lateral disc bulging with annular tearing that "very mildly" narrowed the right sided neural foramina. (JE 2:38). There was minimal disc bulging at L4-5. (JE 2:38). There was mild left greater than right degenerative joint disease at L2-3. (JE 2:38). L1-2 was normal. (JE 2:38). Dr. Brown concluded that there were spondylitic changes, which were age indeterminate. (JE 2:38).

Ms. Mohamed returned to Concentra on July 12, 2019. (JE 1:35-37). Dr. Aabida examined Ms. Mohamed. (JE 1:35-37). Ms. Mohamed reported worsening back pain, and continued pain in her right knee. (JE 1:35). Dr. Aabida noted that Ms. Mohamed was not demonstrating functional improvement. (JE 1:35). Dr. Aabida diagnosed Ms. Mohamed with back pain with radiation and lumbar disc herniation. (JE 1:36). Dr. Aabida referred Ms. Mohamed to a neurosurgeon. (JE 1:36). Her work restrictions remained unchanged. (JE 1:37).

On July 31, 2019, Ms. Mohamed reported to the Iowa Clinic where David Boarini, M.D., examined her. (JE 3:39-44). Ms. Mohamed complained of back pain with radiation down her left leg. (JE 3:39). She also had left leg weakness. (JE 3:39). Dr. Boarini diagnosed Ms. Mohamed with acute midline low back pain without sciatica. (JE 3:40). Dr. Boarini then issued a letter stating that Ms. Mohamed "really mainly has axial back pain and very little leg pain." (JE 3:41). Dr. Boarini observed that Ms. Mohamed walked slowly, but had no focal weakness. (JE 3:41). Dr. Boarini reviewed the MRI and opined that it was "really quite unremarkable." (JE 3:41). Dr. Boarini recommended physical therapy, anti-inflammatories, and muscle relaxants. (JE 3:41). He felt that there was no need for surgery. (JE 3:41). Dr. Boarini allowed Ms. Mohamed to return to light duty work. (JE 3:41).

Ms. Mohamed returned to Dr. Boarini's office on August 21, 2019. (JE 3:45-49). Ms. Mohamed complained of back pain to her bilateral hips. (JE 3:45). She also complained that her right leg was weak. (JE 3:45). Ms. Mohamed alleged that no one

contacted her for physical therapy, so she had not had any. (JE 3:45). She was eager to start physical therapy, as she felt she would benefit from it. (JE 3:45). Dr. Boarini kept Ms. Mohamed on light duty. (JE 3:47).

The claimant commenced physical therapy at Select Physical Therapy on September 27, 2019. (JE 4:59-62). Ms. Mohamed's daughter, Nibras, attended the appointment in order to translate for her mother. (JE 4:59). Ms. Mohamed had low back pain with radiculopathy ongoing for four months. (JE 4:59). She indicated that this pain was worse on the left than the right. (DE 6:29). The therapist observed that Ms. Mohamed ambulated slowly with decreased trunk motion. (JE 4:60). She could squat, twist, bend, lift from the floor, and stand or walk frequently, but was currently allowed to sit at work every hour for a short rest break. (JE 4:60).

Ms. Mohamed had another therapy appointment with Select Physical Therapy on October 10, 2019. (JE 4:63-66). She reported low back pain, and radicular pain into the left lower extremity. (JE 4:63). The therapist opined that the claimant's condition improved overall. (JE 4:63). Ms. Mohamed tolerated the therapy appointment with mild complaints of pain. (JE 4:65). She also showed a "fair perception of appropriate self-exertion levels." (JE 4:65).

On November 1, 2019, the claimant attended her tenth physical therapy visit at Select Physical Therapy. (JE 4:67-70). She felt stiff and sore, and opined that her pain increased. (JE 4:67). She continued to ambulate slowly with decreased trunk motion. (JE 4:68). The therapist reported that Ms. Mohamed had "a few good days a couple weeks ago," but that she "appeared to have a setback" causing her to be hesitant with movement since. (JE 4:68). Ms. Mohamed could lift 20 pounds from the floor, but displayed a poor technique in doing so. (JE 4:68). Ms. Mohamed demonstrated a 40 percent improvement in her symptoms. (JE 4:70). The therapist planned to move Ms. Mohamed to independence or discharge over the next week. (JE 4:70). The therapist told the claimant to contact her doctor for a follow-up appointment due to her continued severity of pain complaints. (JE 4:70). Ms. Mohamed expressed concerns about ceasing therapy. (JE 4:70).

Ms. Mohamed continued her therapy with Select Physical Therapy on November 8, 2019. (JE 4:71-74). This was her twelfth physical therapy visit. (JE 4:71). Overall, Ms. Mohamed's condition remained unchanged, and she complained of increased pain and falls over the previous two weeks. (JE 4:71). Additionally, she complained that "[a]ny lifting, pushing/pulling has led to worsened symptoms." (JE 4:71). The therapist observed that Ms. Mohamed continued to ambulate in a slow fashion. (JE 4:72). The therapist continued to opine that Ms. Mohamed's prognosis was poor. (JE 4:73). As of the end of this visit, Ms. Mohamed was discharged from physical therapy. (JE 4:74).

On November 13, 2019, Ms. Mohamed followed up with Dr. Boarini at the Iowa Clinic. (JE 3:50-55). Ms. Mohamed complained of back pain with radiation down her right leg. (JE 3:50). She also complained of right buttock pain, right inner thigh muscle spasm causing a loss of bladder control, and right leg weakness. (JE 3:50). She

indicated that four weeks of physical therapy have provided no relief of symptoms. (JE 3:50). Dr. Boarini opined that Ms. Mohamed had “a fairly unremarkable physical examination and MRI.” (JE 3:51). He noted that she improved with physical therapy and walked normally. (JE 3:51). Dr. Boarini maintained the light duty restrictions for four weeks while Ms. Mohamed finished physical therapy and work hardening. (JE 3:51). After that time, she was to return to regular duty with no restrictions. (JE 3:51-52).

Ms. Mohamed returned to Select Physical Therapy on December 17, 2019. (JE 4:75-77). She recalled completing physical therapy, and indicated that it provided improvement. (JE 4:75). However, she returned to work and continued to have pain lifting and pushing. (JE 4:75). The therapist observed that Ms. Mohamed was eager to get better, and did not want to complain. (JE 4:75). The claimant rated her pain 1 out of 10 at the time of the appointment, and 0 out of 10 at the best. (JE 4:75). She could lift up to 10 pounds, and push up to 50 pounds. (JE 4:75). Ms. Mohamed told the therapist that she could perform most of the tasks of her job, except for lifting a case of water from floor to waist, pushing a heavy cart, and performing sustained bending while cleaning bathtubs. (JE 4:76). Since she worked, but had pain, the therapist recommended physical therapy rather than work conditioning. (JE 4:76).

By January 20, 2020, Ms. Mohamed completed her tenth visit with Select Physical Therapy since restarting therapy in December of 2019. (JE 4:78-80). She reported pain of 1 out of 10 during the visit, 2 out of 10 at its best and 8 out of 10 at its worst. (JE 4:78). Ms. Mohamed was discharged from therapy due to a denial of authorization. (JE 4:80).

On March 12, 2020, Ms. Mohamed reported for an IME arranged for by defendants with William R. Boulden, M.D., F.A.A.O.S., at Capital Orthopaedics & Sports Medicine. (DE 5:23-28). He issued a report dictating his findings on March 13, 2020. (DE 5:23-28). An interpreter was used during the IME. (DE 5:23). Ms. Mohamed related how the work injury allegedly occurred. (DE 5:23). Her chief complaint was low back pain, which at its worst causes numbness and tingling in the buttocks through the thigh into the foot. (DE 5:23). Dr. Boulden indicated that he could not identify a dermatomal pattern in her description of the pain. (DE 5:23). Dr. Boulden reviewed Ms. Mohamed’s medical treatment. (DE 5:23-25). Dr. Boulden reviewed the home exercise plan with Ms. Mohamed. (DE 5:25). Ms. Mohamed performed mild stretching exercises, but did not perform stabilization exercises. (DE 5:25). As of the time of the examination, Ms. Mohamed was performing her normal work, but noted problems performing her work on an every day basis. (DE 5:25).

Ms. Mohamed told Dr. Boulden that bending, twisting, lifting, and pushing or pulling the supply cart aggravated her symptoms. (DE 5:25). By midday, her pain would begin to increase. (DE 5:25). By the end of the day, she has “a lot of pain and is worn out.” (DE 5:25). She reported difficulty driving home. (DE 5:25). At times, she is moved from her normal job to the laundry area, which is not as physically demanding.

(DE 5:25). Ms. Mohamed found relief from her pain by moving around and flexing her hip and knee. (DE 5:25).

Upon physical examination, Dr. Boulden observed that Ms. Mohamed stands in a flexed position with her spine. (DE 5:26). When she extended her low back, her pain increased. (DE 5:26). Dr. Boulden reviewed lumbar spine x-rays and an MRI. (DE 5:26). Dr. Boulden opined that Ms. Mohamed has degenerative disc disease “up and down” her lumbar spine. (DE 5:26). She also has facet degenerative changes. (DE 5:26). Dr. Boulden did not see herniated discs in the lumbar spine, but saw disc bulging at L5-S1. (DE 5:26). There also was no impingement of the L5 nerve root. (DE 5:26). Dr. Boulden opined that the findings are “all chronic in nature and are not related to the alleged injury” described by Ms. Mohamed. (DE 5:26). Dr. Boulden further noted that there were no clinical objective findings showing pathological changes. (DE 5:26). He opined that she had mechanical back pain, and may have had a contusion to her back or a lumbosacral strain. (DE 5:27). Ms. Mohamed could not describe how she fell, which caused Dr. Boulden difficulty as he found no objective evidence of an injury. (DE 5:27). Dr. Boulden opined that Ms. Mohamed’s symptoms were subjective. (DE 5:27). While Ms. Mohamed had increased symptoms, Dr. Boulden concluded that Ms. Mohamed did not materially aggravate her pre-existing back issues. (DE 5:27). Dr. Boulden recommended a better rehabilitation program to relieve Ms. Mohamed’s temporary aggravation. (DE 5:27). This program would include a strengthening-type exercise program. (DE 5:27). Dr. Boulden declined to provide any work restrictions. (DE 5:28). Upon finishing proper instruction in a stabilization program, Dr. Boulden would place Ms. Mohamed at maximum medical improvement (“MMI”). (DE 5:28). Dr. Boulden finished his report by declining to provide an impairment rating due to the lack of objective findings. (DE 5:28).

On April 9, 2020, the claimant began another round of physical therapy for lower back pain. (JE 4:81-84). The therapist noted that her pain improved with physical therapy, but “significantly worsens with work.” (JE 4:81). She was transferred to the laundry room due to her lower back pain, and found it less taxing on her back. (JE 4:81). At the time of her appointment, she was laid off due to COVID-19, and indicated that being off work improved her back pain. (JE 4:81). Ms. Mohamed continued to display an antalgic gait with decreased time standing on her left lower extremity. (JE 4:82). The therapist concluded their evaluation by recommending that Ms. Mohamed have physical therapy three times per week for three weeks. (JE 4:82).

By April 27, 2020, Ms. Mohamed attended her eighth visit of physical therapy at Select Physical Therapy. (JE 4:85-88). She reported pain of 0 out of 10 at its best and 1 out of 10 at its worst. (JE 4:85). This represented a significant improvement over her first visit on April 9, 2020. (JE 4:85). Ms. Mohamed told the therapist that she was able to take many long walks with her daughter with “very little pain.” (JE 4:86). She reported nervousness that her pain would return when she returned to work. (JE 4:86). Overall, Ms. Mohamed perceived her improvement as 90 percent. (JE 4:86). The therapist found no tenderness over much of the claimant’s back. (JE 4:86). At the time of discharge, the therapist opined that Ms. Mohamed had a good prognosis. (JE 4:88).

The therapist again noted that Ms. Mohamed had poor lifting mechanics and needed frequent cueing to maintain mechanics. (JE 4:88). The therapist recommended that the claimant continue her home exercises, and incorporate a walking program into her daily routine. (JE 4:88).

Dr. Boarini again examined Ms. Mohamed on August 24, 2020. (JE 3:56-58). She complained of back pain, left leg issues, bilateral leg weakness and difficulties going from a sitting to standing position. (JE 3:56). Ms. Mohamed told Dr. Boarini that she was not working at the time due to her symptoms. (JE 3:56). Dr. Boarini diagnosed Ms. Mohamed with acute midline low back pain without sciatica. (JE 3:57). Dr. Boarini recommended a physical therapy consultation and evaluation. (JE 3:57). Dr. Boarini noted that the MRI was unremarkable and that it was unchanged from her previous examination. (JE 3:57). Dr. Boarini wrote, “[t]his patient has myofascial back pain, and I recommended a functional capacity evaluation to see what sort of work limitations she needs.” (JE 3:57-58).

On October 26, 2020, the claimant established care at Jordan Creek Family Medicine Clinic, P.C., with Basil Hassan, M.D. (JE 5:89-92). Ms. Mohamed complained of anterior chest wall pain with respiration, fatigue, hypertension and being overweight. (JE 5:89). Ms. Mohamed needed her blood pressure medication filled, and complained of a “bump” on her chest that was growing for two years. (JE 5:89). She reported no trauma or injury to her chest. (JE 5:90). She reported no muscle aches or localized joint pains. (JE 5:91). Dr. Hassan instructed Ms. Mohamed to lose weight, provided a prescription for Losatran-Potassium, and referred Ms. Mohamed for an x-ray due to midsternal pain and protrusion. (JE 5:91).

Ms. Mohamed attended a functional capacity evaluation (“FCE”) at E3 Work Therapy Services on November 17, 2020. (JE 6:98-108). Kara Campbell, P.T.A., and Aaron Timm, D.P.T. performed the testing on Ms. Mohamed. (JE 6:98-108). The examiners opined that Ms. Mohamed’s overall effort was “equivocal” due to Ms. Mohamed “performing indistinctly during a repeated measures protocol.” (JE 6:98). Ms. Mohamed could lift up to 36.37 pounds from 10 inches to the waist, and 37.27 pounds from 20 inches to the waist. (JE 6:99). She displayed frequent and extreme overt pain behaviors during the FCE. (JE 6:100). Her pain questionnaires were low for subjective pain reports and behaviors. (JE 6:100). The examiners found that benign testing was positive for possible over-reporting of symptoms. (JE 6:101). The examiners also recommended medical correlation. (JE 6:101). Based upon the results, the examiners concluded that Ms. Mohamed met the material handling demands for a medium demand vocation. (JE 6:98).

At the direction of claimant’s counsel, Ms. Mohamed reported to Mid-Iowa Independent Medical Evaluations for an IME performed by Jeffrey A. Pederson, D.O., F.A.A.P.M.R., C.I.M.E., on December 9, 2020. (CE 8:21-26). Dr. Pederson issued a report based upon his examination on December 11, 2020. (CE 8:21-26). Dr. Pederson is a diplomate of the American Board of Physical Medicine and Rehabilitation. (CE 9:27). Ms. Mohamed related the facts of the initial work incident to Dr. Pederson.

(CE 8:21-22). Ms. Mohamed complained of pain at 7 out of 10. (CE 8:22). Lifting anything over 15 pounds, sitting or standing for extended periods of time, and working increased Ms. Mohamed's back pain. (CE 8:22). She also complained of pain radiating to the posterior right thigh. (CE 8:22). Dr. Pederson observed that Ms. Mohamed was teary during the examination, and noted that her daughter opined that Ms. Mohamed was depressed because she could not work or enjoy activities. (CE 8:23). Dr. Pederson reviewed Ms. Mohamed's medical treatment to date. (CE 8:23-25).

Dr. Pederson examined Ms. Mohamed and found that she ambulated with a cane and a flexed forward posture at the waist. (CE 8:25). Dr. Pederson found no pain with passive rotation of the upper body as a unit. (CE 8:25). Ms. Mohamed could not touch her toes on forward flexion. (CE 8:25). Dr. Pederson observed tenderness with palpation over bilateral lumbar paraspinal muscles, sacroiliac joints, gluteal muscles, and the greater trochanter region. (CE 8:25). Dr. Pederson also noted mild tightness in the lumbar paraspinal muscles and quadratus lumborum. (CE 8:25). Dr. Pederson did not find tenderness in the thoracic paraspinal muscles. (CE 8:25). Dr. Pederson diagnosed Ms. Mohamed with right lumbar radiculopathy "likely S1 but unconfirmed," aggravation of pre-existing lumbar degenerative disc disease and facet arthropathy, bilateral knee pain, and myofascial low back pain. (CE 8:26). Dr. Pederson opined that the MRI showed degenerative changes with an annular tear, and further noted that this "may cause a chemical radiculopathy." (CE 8:26). Dr. Pederson stated, "[i]t is reasonable the fall backwards caused or substantially aggravated the annular tear and/or disc bulging causing radicular symptoms." (CE 8:26). Since Ms. Mohamed had a positive Kemp test and a reduction in symptoms while flexing forward, the involvement of the lumbar facet joints after a traumatic fall should be considered. (CE 8:26). Dr. Pederson opined that Ms. Mohamed had not reached maximum medical improvement ("MMI"). (CE 8:26). He recommended a diagnostic workup with an electrodiagnostic test of the right lower extremity and a transforaminal epidural steroid injection at S1 or L5. (CE 8:26). He also noted that Ms. Mohamed could be a candidate for trigger point injections. (CE 8:26).

If Ms. Mohamed decided to forego further diagnostic or treatment options, Dr. Pederson opined that Ms. Mohamed sustained a Category II lumbar impairment that equated to 8 percent of the whole person. (CE 8:26). This is based upon Table 15-3 on page 384 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (CE 8:26). For permanent restrictions, Dr. Pederson indicated that Ms. Mohamed should lift no more than 30 pounds from the floor to the waist. (CE 8:26). She also should avoid repetitive twisting and bending, and have the ability to change positions frequently. (CE 8:26).

Dr. Hassan examined Ms. Mohamed again on January 6, 2021. (JE 5:93-97). She complained of low back pain after a work injury in 2019. (JE 5:93). Her back pain persisted for six days. (JE 5:93). She denied leg pain, numbness, or tingling. (JE 5:93). She told Dr. Hassan that she could feel her blood pressure go up when her pain increased. (JE 5:93). Dr. Hassan recommended that Ms. Mohamed avoid lifting more than 10 pounds and consider additional physical therapy if she was not improving. (JE

5:95). Dr. Hassan also recommended that Ms. Mohamed lose weight. (JE 5:95). He prescribed the claimant with Tizanidine and Aspercreme with lidocaine. (JE 5:96).

On April 7, 2021, Ms. Mohamed reported to Iowa Ortho for an examination by Trevor Schmitz, M.D. (JE 7:109-111). She reported her pain as 5 out of 10. (JE 7:109). She complained that her pain was persistent and worsening. (JE 7:109). Laying on her bed, or sitting for too long worsened her pain. (JE 7:109). Ms. Mohamed related that previous physical therapy provided some help. (JE 7:109). She complained of falling due to her low back pain. (JE 7:109). Dr. Schmitz noted Ms. Mohamed's antalgic gait and that she ambulated with a cane. (JE 7:110). Physical examination of the claimant's back showed normal alignment, a functional range of motion, and tenderness to palpation at L5-S1. (JE 7:110). Left knee range of motion examination caused pain, as well. (JE 7:110). Dr. Schmitz noted normal motor strength at the hips, knees, ankles, and feet. (JE 7:110). Dr. Schmitz recommended dietary counseling and surveillance. (JE 7:110).

Vanessa May, M.S., C.R.C., of Disability Resource Consulting Services, LLC, issued a vocational report on May 26, 2021, in response to a request from defendants' counsel. (DE 4:14-19). In preparing her report, Ms. May reviewed Ms. Mohamed's job description, employment history, and medical records. (DE 4:14-16). Ms. May noted that Ms. Mohamed worked primarily as an unskilled laborer since arriving in the United States of America. (DE 4:16). Despite being an unskilled laborer, Ms. May opined that Ms. Mohamed had an excellent work history, which would provide her with some advantage in the labor market. (DE 4:16). Ms. May noted that Dr. Boulden and Dr. Schmitz opined that Ms. Mohamed retained the ability to meet the demands of medium work as defined in the Dictionary of Occupational Titles. (DE 4:17). Ms. May opined that Ms. Mohamed worked in medium work as a janitor, production helper, and child care monitor. (DE 4:17). Ms. Mohamed worked in light work as a housekeeper. (DE 4:17).

Ms. May performed a labor market survey using "mostly Light work demands, with some falling within the Dictionary of Occupational Titles Medium level, but presumably are within her restrictions based on the description given in the job posting." (DE 4:17). Ms. May further opined that sedentary jobs were not included in her review, but that Ms. Mohamed could perform unskilled sedentary occupations within her restrictions. (DE 4:17). In performing her labor market survey, Ms. May identified openings as a laundry worker, assembler of small products, cashier, housekeeper, dietary aide, and kitchen helper. (DE 4:17-19). Within these categories, Ms. May identified a number of open positions. (DE 4:17-19). Ms. May opined, "[b]ased on the above findings, there are many current openings in the Des Moines, Iowa area that are commensurate with Ms. Mohamed's work abilities as found in the Functional Capacity Evaluation." (DE 4:19). She concluded that the labor market was "extremely friendly for an applicant such as Ms. Mohamed. . . ." (DE 4:19).

In response to a request from claimant's counsel, Phil Davis, M.S., issued a vocational report on May 31, 2021. (CE 10:29-34). As a part of this report, Mr. Davis

interviewed the claimant on May 21, 2021, which was translated by the claimant's daughter, Nibras. (CE 10:29). Mr. Davis also reviewed the claimant's medical records. (CE 10:29). During her interview, Ms. Mohamed indicated that she understood spoken English on a scale of 5 out of 10, her ability to speak English as a 2-3 out of 10, and her ability to speak English as 1 out of 10. (CE 10:30). She cannot write in English. (CE 10:30). After reviewing Ms. Mohamed's previous employment, Mr. Davis opined that Ms. Mohamed's job required her to perform work within the medium physical demand level. (CE 10:33). This was because she needed to lift in excess of 40 pounds on an occasional basis, repetitively push and pull, squat, kneel, bend, twist, and stoop. (CE 10:33). She also was required to constantly walk throughout the course of her workday. (CE 10:33). Mr. Davis noted that a medium category job, as defined by the U.S. Department of Labor, requires 50 pounds of maximum lifting with frequent lifting or carrying of up to 25 pounds. (CE 10:32).

Based upon the restrictions of Dr. Pederson, Mr. Davis opined that Ms. Mohamed's physical lifting abilities were within the light physical demand category. (CE 10:33). Mr. Davis further opined that Ms. Mohamed fell within the sedentary to limited aspects of a light physical demand level. (CE 10:33). The light physical demand category is defined as 20 pounds of maximum lifting with frequent lifting and carrying up to 10 pounds. (CE 10:32). It is also defined as light "if less lifting is involved but significant walking/standing is done or if done mostly sitting, but requires push/pull on arm or leg controls." (CE 10:32). Mr. Davis stated further, "I would opine that the restrictions set forth by Dr. Pederson would preclude Ms. Mohamed from performing all of the essential functions of any of her past employment activities." (CE 10:33). He continued that Ms. Mohamed had limited transferable skills based upon her employment history. (CE 10:33). Mr. Davis concluded his report by opining that, based upon Dr. Pederson's restrictions, Ms. Mohamed is now 100 percent precluded in her ability to perform any of her past employment activities without significant accommodations provided by an employer. (CE 10:33).

There are some questions about her termination, as she was initially furloughed in March of 2020 due to a decrease in business caused by the COVID-19 pandemic. (Testimony). Mr. Danner testified that Ms. Mohamed was not furloughed due to her restrictions. (Testimony). She returned to work for four days in July of 2020, but indicated that her pain increased. (Testimony). Her furlough was reinstated. (Testimony). She never provided Atrium with any restrictions. (Testimony). On October 30, 2020, Atrium terminated any employee that remained on furlough. (Testimony). Mr. Danner testified that he eventually reviewed the results of the FCE, and that Ms. Mohamed could return to her housekeeping position with Atrium based upon the position description. (Testimony). Mr. Danner indicated that Ms. Mohamed would be able to stock her cleaning cart in a lighter fashion in order to avoid heavy lifting or pushing. (Testimony).

Ms. Mohamed testified that she continues to have low back pain on a daily basis. (Testimony). She cannot sit for long, and cannot sleep on one side for a long time. (Testimony). She can no longer clean her house, cut the grass, cook, or do laundry.

(Testimony). Her daughter testified that she and her sister help Ms. Mohamed maintain her house. (Testimony). Ms. Mohamed also testified that she has difficulty ascending or descending stairs. (Testimony). Thus, she established a new bedroom in her kitchen rather than on the second floor of her home. (Testimony).

Ms. Mohamed applied for jobs in November and December of 2020 at DeeZee, the Mailbox, and Anderson Windows. (Testimony). She indicated that she failed a physical examination at DeeZee. (Testimony). Upon providing the Mailbox with her restrictions, they did not return her calls. (Testimony). Anderson Windows also declined to offer her employment. (Testimony). She found out about these jobs from family and friends. (Testimony). She did not apply for any other jobs until one week prior to the hearing when she sought assistance from a state vocational rehabilitation office. (Testimony). Ms. Mohamed indicated that she collected unemployment. (Testimony). This would indicate that she was ready, willing, and able, to work. (Testimony). Ms. Mohamed testified that she would be willing to work in a job that complied with the restrictions of the FCE or Dr. Pederson. (Testimony).

CONCLUSIONS OF LAW

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

Temporary Total Disability/Temporary Partial Disability/Healing Period Benefits

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable, rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used

to buttress expert testimony, and therefore is also relevant and material to the causation question.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is “proximate” when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers’ compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

The first question to consider in this matter is whether Ms. Mohamed’s work injury on June 7, 2019, was a cause of temporary disability during a period of recovery. In this case, the claimant was allowed to return to full duty work by Dr. Aabida in June of 2019. There is no question that the claimant sustained a temporary disability during several time periods in 2019, and early 2020. During these times, several doctors either excused her from work, or placed her on modified duty. Both Dr. Pederson and Dr. Boulden seem to agree that Ms. Mohamed had at the least, a temporary aggravation of chronic back issues, and/or entitlement to temporary disability benefits.

As a general rule, “temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition.” Clark v. Vicorp Rest., Inc., 696 N.W.2d 596 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to “partially reimburse the employee for the loss of earnings” during a period of recovery from the condition. Id. The appropriate type of benefits depends on whether or not the employee has a permanent disability. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury.

Iowa Code 85.33(1) provides:

[t]he employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the first employment in which the employee was engaged at the time of injury, whichever occurs first.

Temporary total disability benefits cease when the employee returns to work, or is medically capable of returning to substantially similar employment.

Iowa Code 85.33(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 first of the three items to occur ends a healing period. See Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Evenson v. Winnebago Indus., 881 N.W.2d 360 (Iowa 2012); Crabtree v. Tri-City Elec. Co., File No. 5059572 (App., Mar. 20, 2020). 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). Compensation for permanent partial disability shall begin at the termination of the healing period. Id.

An employee has a temporary partial disability when, because of the employee's medical condition, "it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability." Iowa Code 85.33(2). Temporary partial disability benefits are payable in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee's temporary partial disability, and "shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury." Id.

Additionally, Iowa Code 85.33(3) provides in pertinent part:

If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of the injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

Iowa Code 85.33(3).

The Iowa Supreme Court held that there is a two-part test to determine eligibility under Iowa Code 85.33(3): "(1) whether the employee was offered suitable work, (2) which the employee refused. If so, benefits cannot be awarded, as provided in section 85.33(3)." Schutler v. Algona Manor Care Center, 780 N.W.2d 549, 559 (Iowa 2010). "If the employer fails to offer suitable work, the employee will not be disqualified from receiving benefits regardless of the employee's motive for refusing the unsuitable work." Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 519 (Iowa 2012). If an employee refuses an offer of temporary work by claiming that the work is not suitable, the

employee must communicate the refusal, and reasons for refusal, to the employer in writing when the offer of work is refused. Iowa Code section 85.33(3)(b). If an employee does not communicate the reason for a refusal in writing, the employee is precluded from raising suitability of the work as the reason for refusal until the reason for the refusal is communicated in writing to the employer. Id.

Compensation for permanent partial disability shall begin at the termination of the healing period.

The claimant suggests that she is entitled to temporary disability benefits from August 24, 2020, to the present and ongoing. On August 24, 2020, Ms. Mohamed visited Dr. Boarini. Dr. Boarini noted that the results of a recent MRI were “quite unremarkable,” and diagnosed Ms. Mohamed with myofascial back pain. He recommended a FCE to provide work restrictions. A FCE was performed on November 17, 2020. The FCE concluded that Ms. Mohamed met the material handling demands for a medium demand vocation, according to the Dictionary of Occupational Titles. The Dictionary of Occupational Titles defines medium work as “[e]xerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Light Work.” Dictionary of Occupational Titles – Appendix C, <http://www.dol.gov/agencies/oalj/PUBLIC/DOT/REFERENCES/DOTAPPC> (last visited August 13, 2021). Dr. Schmitz later examined Ms. Mohamed and made no mention of any restrictions or long term issues. Dr. Schmitz’s plan was simply to recommend dietary counseling and surveillance. Vanessa May noted that Dr. Boulden and Dr. Schmitz opined that Ms. Mohamed retained the ability to meet the demands of medium work as defined in the Dictionary of Occupational Titles. Ms. Mohamed previously worked in medium work as a janitor, production helper, and child care monitor, and in light work as a housekeeper.

Ms. Mohamed later had an IME with Dr. Pederson. Dr. Pederson recommended additional treatment, but also provided his own restrictions. These restrictions included no lifting more than 30 pounds from the floor to waist, and avoiding repetitive twisting and bending. Dr. Pederson also recommended that Ms. Mohamed be allowed to change positions frequently. Phil Davis opined that these restrictions precluded Ms. Mohamed from working in her past jobs, as she could only work within the light physical demand area. The Dictionary of Occupational Titles defines light work as:

Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly (Constantly: activity or condition exists 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job requires

working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible.

Id.

Based upon my review of the evidence in the record, I find that Ms. Mohamed was medically capable of returning to substantially similar employment as of the FCE on November 17, 2020. This is based upon the opinions of Dr. Boarini, Dr. Boulden, Dr. Schmitz, and Ms. May, which I find to be more persuasive than the opinions of Dr. Pederson and Mr. Davis. Mr. Danner also testified that Ms. Mohamed could perform her job with Atrium within the restrictions or weight limits as noted in the FCE despite the job description not containing any weight requirements. He also testified that Ms. Mohamed could perform her position within the restrictions of Dr. Pederson. I determined that Ms. Mohamed was medically capable of returning to substantially similar employment as of the FCE on November 17, 2020. This predates Dr. Pederson's IME. Therefore, I find that Ms. Mohamed is entitled to temporary disability or healing period benefits from August 24, 2020, to November 17, 2020.

Permanent Disability

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable, rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

While a claimant is not entitled to compensation for the results of a preexisting disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). It is well

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

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

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

Much like with the analysis regarding temporary disability above, the first question to examine with regard to Ms. Mohamed's claim for permanent disability benefits is whether or not the alleged injury of June 9, 2019, is a cause of permanent disability. In this matter, as in many, there are conflicting opinions between medical providers and examiners.

On July 10, 2019, after several rounds of physical therapy, Ms. Mohamed had an MRI. The MRI showed age indeterminate spondylitic changes to the lumbar spine, other degenerative joint disease, and minimal contact at L5-S1 to the S1 nerve root sleeves and the exiting L5 nerve root. Dr. Boarini examined Ms. Mohamed and reviewed the MRI. He opined that Ms. Mohamed's MRI results were unremarkable. He also opined that his physical examination of Ms. Mohamed was unremarkable. He reiterated this opinion in November of 2019. He recommended that Ms. Mohamed complete another round of physical therapy. When she began physical therapy in December of 2019, she reported pain of 0 to 1 out of 10. Dr. Boarini eventually recommended a FCE. This was performed in November of 2019. The FCE concluded that Ms. Mohamed met material handling demands for a medium demand vocation. Dr. Schmitz also examined Ms. Mohamed. He noted her complaints, but provided no opinion as to whether they resulted in a permanent impairment. He recommended that Ms. Mohamed have dietary counseling and surveillance.

Dr. Boulden, the defense retained IME doctor, found that Ms. Mohamed had degenerative disc disease up and down her spine. He opined that the MRI of July 10, 2019, was "over read" and that it failed to show actual nerve impingement. This was chronic in nature, and Dr. Boulden found no objective evidence of injury upon reviewing the MRI. Dr. Boulden opined that Ms. Mohamed had chronic issues with her spine, and that her increased subjective complaints were not evidence of a material aggravation of these issues. Based upon his examination of the claimant and review of the records, Dr. Boulden declined to provide a permanent impairment rating.

Dr. Pederson, the claimant retained IME doctor, recommended additional treatment and diagnostics. He opined that Ms. Mohamed's fall caused, or aggravated Ms. Mohamed's annular tear and/or disc bulging which caused radicular symptoms. He also provided permanent restrictions and an impairment rating if Ms. Mohamed did not choose to undergo additional treatment. It is unclear from his report whether Dr. Pederson reviewed the actual MRI or just the report.

Based upon the testimony of Ms. Mohamed and her daughter in this case, it is clear that Ms. Mohamed has subjective complaints of pain. She also claimed physical limitations now, which she did not have prior to the work incident. However, I find the medical evidence from Dr. Boarini, Dr. Boulden, and Dr. Schmitz to be most persuasive when compared to the opinion of Dr. Pederson.

Dr. Boarini, a treating physician, indicated that Ms. Mohamed's examination and MRI were unremarkable. Dr. Schmitz examined Ms. Mohamed and made no treatment recommendations with regard to Ms. Mohamed's back, outside of dietary counseling and surveillance. Finally, Dr. Boulden, even though he was retained by defendants, provided a clear opinion as to this being a chronic condition of Ms. Mohamed with no evidence of an acute injury. Dr. Boulden and Dr. Boarini both reviewed the MRI of Ms. Mohamed. It is unclear whether Dr. Pederson did. Therefore, I conclude that the claimant failed to prove, by a preponderance of the evidence, that the work injury of June 7, 2019, was a cause of permanent disability. Considering the foregoing, there is no need to engage in an analysis as to whether or not the claimant sustained an industrial disability, nor is there a need to determine the extent of permanent disability.

Ms. Mohamed alleges in her post-hearing briefing that she is permanently and totally disabled under the statute and common law odd-lot doctrine.

In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtin, 674 N.W.2d 123, 126 (Iowa 2004)(discussing both theories of permanent total disability under Idaho law and concluding the deputy's ruling was not based on both theories rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish that they are totally and permanently disabled if the claimant's medical impairment, taken together with nonmedical factors totals 100-percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100-percent disability, but is so injured that the claimant is "unable to perform services other than 'those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.'" Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

"Total disability does not mean a state of absolute helplessness." Walmart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003)(quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to

perform.” IBP, Inc., 604 N.W.2d at 633. However, finding that the claimant could perform some work despite claimant’s physical and educational limitations does not foreclose a finding of permanent total disability. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., Il Iowa Industrial Commissioner Report 134 (App. May 1982).

In Guyton v. Irving Jensen, Co., the Iowa Supreme Court formally adopted the “odd-lot doctrine.” 373 N.W.2d 101 (Iowa 1985). Under that doctrine, a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are “so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.” Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to provide evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of fact finds the worker does fall in the odd-lot category, then the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include: the worker’s reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker’s physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker’s burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

I previously found that the claimant failed to prove, by a preponderance of the evidence, that the work injury of June 7, 2019, was a cause of permanent disability. For the same reasons, the claimant failed to prove that she is permanently and totally disabled.

Alternate Care pursuant to Iowa Code section 85.27

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care.... The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care

offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code section 85.27(4).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

By challenging the employer's choice of treatment - and seeking alternate care - claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care she has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that care was unduly inconvenient for the claimant. Id. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," and injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id. Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgement of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

In this case, the claimant seeks alternate care by way of an EMG and "other injection/medication modalities" as recommended by Dr. Pederson in December of 2020.

I previously found that Ms. Mohamed did not incur a permanent disability, and that her healing period ended on November 17, 2020. Therefore, ordering the defendants to provide additional treatment is not appropriate. The request for alternate medical care is denied.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 12. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

The claimant seeks an award of one hundred and 30/100 dollars (\$100.30) for filing fees. In my discretion, I award the claimant one hundred and 30/100 dollars (\$100.30) for the filing fee.

ORDER

THEREFORE, IT IS ORDERED:

The defendants shall pay claimant healing period benefits from August 24, 2020, to November 17, 2020.

The claimant shall take nothing with regard to permanent disability benefits.

The claimant's request for alternate medical care is denied.

The defendants shall reimburse the claimant one hundred and 30/100 dollars (\$100.30) for costs incurred.


Pursuant to the agreement of the parties at the outset of the arbitration hearing, the defendants shall reimburse the claimant for the reasonable costs of the IME pursuant to Iowa Code section 85.39.

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

The defendant shall file a first report of injury (FROI) as required by this agency pursuant to 876 IAC 3.1(1) and 876 IAC 11.7. The FROI shall be filed within fifteen (15) days of the date of this order.

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

Signed and filed this 8th day of October, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Samuel Aden (via WCES)

William Scherle (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.