BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CARMEN BUERON, Claimant, vs. IOWA 80 GROUP, INC., Employer, and TWIN CITY FIRE INSURANCE CO., Insurance Carrier, Defendants.	FILED MAY 08 2019 WORKERS COMPENSATION	File No. 5063062 ARBITRATION DECISION Head Note Nos.: 1108, 1402, 1700, 1803, 3800, 3002

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Carmen Bueron, filed her original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on January 17, 2017. Claimant alleged she sustained a work-related injury on May 17, 2016. (Original notice and petition)

For purposes of workers' compensation, Iowa 80 Group, Inc., is insured by Twin City Fire Insurance Company. Defendants filed their answer on February 20, 2017. The defendants denied the occurrence of the work injury on May 17, 2016. A First Report of Injury was filed on September 7, 2016.

The hearing administrator scheduled the case for hearing on May 18, 2018. The hearing took place at 150 Des Moines Street in Des Moines, Iowa. The undersigned appointed Ms. Tammy L. Guenther, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on her own behalf. Defendants called Ms. Deanna Slack, Manager of Iowa 80 Group, Inc., to testify at the hearing. Joint Exhibits 1 through 10 were offered. Claimant offered exhibits 1 through 5. Defendants offered exhibits A through I. All proffered exhibits were admitted as evidence. The original transcript was submitted on June 15, 2018. The parties also submitted post-hearing briefs on July 13, 2018. The case was deemed fully submitted on that date.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;

2. Claimant sustained an injury on May 17, 2016, which arose out of and in the course of her employment with respect to the abdomen/oblique and back;

3. The alleged injury is a cause of temporary disability;

4. Temporary benefits are no longer at issue;

5. If permanency is found the parties agree the method of calculation is by the industrial manner;

6. The commencement date for any permanent partial disability benefits that may be due is January 25, 2017;

7. The weekly benefit rate is $304.81;

8. Defendants waive any affirmative defenses they may have had available to them;

9. Claimant is entitled to be reimbursed for an independent medical examination pursuant to Iowa Code section 85.39;

10. Prior to the hearing, claimant was paid $674.91 in temporary partial disability benefits and $34.67 in temporary total disability benefits and;

11. The parties agree claimant has paid the costs listed.

ISSUES

The issues presented are:

1. Whether claimant sustained a permanent disability as a result of her work injury on May 17, 2016;

2. If permanency is found there is the issue of the extent of claimant's permanent partial disability; and

3. Is claimant an odd-lot employee?

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant and Ms. Slack, and after judging the credibility of the witnesses, plus after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant is presently 44 years old and married. She smokes tobacco products and has been counseled to cease smoking. Claimant completed the eleventh grade in high school and then left school. In 2005 claimant received her General Equivalency Diploma (GED). She resides in Davenport, Iowa.

Claimant has previous work experience as a warehouse person in Davenport, Rock Island and Chicago. She has worked in a manufacturing plant making hydraulic hoses. Claimant has worked for Sedona Staffing driving a fork lift truck. She has worked at Group O in Milan, Illinois.

Claimant testified she had sustained some previous injuries to her body. At ten years old, claimant fractured her left arm while she was roller skating. In 1998, claimant was involved in a motor vehicle accident outside of Chicago. Claimant fractured her left arm but in a different place than the fracture she sustained as a child. In 2007, claimant incurred a non-work-related injury to her left knee when she turned on a sticky floor. In 2012, claimant hurt her right knee while she was operating a fork lift truck. She had both surgery and physical therapy.

Also in 2012, claimant began to visit Mesick Family Chiropractic Clinic for low back pain and heel pain. The first appointment occurred on April 19, 2012. Claimant reported the problems were not related to her employment at Riverside Staffing. (Joint Exhibit 8, pages 1-14) Claimant had chiropractic manipulation. She had other appointments on April 20, 2012, 4/23/2012, 4/26/2012, 5/3/2012, 5/17/2012, 5/24/2012, 6/7/2012, 6/9/2012, 6/20/2012, 6/27/2012, 8/31/2012, 9/6/2012, 9/7/2012, 11/6/2012, 2/2/2013, 3/30/2012, 6/1/2013, 6/25/2013, 10/16/2013, 12/2/2013, 12/27/2013, 3/28/2014, 5/24/2014, 6/2/2014, 9/26/2014, 10/22/2014, 7/29/2015, and 2/8/2016.

Initially, claimant began working at Iowa 80 Group, Inc., as a temporary worker through Kelley Services. However, on December 23, 2015, claimant became an employee of Iowa 80 Group, Inc. Claimant was hired as a "picker". The formal title of the job is "Warehouse Associate." (Jt. Ex. 10, pp. 1-4) The key objectives of the warehouse associate are:

1. Responsible for maintaining a safe, clean profit center which provides efficient customer service, to assure 100% customer satisfaction.

2. Warehouse associates are responsible for the flow of merchandise from the point of delivery to the storage of the product within the warehouse to the shipment of the product to other profit center or customer destinations. When working in this role, they will be responsible for unpacking, repacking, organizing, and stocking merchandise.

(Jt. Ex. 10, p. 1)

The job duties of the warehouse associate are detailed on page 2 of exhibit 10. The duties are incorporated by reference as though fully set out herein. (Jt. Ex. 10, p. 2)

The physical demands of the warehouse associate are described in joint exhibit 10, page 4. They are:

Physical Demands:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing this job, employees will be regularly standing for 8 hours: use hands to finger, handle, or feel objects, tools or controls. The employee frequently is required to walk and reach with hands and arms. The employee is occasionally required to stoop, kneel, crouch, or crawl.

The employee must be able to regularly lift up to 75 pounds.

(Jt. Ex. 10, p. 4)

Claimant testified that on May 17, 2016, she bent over to pick up a box of oil. She lifted up the box and turned to place it on a pallet. As she turned, she heard a "pop." (Transcript, page 14) Claimant testified it was a painful pop she felt on the lower right side of her back. (Tr., p. 15) Claimant stated, she dropped the box and sat down because she was in so much pain. A coworker came near her. The worker indicated he would go get the supervisor. (Tr., p. 16) Claimant performed a drug test on site and then went home.

On May 18, 2016, claimant saw Packy Huettman, D.O., at Genesis Health System. (Jt. Ex. 1, p. 1) Dr. Huettman diagnosed claimant with a lumbar sprain. Dr. Huettman examined claimant's lumbar spine. The physician found tenderness on the right at L-3, L-4, and L-5. There were muscle spasms and tender points. There was also tenderness at the right sacral area. (Jt. Ex. 1, p. 1) Dr. Huettman prescribed Naprosyn and Skelaxin. Claimant was advised to vary hot and cold packs. The physician advised claimant to return in one week. (Jt. Ex. 1, p. 2)

Claimant returned for a follow-up appointment on May 25, 2016. (Jt. Ex. 1, p. 3) She reported persistent right sided low back pain with some numbness of the posterior right thigh. (Jt. Ex. 1, p. 3) Once again, Dr. Huettman found right sided tenderness at L-3, L-4, and L-5. There were muscle spasms and reduced ROM with right sided straight leg raising. (Jt. Ex. 1, p. 3) Claimant was on a work restriction. The doctor ordered physical therapy. (Jt. Ex. 1, p.4)

On June 15, 2016, claimant returned to Dr. Huettman for a recheck. (Jt. Ex. 1, p. 5) Claimant reported there was no improvement in her back pain. The Naprosyn did not help her but the Skelaxin did. Claimant stated she had no previous back injuries. (Jt. Ex. 1, p. 5) Dr. Huettman conducted a physical examination of claimant's musculoskeletal system. The symptoms were similar to the ones found during the previous clinical visit. (Jt. Ex. 1, p. 5) Dr. Huettman prescribed Meloxicam, 15 mg. (Ex. 1, p. 5) The physician discussed the physical therapy report with claimant. There was no improvement with conservative physical therapy. (Jt. Ex. 1, p. 6)

Claimant underwent magnetic resonance imaging (MRI), on June 16, 2016. Ronald W. Fuller, M.D., a radiologist, found:

> FINDINGS:
>
> Spinal cord: Conus terminates at L1. Signal in the visualized cord is normal.
>
> Vertebrae:
>
> Alignment of the lumbar spine is anatomic. There is no evidence of fracture. Marrow signal is normal.
>
> Segmental analysis:
>
> T12-L1: Normal
>
> L1-2: Normal
>
> L2-3: Normal
>
> L3-4: Normal
>
> L4-5: There is broad-based disk bulging to the right causing right lateral recess narrowing. Disk bulge does contact the undersurface of the exiting nerve root in the neural foramina.
>
> L5-S1: Normal
>
> Other: No additional findings.
>
> **IMPRESSION: Right-sided bulging disk at L4-5 contacting the undersurface of the nerve root in the neural foramina. Recommend clinical correlation**. (Emphasis added.)

(Jt. Ex. 2, pp.1-2)

The next appointment with Dr. Huettman occurred on July 7, 2016. (Jt. Ex. 1, p. 7) The physician prescribed Tylenol with Codeine #3, Baclofen, 20 mg, and Meloxicam, 15 mg. (Jt. Ex. 1, p. 7) Claimant had visited a pain clinic. She received a lumbar epidural steroid injection on June 28, 2016. (Jt. Ex. 4, p. 1) Claimant reported little improvement after the injection. (Jt. Ex. 1, p. 7) Dr. Huettman found normal strength and gait. He also found bilateral tenderness at L-3, L-4 and, L-5. There were muscle spasms and positive straight leg raising on the right. (Jt. Ex. 1, p. 7) The physician ordered a TENS unit. (Jt. Ex. 1, p. 7) A second lumbar epidural steroid injection occurred on July 19, 2016. (Jt. Ex. 4, p. 2)

On August 8, 2016, claimant presented to Myles J. Luszcyk, D.O., an orthopedic surgeon at ORA Orthopedics in Moline, Illinois. Claimant detailed her medical history for Dr. Luszcyk. The following is the medical history provided to the orthopedist:

> The patient is a 41-year-old female who primarily complains of axial-based low back pain. She also notes some radiation of symptoms that go down the lower extremity. This appears to go down the back of the hamstring, the back of the calf, and into the anterolateral aspects of the foot region. This seems to be more consistent with an L5 versus an S1 nerve root distribution by description of the patient's subjective complaints. She reports her pain is a sharp sensation. It is 50/50 in the back and down the leg. She does get some pain that radiates down into the left buttock and hamstring as well, but she reports that these symptoms are essentially unchanged from her injury in May. Her pain is 6/10. It is fairly constant. It does radiate. It does wake her from sleep. Really nothing has improved her symptoms at this point. Rest seems to help, but any type of twisting, bending, or lifting exacerbates her symptoms. Please note that she has tried a TENS unit. She has done 6 sessions of therapy at this point. She has done anti-inflammatory medications. She has had now 2 epidural injections without significant relief of symptoms. She states that she was lifting heavy boxes at work when she immediately felt a burning sensation in the back that radiated down the right lower extremity.

(Jt. Ex. 3, p. 1)

Dr. Luszcyk reviewed the MRI of the lumbar spine. The orthopedist opined the MRI showed:

> It does show a very small disk bulge on the right causing some mild neural foraminal narrowing, lateral recess narrowing, and does appear that there is an annular tear associated with this. There is certainly no critical stenosis centrally within the lateral recess or the foramen.
>
> **ASSESSMENT: At this point time is a degenerative disk disease at L4-L5 with an annular tear and small disk bulge on the right at the**

L4-5 level causing intractable back pain and bilateral leg pain symptoms.

(Jt. Ex. 3, p. 2)

Dr. Luszcyk discussed a plan of care for claimant in his clinical notes for August 8, 2016. The doctor related claimant's annular tear and disk bulge to claimant's work injury. The orthopedist wrote:

> PLAN: I cannot at this point explain the patient's left lower extremity symptoms. She reports that this has really been present since her injury, and certainly the MRI from June 2016 after her injury does not show any severe stenosis on the left to account for her left-sided symptoms. I do think, however, although she has had some degenerative changes at the L4-L5 level, I suspect that the annular tear and the disk bulge is a result of the acute injury. This certainly does make sense with some of the leg symptoms that she is experiencing and the back pain that she is experiencing. I, however, expressed to Carmen that from a surgical perspective, there is very little that I can offer her. I do not feel that surgery would improve her symptoms. Her bulge is very mild, and I have expressed that going in to decompress the area, I could not guarantee that this would improve any of the pain she is experiencing, as she has very minimal stenosis. Moreover, I cannot state that removing the small disk bulge will help her in any way. I think the scar tissue that would result would cause further aggravation of her radiculopathy. The fact that injections also did not help really makes me concerned to proceed down a surgical road, as again, I have no confidence that I would be able to improve her from a surgical perspective. From my standpoint, there is very little I can offer her as I am merely just the surgical consultant. I would have her continue with therapy and anti-inflammatory medications, but from my standpoint, she will follow up on a p.r.n. basis. The patient agrees with the care and management discussed. All questions were answered to the apparent satisfaction of the patient. Please note that I would diminish her work restrictions to 4 hours a day as she finds that she is really struggling to continue during an 8-hour period.

(Jt. Ex. 3, pp. 2, 3)

On August 18, 2016, claimant returned to Dr. Huettman. (Jt. Ex. 1, p. 9) No additional epidural steroid injections were recommended to claimant. (Jt. Ex. 1, p. 9) Claimant reported the Baclofen was of little benefit. Dr. Huettman added Neurontin, 300 mg. to claimant's prescriptions. The physician examined claimant, and found normal strength and gait. There was right sided pain to palpation of L4 to L5, paraspinal muscle spasms, and right sided positive straight leg raising. (Jt. Ex. 1, p. 9)

The next appointment with Dr. Huettman occurred on September 20, 2016. Claimant reported water therapy was beneficial. Claimant desired a return to 8 hour work days. (Jt. Ex. 1, p. 11) The physician switched claimant's pain medications; Tylenol #3 was no longer prescribed. The Gabapentin was increased. (Jt. Ex. 1, p. 12)

On October 24, 2016, Dr. Huettman examined claimant for low back pain with pain radiating down the right buttock and occasionally the pain would radiate into the right leg. (Jt. Ex. 1, p. 13) Claimant had normal strength and gait. Range of motion of the back was reduced. Claimant experienced paraspinal muscle spasms of the right lumbar spine and slight pain with right straight leg raising. (Jt. Ex. 1, p. 13) Dr. Huettman increased claimant's Gabapentin to 400 mg three times per day. The physician suggested massage therapy too. (Jt. Ex. 1, p. 13)

Several weeks later, on November 18, 2018, claimant reported to Dr. Huettman that after two successive days of physical therapy, she was unable to get out of bed. (Jt. Ex. 1, p. 15) Claimant also reported she slipped on a piece of paper at work during the prior week. Claimant stated she reported the incident to her supervisor. Her back pain exacerbated. Dr. Huettman noted claimant was leaning forward and complained of back pain when walking. (Jt. Ex. 1, p. 15) The Gabapentin was increased to 600 mg. (Jt. Ex. 1, p. 16)

The next appointment occurred on November 29, 2016. (Jt. Ex. 1, p. 17) Claimant reported slight improvement from her previous clinical visit. (Jt. Ex. 1, p. 17) There was tenderness with muscle spasms especially in the L4 to S1 areas. (Jt. Ex. 1, p. 17) Dr. Huettman referred claimant to Timothy Miller, M.D.

Dr. Miller performed an assessment and formulated a treatment plan on December 29, 2016. (Jt. Ex. 4, p. 4) The physician opined:

> At this point, I would consider her at maximum medical improvement. I think she has improved about as much as she is going to. There may be ebbs and flows, but I think she has ongoing mechanical back pain and would consider her to be in Category II of the AMA 5th guidelines impairment related to mechanical pain from structural finding in the spine and would rate her along the line. I am uncertain whether I am going to be the rater on her or Dr. Huettman will be, but that is my thought that she is MMI and would rate her along that category. I do think it would be wise to get a functional capacity evaluation on her at this time to determine permanent restrictions. I think that it would be wise to set some restrictions on lifting, repetitive bending and stooping; otherwise I think we will be back here seeing the same problem every month or two for the foreseeable future. I am uncertain whether factory warehouse work is going to be a good choice for her. She may be better off in a position that would allow moving around from sit to stand and limited lifting, limited repetitive bend and stoop, but again, I am somewhat prejudging what the restrictions will be, that is just my though [sic] process with it at this time.

> At this point, if desire is made to prove or disprove joints are related, I would be happy to test her, but I think again this has low yield. Proving discogenic pain would require discography. Many people do not believe in discography, but it can be somewhat useful, however, I normally have not recommended it purely for informational purposes, only when it is going to be a determinate whether a patient is going to have an interbody fusion and I do not believe interbody fusion would be in her best interest given the relatively meager data showing improvement with lumbar fusion vs. ongoing exercise program.

(Jt. Ex. 4, p. 4)

On the very same date, claimant also visited Dr. Huettman. (Jt. Ex. 1, p. 19) Claimant reported "pain all the time". Dr. Huettman opined, "She is about at her MMI". The physician continued the physical therapy and medications. (Jt. Ex. 1, p. 20) Claimant had normal strength and gait. The ROM of her lumbar spine was reduced. She had tenderness to palpation and muscle spasms. (Jt. Ex. 1, p. 20)

Effective January 25, 2017, Dr. Huettman opined claimant was at MMI. The treating physician imposed permanent restrictions. They were: only occasional lifting of 5 pounds, no pushing or pulling, no stooping or bending, no reaching above the shoulder level, and no reaching below the shoulder level. (Jt. Ex. 1, p. 21) Dr. Huettman's final diagnosis for claimant was **chronic lumbar back pain with annular tear.** (Emphasis added.)

Defendants sent claimant to Stephen F. Weiss, M.D., of Rockford, Illinois for an independent medical evaluation. The examination occurred on March 22, 2017. Dr. Weiss authored an initial report on March 29, 2017. (Defendants' Exhibit A)

Dr. Weiss performed a physical examination of claimant. In his report, the independent medical examiner noted:

> **PHYSICAL EXAMINATION**
>
> Physical examination reveals that Ms. Bueron has a stated height and weight of 5'5", 225 pounds. She has a slightly antalgic gait on the left side. She indicates she is unable to walk on her heels or toes or either border of her feet. No paravertebral muscle spasm is noted.
>
> Range of motion of the back is as follows:

Flexion	10 degrees (normal equals 70-90 degrees)
Extension	20 degrees
Right bending	20 degrees

Left bending 20 degrees

There is pain on superficial palpation and widespread deep palpation. She has pain on simulated axial compression and simulated trunk rotation.

Neurological evaluation reveals the right knee jerk is 1+ and the left knee jerk is 2+. (SFW Note- Ms. Bueron has had surgery on the right knee with an anterior medial scar. Surgery apparently was for a torn patella tendon and this probably explains the depressed knee jerk.) Both ankle jerks are 2+. No EHL weakness is noted. No gross sensory deficit is appreciated. Straight leg raising is positive on the right side in the sitting position. No clonus is elicited. Plantar reflexes are bilaterally downgoing.

Circumferences of the lower extremities are not measured as it is too painful for her to lie fully supine. (SFW Note- The presence of pain on superficial palpation, widespread deep palpation, simulated axial compression, and simulated trunk rotation are all positive Waddell's signs consistent with a diagnosis of symptom magnification.)

(Def. Ex. A, pp. 4-5)

Dr. Weiss diagnosed claimant with a lumbar strain and symptom magnification. (Def. Ex. A, p. 5) The independent medical examiner opined claimant sustained her lumbar strain secondary to the work injury on May 17, 2016. (Def. Ex. A, p. 5) Dr. Weiss imposed permanent lifting restrictions. He restricted claimant from lifting more than 15 pounds on a frequent basis and 25 pounds on an occasional basis. (Def. Ex. A, p. 6)

Dr. Weiss rated claimant as having a 2 percent permanent impairment to the body as a whole. However, the physician relied on the Sixth Edition of the AMA Guides to the Evaluation of Permanent Impairment rather than the Fifth Edition which is used to calculate functional impairment ratings under the Iowa Workers' Compensation laws. (Def. Ex. A, p. 6)

Dr. Weiss provided a supplemental report with the date of April 19, 2017. Defense counsel questioned the independent medical examiner about the permanent work restrictions that were imposed. Defense counsel wanted to know whether the permanent restrictions were related to the minor lumbar strain or to the doctor's impression there was symptom magnification and/or obesity.

Dr. Weiss provided a response. It is duplicated below:

Because I felt that Ms. Bueron had sustained a 2% permanent impairment as a result of the work injury in question, I did recommend permanent light duty restrictions. Obviously, the fact that there is evidence of Symptom Magnification does make decisions regarding both the amount of permanent impairment she may have sustained and whether she needs

> permanent work restrictions difficult. In this case, I could not ignore the finding of nerve root irritation and for that reason I felt the aforementioned permanent work restrictions were appropriate and were secondary to the work injury in question.

(Def. Ex. B, pp. 10-11)

Claimant exercised her right to an independent medical examination pursuant to Iowa Code section 85.39. David H. Segal, M.D., conducted the examination on May 23, 2017. Claimant provided a detailed history of her work injury and the resulting symptoms. Claimant explained there was constant pain in the center and right lower back with intermittent pain on the left side of the lower back. Claimant indicated she had pain radiating to the buttocks. The pain was constant on the right side and intermittent on the left. On the right leg, the pain radiated on the posterior and lateral side of the thigh to the knee, then on the lateral and posterior side from the calf to the ankle. She had numbness and tingling in the right foot. Dr. Segal said the radiation was in the L4 distribution. (Claimant's exhibit 1, page 11) Claimant described the pain as aching, burning, cramping, deep, discomforting, numbness, sharp, shoots, spasms, stabbing, stiffness, throbbing and tingling. (Cl. Ex. 1, p. 1)

After conducting a physical examination of claimant, Dr. Weiss diagnosed claimant with four conditions. The diagnoses are duplicated below:

> 1. Right L4 and L5 radiculopathies. Ms. Bueron suffered a work injury on May 17, 2016, that is well documented. Prior to that injury, she did not have any low back pain or radicular pain. The pain initially started in the low back and buttock area and then spread into her leg. With disc injuries, very commonly initially there is the annular tear where the hard outer covering of the disc rips and tears from trauma. This can cause significant low back pain. Through that opening with the continued motions of living (which include sitting, getting up, walking), the soft spongy center of the disc (known as the nucleus pulposus) can extend out through the area of the annular tear. Furthermore, the annular tear has been shown to cause chemical irritation of the nerve. All of these factors are causing Ms. Bueron's radiculopathy. Her leg pain is well documented in notes starting very shortly after the injury, and the back pain started immediately on the right side. Dr. Huettman gave a diagnosis of radiculopathy as does the physical therapist. Dr. Luszcyk does not use the word *radiculopathy* but describes a radiculopathy. Even Dr. Weiss's exam shows a positive straight leg raise, which is typically a sign of radiculopathy. This diagnosis has been caused by the injury of May 17, 2016. I agree with Dr. Luszcyk when he says in his notes: "I suspect that the annular tear and the disc bulge is a result of the acute injury." I agree with this. I do think that this disc herniation and annular tear were directly caused by the injury and continue to this day.

2. Facet arthropathy. Ms. Bueron does have tenderness to palpation over the facet area of L3, L4, and L5. This is well documented in all of Dr. Huettman's notes, all the physical therapy notes, and was clearly present in my exam today. The facet injury could have been caused the day of the injury, or it could have developed because of the altered gait. Additionally, the injury of November 8, 2016, appears to have worsened or exacerbated the facet arthropathy and SI joint arthropathy and also has given Ms. Bueron more prominent left-sided symptoms, although the right side is still predominant.

3. SI joint arthropathy. This is specifically documented in the physical therapy notes. In my exam, I found four positive provocative SI joint tests. There is significant tenderness to palpation over the SI joint. This pain also may have started directly with the injury, or it may have developed because of the altered gait and the guarding and the difficulty in walking that Ms. Bueron is experiencing. Again, as stated above in diagnosis #2, the injury of November 8, 2016, appears to have worsened or exacerbated the SI joint arthropathy and facet arthropathy, also giving Ms. Bueron more prominent left-sided symptoms, although the right-sided symptoms remain predominant.

4. Annular tear. At the time of the injury, as was mentioned above, I believe the annulus fibrosis (which is the hard outer covering of the disc) tore from the injury. Through that tear, the disc herniated out and continues to compress the nerve. Annular tears, however, can be considered a separate injury, as they independently can cause nerve pain. The mechanism of pain generation from an annular tear is believed to be 1) the inflammatory cascade surrounding the annular tear secondarily inflames the nerve, and 2) the acidic-based fluids that are extruded from the annular tear and cause a chemical radiculitis of the nerve. So, there are two mechanisms which are causing dysfunction of the nerve, which are causing pain, numbness, tingling, and weakness: the annular tear and the disc herniation causing pressure.

(Cl. Ex. 1, p. 14)

Dr. Segal opined the work injury caused claimant's current condition. Dr. Segal opined the L4-L5 disc injury resulted from the May 17, 2016 work injury. (Cl. Ex. 1, p. 15) The independent medical examiner also determined claimant suffered a permanent impairment as a result of the work injury. (Cl. Ex. 1, p. 14) Dr. Segal calculated the permanent impairment to be 16 percent impairment to the body as a whole. (Cl. Ex. 1, p. 15) The doctor described in detail how he arrived at his calculation. His method is described below:

> Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, what impairment rating would you assess as being caused by the work injury? Using the *AMA Guides, Fifth Edition,* in the Spine Chapter, page 384, Table 15-3, "Criteria for Rating Impairment Due to Lumbar Spine Injury," the appropriate category for Ms. Bueron is DRE Lumbar Category III, 10%-13% impairment of the whole person. The description of this category is as follows: "Significant signs of radiculopathy, such as dermatomal pain and/or in a dermatomal distribution, sensory loss, loss of relevant reflex(es), loss of muscle strength, **or** history of herniated disc at the level and on the side that would be expected from objective clinical findings associated with radiculopathy." Therefore, Ms. Bueron is in the Lumbar Category III, 10%-13% impairment of the whole person. Factoring in the fact that she has continued severe symptoms of pain, difficulty walking, difficulty with function, and cannot manage activities of daily living, she would be at 13% impairment of the whole person. Additionally, the Pain Chapter (which is Chapter 18 supports addressing the SI joint pain with adding 3% impairment of whole person based on the significant pain from the SI joint, which is not really addressed by the Lumbar Chapter. Therefore, she would have a total of 16% impairment of whole person based on the *AMA Guides, Fifth Edition* and my evaluation.

(Cl. Ex. 1, p. 15)

Dr. Segal also imposed permanent restrictions in his report. They were:

Walking up to 10 minutes at a time, then needs to stop

Standing up to 10 minutes at a time, then needs to stop

Sitting up to 30 minutes at a time, then needs to change position

Driving/riding in car – up to 20 minutes at a time, then needs to get out and stretch/walk

Lifting waist to/from crown up to 5 lbs. – occasionally

Lifting waist to/from crown greater than 5 lbs. – never

Front carry up to 5 lbs up to 50 ft. – occasionally

Front carry greater than 5 pounds – never

Lifting floor to/from waist up to 5 pounds – occasionally

Lifting floor to/from waist greater than 5 pounds – never

Reaching – occasionally

Pulling/pushing up to 5 lbs. – occasionally

Pulling/pushing greater than 5 lbs.- never

Bending one time per hour – occasionally

Bending up to 3 times per hour – rarely

Bending more than 3 times per hour – never

Squatting, stooping, crawling, kneeling – never

Climbing ladders – never

(Cl. Ex. 1, p. 15)

In his conclusion, Dr. Segal emphasized the point claimant's medical history was consistent throughout her medical records. The independent medical examiner did not observe any type of symptom magnification. (Cl. Ex. 1, p. 16)

On August 9, 2017, Cassim M. Igram, M.D., at the University of Iowa Hospitals and Clinics, examined claimant for a surgical consultation. A physical examination was conducted. The results showed:

Physical Exam:

On physical exam she was most cooperative. She does seem uncomfortable. Difficulty arising from a chair and definitely favors the right leg with ambulation. There was reproducible pain with hip twisting and head compression. In the seated position she did have breakaway weakness in the right leg. Straight leg raising in the seated position was unimpressive. In the supine position she had reproducible complaints right more so than left at about 20 degrees bilaterally. Lumbar MRI reviewed. I do not see significant nerve root impingement on the study from 13 months ago.

Assessment:

Assessment is back and right leg pain. History of work-related injury from the spring 2016.

Plan:

Today I did discuss her condition with her. Based on the information at hand I would not recommend surgical intervention. She does indicate a change in her symptoms and a worsening of her symptoms since the MRI scan. In my estimation it would be appropriate to repeat the study. If the MRI is unchanged my opinion will remain the same. I will be happy to review the study once it is completed.

(Jt. Ex. 5, pp. 3-5)

On August 16, 2017, claimant underwent a second MRI through Genesis Health System. (Jt. Ex. 6) The MRI was ordered by Dr. Igram. Curtis T. Poor, M.D., interpreted the MRI results as follows:

> IMPRESSION: Stable MR lumbar with tiny right-sided L4-5 lateral foraminal disc protrusion without loss of epidural fat, with face minimal abnormal annular signal, a finding described in cases of annular disruption.

(Jt. Ex. 6, p. 2)

Dr. Igram reviewed the August MRI. His clinical notes reflected his opinion following the MRI.

> I have reviewed a repeat lumbar MRI in this patient dated August 16, 2017. The study is essentially unchanged according to the report from the study of June 16 of 2016. In that event, my opinion is as noted above. At this time I would not recommend surgical intervention. I do not have any other treatment recommendations.

(Jt. Ex. 5, p. 4)

Defendants desired another independent medical examination. Rick Garrels, M.D., examined claimant on October 10, 2017. (Def. Ex. D, p. 13) The physician noted the following during the physical examination of claimant:

> This is a healthy appearing Hispanic-American female. She has moderate pain behavior. She has mildly antalgic gait favoring the right leg. She reports difficulty moving the right hip and also describes a locking sensation in the front of the left hip. Lumbar spine ROM is limited to 30 degrees of flexion, 10 degrees of extension, 25 degrees of right side bending and 35 degrees of left side bending. With the seated straight leg raise there is increased low back pain with hip flexion at 90 degrees. Her Patella reflex is 1+ on the right and 2+ on the left. The Achilles reflex is 1+ bilaterally. Her bilateral lower extremity strength is 5/5 throughout. She is able to do both tiptoe and heel walk but reports pain and pulling in the low back. Pinwheel testing shows normal sensation throughout the left leg. The right leg has decreased sensation along the medial thigh and the proximal lower leg. The right shin as hypersensitivity compared to the thigh. Circumference measurements 8 cm above the anterior patella pole is 49 cm bilaterally. The circumference 12 cm below the distal patellar pole is 40 cm bilaterally. Waddell testing was completed with the patient standing and cervical compression resulted in increased lower back pressure. Rotation of the torso with her arms along her side resulted in an increase in right low back pain.

(Def. Ex. D, p. 16)

Dr. Garrels held different opinions relative to causation than did the other medical experts. Dr. Garrels opined:

> When you include the medical history of the chiropractor prior to the work injury the picture of her condition makes more sense. The injury sustained on 5/172016 appears to be a temporary aggravation of the long term pre-existing low back pain that appears to have developed as a result of a motor vehicle accident years prior. Typically a low back sprain takes 6-8 weeks to resolve, but when there is a significant pre-existing state it may take longer. When you look at the objective documentation of Dr. Huettman, it appears the acute muscular findings resolved on, or about January 1, 2017. I would use this date as the date of Maximal Medical Improvement. . . .

(Def. Ex. D, p. 13)

Dr. Garrels also differed from the other medical experts who had provided permanent impairment ratings. Dr. Garrels opined:

> When I first looked at the impairment ratings by Drs. Weiss and Segal it appeared they found similar findings, but their rating[s] were quite different. Part of this is due to two different rating methods being used. Dr. Weiss used the 6th Edition and Dr. Segal the 5th Edition. Since this is an Iowa Claim, the 5th Edition is required. Taking into consideration the additional information about her pre-existing state, I conclude her current state is consistent with the normal progression of that state which is why none of the treatment which typically works for acute discogenic disease has been effective. The imaging changes largely help to understand her pre-existing state. The fact there was no change between the two MRI's supports this further. The chiropractic records help to understand how she was functionally limited by the pre-existing state too. Using the AMA Guides, 5th Edition, Ms. Bueron falls in DRE Lumbar Category I which assesses a 0% whole person impairment using Table 15-3 on page 384 of the AMA Guides.

(Def. Ex. D, p. 13)

Dr. Garrels opined claimant needed restrictions but the restrictions were for pre-existing lumbar degenerative disc and joint disease and for chronic SI pain. The restrictions were not for any work injury on May 17, 2016. Dr. Garrels agreed with the restrictions Dr. Huettman had imposed.

On November 26, 2017, Dr. Segal issued a subsequent report as he had reviewed additional medical records. (Cl. Ex. 2, p.1) Dr. Segal replied to some of the opinions issued by Dr. Garrels. For example: Dr. Segal stressed the point that prior to

claimant's work injury on May 17, 2016, she was under no work restrictions for any conditions. Dr. Segal also took issue with Dr. Garrels concerning the chiropractic visits claimant made in 2012 and 2013. Dr. Segal opined:

> Of specific importance is that her low back pain was worst in 2012 and 2013 due to the number of chiropractic visits, which were fifteen visits in 2012 and only six visits in 2013. There were five visits in 2014, one visit in 2015, and one visit is 2016. In the last visit in 2016, there was no pain noted at the L5 area. The pain was noted between T5-T6 to L2-L3, different from where the pain is now after the work injury of 5/17/16. She had numbness around the C4 area. There is no note of dysfunction or inability to function at work, there was no history of dysfunction or inability to function at work. Therefore, the chiropractic records support remote low back discomfort that was more of a whole spine general discomfort (from the records that I have to review), that was worse in 2012, which is remote from the work injury of 5/17/16. Leading up to the work injury of 5/17/16, it appears that there was some spine pain, but not in the areas of the work injury, and there was no radicular pain. Therefore, the work injury of 5/17/16 caused the radicular pain, and there likely was a remote preexisting condition which was stable and appears minimal by the records and had a substantial permanent aggravation based on the work injury. The work injury of 5/17/16 caused the current condition in terms of low back pain with radiculopathy and caused a permanent aggravation of what appears to be a remote history of low back pain that was possibly at low levels and stable leading up to the work injury of 5/17/16. It does appear, however, that leading up to the work injury the pain was not in the same area of pain and symptoms that the work injury of 5/17/16 had caused.
>
> I do not think it is reasonable to conclude that the symptoms that Ms. Bueron currently complains of are a continuation of the prior remote symptomatology or low-grade symptomatology leading up to the work injury of 5/17/16. Furthermore, it is also not reasonable to speculate that she would have developed pain in those regions because of her remote preexisting symptoms-in fact, quite the opposite because she never complained of radicular pain leading up to the work injury of 5/17/16. It is much more likely that she never would have complained of radicular pain were it not for the work injury of 5/17/16. Additionally, because she was completely functional and working without restrictions and without seeking advanced medical treatment (only limited chiropractic, specifically in the years 2014, 2015, and 2016, where there are only five visits in 2014 and only one visit per year in both 2015 and 2016). It is very unlikely that her preexisting condition would have spontaneously caused the current pain she has. In fact, it is much more likely that her preexisting condition would have continued the way it was in 2015 and 2016 and would have remained what appears to be low-grade symptomatology throughout her

> entire spine, which appears to be the common complaint of generalized back pain that many people her age have.

(Cl. Ex. 2, pp. 4-5)

Dr. Segal differed strongly with Dr. Garrels about the nature and extent of claimant's work injury. (Cl. Ex. 2, p. 5) Dr. Segal opined it was not appropriate to diagnose claimant with "low back sprain", because claimant had radiculopathy from the onset of her work injury. (Cl. Ex. 2, p. 5) Dr. Segal also stated he disagreed with Dr. Garrels' impairment rating of zero percent. Dr. Segal opined:

> As far as Dr. Garrels's impairment rating of 0% whole person based on the fact that he feels there are no symptoms from work injury of 5/17/16 at that time-I respectfully disagreed with that. His writing that "none of the treatments which typically work for acute discogenic disease have been effective," really has no bearing on this discussion of impairment rating or causation. In general, treatments do not always work for everybody, and that does not necessarily imply etiology or causation. When treatments do work, that can be diagnostic and help imply causation. However, the fact that they did not work does not necessarily imply where the pain generator is or what the pain generator is, and definitely does not have a bearing on causation. The fact that there was no change between the two MRIs also does not support his hypothesis, as both MRIs were after the work injury, and there does not have to be a progression. The fact that the two MRIs after the work injury did not significantly change (although I have not reviewed the second one myself), and the fact that the radiologist writes there is no major change in the second MRI, does not in any way imply or support the hypothesis that Ms. Bueron's pain is from preexisting injury.

(Cl. Ex. 2, pp. 5-6)

Claimant was paid a total of $709.58 in temporary partial disability benefits and temporary total disability benefits. The parties agreed $674.91 was paid in temporary partial disability benefits and $34.67 was paid in temporary total disability benefits.

Both claimant and Ms. Deanna Slack testified about claimant's current work duties. Ms. Slack testified she was well aware claimant needed to work in a light duty position. (Tr., p. 59) Claimant was placed in a position where she bags, and tags small items, places a "header tag" with a hole punched through it, and prepares the small bags for shipping to the other truck stops owned by the Iowa 80 Group, Inc.

Ms. Slack testified credibly about claimant's job placement. During the defendants' portion of the case, Mr. Donohue asked a series of questions about claimant's light duty position. A portion of the questions and answers are duplicated below:

Q. I'm sorry, I interrupted you. So going forward, up until Carmen's injury, if you have anything else to say about that or then tell us what in terms of light duty Carmen was provided with.

A. The bagging and tagging. So she's described some of it of what she's [sic] does. It's a very organized area that has multiple items and they're ever changing because it's whatever we can have.

There are certain - - let's say 52 items - - I believe I counted them - - are about the same. So we're always going to have a magnet that needs pieces added to it and put in a bag with the label.

But then there are some newer things. Like there were some shop towels, which might not always be something we buy, but we did. And so there's no new things, so it is ever changing and ever growing, but it's a permanent profit center in our business because we need it to be competitive.

Q. So, as I understand it, these things that Carmen ends up sorting and putting into smaller packages, are those - - how do these get to the company initially? Are they purchased in bulk from some other source?

A. Yes. That's the bulk I was explaining. They're purchased - - say you have to buy a hundred in a box. To send them out to retail locations, they need to look nice. So they have a header card with a hole poked through so they can go on the pegs. So if you've been in any of the stores, even Walmart, how they look, that's exactly how our truckstops look. You have to have things individual or in groups of two or three rather than a box of a hundred.

Q. So is that a money maker for the company, the ability to buy in bulk, split it up into smaller packages, and then resell it inside your outlets?

A. Absolutely.

Q. Has the company always had this type of light duty work available for Carmen since her accident?

A. Yes.

Q. These tasks that you described, the labeling, the separating, the bagging, are these important tasks that need to get done by Iowa 80 in order to meet production needs?

A. Yes. Someone has to be there to do it.

Q. What would you say to someone suggesting that Carmen is just given this stuff to keep her busy and it's not really a useful function for anybody?

A. We accommodate Carmen based on what she needs for her restrictions, but someone has to do this job and - -

Q. Go ahead. Sorry.

A. And it is within her restrictions so it's a nice fit for everyone.

Q. Is there enough of this type of sorting and labeling and bagging - - correct me if I'm - - add to it - - I'm sure I'm leaving stuff out. Is there enough of that kind of work to keep someone employed on full-time basis?

A. Full time plus probably help when it's a busy time or a big buyout. So it could be a position and a half, somebody doing it maybe 20 extra hours to help.

Q. So are there times when not only Carmen, but additional employees are needed to fulfill these light duty-type tasks?

A. Yes, absolutely.

Q. Would you say this type of work or this area where Carmen is working, is it a growing revenue source or business for the company or is it stagnant or how would you describe it?

A. It's very much growing. And we're so happy with the profits that we'll continue to make it its own private label section.

(Tr., pp. 60-63)

Ms. Slack was very knowledgeable about claimant's current work duties. Ms. Slack appeared genuinely concerned about claimant working within the confines of her work restrictions. Claimant had been performing a viable job for the company. The job was not what one would classify as "make work".

RATIONALE AND CONCLUSIONS OF LAW

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

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

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 908, 76 N.W.2d 756, 760-61 (1956). It the claimant had a preexisting condition or disability that is materially, aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 135, 115 N.W.2d 812, 815 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 375, 112 N.W.2d 299, 302 (1961).

When an expert's opinion is based upon an incomplete history, it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence. Together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Claimant has established by a preponderance of the evidence; she has a permanent partial disability to the back as a result of her work injury on May 17, 2016. This deputy relied upon the second opinion of Dr. Segal. His opinion was issued on November 26, 2017. His opinions on pages 4 and 5 of claimant's exhibit 2 are especially compelling. As stated earlier, Dr. Segal wrote:

> I do not think it is reasonable to conclude that the symptoms that Ms. Bueron currently complains of are a continuation of the prior remote symptomatology or low-grade symptomatology leading up to the work injury of 5/17/16. Furthermore, it is also not reasonable to speculate that she would have developed pain in those regions because of her remote preexisting symptoms-In fact, quite the opposite because she never complained of radicular pain leading up to the work injury of 5/17/16. It is much more likely that she never would have complained of radicular pain were it not for the work injury of 5/17/16. Additionally, because she was completely functional and working without restrictions and without seeking advanced medical treatment (only limited chiropractic, specifically in the years 2014, 2015, and 2016, where there are only five visits in 2014 and only one visit per year in both 2015 and 2016), it is very unlikely that her preexisting condition would have spontaneously caused the current pain she has. In fact, it is much more likely that her preexisting condition would have continued the way it was in 2015 and 2016 and would have remained what appears to be the common complaint of generalized back pain that many people her age have.

(Cl. Ex. 2, pp .4-5)

Claimant was symptom free until she sustained her work injury. Then her symptoms occurred immediately following the injury. She had both back pain and radiculopathy. Throughout the entire course of her medical treatment, claimant's symptoms remained consistent. Dr. Luszcyk, the orthopedic surgeon, suspected the annular tear and disk bulge resulted from claimant's acute injury at work. He based his opinions on objective MRI test results. (Jt. Ex. 3, p. 3) Dr. Weiss diagnosed claimant with a lumbar strain and symptom magnification, Dr. Weiss opined the lumbar strain was secondary to the work injury on May 17, 2016. (Def. Ex. A, p. 6) Dr. Huettman diagnosed claimant with chronic back pain with annular tear. (Jt. Ex. 1, p. 21) He never questioned the cause of claimant's conditions.

The least credible medical opinion was the one Dr. Garrels espoused. He based his opinion on a motor vehicle accident that occurred approximately fourteen years prior to the date of the work injury. Other than some chiropractic care, claimant did not treat for lumbar pain and radiculopathy until after the work injury. No weight is accorded to the opinion of Dr. Garrels.

It is the determination of the undersigned; claimant has sustained a permanent disability as a result of her work injury on May 17, 2016. Because her injury is to her lumbar spine and involves some radiculopathy, the injury is to the body as a whole.

Because claimant's injury is to the body as a whole, her disability is to be calculated by the industrial method. Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant is 44 years old. She left school in the eleventh grade. However, she obtained her GED in 2005. Claimant also has a certificate in supply chain and logistics from the John T. Blong Technology Center, in association with the Scott County Community College. She obtained the certificate in 2014. (Def. Ex. L, pp 42- 43) She has no other formalized education.

Claimant has prior experience as a warehouse worker in various locations. She has worked as a temporary worker driving a fork lift truck. She worked for QPS Employment Group in 2015 performing warehouse work. She worked in a manufacturing plant that produced hydraulic hoses. Claimant was not specific as to what her actual job duties were. She worked at Group O in Milan. She worked at Hy-Vee for one year and operated a cash register. For two years, she worked as an assistant manager at Swiss Pretzel. Claimant was not a great historian when it came to detailing the remainder of her work career.

According to Dr. Huettman, an authorized treating physician, claimant was permanently restricted to lifting 5 pounds on an occasional basis, no pushing or pulling, no stooping or bending, no reaching above the shoulder level and no reaching below the shoulder level. (Jt. Ex. 1, p. 21) The employer is honoring those restrictions in the workplace.

It is acknowledged the work restrictions are quite severe. Outside of the Iowa 80 Group, Inc., claimant would find it very difficult to obtain warehouse work with the restrictions she has currently. However, there are positions where only light assembly work is required. For example: in the electronics industry, light assembly work is the norm.

I have determined claimant is performing viable work for her employer. The position was not newly created for claimant. It existed prior to claimant being assigned to the job. There is ample work to keep claimant occupied for the duration of her shift. Ms. Slack testified this portion of the company's operation is productive and profitable for the company. This is not a "make work" position. Under Murillo v. Blackhawk Foundry, 571 N.W.2d 16, 18 (Iowa 1997), the employer's accommodation for the injured worker can be factored into claimant's award.

There are three impairment ratings. Dr. Garrels rated claimant as having a zero percent functional impairment rating. Dr. Weiss rated claimant as having a 2 percent functional impairment rating, but he used the wrong edition of the AMA Guides to the Evaluation of Permanent Impairment, to provide his rating. Dr. Segal opined there was a 16 percent functional impairment rating using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

After considering all of the factors involving industrial disability; it is the determination of the undersigned; claimant has a permanent partial disability in the amount of sixty (60) percent.

Defendants shall pay unto claimant three hundred (300) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of $304.81 per week and commencing from January 25, 2017.

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

Claimant is also entitled to be reimbursed for the independent medical examination with Dr. Segal pursuant to Iowa Code section 85.39. The correct procedures were followed by claimant.

The final issue is the matter of costs.

Iowa Code section 86.40 states:

> Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> Costs. 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, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Claimant is requesting certain costs as detailed on page 2 of the hearing report

The following costs are taxed to defendants:

Filing fee: $100.00

Service Fee $12.92

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant three hundred (300) weeks of permanent partial disability benefits commencing from January 25, 2017 and payable at the stipulated rate of three hundred four and 81/100 dollars ($304.81)

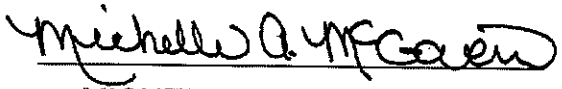
All past due benefits shall be paid in a lump sum together with interest as allowed by law and as discussed in the body of the decision.

Defendants shall pay the cost of the independent medical exam performed by Dr. Segal.

Defendants shall pay costs as detailed in the body of the decision.

Defendants shall file all reports as required by law.

Signed and filed this 8th day of May, 2019.



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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.