

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER STEFANI,

Claimant,

vs.

PT NETWORK, LLC,

Employer,

and

UNKNOWN,

Insurance Carrier,
Defendants.

File No. 21012819.01

ARBITRATION DECISION

Head Note Nos.: 3002, 1800, 1801.1
2502, 2907

Claimant Jennifer Stefani filed a petition in arbitration on January 6, 2022, alleging she sustained injuries to her lungs and viral Covid pneumonia from contracting Covid-19 while working for Defendant PT Network, LLC ("PT Network") on September 3, 2021. On February 11, 2022, Stefani served PT Network with a copy of the original notice and petition by sheriff at its last known address. PT Network did not file an answer or appearance.

On May 16, 2022, Stefani filed notice of intent to file for default judgment and sent a copy of the notice to PT Network at its last known address, notifying PT Network that if it failed to respond to the petition it would lose certain rights and should seek legal advice at once. PT Network did not respond to the notice. On July 28, 2022, Stefani filed an application for entry of default against the employer for failure to file an appearance or answer. Stefani served PT Network with a copy of the application. PT Network did not file an answer or respond to the application.

On August 11, 2022, a default order was entered against PT Network. A hearing for consideration and award of appropriate relief was scheduled for September 13, 2022.

The hearing for consideration and award of appropriate relief was held on September 13, 2022. Attorney Raymond Stefani represented Stefani. Stefani appeared and testified. Exhibits 1 through 12 were admitted into the record. The hearing was recorded through digital means pursuant to rule 876 Iowa Administrative Code 4.49. A transcript of the hearing will not be prepared by the Division of Workers'

Compensation. If any party wishes to appeal this decision, that party is charged with requesting a copy of the digital audio recording and obtaining a transcript to be prepared and filed by a certified shorthand reporter. The matter was fully submitted on September 13, 2022.

FINDINGS OF FACT

Stefani lives in North Liberty with her husband. At the time of the hearing she was 52.

Stefani has been a licensed as a registered nurse in Iowa since 2005. Stefani specializes in occupational health care.

PT Network provides onsite occupational health services for employers in Iowa. On March 15, 2021, PT Network hired Stefani as an occupational health/Registered Nurse and placed her at Whirlpool. The Whirlpool plant where Stefani worked had 3,000 employees. Stefani worked full-time, eight hours per day, Monday through Friday. Stefani provided treatment to injured and sick employees, performed alcohol screens and work-related testing, engaged in charting, made and received telephone calls, and performed contract tracing at Whirlpool in addition to other duties for PT Network. (Exhibit 1)

Stefani worked in the medical area of the plant directly with Annie Rabe, the clinic coordinator, and Bailey Dickey, a licensed practical nurse. Stefani worked especially close to Dickey, who was pregnant. Stefani wore a surgical mask at work. Dickey removed her mask often throughout each shift to eat and while making telephone calls. Stefani and Dickey shared the same telephone.

Stefani was diagnosed with multiple sclerosis 22 years ago. She receives treatment for multiple sclerosis through the University of Iowa. Prior to working for PT Network she had not been restricted from working due to her multiple sclerosis.

During Stefani's employment with PT Network many Whirlpool employees developed Covid-19 infections while working at the plant. When an employee was sick the employee would come to Stefani's office for screening. Stefani would examine the employee, take the employee's vital signs, and if the employee appeared to have Covid-19 symptoms, Stefani would send the employee for Covid-19 testing and home from work. Whirlpool did not require all employees to wear masks when they went to Stefani's office.

On Tuesday, August 31, 2021, Dickey came to work. Stefani observed Dickey appeared ill. She asked Dickey if she was okay and Dickey responded she was tired. The next day Dickey returned to work and she again appeared ill to Stefani. On Thursday, September 2, 2021, Dickey called in sick to work and she went for Covid-19 testing. On September 3, 2021, Dickey sent Stefani a text message informing her she had tested positive for Covid-19. Stefani had Covid-19 symptoms that day, she left

work, and she went for testing. Stefani's rapid and PCR tests were negative. Stefani continued to experience symptoms and she went for additional testing on September 5, 2021. Stefani's test on September 5, 2021, was positive.

Stefani informed Rabe and other staff with PT Network she had tested positive for Covid-19 after being exposed by Dickey. (Exhibit 3). Rabe forwarded her message to Brian Shinkle, D.O., the Medical Director for PT Network. (Ex. 3) Dr. Shinkle responded the same date:

Sorry to hear that. Because you tested positive you need to quarantine 10 days from start of symptoms. You also need to go back an [sic] identify anyone you were a [sic] close contact with. That is anyone you were within 6 feet for 15 minutes or more within a day, going back 48 hours from when symptoms began. Anyone who had that degree of contact with you is a close contact. Those close contacts who are unvaccinated need to quarantine. Those close contacts who are fully vaccinated do not need to quarantine and can continue to work.

(Ex. 3:2)

Danielle Garvey, a human resources professional for PT Network, sent Stefani an e-mail on September 7, 2021, stating she was sorry to hear that she had tested positive for Covid-19, and noting "[b]ecause your exposure was work-related, your time out of work will be company paid. I have copied our Payroll Manager, Brunella Mostovoy, on this email to accurately code your time during your time out of work. Please confirm your first date out of work." (Ex. 4) Stefani completed and submitted an incident report to PT Network reporting the exposure to Dickey and her work injury. (Ex. 8)

Unfortunately, Stefani's symptoms became worse and she went to the hospital on September 12, 2021. Stefani was discharged the next day.

Following her discharge Stefani had difficulty breathing and her condition worsened. She was readmitted to the hospital for five days on September 14, 2021. While in the hospital she received intravenous antiviral medication, oxygen, and physical therapy. Stefani testified she was diagnosed with viral Covid-19 pneumonia. Stefani reported she experienced shortness of breath, pain, and difficulty walking. Stefani's breathing problems persisted after she was discharged from the hospital the second time and she received home oxygen.

After she was discharged from the hospital, Stefani received follow-up care from her primary care provider, Amy Andersen, M.D. Stefani received additional physical therapy and a prescription albuterol inhaler.

On December 22, 2021, CNA, an agent for PT Network sent Stefani a letter, stating,

After completing our investigation, there is no medical evidence your injury arose out of and in the course of your employment. If you have other information to review, please provide the same. You have the right to file an appeal at the Iowa Division of Workers Compensation. There [sic] address is 150 Des Moines ST, Des Moines, IA 50309.
www.iowaworkcomp.gov.

Please use our claim number when corresponding with our office.

(Ex. 9)

After Stefani received the denial letter, PT Network contacted her and informed her she had three options: (1) to request an accommodation under the Americans with Disabilities Act; (2) to request an unpaid leave of absence; or (3) to return to work part-time performing contract tracing.

Stefani returned to Dr. Andersen and requested Dr. Andersen release her to perform contract tracing. Dr. Andersen released Stefani to return to part-time remote work on January 10, 2022, four days per week. (Ex. 5:2)

Stefani testified she was off work from September 7, 2021 through January 11, 2022 due to her work injury. PT Network allowed her to return to work January 12, 2022.

Stefani testified she worked 20 hours the week of January 12, 2022. Dr. Andersen released her to work six hours per day the next week. For the next two weeks Stefani worked six hours per day or 30 hours. Dr. Andersen released her to work eight hours per day. PT Network did not have much part-time contract tracing work available and she only worked 12 hours the next week. The week of February 6, 2022, through February 12, 2022, she worked 24 hours. The week of February 13, 2022 through February 18, 2022, she worked 24 hours.

On February 18, 2022, Stefani resigned from PT Network. Stefani testified she resigned because she was not receiving many hours at PT Network and she did not want to return to Whirlpool. Stefani never returned to her normal position after she contracted Covid-19 and reported it took her five months to fully recover.

PT Network did not pay Stefani any weekly temporary workers' compensation benefits or pay for any of her medical treatment, set forth in Exhibit 6. Stefani paid for her medical care through her husband's insurance. Stefani's out-of-pocket medical expenses total \$11,002.36. (Ex. 11)

Stefani testified for the 13 weeks prior to the work injury she had an average weekly wage of \$1,446.77, and she was married with one exemption.

CONCLUSIONS OF LAW

Stefani testified she contracted Covid-19 from her coworker, Dickey at work. Garvey, a human resources professional for PT Network sent Stefani an e-mail on September 7, 2021, stating she was sorry to hear that she had tested positive for Covid-19 and admitting Stefani's exposure was work-related. (Ex. 4) Stefani seeks to recover temporary benefits, medical benefits, and costs from PT Network.

I. Rate

Iowa Code section 85.36 sets forth the basis for determining an injured employee's compensation rate. Mercy Med. Ctr. v. Healy, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011). The basis of compensation shall be the "weekly earnings of the injured employee at the time of the injury." Iowa Code § 85.36. The statute defines "weekly earnings" as

gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed . . . rounded to the nearest dollar.

Id. The term "gross earnings" is defined as "recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits." Id. § 85.61. Weekly earnings for employees paid on an hourly basis

shall be computed by dividing by thirteen the earnings, including shift differential pay but not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

Id. § 85.36(6). Thus under the statute, overtime is counted hour for hour, and shift differential, vacation, and holiday pay are also included. Irregular pay is not included.

Stefani worked 40 hours per week prior to the work injury. She testified for the 13 weeks before the work injury she earned average weekly earnings of \$1,446.77. Stefani was married and entitled to one exemption. For the ratebook in effect at the time of the work injury, Stefani's rate is \$909.59. www.iowaworkcomp.gov (published website of ratebook spreadsheets, including the governing spreadsheet for injuries occurring between July 1, 2021 and June 30, 2022).

II. Temporary Benefits

Iowa Code section 85.33 (2021) governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). Stefani is only seeking temporary benefits in this case. There was no evidence presented she has sustained a permanent impairment as a result of the September 3, 2021 work injury.

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

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

"[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). "Stabilization of the employee's condition 'is the event that allows a physician to make the determination that a particular medical condition is permanent.'" Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57.

Iowa Code section 85.33(1) governs temporary total disability benefits as follows:

[e]xcept as provided in subsection 2 of this section, the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Under Iowa Code section 85.33(6), “‘employment substantially similar to the employment in which the employee was engaged at the time of the injury’ includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed.”

Stefani testified she was restricted from working September 7, 2021, through January 10, 2022. For these weeks Stefani is entitled to temporary total disability benefits at the rate of \$909.59.

Stefani returned to work part-time January 12, 2022. She never returned to her normal job duties. Stefani testified she worked 20 hours the week of January 12, 2022. For the weeks of January 16, 2022 and January 23, 2022, Stefani worked 30 hours each week. For the week of January 30, 2022, she worked 12 hours. For the weeks of February 6, 2022 and February 18, 2022, Stefani worked 24 hours each week. On February 18, 2022, Stefani resigned from her employment with PT Network.

According to Stefani’s paystub for the period ending August 7, 2021, Stefani earned \$29.08 per hour. Under the statute,

If an employee is entitled to temporary partial benefits under subsection 3 of this section, the employer for whom the employee was working at the time of injury shall pay to the employee weekly compensation benefits, as provided in section 85.32, for and during the period of temporary partial disability. The temporary partial benefit shall be sixty-six and two-thirds percent of the difference between the employee’s weekly earnings at the time of injury, computed in compliance with section 85.36, and the employee’s actual gross weekly income from employment during the period of temporary partial disability.

Iowa Code § 85.33(4).

Using the above formula, Stefani is entitled to temporary partial disability benefits of \$576.78 for the week of January 12, 2022, \$382.71 for the week of January 16, 2022 through January 22, 2022, \$382.71 for the week of January 23, 2022 through January 29, 2022, \$731.87 for the week of January 30, 2022, through February 5, 2022, \$499.23 for the week of February 6, 2022 through February 12, 2022, and \$499.23, for the week of February 13, 2022, through February 18, 2022.

III. Medical Bills

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

The employer furnished no care in this case. I find the medical bills set forth in Exhibits 6 and 11 are causally connected to the work injury. Defendant is responsible for all causally connected medical bills set forth in Exhibit 6 and shall reimburse claimant for all out-of-pocket expenses set forth in Exhibit 11.

IV. Costs

Stefani seeks to recover the \$100.00 filing fee, \$60.00 service fee for PT Network, \$60.00 service fee for attempted service on CNA, and the \$8.06 certified mail return receipt fee for service of the application for default against PT Network.

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 Iowa Administrative Code 4.33, provides costs may be taxed by the deputy workers' compensation commissioner for: (1) the attendance of a certificated shorthand reporter for hearings and depositions; (2) transcription costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses; (5) the cost of doctors' and practitioner's deposition testimony; (6) the reasonable cost of obtaining no more than two doctors' or practitioners' reports; (7) filing fees; and (8) the cost of persons reviewing health service disputes. The rule allows for the recovery of the filing fee and service of the original notice. CNA was not a party to the hearing on damages and default was not entered against CNA. I do not find PT Network should be assessed with the service fee for CNA. The rule does not allow for the recovery of the service fee for the application for default. I find Stefani is entitled to recover the cost of the \$100.00 filing fee and the \$60.00 cost of service on PT Network.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay claimant temporary total disability benefits from September 7, 2021, through January 11, 2022, at the weekly rate of nine hundred nine and 59/100 dollars (\$909.59).

Defendant shall pay claimant temporary partial disability benefits of five hundred seventy-six and 78/100 dollars (\$576.78) for the week of January 12, 2022, three hundred eighty-two and 71/100 dollars (\$382.71) for the week of January 16, 2022 through January 22, 2022, three hundred eighty-two and 71/100 dollars (\$382.71) for the week of January 23, 2022 through January 29, 2022, seven hundred thirty-one and 87/100 dollars (\$731.87) for the week of January 30, 2022, through February 5, 2022, four hundred ninety-nine and 23/100 dollars (\$499.23) for the week of February 6, 2022 through February 12, 2022, and four hundred ninety-nine and 23/100 dollars \$499.23, for the week of February 13, 2022, through February 18, 2022.

Defendant is responsible for all causally connected medical bills set forth in Exhibit 6 and claimant's out-of-pocket medical expenses set forth in Exhibit 11.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendant shall reimburse claimant one hundred and 00/100 dollars (\$100.00) for the filing fee and sixty and 00/100 dollars (\$60.00) for the cost of service on Defendant.

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

Signed and filed this 14th day of October, 2022.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Raymond Stefani (via WCES)

PT Network, LLC (via regular and certified mail)
501 Fairmount Ave., Ste. 302
Towson, MD 21286-5457

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.