

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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LOIS JEAN SCHMITT,

Claimant,

vs.

ATLANTIC WALMART  
SUPERCENTER,

Employer,

and

NEW HAMPSHIRE INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

SEP 01 2017

WORKERS COMPENSATION

File No. 5053917

ARBITRATION DECISION

Head Note Nos.: 1100, 1803

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**STATEMENT OF THE CASE**

Lois Schmitt, claimant, filed a petition in arbitration seeking workers' compensation benefits from the employer, Atlantic Walmart Supercenter and the insurance carrier, New Hampshire Insurance Co. The arbitration hearing was held on February 24, 2017. The parties filed post-hearing briefs on April 7, 2017, and the matter was considered fully submitted at that time.

The evidentiary record includes: Joint Exhibits 1 through 9; Claimant's Exhibits 1 through 16; and Defendants' Exhibits A and B. All of the exhibits were admitted without objection.

At the hearing, claimant, Rose Tanner, Nancy Schmitt and Kerree Grooms all provided testimony.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

**ISSUES**

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury on September 9, 2015, that arose out of and in the course of her employment with defendant.
2. Entitlement to healing period benefits.
3. Whether claimant is an odd-lot worker.
4. Extent of permanent partial disability, if any.
5. Whether claimant is entitled to payment of medical expenses attached to the hearing report.
6. Costs.

### FINDINGS OF FACT

After a review of the evidence presented, I find as follows:

Claimant, Lois Schmitt, testified that she was 78 years old, but her date of birth as set forth in the medical records indicates that she was 79 years of age at the time of the hearing. (Transcript page 10; Exhibit JE 1, p. 1)

Claimant did not graduate from high school, but did attend trade school, taking courses in health and nutrition. (Tr. p. 14; Ex. B, p. 4)

Prior to working for Walmart, claimant worked at care centers, including Allen House, Heritage House and the Atlantic Care Center. Her jobs largely involved cooking and cleaning, with some responsibility for hiring and training. (Tr. pp. 12-13) She testified that all of her prior work has been physically demanding. (Tr. p. 14)

This claim arises from a fall that occurred while she was working for the defendant employer on September 9, 2015.

Prior to September 9, 2015, claimant's medical treatments included a bout with colon cancer that resulted in a partial colectomy and took her off work for four months in 2013. (Tr. p. 16) At the time of the hearing, claimant was no longer receiving cancer treatment. (*Id.*) In 2000, claimant fell and injured her back that resulted in ongoing issues with pain going down her right leg. (Tr. p. 17) Claimant stated that she continued to have problems with her back in 2015. (Tr. p. 17)

However, claimant stated that she had not been having any issues with her right hip prior to the September 9, 2015, incident. (*Id.*) But, in July 2009, claimant was seen for right hip pain with radiation into the right lower leg with numbness. This was reported as "ongoing for many years." (Ex. JE 1, p. 1)

Claimant also had been previously diagnosed with *Clostridium Difficile*, or "C. Diff." and anemia, and experienced general weakness and dizziness. Claimant also stated that she has a history of getting dehydrated easily. (Ex. JE 1, p. 3; Tr. p. 75)

Claimant was seen at the Cass County Memorial Hospital in November, 2012 with weakness, dizziness and electrolyte abnormalities. (Ex. JE 1, p. 3) At that time, she reported falling and lying on her floor all night prior to being brought to the emergency room.

On February 8, 2013, claimant had an episode of vertigo and was seen at the Atlantic Medical Center. (Ex. JE 1, p. 12) She was advised to not overdo it and keep hydrated. (Ex. JE 1, p. 14)

On June 25, 2013, she had another episode of vertigo that had first begun one week prior, with symptoms several times per day. (Ex. JE, 1, p. 15) She was told to follow-up if it did not resolve in a few days. (Ex. JE 1, p. 17)

On July 18, 2013, Mark Woodruff, M.D., authored a letter to claimant's primary care provider, Vanessa Cook, M.D. regarding chest pains that claimant was having and noted that she has "lightheadedness" which "is a frequent problem for her." (Ex. JE 2, p. 1) Dr. Woodruff noted that the last episode had occurred earlier that day, while in her kitchen. The feeling of being lightheaded came on gradually and "[s]he usually just tries to stand still, sit down or lie down and the symptoms are relieved within a few minutes, quicker of course if she lays down." (Id.) At that time, Dr. Woodruff stated that claimant reported nearly fainting, but that there had been no true episode of syncope. (Id.)

On August 9, 2013, she presented again feeling dizzy, stating that she felt weak and tired, like when she had cancer previously. (Ex. JE 1, p. 18)

On September 8, 2014, claimant was seen by physical therapist Laura Hickman and reported that she had fallen onto her right side while working at Walmart about 4 weeks earlier. She reported that she also fell before her cancer and "did rehab in the nursing home for 31 days. She also did therapy 2 months after to build her strength back up." (Ex. JE 3, p. 1) In addition it is noted that "[s]he reports having multiple trauma to the right hip with falls." (Id.)

Claimant was seen from time to time by medical providers prior to her September 9, 2015 fall. She was seen for dehydration August 23, 2013; vertigo symptoms on May 8, 2014 and October 31, 2014; and weakness on August 28, 2014. (JE 1, pp. 23, 25, 27, 36) In addition to these visits, on October 26, 2014, claimant reported that she was at home sitting in front of her computer, when she passed out following a stressful phone conversation with her son. She woke up on the floor. (Ex. JE 1, p. 29) Claimant reported that she had also passed out about six months earlier after she stood up from a table and again she woke up on the floor. (Id.)

On September 9, 2015, claimant had finished her work at the Walmart Deli, and she was walking toward the back of the store to clock out. She walked down an aisle and saw another Walmart employee, Rose Tanner, and stopped to speak with her for a short time. (Tr. p. 45) Claimant reported that just before she fell, she "felt all right," but was "[j]ust kind of tired." (Tr. p. 46) She indicated that she "got that tingling in her leg." (Tr. p. 47) She then fell to the floor. (Id.) Claimant's incident report indicates that she "got dizzy and fell." (Ex. 9, p. 1) Claimant testified that she filled out the incident report

herself. (Tr. pp. 73-74) The co-worker that she was speaking to, Rose Tanner, completed a written statement and said that "Lois was standing, talking, joking, and very suddenly just crumpled and went down. Her legs just buckled." (Ex. 10, p. 1) She stated that the floor was not slippery, uneven or cluttered where claimant fell. (Tr. pp. 92-93)

Rose Tanner, who was 91 years old at the time of the hearing, testified that she had been working at Walmart for over 10 years. (Tr. p. 82) She worked with claimant in the deli and also worked in the apparel department. (Tr. pp. 83, 87) Ms. Tanner was asked about claimant's fall at hearing, but her recollection of the events was not very clear. (Tr. pp. 87-88) She eventually did recall that claimant had fallen and right before she fell, she said that she looked normal, but after reviewing her deposition, she revised her testimony to say that she looked tired. (Tr. p. 89; Ex. 16, p. 6)

After claimant fell, an ambulance was called and claimant was taken to the hospital in Atlantic, Iowa, where it was noted that she reported "passing out" at work at Walmart and that she had a history of syncopal episodes due to dehydration and anemia. (Tr. p. 48; Ex. JE 4, pp. 1, 6) She was diagnosed with a right hip fracture. (Ex. JE 4, p. 6) At hearing, claimant denied that she passed out and stated that she was coherent at all times and knew when she hit the floor. (Tr. p. 74) However, the syncopal nature of this episode is noted in multiple locations in the records. (Ex. JE 4, pp. 1-6) I note that the records indicate that claimant reported "feeling fine earlier today" and there is no discussion in the record that she presented with dehydration. (Ex. JE 4, p. 6)

Claimant was hired by Walmart in Atlantic, Iowa, on October 20, 2006, to work part-time. (Tr. pp. 11, 21) She worked the same job in the deli since she was hired. (Tr. p. 11) When she was hired, there were about eight or nine, mostly full-time employees, working in the deli. (Tr. p. 22) Claimant was initially working about 31 or 32 hours per week. (Tr. p. 21) She moved to full-time in 2014. (Tr. p. 21) Her hours increased to include overtime in March 2015. (Tr. p. 22) In July 2015, the deli lost their supervisor, and claimant's hours increased further. (Tr. pp. 20, 21)

The deli was supposed to be open from 6:00 a.m. to 11:00 p.m. (Tr. p. 19) Claimant stated that when she last worked in the deli, the number of employees was down to just five. (Tr. p. 19) Claimant testified that she felt the deli was understaffed. (Tr. p. 23) She was often running the deli alone without assistance. (Tr. p. 37)

She described her work in the deli as: cleaning up from the prior evening shift, because they did a poor job of cleaning; making sandwiches and salads; waiting on customers; unpacking and putting away supplies; and cleaning the rotisserie. (Tr. pp. 23-26) She testified that "[e]verything is difficult" in her job and that she was on her feet all day. (Tr. p. 26)

In the period of approximately three weeks before the injury, the job had been stressful for claimant, in part because she felt that she was not getting adequate help

from co-workers and she was being left alone in the deli. (Tr. pp. 28-29) She stated that her job made her tired. (Tr. p. 29)

Claimant fell on September 9, 2015. During the week prior to the incident claimant worked: 11.17 hours on September 2; 11.92 hours on September 3; 9.04 hours on September 4; 9.20 hours on September 5; 8.97 hours on September 6; and, 12.32 hours on September 7 (claimant was paid for an additional 8.0 hours of holiday pay on September 7). (Ex. 7, pp. 1-2) Claimant had clocked-out for between 0.52 and 0.95 hours on each of the above days, which were not included above in her hours worked each day.

Claimant testified that she also worked a full day on September 8, 2015. (Tr. p. 31) However, there was no particular explanation why the Time Clock Archive Report shows only 0.60 hours worked that day. Claimant contends that this is incorrect. (Tr. p. 31, Ex. 7, p. 2)

I find that without including any hours that are not included in the Time Clock Archive Report, and excluding the additional 8 hours of holiday pay from September 7, 2015, which claimant did not work, she worked a total of 63.25 hours in the week prior to her fall.

When claimant was asked why she fell she stated that she did not really know and thought it was due to general exhaustion. (Tr. p. 46) Claimant described in her deposition, being exhausted on the day that she fell, having worked a lot of hours in the days leading up to the incident. She stated that she was working up to 13 or 14 hour shifts. (Ex. B, p. 14) The time clock records indicate that she had actually been engaged in shifts of about 9 ½ to about 12 ½ hours. Those are substantial hours for anyone, let alone claimant, who was 79 years old at the time. (Ex. 7, pp. 1-2)

Regarding the fall, claimant stated in her deposition that after stopping to talk to Rose, "when I went to go, my leg just gave out on me." (Ex. B, p. 14) It was her right leg that gave out. (Ex. B, p. 15) She reported telling Rose that she felt weak, but that she did not feel dizzy before she fell. (Ex. B, p. 15) Rose testified that claimant did not say anything to her about feeling dizzy before she fell, but stated that claimant looked tired. (Tr. p. 89)

Claimant testified that employees were not allowed to have water while working in the deli. (Tr. pp. 40-41) Claimant stated that she dehydrates easily. (Tr. p. 40) Her last drink of water prior to the fall, she believed may have been around her lunch break about 1:00 or 1:30 p.m. or perhaps at a restroom break around 2:30 p.m., but she was not certain. (Tr. pp. 79-80) She fell about 6:00 p.m. (Ex. 10; Ex. 12; JE 4, p. 1)

Rose Tanner testified that working in the deli was "hard work" and that it was "[n]ot normally" adequately staffed. (Tr. p. 84) She also stated that workers in the deli were not allowed to have anything to drink while working in the deli, because "customers don't like to see you eating and drinking and turn around and wait on them." (Tr. p. 86) She also stated that the water fountain was "quite a ways" from the deli

where they were allowed to get a drink only as time permitted, but that on a busy day, it would be difficult to get a drink. (Id.)

Kerree Grooms, testified at the hearing. She worked with claimant at Walmart since 2007. (Tr. p. 106) She worked in the deli for about four years and also believed that it was understaffed. (Tr. pp. 107, 111) She stated that Lois was a hard worker and that working in the deli was physically demanding. (Tr. pp. 107-108) She confirmed that employees could not drink liquids while working in the deli. (Tr. p. 114) She also stated that the water fountain "was halfway across the store," and stated that it was difficult to get water breaks when she wanted them. (Tr. p. 111; Tr. p. 114)

After the fall on September 9, 2015, claimant was diagnosed with a right hip fracture. She underwent an open reduction and internal fixation on September 10, 2015, with Edward Fisher, M.D. (Ex. JE 4, pp. 6, 12) Claimant explained that "[t]hey put a rod in my leg." (Tr. p. 48)

After surgery, claimant remained in the hospital. She was moved to skilled care on September 15, 2015, and began physical therapy. (Ex. JE 4, p. 14) Claimant remained in skilled care at the hospital until September 21, 2015, when she was transferred to the Atlantic Nursing Home to continue with daily therapy and wound management. (Tr. pp. 48, 49; Ex. JE 5, p. 1) She remained at the Atlantic Nursing Home for about five weeks and was discharged to her home on October 26, 2015. (Ex. JE 6, p. 12) However, she continued with therapy through December 4, 2015. (Ex. JE 6, p. 11)

On December 3, 2015, Dr. Fisher noted that claimant "is really not having pain. The biggest problem is poor balance and she still uses her walker and needs it." (Ex. JE 7, p. 1) It was noted that although the fracture has healed, she has "extremely poor balance and she really isn't safe trying to walk without the walker." (Id.) Dr. Fisher indicated that "I expect that she is going to need to continue to use the walker for safety indefinitely." (Id.) Dr. Fisher further noted that "[s]he doesn't plan on returning to work but for work comp purposes she would be able to do sitting work with minimal standing and walking with use of walker." (Id.)

On February 25, 2016, claimant was noted to have a limp and continued to have very poor balance, and she was having some pain in her hips with aggressive range of motion. A cortisone injection for her hip was discussed, but claimant did not want to proceed with an injection at that time. (Ex. JE 7, p. 4) Again, Dr. Fisher noted that "[s]he needs to use the walker indefinitely to be safe." (Id.) She was to follow-up in two to three months. (Id.)

On April 15, 2016, claimant fell after losing her balance while bending over in her home. (Ex. JE 8, p. 1) She hit her head on a kitchen cabinet drawer and landed on her right shoulder. (Id.) She was seen at the hospital, without significant follow-up specifically for this incident.

On May 24, 2016, claimant returned for a follow-up appointment with Dr. Fisher per instructions from the February, 2016 visit. Claimant's symptoms and general

condition remained largely unchanged, including poor balance and her need to use the walker indefinitely. At that time no additional treatment was recommended. (Ex. JE 7, p. 6)

Claimant testified that at the time of the hearing, she had pain in her right hip that she rated at about 5/10. (Tr. p. 51) She also described loss of strength in her leg and hip that has affected her ability to walk. Claimant stated that she is not able to stand for long periods of time and needs to rest after a half hour or less. (Tr. p. 52) Claimant indicated that she no longer walks without a walker or a cane, which she did not need before September 9, 2015. (Tr. p. 51) She stated that she also has trouble sitting for long periods and that her leg goes to sleep when she sits too long. (Tr. p. 52)

Claimant testified that before September 9, 2015, she was active, doing her own laundry, cleaning, and living independently. (Tr. p. 53) She took care of herself and was physically quite capable as demonstrated by her work schedule in the week prior to her fall. At the time of the hearing, claimant stated that she had nursing aides from Unity Point that now help her with cooking and cleaning and bathing. (Tr. p. 54)

Claimant's daughter, Nancy Schmitt, testified at hearing that she also worked at Walmart from 2008 to 2010 and again from 2010 to 2015. (Tr. pp. 95-96) She worked in the deli from 2008 to 2010. (Tr. p. 96) In addition, she worked as a supervisor and manager thereafter. (Tr. pp. 96-97) She explained that the reason that employees were not allowed to have drinks in the deli was to avoid cross-contamination during food preparation. (Tr. p. 98) The deli employees were not given designated water breaks, rather employees would get a drink from the water fountain, in the middle of the store, as time allowed. If the deli was busy an employee just had to wait. (Tr. p. 98) Nancy also stated that other than helping her mother when she had cancer and was battling c. diff, her mother lived without assistance prior to September 9, 2015. (Tr. p. 99) She described claimant as very active prior to the September 9, 2015 injury. (Tr. p. 104) Nancy was concerned that her mother was working too many hours in the weeks prior to the fall.

Although claimant has not worked since the day of the injury, she has not been officially terminated from Walmart, nor has she ever been called back to work. Although claimant does not believe that in her current condition, she could return to work at Walmart. (Tr. p. 55)

Claimant testified that but for this incident, she would still be working at Walmart, and if not at Walmart, she would be working somewhere. (Tr. p. 56)

On November 10, 2015, Dr. Cook, claimant's family physician, authored a letter to claimant's attorney stating that "it is my opinion that the fall Lois sustained most definitely could be attributed to her work schedule in the month or two prior to the fall." (Ex. 3, p. 1; Tr. p. 50) Dr. Cook further stated that "[d]ue to Lois having diagnoses of osteoporosis and osteoarthritis, coupled with her age, she should not be expected to work extended hours when she is required to be on her feet all day." (Ex. 3, p. 1)

On October 31, 2016, Dean Wampler, M.D., issued a report following an independent medical examination (IME) on the same day. (Ex. A, p. 1) Claimant reported to Dr. Wampler that she was exhausted on the day that she fell and that she had stopped to talk to Rose and as she began to walk away, she “just went down.” (Ex. A, p. 3) She reported that the reason she fell was that she was “just too tired and my body gave up on me.” (Ex. A, p. 4) Dr. Wampler, after reviewing medical records and conducting an examination of claimant, found that claimant had prior incidents of dizziness and unexplained syncopal episodes unrelated to work and that the medications she takes, can in themselves, or in combination, have side effects that would potentially include dizziness, balance problems, and sudden loss of consciousness. (Id.)

Dr. Wampler was asked whether claimant’s injury was due to “a work related circumstance and/or caused by her work or a result of [a] personal circumstance [or] other neuropathic injury?” (Ex. A, p. 8) Dr. Wampler found five possible reasons she may have collapsed, unrelated to her work:

These factors include 1) known pre-existing hip abductor weakness and Trendelenburg gait, 2) known lumbar radiculopathy causing right leg symptoms and numbness, 3) recurrent syncopal episodes incompletely evaluated in 2014, 4) peripheral neuropathy associated with poor position sense in her lower extremities, and finally 5) side effects of medications that could be cumulative and significant.

(Ex. A, p. 8) Dr. Wampler, after noting these possible reasons for her fall and the fact that claimant did not trip, slip or stumble, stated that “it is my opinion within a reasonable degree of medical certainty that Ms. Schmidt’s fall at work on September 9, 2015 was the result of a personal health condition or idiopathic injury; and was unrelated to her work circumstances.” (Ex. A, p. 9) He concludes that claimant’s “generalized weakness, depression and debility all existed prior to her fall,” and that her:

current abnormalities during my physical exam, with the exception of tenderness over her right outer hip, are all casually [*sic*] related to her pre-existing conditions documented in the medical record. Primary care and physical therapy notes in 2014 clearly identify multiple symptoms or problems of weakness, dizziness, syncope, right leg pains with numbness, gluteus muscle atrophy and Trendelenburg gait.

(Ex. A, p. 9)

Although Dr. Wampler does not believe that claimant’s fall and therefore her hip injury are related to her employment, he goes on to determine that claimant reached maximum medical improvement (MMI) concerning the hip fracture and resulting surgery on May 24, 2016, when she was discharged from care by Dr. Fisher. Dr. Wampler further assigned 25 percent permanent impairment to the right lower extremity, based on table 17-33, page 546 of the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides). He declined however, to assign



restrictions based on his conclusion that there is no causally related injury. (Ex. A, pp. 9-10)

On December 30, 2016, Michael McGuire, M.D., issued a letter to claimant's counsel following an IME that occurred on December 21, 2016. Dr. McGuire stated that he interviewed claimant and "learned of the on-the-job injury she suffered to her right hip on 9 September 2015." (Ex. 6, p. 1) He further stated that claimant described the "mechanism of injury" as well as her "evaluations and treatments since that time, and her current clinical condition." (*Id.*) Dr. McGuire also reviewed medical records, which are not itemized, but are described as documenting "her evaluations and treatments for her right hip fracture." (*Id.*) There is a reference to a history and physical completed by Dr. Cook on September 9, 2015, which is presumably the medical record contained at Joint Exhibit 4, page 8. In this record, there is only a very brief four line paragraph setting out some of claimant's medical history, which does not include any specific reference to anything after 2012, such as her complaints of dehydration, vertigo symptoms, dizziness, weakness and fainting. (Ex. JE 4, p. 8)

Dr. McGuire stated that he understood that claimant was working excessive overtime around the time of her fall and he is critical of Walmart for requiring an elderly employee to work such long hours. He further understood that on September 9, 2015, claimant had a 15 minute morning break, a 30 minute lunch break and no afternoon break. However, claimant appears to have actually had a one hour lunch break. (Ex. 7, p. 2) He concluded that "[f]or all of those reasons, the exhaustion from over work led her to fall and injury [*sic*]." (Ex. 6, p. 2) Dr. McGuire goes on to "estimate a 50% [i]mpairment of the [w]hole [p]erson," based on table 17-5 of the AMA Guides.

It appears that Dr. McGuire did not have the opportunity to consider all of claimant's medical history prior to the September 9, 2015 fall and was unable to consider or discuss her prior recurrent syncopal episodes or complaints of dizziness and dehydration.

Considering the expert opinions in this case, I note that Dr. Cook, a treating physician, merely stated that claimant's fall on September 9, 2015, "could be attributed to her work schedule in the month or two prior to the fall." (Ex. 3, p. 1) (emphasis added) Dr. Cook does not conclude that it is "probable" or "more likely than not" that the work schedule and resulting fatigue caused the fall. Dr. McGuire, claimant's IME physician, causally related the fall to claimant being overworked for several days prior to the fall, but was unaware of claimant's medical history prior to her fall of dizziness, dehydration, weakness, and fainting. (Ex. 6, pp. 1-2) Dr. Fisher, the orthopedic surgeon who performed the surgery on September 10, 2015, did not address the issue of causation. (Ex. 5, p. 1; Ex. JE 4, pp. 10-14) Dr. Wampler, performed a thorough review of both her pre- and post-injury medical records, and conducted a physical examination and interview of claimant. Dr. Wampler concluded that "within a reasonable degree of medical certainty that Ms. Schmidt's fall at work on September 9, 2015 was the result of a personal health condition or idiopathic injury; and was unrelated to her work circumstances." (Ex. A, p. 9)

I accept the opinion of Dr. Wampler and find his opinion to be the most informed and persuasive. Dr. Wampler's opinion was well informed and was stated to a reasonable degree of medical certainty, or more probable than not.

The opinion of Dr. Wampler, combined with the fact claimant stated that she really did not know what caused her to fall, and the fact that an eyewitness, Rose Tanner, could not identify any particular cause for her fall, leads me to conclude that claimant has failed to carry her burden of proof that she sustained an injury that arose out of her employment.

This is not to say that defendant managed the deli well or treated claimant as a longtime valued employee. But, I am unable based on the record presented to find the casual connection.

### CONCLUSIONS OF LAW

The primary disputed issue in this case is whether claimant sustained an injury that arose out of her employment.

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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).

"When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. 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 Cas. Co., 526 N.W.2d 845 (Iowa 1995). (Citations omitted.)

"Arising out of" – Lakeside Casino v. Blue, 743 N.W.2d 169, at 174 (Iowa 2007):

The element of "arising out of" requires proof "that a causal connection exists between the conditions of [the] employment and the injury." Miedema, 551 N.W.2d at 331. "In other words, the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of [the] employment." Id.; accord McIlravy v. N. River Ins. Co., 653 N.W.2d 323, 331 (Iowa 2002) (stating "injury must be or related to the working environment or the conditions of employment."); Griffith v. Norwood White Coal, Co., 229 Iowa 496, 502, 294 N.W. 741, 744 (1940) (stating "injury arises out of the employment if it can reasonably be said to result from a hazard of the employment"). In Hanson, this court adopted the actual-risk rule:

If the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of the employment. And it makes no difference that the risk was common to the general public on the day of the injury.

452 N.W.2d at 168.

I have found above that Dr. Wampler's opinion that the claimant's injury was the result of a personal health condition and is unrelated to her employment was the most persuasive expert opinion and I accepted the same.

I am unable, based on the facts as contained in the record and the expert opinions provided, to conclude that there was an element of claimant's work environment or condition of employment that is related to the injury and that the injury was not merely coincidental.

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I conclude

that claimant was not successful in this claim and therefore exercise my discretion and order that each party shall bear their own costs.

The remaining issues raised by claimant are moot.

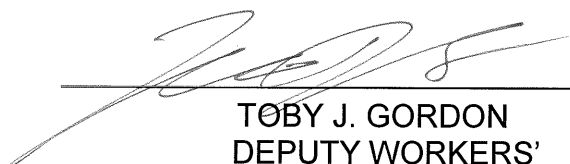
**ORDER**

**THEREFORE, IT IS ORDERED:**

Claimant shall take nothing.

Each party shall pay their own costs.

Signed and filed this 18<sup>th</sup> day of September, 2017.

  
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TOBY J. GORDON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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TJG/srs

**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.