BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARY COLEMAN DUCHESNEAU, Claimant, vs. WAL-MART STORES, INC., Employer, and ILLINOIS NATIONAL INS. CO., Insurance Carrier, Defendants.	File No. 5065565 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1803, 2701, 2907

STATEMENT OF THE CASE

Mary Coleman Duchesneau, claimant, filed a petition for arbitration against Wal-Mart Stores, Inc. (hereinafter "Wal-Mart"), as the employer and Illinois National Insurance Company as the insurance carrier. This case came before Deputy Workers' Compensation Commissioner Michelle A. McGovern for an arbitration hearing on April 25, 2019, in Des Moines. The hearing transcript was filed with the Iowa Division of Workers' Compensation on May 3, 2019.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted by the hearing deputy and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

Claimant was the only witness that testified at hearing. The parties offered Joint Exhibits 1 through 10. Claimant offered Exhibits 1 through 9. Defendants offered Exhibits A through F. All offered exhibits were admitted as evidence in the case.

Post-hearing briefs were filed on May 24, 2019. The case was deemed fully submitted to Deputy McGovern on that date.

The Iowa Workers' Compensation Commissioner determined that Deputy Commissioner McGovern was unavailable to the agency. Therefore, pursuant to Iowa Code section 17A.15(2), Commissioner Cortese delegated this file to the undersigned

for preparation and filing of an arbitration decision. Deputy McGovern returned to the agency before the undersigned could file this decision. However, Deputy McGovern has now retired and is unavailable to the agency.

Pursuant to Iowa Code section 17A.15(2), the undersigned inquired of the parties whether they believed demeanor of a witness is a substantial factor in the case. The undersigned offered to hear those portions of the testimony again for which demeanor was considered a substantial factor. On December 27, 2019, defense counsel confirmed via e-mail to the undersigned that defendants do not believe demeanor is a substantial factor in this case and that they have no objection to the undersigned drafting an arbitration decision without further evidentiary hearing. On December 30, 2019, claimant's counsel similarly confirmed via e-mail that claimant does not have an objection based on demeanor. Therefore, pursuant to Iowa Code section 17A.15(2) and the Commissioner's Order of Delegation filed on December 30, 2019, the undersigned performs a review of the evidentiary record in this case and issues this arbitration decision at the direction of the Commissioner.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant proved her current neck condition is causally related to the April 2, 2012 work injury at Wal-Mart.

2. The extent of claimant's entitlement to permanent partial disability benefits.

3. Whether claimant has proven entitlement to future treatment through Steven Quam, D.O.

4. Whether costs should be assessed against either party and, if so, the extent of any such assessment.

FINDINGS OF FACT

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

Mary Coleman Duchesneau is a 59-year-woman who possesses a high school diploma. (Transcript, pages 10, 41) She attempted to enter the carpenters union but withdrew from her journeyman training when she became pregnant. (Tr., p. 41) She has worked a variety of jobs throughout her work life. Among the jobs she has performed are carpentry work, janitorial work, retail sales, baking, dry cleaning, child care, as a cab driver, in a photo lab at Walgreens, as a cashier, customer service manager, merchandise supervisor, photo manager, deli merchandise supervisor, and as a people greeter/customer host at Wal-Mart. (Claimant's Exhibit 8, pp. 1-2)

Ms. Coleman Duschesneau started her employment with Wal-Mart in 2003. (Claimant's Ex. 1, p. 8) Although she worked various positions within the company, she eventually transferred and was working as the deli merchandise supervisor. On April 2, 2012, Ms. Coleman Duschesneau developed difficulties with both hands and arms, which she felt radiated up to her shoulders as well, as a result of using a Gemini.

Although initial medical records did not report complaints of neck symptoms, Ms. Coleman Duchesneau testified that she experienced pain running into her neck as well. (Tr., p. 14) She used this hand-held device (the Gemini) three to four hours a day to price and change pricing on deli items. (Tr., p. 13) Claimant also testified that she did not have any prior injuries to her hands, elbows, shoulders or neck before April 2012. (Tr., pp. 35-36) No prior medical records are in evidence to document ongoing or pre-existing problems with claimant's hands, elbows, shoulders or neck.

On April 2, 2012, claimant developed symptoms and could not release her grip on the Gemini. She reported her condition to Wal-Mart management. The company sent claimant for medical attention.

Claimant was evaluated at Iowa Methodist Occupational Health and Wellness clinic on April 17, 2012. The initial assessment was bilateral hand, elbow, shoulder and back strain related to repetitive work on a cumulative basis. (Claimant's Ex. 1, p. 1) Claimant was given bilateral carpal tunnel braces and elbow pads. She was started on some anti-inflammatory and muscle relaxant medications. (Joint Ex. 1, p. 1)

Unfortunately, initial conservative measures were not effective in relieving claimant's symptoms. She was referred for an EMG and orthopaedic consultation. (Joint Ex. 1, pp. 2-3) Bill Koenig, M.D. performed the EMG on May 7, 2012 and identified very mild left carpal tunnel syndrome and very mild left cubital tunnel syndrome. He identified no evidence for carpal or cubital tunnel syndrome on the right side. (Joint Ex. 2)

Michael A. Gainer, M.D., an orthopaedic surgeon, evaluated Ms. Coleman Duchesneau on May 29, 2012. Claimant reported decreased mobility, locking, popping and swelling and reported symptoms radiating in the arms bilaterally. (Joint Ex. 3, p. 1) Dr. Gainer assessed claimant with both cubital and carpal tunnel syndromes. However, he recommended against operative intervention at that time. (Joint Ex. 3, p. 3)

Dr. Gainer re-evaluated claimant on August 2, 2012. At that appointment, he diagnosed claimant with carpal tunnel syndrome and a lesion of the ulnar nerve. He noted he found no evidence of trigger finger during his evaluation. However, he did not recommend surgical intervention and only instructed claimant to return to his office as needed. (Joint Ex. 3, p. 5)

Unfortunately, claimant's symptoms continued. She was referred to John L. Gaffey, M.D., an orthopaedic surgeon, for a second opinion. Dr. Gaffey assessed her with bilateral upper extremity pain, numbness and tingling. (Joint Ex. 4, p. 1) However,

Dr. Gaffey noted that her history and clinical findings did not suggest carpal tunnel syndrome, cubital tunnel syndrome, or any nerve impingement. He also opined that claimant did not demonstrate any significant tendinopathy.

Dr. Gaffey recommended continued use of wrist splints, but recommended against any surgical intervention for the hands or arms. Dr. Gaffey noted, "I do not believe that she has a nerve impingement that is treatable by a surgeon that would cause her significant relief." Instead, he recommended evaluation of claimant's neck and referred her to a pain specialist, Steven R. Quam, D.O., for evaluation. (Joint Ex. 4, p. 2)

Dr. Quam initially evaluated claimant on September 28, 2012. He diagnosed her with upper extremity pain and possible carpal and cubital tunnel syndrome bilaterally. (Joint Ex. 5, p. 1) He recommended a cervical MRI and the possibility of a cervical epidural steroid injection. He also increased her dosage of Gabapentin. (Joint Ex. 5, pp. 3-4)

The cervical MRI demonstrated a small central bulge at C4-5 as well as minimal disc bulges at C5-6 and C6-7. (Joint Ex. 6) Between December 2012 and May 2017, Dr. Quam performed numerous epidural steroid injections into claimant's neck. Claimant testified that she has ongoing neck symptoms and that she gets migraines as a result of her neck pain. (Tr., p. 33)

Unfortunately, claimant's hand and left shoulder symptoms never resolved. She was ultimately referred to an orthopaedic surgeon, Ericka Lawler, M.D., at the University of Iowa Hospitals and Clinics. Dr. Lawler evaluated claimant in October 2014. She documented an event at work where claimant experienced a pop in her left shoulder while lifting a bicycle above her head. Dr. Lawler documents no reports of neck pain from claimant, however. (Joint Ex. 8, p. 1) Initially, Dr. Lawler joined with Dr. Gainer and Dr. Gaffey and recommended against any surgical intervention for claimant's hands or elbows. (Joint Ex. 8, p. 4) However, upon re-evaluation by a nurse practitioner at Dr. Lawler's clinic, a referral for evaluation by a shoulder surgeon was made.

James V. Nepola, M.D. evaluated claimant on February 16, 2015. After attempting an unsuccessful injection in claimant's left shoulder, Dr. Nepola recommended surgical intervention. Dr. Nepola took claimant to surgery on June 5, 2015. He performed a left shoulder arthroscopy in which he resected claimant's distal clavicle and performed a subacromial decompression in the left shoulder. (Joint Ex. 8, p. 32)

Dr. Nepola declared maximum medical improvement for claimant's left shoulder on July 19, 2016. He recommended permanent work restrictions that include no repetitive reaching away from claimant's body or above shoulder height with the left arm. (Joint Ex. 8, p. 90) Dr. Nepola ultimately opined that claimant sustained an 11 percent permanent impairment of the whole person as a result of her left shoulder injury. (Defendants' Ex. D, p. 18) He reiterated his permanent work restrictions for the

left shoulder that include no repetitive reaching away from the body or above shoulder with the left arm. (Defendants' Ex. D, p. 18)

Claimant's hand symptoms continued, however. Ultimately, claimant returned to Dr. Lawler for injections and was later recommended for surgical intervention for bilateral carpal tunnel release and trigger finger releases. In all, claimant underwent ten surgeries for her hands, including carpal and cubital tunnel releases as well as various trigger finger releases. (Joint Ex. 8)

Dr. Lawler declared maximum medical improvement for claimant's various hand and finger issues on March 12, 2018. She opined that claimant should not lift greater than 15 pounds with her right hand or repetitively grip with the right hand. Dr. Lawler deferred to Dr. Nepola's restrictions for the left upper extremity. (Joint Ex. 8, p. 116; Defendants' Ex. E, p. 20) However, Dr. Lawler recommended a functional capacity evaluation (FCE) be performed to objectively document claimant's residual abilities. (Joint Ex. 8, p. 117)

Unfortunately, the May 22, 2018 FCE was deemed invalid due to inconsistent performance by claimant. The FCE suggested, if its demonstrated abilities were utilized as permanent restrictions, that claimant could only lift five pounds and that she would be in the sedentary work category. (Joint Ex. 9)

Ms. Coleman Duchesneau obtained an independent medical evaluation performed by Sunil Bansal, M.D. on March 15, 2018. Dr. Bansal expressed concerns about claimant's right shoulder, opined that the right shoulder was not at maximum medical improvement and recommended a right shoulder MRI. Of course, no treatment has been provided for the right shoulder, nor was any recommended by Dr. Nepola during his evaluations.

Dr. Bansal opined that claimant sustained cumulative injuries to both shoulders, both elbows, both hands, both wrists and fingers on both hands. Dr. Bansal opined that the injuries were the result of overuse syndrome. (Claimant's Ex. 1, pp. 17-20) He assigned 3 percent of the whole person for the right shoulder, 3 percent of the whole person as a result of right carpal tunnel syndrome, as well as 11 percent of the whole person as a result of claimant's left shoulder injury and 2 percent of the whole person as a result of the left carpal tunnel syndrome. (Claimant's Ex. 1, pp. 21-22)

Dr. Bansal also opined that claimant requires permanent work restrictions as a result of her injuries. Specifically, Dr. Bansal opined that claimant should not lift greater than five pounds with either hand, should not lift over shoulder and should not frequently squeeze, pinch, grip or grasp with either hand. (Claimant's Ex. 1, p. 22)

Defendants obtained an independent medical evaluation of their own with Charles D. Mooney, M.D. on October 5, 2018. Dr. Mooney opined that claimant's job activities at Wal-Mart were not a direct causal or specific aggravating factor for carpal tunnel syndrome or trigger finger. He opined that claimant's left shoulder injury was

also not related to her work duties at Wal-Mart. Dr. Mooney deferred to the treating surgeons regarding the dates for maximum medical improvement. (Defendants' Ex. C, pp. 10-11)

Dr. Mooney also concurred with Dr. Lawler and opined that claimant does not qualify for any permanent impairment related to carpal tunnel syndrome or trigger finger. He noted that there is significant psychological overlay and non-physiologic findings during his evaluation. Dr. Mooney did assign a 10 percent upper extremity impairment rating for the distal clavicle resection in claimant's left shoulder. (Defendants' Ex. C, p. 11) Dr. Mooney assigned no permanent restrictions because claimant provided an inconsistent FCE and because of the psychological overlay he identified during his evaluation. Dr. Mooney opined that claimant could advance her activities if she desired to do so. (Defendants' Ex. C, p. 12)

Claimant's counsel also wrote to Dr. Quam, requesting an opinion regarding causation of claimant's various claimed injuries. Dr. Quam did not provide an independent response, but signed claimant's counsel's correspondence. In that correspondence, Dr. Quam appears to assign causation of claimant's various conditions to her work duties at Wal-Mart. Specifically, Dr. Quam opines via claimant's counsel's letter that claimant sustained cumulative injuries to the bilateral hands, bilateral elbows, bilateral shoulders and neck as a result of work duties at Wal-Mart. (Claimant's Ex. 9, p. 2) No other physician has rendered a causation opinion regarding the cause of claimant's neck condition.

As I weigh and consider the competing medical evidence, I find the medical opinions of Dr. Lawler and Dr. Nepola to be the most convincing opinions in this record. Both were treating surgeons and had a chance to evaluate claimant numerous times in clinic and both evaluated claimant intra-operatively. To the extent Dr. Bansal concurs in his causation opinions about the left shoulder, hands, elbows, and trigger finger conditions being related to claimant's work at Wal-Mart, I accept those opinions as well. Similarly, to the extent that Dr. Quam causally relates the left shoulder, hands, elbows, and trigger fingers, I find those opinions to be convincing.

I do not find the causation opinions of Dr. Mooney to be convincing in this situation. Instead, I find the repetitive use of claimant's hands likely to be the cause of her trigger fingers, carpal tunnel and left shoulder conditions.

With respect to the right shoulder, I do not find the causation opinion of Dr. Bansal to be convincing. Claimant requested no treatment for the right shoulder and did not complain significantly of right shoulder symptoms over the course of numerous evaluations with a pain specialist and various orthopaedic surgeons. Dr. Nepola makes no mention of right shoulder symptoms and I find that claimant has not proven by a preponderance of the evidence that she sustained a right shoulder injury as a result of her work duties at Wal-Mart.

With respect to claimant's alleged neck injury, the only physician that offers an opinion is Dr. Quam. In response to claimant attorney's letter, he includes the neck condition as causally related to work duties. (Claimant's Ex. 9, p. 2) Given the lengthy treatment provided by Dr. Quam for the neck condition, I find his causation opinion credible and convincing. Therefore, I find that claimant has proven she sustained a neck injury as a result of her work duties at Wal-Mart. However, no physician has opined that the neck injury resulted in permanent restrictions or permanent impairment.

I accept the work restrictions assigned by Dr. Lawler and Dr. Nepola as the applicable work restrictions. I also accept their maximum medical improvement dates as most applicable. I accept Dr. Lawler's opinion that claimant sustained no permanent impairment as a result of the carpal tunnel syndrome or trigger finger conditions. I also accept Dr. Nepola's 11 percent permanent impairment of the whole person as a result of the left shoulder injury as most accurate. Therefore, I find that claimant has proven an 11 percent permanent impairment of the whole person as a result of her injuries and that she requires permanent work restrictions. As the parties stipulated, claimant has proven permanent disability resulting from her work injuries, including the left shoulder and bilateral hands and arms.

Ms. Coleman Duchesneau testified that she could not return to work in the carpentry field, performing the repetitive work of a cashier, performing the physical work of fire clean-up she performed at Service Master, or in the janitorial work she previously performed. These are all accepted as accurate.

Claimant asserted that she cannot return to work as a deli manager at Wal-Mart in her current condition. Given that she used the Gemini three to four hours per day, this would likely violate the restrictions offered by Dr. Lawler. Similarly, claimant testified she could not return to work in a photo lab at Wal-Mart or Walgreens. She testified there were lifting duties in those jobs, which would likely exceed her restrictions from Dr. Lawler and Dr. Nepola.

Ms. Coleman Duchesneau earned $13.50 per hour working at Wal-Mart on the date of injury. She continues working for Wal-Mart and currently earns $15.60 per hour. (Tr., pp. 65, 67) Accordingly, she has not sustained an actual loss of income as a result of the injuries on an ongoing basis. Nevertheless, claimant has limited educational training. At the age of 59, she is not likely to successfully retrain and it likely would not make economic sense for her to pursue further training at this time.

With Dr. Lawler's 15-pound lifting restriction with the right hand and the limitations imposed by Dr. Nepola for the left arm, claimant is precluded from returning to several prior employment positions. She continues working for Wal-Mart, but her employment options are now significantly limited if she is terminated by Wal-Mart or elects to pursue alternate employment options. On the other hand, claimant earns more at Wal-Mart. I find that claimant sustained a moderate to significant loss of future earning capacity as a result of the April 2, 2012 work injuries at Wal-Mart.

Considering claimant's age, educational and employment histories, her continued employment for Wal-Mart, her inability to return to several jobs she held in the past, the situs and severity of her injuries, including the numerous surgeries, her permanent work restrictions, permanent impairment, her motivation to continue working, as well as all other factors of industrial disability outlined by the Iowa Supreme Court, I find claimant proved a 55 percent loss of future earning capacity as a result of the April 2, 2012 work injuries at Wal-Mart.

CONCLUSIONS OF LAW

The initial dispute between the parties is whether claimant proved her neck condition is causally related to the work injury on April 2, 2012 at Wal-Mart.

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.

In this case, I found that the only physician offering a causation opinion pertaining to claimant's neck condition was Dr. Quam. Given that Dr. Quam was a long-time treating pain specialist for claimant's neck, I found his unrebutted causation opinion credible and convincing. Having found that claimant proved she sustained a neck injury as a result of her work duties at Wal-Mart, I conclude claimant proved she sustained a neck injury arising out of and in the course of her employment with Wal-Mart on April 2, 2012. The neck injury and resulting condition was considered as part of my analysis of permanent disability, although it was found that no physician imposed permanent restrictions or permanent impairment as a result of the neck condition.

The next disputed issue between the parties is the extent of claimant's entitlement to permanent disability benefits. The parties stipulate that Ms. Coleman Duchesneau sustained permanent disability as a result of the April 2, 2012 work injury and that the injury should be compensated with industrial disability pursuant to Iowa Code section 85.34(2)(u)(2012).

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 R. Co., 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.

Having considered the relevant industrial disability factors outlined by the Iowa Supreme Court, I found that claimant proved a 55 percent loss of future earning capacity as a result of the April 2, 2012 work injury at Wal-Mart. This is equivalent to a 55 percent industrial disability and entitles claimant to an award of 275 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u).

Ms. Coleman Duchesneau also asserts a claim for alternate medical care pursuant to Iowa Code section 85.27(4). Specifically, claimant seeks an order authorizing future treatment through Dr. Quam, for treatment of her neck.

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.

"Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he 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 the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

Having found that claimant proved a causal connection between her work duties at Wal-Mart and her alleged neck injury, I conclude that claimant is entitled to ongoing and future medical care for the neck condition. Having found that Dr. Quam was a treating physician for the neck condition and that he causally connected it to claimant's work activities, I conclude that claimant's request for future medical care through Dr. Quam is reasonable.

Defendants denied liability and authorized any further treatment through Dr. Quam based upon the medical opinions of Dr. Mooney. I did not accept or find Dr. Mooney's medical opinions to be convincing in this case. Given that defendants are currently offering no additional treatment and that Dr. Quam recommends additional treatment for the neck, I conclude that claimant has established entitlement to an order for alternate medical care. Specifically, I conclude claimant is entitled to an order of alternate medical care for future treatment of her neck to be through and at the direction of Dr. Quam.

The final disputed issue is whether costs should be assessed against either party. Costs are assessed at the discretion of the agency. Iowa Code section 86.40.

Claimant has not introduced specific costs for reimbursement, other than the cost of filing her petition. The filing fee is a permissible and reasonable cost. 876 IAC 4.33(7). I conclude that defendants should be ordered to reimburse claimant the cost of her filing fee, or $100.00.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant two hundred seventy-five (275) weeks of permanent partial disability benefits.

All weekly benefits shall be paid at the stipulated weekly rate of three hundred thirty-eight and 36/100 dollars ($338.36), commencing on August 9, 2016.

Defendants shall be entitled to the stipulated credit noted on the hearing report against this award of benefits.

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. Apr. 24, 2018).

Dr. Quam is authorized and appointed as the treating physician for claimant's neck injury. All future causally related medical care of claimant's neck shall be through or at the direction of Dr. Quam.

If they have not already done so, defendants shall immediately reimburse claimant's independent medical evaluation fee pursuant to their agreement to do so at the time of hearing.

Defendants shall reimburse claimant's taxable costs totaling one hundred dollars ($100.00).

Defendants shall timely file all reports as required by 876 IAC 11.7.

Signed and filed this 2nd day of March, 2020.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jenna Green (via WCES)
Lindsey Mills (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.