

The defendants objected to Pages 3 and 4 of Claimant's Exhibit 4. They argue that the East Penn-Sedgwick email and Medicus-Iowa Ortho fax are documents created in anticipation of litigation and therefore privileged under Iowa Rule of Civil Procedure 1.503(3).

Young disagrees. Young argues that administrative proceedings such as this case are governed by evidentiary rules that are less strict than those that govern trials in Iowa district courts. He further contends that Iowa Code section 85.27(2) expressly waives any such privilege under which the fax and email might be covered.

With respect to the fax from Frankowski to Iowa Ortho that is Page 4 of Claimant's Exhibit 4, there is no basis upon which to conclude that Iowa Ortho was a representative of either of the defendants or was participating in preparation of litigation against Young. The facts show just the opposite. Iowa Ortho was not a representative of the defendants, but a provider of care to Young that was not authorized by the defendants.

Further, Frankowski's fax to Iowa Ortho in substance was plainly intended to inform Iowa Ortho that the defendants had denied a causal relationship between Young's work injury and the care she was seeking at Iowa Ortho so that Iowa Ortho could provide care to Young and have her private insurance pay for it. Thus, Page 4 of Claimant's Exhibit 4 is not subject to the qualified privilege of Iowa Rule of Civil Procedure 1.503(3). The fax was not created with an eye toward litigation, but an eye toward how Iowa Ortho would bill and be paid for the care it provided Young. Page 4 of Claimant's Exhibit 4 is therefore admitted and a part of the record.

The email found at Page 3 of Claimant's Exhibit 4 is between Sedgwick, the third party administrator, and East Penn. There is little basis for concluding that the correspondence was made with litigation in mind as opposed to East Penn's operations. Indeed, the defendants' argument relies on conclusory assertion in support of this argument. This is likely because the focus of the email was on determining what, if any, permanent work restrictions Young had so that West Penn could assess whether it could accommodate them on a permanent basis. Put otherwise, the focus was on Young's ability to perform her job at West Penn. Consequently, the email is not subject to immunity from discovery (an immunity the defendants did not assert during discovery) or admission as evidence in this case. Thus, Page 3 of Claimant's Exhibit 4 is admitted into evidence over the defendants' objection.

Thus, the evidentiary record consists of:

- Testimony at hearing by Young;
- Joint Exhibits 1 through 6;
- Claimant's Exhibits 2 through 11; and
- Defendants' Exhibits A through G.

ISSUES

The parties jointly prepared a hearing report that defines the claims, defenses, and issues submitted to the deputy commissioner who presides at the hearing. 876 IAC 4.19(f). The hearing report includes various stipulations, all of which were accepted and are incorporated into this decision. The parties are bound by their stipulations, and this decision will not address any factual or legal issues relating to them.

In addition to the stipulations, the parties identified the following issues in the hearing report as being in dispute:

- 1) The admissibility of Pages 3 and 4 of Claimant's Exhibit 4;
- 2) Whether Young is entitled to healing period or temporary disability benefits from May 7, 2017, through September 16, 2017;
- 3) Whether Young is entitled to permanent disability benefits;
- 4) Whether the defendants are entitled to a credit against any disability benefits paid.
- 5) Whether Young is entitled to an award of medical expenses;
- 6) Whether Young is entitled to reimbursement for an independent medical examination (IME) under Iowa Code section 85.39;
- 7) Whether the defendants must pay a penalty under Iowa Code section 86.13; and
- 8) Whether costs should be taxed against either party.

FINDINGS OF FACT

Young was 61 years of age at the time of hearing. (Hearing Transcript, p. 48) She has a health history that includes carpal tunnel syndrome and release, diabetes, and left-foot problems. (Jt. Ex. 5, pp. 1–19; Defendants' Exhibit G, p. 1)

Young was a "C" student in high school. (Tr. p. 48) She graduated in 1975. (Tr. p. 48) After high school, Young attended Des Moines Area Community College (DMACC), where she took secretarial classes before switching to data entry. (Tr. p. 48–9) Young earned a data entry certificate from DMACC in or around 1977. (Tr. p. 49)

Young's first job after graduating from high school was at a restaurant. (Tr. p. 50) She cooked, served tables, and washed dishes. (Tr. p. 50) Young held that job for about 15 years before transitioning to truck driving. (Tr. p. 50)

In 1990, Young enrolled in truck-driving school. (Tr. p. 49) Young earned a commercial driver's license (CDL). (Tr. pp. 49–50) She worked as a cross-country truck driver. (Tr. p. 50) Young had to unload her hauls herself while performing this job. (Tr. pp. 50–51) She worked as a truck driver for about 16 years. (Tr. p. 51)

Young's career as a truck driver ended after her husband became disabled. (Tr. p. 51) She stayed home to care for him. (Tr. p. 51) Then Young got a job at a convenience store, working the cash register and cooking food such as submarine sandwiches and pizza. (Tr. p. 51) She worked at the convenience store for about one year. (Tr. p. 51)

Young's next job was at a restaurant. (Tr. p. 51) She cooked and served tables. (Tr. p. 52) Young held this job for two or three years before going to work at East Penn. (Tr. p. 52)

East Penn manufactures car batteries. (Tr. p. 52) Young underwent a pre-employment physical before starting her job at East Penn, which she passed. (Tr. p. 53) Young worked 40 hours per week at East Penn. (Tr. p. 53) East Penn provided health insurance and a 401(k) retirement plan. (Tr. p. 53)

Young worked as part of a production line, putting labels and handles on batteries and palletizing them for shipment. (Tr. p. 52) On August 8, 2016, Young was making boxes. (Joint Exhibit 1, p. 1) She walked around the cart onto which they place boxes and caught her right leg on the cart. (Jt. Ex.1, p. 1) Young tripped on a cart and fell. (Tr. p. 53) Young described her fall multiple times from the date of injury through the date of hearing:

- August 9, 2016: Young told Jennifer Angstadt, RN, who conducted an intake for East Penn, that “she fell to both of her knees” and “bumped her forehead on the table as she fell to the ground.” (Jt. Ex. 1, p. 1)
- August 10, 2016: Nicole Ruble, PA-C, examined Young at South Central Iowa Medical Clinic (South Central) and described the fall. Ruble does not note any twisting of Young's back when she fell or that Young complained of any hip or back pain during the visit. (Jt. Ex. 2, p. 1)
- August 22, 2016: Young complained to Ruble that “walking the way that she has been has caused some right hip pain.” (Jt. Ex. 2, p. 4)
- August 23, 2016: Lauren Plum, P.T., performed a physical therapy intake examination at Wayne County Hospital of Young. Plum's notes state Young “reports she tripped over a cart at work and landed on her hands and knees, also hitting her head on a cabinet in front of her.” (Jt. Ex. 3, p. 7) Plum does not document that Young described twisting her back in the fall. (Jt. Ex. 3, p. 7) However, Plum does note that Young “[a]lso reports pain in her [right] hip and cannot lie on [right] side; [Young] thinks this may

be due to wearing the immobilizer and walking differently.” (Jt. Ex. 3, p. 7) Thus, Young made no mention of twisting her back when she fell to Plum during the intake examination, but expressly tied her complaints of right hip pain to wearing an immobilizer and walking differently. (Jt. Ex. 3, p. 7)

- October 13, 2016: Shehada Homedan, M.D. examined Young and described in a consultation report thusly: “She injured her knee at work when she fell directly on her left knee.” (Jt. Ex. 3, pp. 15) Dr. Homedan did not document in the report any notes relating to back or hip pain complaints by Young. (See Jt. Ex. 3, pp. 15–16)
- December 15, 2016: Richard Goding, M.D., examines Young and in his consultation report, notes that she “states she fell on her knee in August on both knees and she has had left vs. right pain.” (Jt. Ex. 3, p. 26) Dr. Goding makes no note of any twisting of Young’s back during the fall. (See Jt. Ex. 3, pp. 26–27)
- February 10, 2017: William Jacobson, M.D., examined Young for a defense independent medical examination (IME) and recounts her fall as follows: “She sustained an injury to her knees in August 2016 after tripping over a cart. She reports landing directly on both knees. She reports having bruising of both knees.” (Defendants’ Exhibit G, p. 1)
- November 2, 2018: In an answer to an interrogatory, Young states she “was working on the ‘finishing line’ and was moving boxes and tripped over a cart and fell onto the concrete floor on both knees. This caused her to injure both knees and her low back.” (Def. Ex. H, p. 3)
- November 21, 2018: After meeting and examining Young, Sunil Bansal, M.D., describes her injury as follows: “As she was walking, she tripped over a cart that was used to stack boxes on. She fell straight forward onto her knees. She also hit her hand on the counter and twisted her back.” Claimant’s Exhibit 2, p. 7)
- April 19, 2019: Young testified that she fell forward and landed on her knees without mentioning that she twisted her back. (Tr. p. 53) Young did not state in her sworn testimony that she twisted her back when she fell. (See *generally* Tr.)

Thus, there is one instance in which Young stated that she also twisted her back in the fall. Young shared this detail with Dr. Bansal during his examination of the claimant, who included the additional detail in his report and relied on it at least in part for his causation opinion in the report. Young’s description of her fall to Dr. Bansal stands in contrast to her consistent description to other medical professionals and in litigation.

Young consistently described her fall from the day after it occurred and in her testimony at hearing as her falling forward onto both of her knees, without mentioning a twist of her back. While not identical, Young described her fall at work to Angstadt, Ruble, Dr. Homedan, Dr. Goding, and Dr. Jacobson in similar fashion. Their recordings of how she fell do not include any mention of her twisting her back in the fall. Further, while Young's answer to Interrogatory 3 states that she injured her low back in the fall, the answer's description of the fall does not describe twisting of the back (See Def. Ex. H, p. 3) And Young's sworn testimony at hearing contained no mention of twisting her back when she fell on August 8, 2016. (Tr. p. 53)

Dr. Bansal's report is thus an outlier. Dr. Bansal is the only medical professional who documented that Young twisted her back when she fell while working at East Penn. Young's statement to Angstadt on the day after the fall, which Young by and large adhered to throughout her treatment with various providers (e.g., Ruble, Plum, Dr. Homedan, and Dr. Goding), during her IME with Dr. Jacobson, and in her answers to interrogatories and sworn hearing testimony is more credible than her statement to Dr. Bansal because of the following factors:

- The closeness in time to the fall, which means Young's recollection of what happened was better when speaking with doctors shortly after the fall than with Dr. Bansal over a year afterward;
- Young's interest in receiving effective care for her injuries; and
- Young being under oath while testifying at hearing.

In contrast, Young's statement to Dr. Bansal that she twisted her back occurred about 15 months after the fall. Dr. Bansal was not providing care in the traditional sense to Young, but performing a one-time IME. Moreover, Young was not under oath when speaking with Dr. Bansal. For these reasons, the statement in Dr. Bansal's report that Young twisted her back when she fell while working at East Penn on August 8, 2016, is not credible. Young's recount to Angstadt, Ruble, Plum, Dr. Homedan, Dr. Goding, and Dr. Jacobson, which is in line with her interrogatory answer and hearing testimony, is more credible.

Moreover, Young did not complain of pain in her lower back or hip when she saw Angstadt on August 8, 2016. (See Jt. Ex. 1, p. 1) Nor did she share any such complaints in her initial visit with Ruble on August 10, 2016. (See Jt. Ex. 2, pp. 1-3) Young did not complain of pain in that area of her body until August 22, 2016, when she complained to Ruble of right-hip pain and specifically tied it to walking differently. (Ex. 2, p. 4) Thus, when Young first shared with a care provider that she was experiencing right-hip pain, she did not link her right-hip pain to her fall at East Penn. (See Ex. 2, p. 4)

Young's description of how she fell changed when she saw Dr. Bansal. Young did not complain of hip or back pain in the immediate aftermath of the fall. And when Young first complained about hip pain, she expressly linked it to the way she had been

walking. The weight of the evidence therefore establishes that Young's fall was forward, onto both of her knees, and without twisting her back in the fall.

As noted above, Angstadt performed an intake examination of Young on August 9, 2016. (Jt. Ex. 1, p. 1) Young informed Angstadt of bruising on both knees. (Jt. Ex. 1, p. 1) She reported a small abrasion on and slight swelling in her left knee. (Jt. Ex. 1, p. 1) Angstadt noted that Young rated her left knee pain at a 10 when transitioning from sitting to standing. (Jt. Ex. 1, p. 1) Young told Angstadt that she experienced minimal pain when standing because "she places more weight onto her [right] leg." (Jt. Ex. 1, p. 1)

On August 10, 2019, East Penn directed Young to receive care at South Central, where Ruble examined Young. (Jt. Ex. 2, p. 1) Ruble noted "moderate, sharp left knee pain" and "feelings of instability and the knee 'giving way.'" (Jt. Ex. 2, p. 1) Ruble provided Young with a knee immobilizer. (Jt. Ex. 2, p. 1) Ruble assigned Young work restrictions on standing and walking "as that incites the pain," for two weeks. (Jt. Ex. 2, p. 3) Young's light duty was to perform seated work only. (Jt. Ex. 2, p. 2)

Young had an x-ray performed on her left leg that showed no fracture. (Jt. Ex. 3, p. 6) In a follow-up note by East Penn dated August 10, 2019, Kathy Hoffman, RN, BS, noted that sitting does not bother Young, "but walking and steps bother her a lot." (Jt. Ex. 1, p. 1)

Young returned to South Central on August 22, 2016, for a follow-up examination with Ruble. (Jt. Ex. 2, p. 4) She had treated with Tylenol and light-duty work. (Jt. Ex. 2, p. 4) But Young complained that her symptoms had worsened. (Jt. Ex. 2, p. 4) She informed Ruble that she continued to experience left-knee pain and left-knee swelling. (Jt. Ex. 2, p. 4) According to Ruble's notes, Young reported that "walking the way that she has been has caused some right[-]hip pain." (Jt. Ex. 2, p. 4) At hearing, Young explained that she was experiencing pain in her hip and back from the low back into the area of her buttocks, while trying to sleep, so she decided to talk to Ruble about it. (Tr. pp. 55-56)

Ruble performed a physical examination of Young's left knee. (Jt. Ex. 2, p. 5) Ruble found "tenderness to palpation present of the lateral and medial aspects of the left knee, pain with motion present, knee joint crepitus noted bilaterally, joint stability WNL but pain present with varus and valgus stress to the left knee joint, [and] mild swelling noted of the anterior knee." (Jt. Ex. 2, p. 5) Ruble decided to continue conservative treatment in the form of light duty and starting physical therapy in two weeks. (Jt. Ex. 2, p. 6) Ruble assigned work restrictions of no walking or standing and no work requiring prolonged kneeling, squatting, stooping, or climbing. (Jt. Ex. 2, p. 7) Moreover, under Ruble's work restrictions, Young could sit, stand, and walk as needed. (Jt. Ex. 2, p. 7)

As discussed above, Plum performed an initial examination of Young for physical therapy intake at Wayne County Hospital on August 23, 2016. (Jt. Ex. 3, pp. 7, 10)

Young shared that her whole left knee hurt initially but now the pain was primarily located in the front of the left knee and on either side of her kneecap. (Jt. Ex. 3, p. 7) Moreover, Young complained of right-hip pain that prevented her from lying down on her right side that she thinks may be due to wearing the immobilizer and walking differently. (Jt. Ex. 3, p. 7) The examination notes state Young's gait was normal at the time. (Jt. Ex. 3, p. 8)

Young went to Community Health Centers of Southern Iowa on August 29, 2016. (Jt. Ex. 5, p. 20) Mark Easter, D.O., examined Young. (Jt. Ex. 5, p. 24) Dr. Easter noted that Young was experiencing aching pain all over that was worse in the left arm and leg. (Jt. Ex. 5, p. 20) Her symptoms included decreased mobility, joint instability, joint tenderness, limping, nocturnal awakening, nocturnal pain, and weakness. (Jt. Ex. 5, p. 20) Young's pain was aggravated by bending, climbing (and descending) stairs, movement, and walking. (Jt. Ex. 5, p. 20)

Plum discharged Young from physical therapy on August 30, 2019. (Jt. Ex. 3, p. 11) In Plum's discharge summary, she noted that Young reported worsening pain in both knees and the right hip at night. (Jt. Ex. 3, p. 11) Young complained to Plum that she was "unable to tolerate lying on her side to sleep, particularly lying on her [right] side." (Jt. Ex. 3, p. 11) Plum further documents worsening range of motion in Young's left knee and increasing tenderness to palpation in the presence of normal strength. (Jt. Ex. 3, p. 13) She states that at the time of the discharge, Young was unable to lift and carry objects or negotiate stairs with reciprocal gait. (Jt. Ex. 3, p. 11)

Ruble next saw Young on September 7, 2019. (Jt. Ex. 2, p. 8) Young again complained to Ruble of worsened symptoms. (Jt. Ex. 2, p. 8) Her left-knee pain continued and she was also experiencing right-hip pain when she laid on it at night as well as left elbow pain, which she attributed to the light-duty work East Penn had assigned her. (Jt. Ex. 2, p. 8)

Ruble performed a physical examination of Young's left and right legs. Ruble's exam of the left leg found tenderness to palpation present of the lateral aspect of the knee, no knee joint crepitus, knee pain with motion and no effusion. (Jt. Ex. 2, p. 8) The exam of Young's right leg found "tenderness to palpation present of the lateral aspect of the hip, otherwise no tenderness to palpation present, no pain with motion present." (Jt. Ex. 2, p. 9) Ruble suspected that Young's hip pain was "due to change in gait since she hurt her knee" and felt that it "should improve" when her left knee is better. (Jt. Ex. 2, p. 10)

Ruble concluded that Young's condition was worsening with conservative treatment. (Jt. Ex. 2, p. 10) She recommended magnetic resonance imaging (MRI) and referral to an orthopedist. (Jt. Ex. 2, p. 10) Ruble again prescribed light duty. (Jt. Ex. 2, p. 10)

On September 24, 2016, Young underwent an MRI with Kraig Kirkpatrick, M.D. (Jt. Ex. 3, p. 14) Dr. Kirkpatrick noted the following impression:

Grade I to II chondromalacia along the lateral aspect of the median patellar ridge with underlying subchondral edema. There is a 2 x 4 mm joint body in the posterior joint space (image #17 of series 3). The menisci and cruciate ligaments are intact.

(Jt. Ex. 3, p. 14)

As discussed above, on October 13, 2016, Dr. Homedan examined Young. (Jt. Ex. 3, pp. 15–16) Dr. Homedan notes that Young reported “moderate pain on the outer side of the knee associated with swelling, grinding, popping, catching and stiffness.” (Jt. Ex. 3, p. 15) Young stated that two weeks of physical therapy made her feel worse. (Jt. Ex. 3, p. 15) Dr. Homedan reviewed the x-rays and MRI of Young’s left knee and “they showed mild degenerative changes with a small loose piece of bone on the lateral aspect of the femoral condyle adjacent to the lateral patellar facet and edema in the knee cap.” (Jt. Ex. 3, p. 15) Dr. Homedan discussed Young’s various treatment options with her, including conservative treatment and surgery. (Jt. Ex. 3, p. 16) Young elected left-knee arthroscopy and debridement. (Jt. Ex. 3, p. 16–17)

On October 17, 2016, Young returned to Community Health to see Dr. Easter. (Jt. Ex. 5, p. 25) Young complained of aching and sharp pain in her left wrist that radiated to her left hand. (Jt. Ex. 5, p. 25) Lifting and movement made the pain worse. (Jt. Ex. 5, p. 25) She told Dr. Easter that she woke up the day before with a very sore left hand and left wrist, but denied an injury of any kind. (Jt. Ex. 5, p. 25) Her symptoms included decreased mobility, joint instability, joint tenderness, nocturnal awakening, nocturnal pain, swelling, and weakness. (Jt. Ex. 5, pp. 25, 27)

Dr. Easter diagnosed Young’s left wrist as “sprain/overuse.” (Jt. Ex. 5, p. 28) He identified her left-wrist injury as a “[w]ork-related condition.” (Jt. Ex. 5, p. 28) Dr. Easter found the x-ray of Young’s left wrist normal “except for minimal spurring bone distal to navicular (multangular?).” (Jt. Ex. 5, p. 28)

Young returned to South Central on October 19, 2016. (Jt. Ex. 2, p. 11) This time, Young complained to Ruble of right-knee pain. (Jt. Ex. 2, p. 11) Ruble noted:

Patient fell at work a few months ago and injured her left knee. Shortly after the fall her right knee started hurting which she attributed to favoring the left side but the right side is still very painful. She reports that it aches at night even when she is not using it. She continues to be on light duty at work and will be having a foreign body removed from her left knee in a few weeks.

(Jt. Ex. 2, p. 11) Ruble ordered an x-ray and referred Young to Dr. Homedan for evaluation. (Jt. Ex. 2, p. 13)

Later on October 19, 2016, Young received an x-ray of her right knee at Mercy Medical Imaging. (Jt. Ex. 3, p. 19) Dr. Kirkpatrick interpreted the x-ray. (Jt. Ex. 3, p. 19)

Under “History,” Dr. Kirkpatrick notes, “Pain following a fall.” (Jt. Ex. 3, p. 19). Dr. Kirkpatrick finds “a 6 mm well-corticated ossicle projecting over the lateral aspect of the patellofemoral joint on the sunrise side, likely a small joint body in the lateral recess or sequela of prior trauma to the insertion of the lateral retinaculum.” (Jt. Ex. 3, p. 19)

Young saw Dr. Homedan regarding her right-knee pain on October 20, 2016. (Jt. Ex. 3, p. 20) Dr. Homedan notes that Young’s right-knee pain “started at the time when she injured her left knee.” (Jt. Ex. 3, p. 20) He notes that the pain “got worse over the past week, associated with popping, grinding and catching, swelling and stiffness.” (Jt. Ex. 3, p. 20) On examination, Dr. Homedan found “mild effusion” with “tenderness over the medial and lateral joint line, tenderness over the lateral patellar facet.” (Jt. Ex. 3, p. 20) Dr. Homedan and Young discussed conservative treatment and a possible MRI for her right knee; ultimately, they decided to wait until she is done with her left knee before choosing how to proceed with care for her right knee. (Jt. Ex. 3, p. 20)

Young testified at hearing that she had to perform seated work due to the work restrictions she received for her knee injury. (Tr. p. 56) She explained that a rope handle went on some batteries. (Tr. p. 56) East Penn directed Young to perform that function. (Tr. p. 56) Throughout her workday, Young would tie one end of the rope before putting them on the battery. (Tr. p. 56) This caused Young’s hand to hurt, so she asked East Penn if she could perform other duties so she was not tying the ropes all day, every day. (Tr. p. 56–57) Sometime thereafter, she was getting ready to go to work and attempted to fasten her jeans when a tendon in her hand pulled and it hurt really bad. (Tr. p. 57)

Young saw Ruble at South Central on October 26, 2016, because of left wrist pain. (Jt. Ex. 2, p. 14) According to Ruble’s notes, the pain developed the day prior and “was acute in onset.” (Jt. Ex. 2, p. 14) Young shared with Ruble that even though she fell on her left wrist on August 8, 2016, it was not really bothering her until the day before. (Jt. Ex. 2, p. 14). She stated that when she was buttoning her pants at home on October 25, 2019, she felt and heard a pop and had pain in her wrist. (Jt. Ex. 2, p. 14)

Ruble diagnosed Young with a left wrist “sprain, overuse injury.” (Jt. Ex. 2, p. 17) South Central provided Young with a wrist splint. (Jt. Ex. 2, p. 16) Ruble released Young to return to work with the following restrictions:

- No carrying over 10 pounds with left hand;
- Minimal walking and standing;
- Minimal use of left hand; and
- Continue the previous restrictions from knee injury.

(Jt. Ex. 2, p. 17) Ruble referred Young to Dr. Homedan for the left-wrist injury because she was already treating with him for her left-knee injury. (Jt. Ex. 2, p. 16)

After seeing Ruble on October 26, 2016, Young underwent x-rays of her left wrist. (Jt. Ex. 3, p. 21) Mark Johnson, M.D., reviewed Young's left-wrist x-rays. (Jt. Ex. 3, p. 21) He found no acute fracture and that the carpal rows were anatomically aligned. (Jt. Ex. 3, p. 21)

On October 27, 2016, Young visited Ruble at South Central for a consultation at the request of Dr. Homedan before her scheduled left-knee arthroscopy. (Jt. Ex. 2, p. 18) Young had "no additional problems to discuss" with Ruble during the visit. (Jt. Ex. 2, p. 18) Ruble found Young a reasonable candidate for the arthroscopy. (Jt. Ex. 2, p. 21)

Dr. Homedan performed surgery on Young on November 3, 2016. (Jt. Ex. 3, p. 22) In the report of operation, Dr. Homedan describes the procedure as a left knee arthroscopic loose body excision and chondroplasty. (Jt. Ex. 3, p. 22)

Young saw Ruble at South Central on November 28, 2016. (Jt. Ex. 2, p. 22) Young told Ruble that her symptoms had not improved. (Jt. Ex. 2, p. 22) She complained of continued bilateral knee pain and left wrist pain. (Jt. Ex. 2, p. 22) Although Young had been released to return to work without restriction, she informed Ruble that she had not done so because of her bilateral knee pain and left wrist pain. (Jt. Ex. 2, p. 22)

Ruble examined Young. (Jt. Ex. 2, p. 24) Ruble noted "right knee joint crepitus present," with normal range of motion and joint stability, and "tenderness to palpation present of the distal patellar tendon and the lateral aspect of the knee joint line." (Jt. Ex. 2, p. 24) With respect to Young's surgically repaired left knee, Ruble noted the surgical wounds were healing, no joint crepitus, "tenderness to palpation present of the distal patellar tendon and the lateral aspect of the knee joint line." (Jt. Ex. 2, p. 24)

Young asked for a referral to a different specialist because the surgery had not resolved her left-knee pain and Dr. Homedan had not treated her right knee or left wrist. (Jt. Ex. 2, p. 22) Ruble referred Young for an orthopedic consultation with Dr. Goding. (Jt. Ex. 2, pp. 24) The diagnostic arthroscopy found:

- Grade 4 changes in the patellofemoral articulation;
- Grade 2 and 3 changes in the medial compartment;
- Loose osteophyte on the lateral edge of the lateral patellar facet; and
- Intact medial meniscus, lateral meniscus, and ACL. (Jt. Ex. 3, p. 22)

Dr. Homedan removed the loose osteophyte and performed chondroplasty. (Jt. Ex. 3, p. 22)

Dr. Homedan saw Young for a follow-up examination on November 10, 2016. (Jt. Ex. 3, p. 24) With respect to Young's left knee, Dr. Homedan discussed gradually increasing her activities and returning to full-duty work in the next couple of weeks. (Jt.

Ex. 3, p. 24) Young also presented for evaluation of “left wrist pain for the past couple of months.” (Jt. Ex. 3, p. 24) Dr. Homedan noted that Young’s left-wrist pain was “aggravated by repetitive motion mainly on the base of her thumb, radiates to her forearm, associated with stiffness and weakness.” (Jt. Ex. 3, p. 24) Dr. Homedan recommended continuing conservative treatment. (Jt. Ex. 3, p. 24) Ultimately, Young decided to continue wearing a wrist brace, start physical therapy, and wait on receiving a Cortisone injection for the time being. (Jt. Ex. 3, p. 24; Tr. p. 59)

On November 28, 2019, Young returned to see Ruble at South Central. (Jt. Ex. 2, p. 22) Young complained of continued pain in both knees and her left wrist. (Jt. Ex. 2, p. 22) Despite being released to return to work, Young told Ruble that she had been unable to do so because of the pain. (Jt. Ex. 2, p. 22) She asked to see a different specialist than Dr. Homedan because the surgery had not helped the pain in her left knee and Dr. Homedan “did not address her other knee or her wrist.” (Jt. Ex. 2, p. 22; Tr. p. 60) Ruble noted that the defendants had denied liability for Young’s left wrist injury because it had manifested itself while she was at home, getting dressed. (Jt. Ex. 2, p. 22)

Ruble authored and signed a letter dated November 28, 2016, “To whom it may concern.” (Jt. Ex. 2, p. 26) Ruble did not address the letter to a specific person or entity. (Jt. Ex. 2, p. 26) The letter states that South Central saw Young “and is unable to work due to continuing knee and wrist pain.” (Jt. Ex. 2, p. 26) It states that Young had been scheduled for an appointment with Dr. Goding, on December 15, 2016, and excused her from work until December 16, 2016. (Jt. Ex. 2, p. 26) Ruble states in the letter that, “After he sees her he will need to take over this and decide if/when she needs to be off work.” (Jt. Ex. 2, p. 26)

Dr. Goding saw Young on December 15, 2016, for bilateral knee pain. (Jt. Ex. 3, p. 26) Young told Dr. Goding that she had moderate to severe pain after the fall at work. (Jt. Ex. 3, p. 26) Anti-inflammatory medications and rest relieved Young’s pain somewhat, but all weight-bearing activities exacerbated it. (Jt. Ex. 3, p. 26)

Dr. Goding opined that Young was suffering from osteoarthritis. (Jt. Ex. 3, p. 26) He described the plan as continuing conservative treatment. (Jt. Ex. 3, p. 26) Dr. Goding noted that Young would return if she wished to discuss surgery. (Jt. Ex. 3, p. 26) Nonetheless, a general orthopedic pre-op note dated the same day identified a planned total right knee replacement surgery for Young, planned for January 2017. (Jt. Ex. 3, pp. 28–29) Dr. Goding had planned on performing total knee replacement surgery on both of Young’s knees. (Tr. p. 61)

On January 12, 2017, Young saw Ruble at South Central for a preoperative consultation requested by Dr. Goding for proposed right total knee replacement. (Jt. Ex. 2, p. 27) Young had no additional complaints that day. (Jt. Ex. 2, p. 27) Ruble deemed Young a reasonable candidate for the surgery. (Jt. Ex. 2, p. 30)

Young testified during the hearing that, “Right after [Dr.] Goding said that he wanted to do total knee replacements, they pulled me in the office, gave me the papers to sign, like you have to sign these.” (Tr. p. 66) But the evidence in the record does not support her testimony. There is no indication that Young signed any short-term or long-term disability applications from December of 2016 through April of 2017.

On February 10, 2017, William Jacobson, M.D., performed an independent medical examination (IME) of Young at Capital Orthopaedics. (Def. Ex. G, pp. 1) Capital Orthopaedics explained to Young that it was an IME, Dr. Jacobson would be providing a report to the defendants, and Dr. Jacobson and Young “were not establishing the traditional physician-patient relationship.” (Def. Ex. G, p. 1) This was the only time Dr. Jacobson examined Young.

Dr. Jacobson reviewed records dated from August 10, 2016, to January 12, 2017, from South Central, Wayne County Hospital Imaging, the operative note from Dr. Homedan, and therapy notes from Wayne County Hospital. (Def. Ex. G, p. 2) Dr. Jacobson did not review Dr. Homedan’s office notes or notes from Dr. Goding. (Def. Ex. G, p. 2) Dr. Jacobson also performed a physical examination of Young. (Def. Ex. G, p. 2) Dr. Jacobson opined that Young had a normal gait. (Def. Ex. G, p. 2)

Dr. Jacobson answered questions about whether Young’s injuries were related to her fall while on the job with East Penn on August 8, 2016. (Def. Ex. G, p. 3) Dr. Jacobson concluded that there was a causal relationship between Young’s fall while working for East Penn and her left-knee injury, right-knee injury, and left-wrist injury. (Def. Ex. G, pp. 3, 5)

Dr. Jacobson found that Young had “no symptoms in regards to her left thumb and wrist.” (Def. Ex. G, p. 2) He diagnosed Young with “left wrist tendinitis that has resolved.” (Def. Ex. G, pp. 4–5) Dr. Jacobson concluded that Young had reached MMI with respect to the work injury of her left wrist on December 30, 2016, and rated her as a zero percent impairment, using the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides)*. (Def. Ex. G, p. 6) Dr. Jacobson opined that Young could return to work with no restrictions relating to her left wrist. (Ex. G., p. 6)

With respect to the injuries to Young’s knees, Dr. Jacobson concluded that she had “some mild underlying arthritis, which was likely pre-existing,” and temporarily aggravated by the fall at work. (Def. Ex. G, p. 4) “The left knee x-rays show minimal degenerative changes. Her complaints of pain are more severe than I would expect; however, her arthroscopy by Dr. Homedan indicates she has significant chondromalacia of the patellofemoral joint and medial compartment, so I do believe she has left knee pain.” (Ex. G., p. 5) Dr. Jacobson also opined that “objective findings do not support her right knee subjective complaints based on her x-rays.” (Ex. G. p. 5)

On the question of future treatment for Young's knees, Dr. Jacobson opined:

I think it is reasonable to consider viscosupplementation injections as a one-time treatment. This would treat the temporary aggravation of the underlying arthritis as a result of the falls for both knees. After the first injection, if she continued to have knee complaints and pain due to the underlying arthritis, then I would opine that these would be covered under her private insurance and not a result of the work injury. I would describe the work injury as a temporary aggravation. I would not recommend any further diagnostic tests.

(Def. Ex. G, p. 4) In addition to the one-time viscosupplementation injections in her knees, he recommended physical therapy a couple of times per week for four to six weeks to treat Young's bilateral knee pain. (Def. Ex. G, p. 4)

Dr. Jacobson concluded that Young was not at MMI for her knee injuries. (Def. Ex. G, p. 4) Consequently, he declined to give a rating of permanent impairment. (Def. Ex. G, p. 4) Dr. Jacobson further opined that he "would not anticipate any impairment, however." (Def. Ex. G, p. 4) He stated that he "would anticipate MMI for the knees being approximately six to eight weeks after the injections and therapy." (Def. Ex. G, p. 7) Dr. Jacobson classified the degree of disability Young had with respect to her knees as "mild." (Def. Ex. G, p. 5)

Dr. Jacobson gave Young work restrictions in the form of avoiding kneeling, squatting, heavy lifting over 20 pounds, ladders, and uneven ground. (Def. Ex. G, p. 5) In a letter dated March 10, 2017, East Penn offered Young work within the work restrictions prescribed by Dr. Jacobson and during the time of her old shift. (Cl. Ex. 4, p. 1)

The defendants refused to authorize the total knee replacement surgery on Young's right knee that was scheduled with Dr. Goding. (Tr. pp. 61–62) The hospital called Young and notified her that the surgery with Dr. Goding was cancelled. (Tr. p. 62) No one informed Young of the reason why the defendants had refused to authorize the total knee replacement procedure with Dr. Goding. (Tr. pp. 62–63) As of the date of hearing, Young did not know the reason. (Tr. pp. 62–64)

Ruble again examined Young at South Central on April 3, 2017, for an employment physical examination requested by East Penn. (Jt. Ex. 2, p. 31; Tr. p. 64) Ruble noted that Young complained of bilateral knee pain and feelings of instability. (Jt. Ex. 2, p. 31) Young shared with Ruble that East Penn had her see an independent physician who recommended that she return to work with restrictions. (Jt. Ex. 2, p. 31) Young informed Ruble that her left wrist pain had resolved. (Jt. Ex. 2, p. 31) She also stated "that she is certain that when she returns to work the left wrist pain will return but she hasn't had any since she was off work." (Jt. Ex. 2, p. 31)

Ruble examined Young. (Jt. Ex. 2, p. 33) With respect to the left lower extremity, she noted "tenderness to palpation present and pain with motion present at the anterior aspect of the knee." (Jt. Ex. 2, p. 33) For the right lower extremity, Ruble noted "knee joint tenderness to palpation and pain with motion present along the anterior aspect of the knee." (Jt. Ex. 2, p. 33)

Ruble planned to have Young follow up with the orthopedic department to discuss joint injections in her knees. (Jt. Ex. 2, p. 33) She also planned a referral to physical therapy. (Jt. Ex. 2, p. 33) Further, Ruble stated Young could return to work at East Penn per the recommendation of Dr. Jacobson. (Jt. Ex. 2, p. 33)

Young performed light-duty work at East Penn, often tying rope on batteries, on April 3, 2017. (Jt. Ex. 3, p. 30, Tr. p. 65) The repetitive light duty job duty of tying rope made her left-wrist symptoms worse. (Tr. p. 65) Young did not feel a pop while performing this light-duty work at East Penn. (Tr. p. 84) The work caused her left wrist to ache. (Tr. p. 84)

On April 10, 2017, Plum performed another physical therapy evaluation of Young at the recommendation of Dr. Jacobson. (Jt. Ex. 3, p. 30) Young told Plum that she was experiencing "'sharp, stabbing, knife-like, needle-like' pain in bilateral anterior knees, just inferior to the patella, left greater than right." (Jt. Ex. 3, p. 30) Further, Young shared that her knees will lock or occasionally give out and swell with activity. (Jt. Ex. 3, p. 30) Young rated her left-knee pain as the same or worse since surgery by Dr. Homedan. (Jt. Ex. 3, p. 30) Plum observed antalgic gait, with bilateral trunk lean, when Young walked from the waiting room to the exam room. (Jt. Ex. 3, p. 31)

In addition, Young reported "difficulty standing still, walking for greater than 1 hour, negotiating stairs with reciprocal gait, and especially with kneeling." (Jt. Ex. 3, p. 30) Plum noted that Young said the only thing that makes her knees feel better is inactivity. (Jt. Ex. 3, p. 30) She told Plum that she stays in her recliner more than 80 percent of the time when at home. (Jt. Ex. 3, p. 30)

Plum found that Young's "objective measurements remain consistent with her performance during her last [physical therapy] episode of care, with bilateral knee [range of motion] and strength [within normal limits] but painful. Her pain has affected her ability to stand for prolonged periods, ambulate community distances, negotiate stairs with reciprocal gait, negotiate curb steps, and kneel." (Jt. Ex. 3, p. 31) Because of Young's failure to respond positively to her prior round of physical therapy, Plum planned an alternative approach that emphasized closed kinetic chain weight-bearing exercise with a short-term trial of skilled physical-therapy interventions. (Jt. Ex. 3, p. 31)

Young saw Ruble at South Central on April 27, 2017. (Jt. Ex. 2, p. 35) Young told Ruble that "her pain is the same as it was at the previous visit" on January 12 of that year. (Jt. Ex. 2, p. 35) She reported difficulty with stairs, instability, bilateral knee pain, and knees locking. (Jt. Ex. 2, p. 35) Ruble further noted that Young stated "she really doesn't do anything because most activity makes her knees hurt." (Jt. Ex. 2, p. 35)

Ruble examined Young. (Jt. Ex. 2, p. 37) She noted tenderness to palpation present of the posterior right knee, no edema present, and no ecchymosis. (Jt. Ex. 2, p. 37) Ruble found that Young's left lower extremity had joint stability within normal limits and normal range of motion. (Jt. Ex. 2, p. 37) She noted no joint crepitations present. (Jt. Ex. 2, p. 37) Ruble found that Young experienced knee pain with motion. (Jt. Ex. 2, p. 37)

The examination of Young's left lower extremity showed tenderness to palpation present on the medial aspect of the knee, no edema present, and no ecchymosis. (Jt. Ex. 2, p. 37) Range of motion and joint stability were normal. (Jt. Ex. 2, p. 37) As with the right leg, knee pain with motion was present. (Jt. Ex. 2, p. 37) Ruble found Young's gait and station to be normal. (Jt. Ex. 2, p. 37)

Ruble opined that it is unlikely that Young's pain was due to the contusion that resulted from her fall while working at East Penn. (Jt. Ex. 2, p. 37) Rather, Ruble felt the cause of Young's pain was more likely osteoarthritis of the knees. (Jt. Ex. 2, p. 37) Further, she stated that she had little to offer Young in terms of treatment aside from viscosupplementation. (Jt. Ex. 2, p. 37)

Defendants' Exhibit D is labeled at the top of each page of the document as, "EAST PENN POLICIES AND PROCEDURES MANUAL." (Def. Ex. D, pp. 1-3). The document refers to itself as a policy and contains information about an employee's eligibility for disability benefits. (See Def. Ex. D) It states:

The total short-term disability ("STD") benefit paid under the provisions of this policy will be terminated upon receipt of any disability payments for which an employee might be entitled from a state disability plan and/or the simultaneous receipt of any unemployment compensation benefits while receiving STD benefits under this Policy. It is the responsibility of the employee to provide Personnel with written evidence of all non-company disability payments and/or unemployment compensation benefits.

(Def. Ex. D, p. 2) There is no provision addressing the interplay between benefits under the STD policy and workers' compensation insurance policy. (See Def. Ex. D) No testimony at hearing addressed this subject. (See Tr.)

On May 1, 2017, Matthew Krasnick, a workers' compensation coordinator at East Penn, emailed Tanisha Taylor, the Sedgwick claims representative. (Cl. Ex. 4, p. 3) Krasnick informed Taylor that East Penn had assigned Young light-duty work, but that the employer could not have her working such duties indefinitely. (Cl. Ex. 4, p. 3) He recognized that a finding of MMI and work release would be necessary before Young could return to full-duty work. (Cl. Ex. 4, p. 3) Krasnick inquired about an IME. (Cl. Ex. 4, p. 3)

Young signed and submitted a disability claim form dated May 2, 2017. (Cl. Ex. 5, p. 1) She identified the basis for the claim as “fell hurt both knees.” (Cl. Ex. 5, p. 1) The form identifies May 2, 2017, as Young’s first day out of work. (Cl. Ex. 5, p. 1)

Young was approved for STD benefits. (Cl. Ex. 5, pp. 7–10; Tr. p. 66) She received STD payments from May 2, 2017, through September 16, 2017, in the net amount of \$193.37 per week, except for the first week in which she received a prorated \$138.12 because she worked eight hours. (Cl. Ex. 5, pp. 7–10)

Young experienced health issues with her heart in May of 2017. (Tr. pp. 65–66) She underwent heart surgery. (Tr. p. 65) The surgery and recovery caused Young to be unable to work for approximately one or two weeks. (Tr. p. 65)

On May 10, 2017, Young went to Community Health, where Dr. Easter examined her. (Jt. Ex. 5, p. 30) Young complained of ongoing bilateral knee pain, cracking, and popping. (Jt. Ex. 5, p. 30) Dr. Easter documented that Young “[h]ad a fall to the side in therapy one month ago” that caused “medical bruising.” (Jt. Ex. 5, p. 30) Dr. Easter ordered an MRI and physical therapy evaluation. (Jt. Ex. 5, p. 30) He opined that they would wait to decide on a steroid injection until after the MRI was completed. (Jt. Ex. 5, p. 30)

Young returned to Community Health for a follow-up examination with Dr. Easter on May 22, 2017. (Jt. Ex. 5, p. 35) Dr. Easter performed a celestone injection on Young’s left knee. (Jt. Ex. 5, p. 37)

On June 13, 2017, Young saw Dr. Easter for a follow-up appointment at Community Health. (Jt. Ex. 5, p. 39) Young continued to rate her left-knee pain as a six out of 10. (Jt. Ex. 5, p. 39) She denied any improvement in her symptoms after the injection on May 22, 2017. (Jt. Ex. 5, p. 39) Dr. Easter discussed Young’s “relatively heavy work load with lead-acid battery assembly and shipping” with her. (Jt. Ex. 5, p. 42) Dr. Easter noted that they would defer to orthopedic expertise regarding diagnostic and therapeutic options. (Jt. Ex. 5, p. 42)

Krasnick wrote a letter to Medicus Resources Management, dated July 26, 2017. (Cl. Ex. 4, p. 5) It advised that “Young sustained compensable injuries to her bilateral knees on August 8, 2016 from a work accident.” (Cl. Ex. 4, p. 5) Krasnick further stated:

Ultimately, we received a medical opinion from Dr. William Jacobson that her accepted work injuries had resolved and that her restrictions and need for continuing medical treatment were no longer causally related to the accepted work injuries.

Therefore, workers’ compensation will no longer be covering this employee’s medical treatment for her bilateral knees effective May 2, 2017.

(Cl. Ex. 4, p. 5)

Young went to Iowa Ortho on August 15, 2017, when she related her complaints to the work injury at East Penn on August 8, 2016, on her patient information form. (Jt. Ex. 6, p. 1) Young informed Iowa Ortho that she was suffering from bilateral knee and hip pain as well as low back pain. (Jt. Ex. 6, p. 2) With respect to her knee pain, Young said her pain was constant and stable, giving it a severity rating of six. (Jt. Ex. 6, p. 3) She reported that walking and using stairs aggravated her pain while rest relieved it. (Jt. Ex. 6, p. 3) Young said that she will occasionally experience numbness that goes down to her feet. (Jt. Ex. 6, p. 3) Mark Matthes, M.D., recommended an MRI of her lumbar spine with which Young agreed. (Jt. Ex. 6, p. 3)

Ruble performed another employment physical examination of Young on September 18, 2017. (Jt. Ex. 2, p. 37) She noted that Young was still having bilateral knee pain, but was ready to get back to work. (Jt. Ex. 2, p. 37) Ruble noted that the strength in Young's legs was normal. (Jt. Ex. 2, p. 40) She also found that Young's gait and station were normal. (Jt. Ex. 2, p. 40) Ruble released Young to return to work without restrictions. (Jt. Ex. 2, p. 40)

On February 9, 2018, Young followed up with Iowa Ortho. (Jt. Ex. 6, p. 5) Young reported aching bilateral knee pain that radiated to the bilateral hips/low back. (Jt. Ex. 6, p. 5) She also complained of low-back pain. (Jt. Ex. 6, p. 5) Young shared that she occasionally experienced numbness in both legs. (Jt. Ex. 6, p. 5) Using stairs worsened her pain. (Jt. Ex. 6, p. 5) Marc Goeders, PA-C, examined Young and recommended a lumbar MRI. (Jt. Ex. 6, p. 6)

Young underwent an MRI at the Decatur County Hospital on February 26, 2018. (Jt. Ex. 6, p. 7) Goeders saw Young for a follow-up examination on March 1, 2018. (Jt. Ex. 6, p. 7) Goeders noted that the MRI showed mild degenerative disk bulging and facet arthritis at L4, L5, and L5-S1. (Jt. Ex. 6, p. 7) Based on the MRI findings, Goeders concluded that Young was not a candidate for injection therapy. (Jt. Ex. 6, p. 7) Goeders discussed physical therapy with Young, but she was not interested in pursuing it. (Jt. Ex. 6, p. 7)

On November 21, 2018, Sunil Bansal, M.D., performed an examination of Young. (Cl. Ex. 2, p. 1) Dr. Bansal reviewed the following medical records relating to Young's care:

- May 7, 2014 through September 5, 2018: Unrelated to Young's alleged work injuries (Cl. Ex. 2, p. 2);
- August 10, 2016, through September 18, 2017: South Central (Cl. Ex. 2, pp. 2-4);
- August 10, 2016, through December 15, 2016: Wayne County Hospital (Cl. Ex. 2, pp. 4-5);

- August 23, 2016, through April 24, 2017: Wayne County Hospital Physical Therapy (Cl. Ex. 2, p. 7);
- February 10, 2017: IME report by Dr. Jacobson (Cl. Ex. 2, p. 5);
- May 10, 2017, through June 13, 2017: Community Health (Cl. Ex. 2, pp. 5–6);
- August 15, 2017, through March 1, 2018: Iowa Ortho (Cl. Ex. 2, pp. 6–7); and
- November 21, 2018: Iowa Radiology (Cl. Ex. 2, p. 7).

In addition, Dr. Bansal met with Young, discussed Young’s physical condition with her, and performed a physical examination of Young. (Cl. Ex. 2, pp. 1–9) Dr. Bansal’s report, which is dated March 7, 2019, describes Young’s mechanism of injury as follows:

As she was walking, she tripped over a cart that was used to stack boxes on. She fell straight forward onto her knees. She also hit her hand on the counter and twisted her back.

(Cl. Ex. 2, p. 7)

With respect to Young’s back, Dr. Bansal’s report states that Young “continues to have frequent back pain, and has difficulty sitting for very long. She is able to sit for 30 minutes.” (Cl. Ex. 2, p. 7) Dr. Bansal notes that Young’s “back pain is located in her lower back, with increased pain with twisting and turning.” (Cl. Ex. 2, p. 7)

Dr. Bansal diagnosed Young with sacroiliitis. (Cl. Ex. 2, p. 9) He opines, “According to the Mayo Clinic, the mechanism of falling is consistent with the development of sacroiliitis.” (Cl. Ex. 2, p. 10 (citing the Mayo Clinic website¹)) Dr. Bansal expands:

The sacroiliac joint is twice as susceptible to axial torsion overloading than are the lumbar motion segments. Imbalanced loads such as from a fall may jeopardize the interlocking sacral mechanics by impeding balanced transiliac bony fixation and ligamentous tension across the sacrum.

(Cl. Ex. 2, p. 10)

Dr. Bansal revisited his opinion on causation at the request of Young’s counsel, who asked in a letter, “Did Ms. Young’s altered gait from her knee injuries further

¹ <http://www.mayoclinic.org/diseases-conditions/sacroiliitis/basics/causes/con-20028653> (last viewed Nov. 22, 2019).

aggravate and/or contribute to her sacroiliitis that was caused by her fall?" (Cl. Ex. 2, p. 14) Dr. Bansal provided the following answer, dated April 11, 2019:

Against the backdrop of a diagnosis of sacroiliitis, it is my medical opinion that an altered gait would serve to further aggravate that condition.

Dr. Cohen from John Hopkins University Medical School states that risk factors for sacroiliitis included leg length discrepancy or altered gaits.

(Cl. Ex. 2, p. 14–15 (citing Cohen, S. "Sacroiliac Joint Pain: A Comprehensive Review of Anatomy, Diagnosis, and Treatment," *Anesthesia & Analgesia*, 2005 Nov, 101(5): 144-53))

Dr. Bansal declared Young at MMI for her back injury as of November 21, 2018, the date on which he examined her. (Cl. Ex. 2, p. 9) On the question of whether Young has sustained a permanent impairment due to her back injury, Dr. Bansal opined that per the *AMA Guides*, Young's symptoms, and his physical examination of her, "she meets several criteria for a DRE Category II impairment, including guarding and loss of range of motion." (Cl. Ex. 2, p. 12) Dr. Bansal assigned a three percent whole person impairment based on Table 15-3 of the *AMA Guides*.

Dr. Bansal further opined that Young sustained injuries to her left and right knees that arose out of and in the course of her employment. (Cl. Ex. 2, p. 10) "This mechanism of falling onto the knees aggravated her underlying chondromalacia. The pathophysiologic basis is from localized chondrocyte destruction and resulting inflammation." (Cl. Ex. 2, p. 10 (citing Mankin HJ. "The response of articular cartilage to mechanical injury." *J Bone Joint Surg.* 1982; 64A: 450-6) According to Dr. Bansal:

The inflammatory response is most likely what aggravated her bilateral knee degenerative joint disease. A temporary exacerbation presupposes that the individual returns to their preinjury baseline after a reasonable time period. In Ms. Young's case, her preinjury baseline was characterized as doing well with no bilateral knee pain. After the August 8, 2016 incident this was clearly not the case, accelerating the need for knee replacements.

(Cl. Ex. 2, p. 10)

Dr. Bansal gave Young a permanent impairment rating of five percent lower extremity impairment or a two percent whole person impairment for having a history of direct knee impact, patellofemoral pain, and crepitus on examination for each knee using the footnote at the bottom of Table 17-31 of the *AMA Guides*. (Cl. Ex. 2, p. 12) He also gave Young the following permanent work restrictions for the injuries to her back and both knees:

- No lifting over 20 pounds;

- No frequent kneeling, bending, squatting, climbing, or twisting;
- Avoid multiple steps, stairs, or ladders; and
- No prolonged sitting greater than 30 minutes at a time. (Cl. Ex. 2, p. 12)

On the question of future care for the injuries to Young's left and right knees, Dr. Bansal opined that she may need intermittent cortisone and/or viscosupplementation (Synvisc-One/Euflexxa) injections, NSAIDs, and pain medicine for maintenance. (Cl. Ex. 2, p. 12–13) Dr. Bansal opined that for both of Young's knees, "[t]he endpoint is a knee replacement." (Cl. Ex. 2, pp. 12–13)

Dr. Bansal did not address Young's left-wrist injury in his IME report. (See Cl. Ex. 2) Dr. Easter found the injury was related to Young's work, (Jt. Ex. 5, p. 25) as did Ruble. (Jt. Ex. 2, p. 17) Dr. Jacobson found the same in his IME report. (Def. Ex. G, p. 3) The record establishes that Young sustained an injury to her left wrist due to repetitive work while performing light duty for East Penn under work restrictions for her bilateral knee injuries.

While Dr. Easter and Ruble noted that Young's left-wrist pain was related to her work duties, no treating physician used the *AMA Guides* to render an opinion on the question of whether Young sustained a permanent disability to her left wrist. Dr. Bansal also did not address this question in his report. Dr. Jacobson provided the only expert medical opinion on whether Young's left wrist is permanently disabled because of her work injury.

Dr. Jacobson concluded that Young reached MMI for her work-related left wrist injury on December 30, 2016, and that no permanent impairment resulted from it. (Def. Ex. G, pp. 4–6) Young's left-wrist pain had resolved and she exhibited no symptoms at the time of Dr. Jacobson's examination of it. (Ex. G, pp. 2, 5–6) She remained symptom free until an incident in her home. (See Tr. p. 57) Young felt a pop in her left wrist while buttoning her pants at home, followed by pain. (Tr. pp. 57) Young testified at hearing that her left wrist hurts when she performs repetitive tasks with it. (Tr. p. 77) Young also shared that she "limit[s] any repetitive type stuff so it doesn't aggravate it." (Tr. p. 77)

No medical professional has opined that the second incident involving Young's left wrist, which occurred at her home while she was buttoning her pants, was an injury arising out of and in the course of her employment. Nor is there medical evidence showing that Young sustained any permanent disability from the injury she suffered at home while buttoning her pants.

East Penn closed Young's department in 2019, leaving her employment status in question. At the time of hearing, Young did not know if she was still employed with East Penn or not. Young bid to work tearing down the equipment in her department, but did not get it. She also sought a janitorial job with East Penn. Young believes that East Penn did not place her in these positions because of her work restrictions, but has

presented no documentary evidence or accounts of alleged statements by agents of East Penn to support her belief.

CONCLUSIONS OF LAW

1. Causation and Disability

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 Electric 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).

Young has alleged work-related injuries to her:

- Left wrist;
- Hip/back;
- Left knee; and
- Right knee.

With respect to Young's left wrist, Dr. Jacobson persuasively addresses causation, MMI, and permanent disability. He found that Young sustained a left wrist injury because of the repetitive job duties associated with her light-duty assignment of tying handles onto batteries, which she was assigned to accommodate the work restrictions necessitated by her knee injury. Dr. Jacobson further opined that the left wrist injury was temporary in nature and had resolved, placing Young at MMI for the injury on February 10, 2017. He concluded that Young had no permanent impairment of her left wrist.

At hearing, Young testified that she experienced left-wrist pain after Dr. Jacobson's IME report. Her subsequent left-wrist pain began while she was getting dressed at home. Young further testified that she avoids repetitive activities with her left arm and this prevents pain in her left wrist.

Thus, the evidence establishes that Young sustained a work-related injury to her left wrist caused by the repetitive motion performing light-duty work. She reached MMI on February 10, 2017, with no permanent disability or work restrictions relating to the injury. Young then sustained a temporary aggravation when getting dressed at home that did not arise out of and in the course of employment. There is no medical opinion on causation supporting the conclusion that the injury while getting dressed at home is related to her work. Young did not prove a permanent disability to her left wrist relating to the injury.

As discussed above, Young fell forward onto both of her knees while working at East Penn on August 8, 2016. However, she did not twist her back when she fell. Young first complained of pain in the area of her hips and back when she saw Ruble on August 22, 2016, two weeks after she fell at work. Young complained to Ruble that "walking the way that she has been has caused some right[-]hip pain." Thus, Young did not relate the pain to the fall, but to an altered gait caused by walking differently due to her knee injury caused by the fall.

On August 30, 2016, Young told Plum that her right-hip pain was worse and she was unable to tolerate lying on her right side because of the hip pain. Young again complained to Ruble of right-hip pain on September 7, 2019. Ruble's physical exam of Young found tenderness and palpation present of the lateral aspect of the hip. She suspected that the hip pain was due to Young's altered gait since she hurt her knee and opined that it should improve once her left knee is better.

After the September 7 appointment with Ruble, Young does not make any additional complaints for almost one year. She went on a leave of absence from East Penn beginning on May 7, 2017, after her application for STD benefits was approved.

The evidence shows that Young's next complaint of hip pain occurred when she went to Iowa Ortho on August 15, 2017. Iowa Ortho noted bilateral hip pain, which is the first instance of Young making a complaint of left hip pain. On February 9, 2018, Iowa Ortho records describe Young's pain as "bilateral knee. The pain radiates to the [b]ilateral hips/low back."

Based on these complaints, Iowa Ortho recommended an MRI, which Young ultimately obtained on February 26, 2018. It showed mild degenerative disk bulging and facet arthritis at L4-L5 and L5-S1 and no frank disk herniation, spinal stenosis, or lumbar nerve root impingement. Consequently, Iowa Ortho found she was not a candidate for injection therapy and because she did not want to participate in physical therapy, did not have a whole lot else to offer her.

Dr. Bansal noted that Young was experiencing frequent "back pain" at the time of his physical exam of her on November 21, 2018. The pain was "located in her lower back, with increased pain with twisting and turning. He diagnosed her with sacroiliitis, caused by the fall at work. Dr. Bansal expanded on his causation opinion in response to a letter from Young's attorney, stating, "Against a backdrop of a diagnosis of sacroiliitis, it is my medical opinion that an altered gait would serve to further aggravate that condition." Dr. Bansal did not opine on the following:

- If the mechanism of injury was the actual fall at East Penn on August 8, 2016, why did Young not complain of symptoms until August 22, 2016?
- What caused Young to complain of right-hip pain because of an altered gait on August 22, August 30, and September 7, 2016, and then cease complaints for about a year?
- If the mechanism of injury was the fall at work, why did Young experience pain in only her right hip for a few weeks, not complain of pain to care providers for several months, and then complain of bilateral hip pain to Iowa Ortho on August 15, 2017?
- What caused Young's new symptom of radiating pain from her knees to her hips and back?

If Young had experienced symptoms closer in time to the fall and consistently from that point through her treatment with Iowa Ortho, Dr. Bansal's opinion on causation with respect to this injury would be more persuasive. But Dr. Bansal offers no explanation for the lack of documentation in the medical records for about a year with respect to Young experiencing any symptoms in her hips or back or why the symptoms would reemerge worse than before and in a larger area of her body while she was on a

leave of absence from East Penn and collecting STD benefits. Consequently, Dr. Bansal's opinion on whether the alleged injury or injuries to Young's hips and back fails to satisfy the claimant's burden of proof to show causation to her work at East Penn.

On the question of whether Young sustained work injuries to her left and right knees, nearly every medical professional who has examined Young agrees that she did. Both Dr. Jacobson and Dr. Bansal agree that the fall caused the injuries to Young's knees. She has met her burden by proving by a preponderance of the evidence that her bilateral knee injuries arise out of and in the course of her employment. Consequently, the dispute is over whether Young is due temporary and permanent disability benefits must be considered.

An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. Iowa Code § 85.33(2). An employee is temporarily, partially disabled when the employee is not capable medically 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. *Id.*

Young submitted an application for STD and identified the work injury to her knees as the reason she was unable to work. The application was approved, so Young was placed on leave and she received STD benefits. This establishes Young was off work because East Penn could not accommodate her physical limitations resulting from her knee injuries. The weight of the evidence establishes that Young is entitled to temporary partial benefits from May 7, 2017, through September 16, 2017.

Dr. Jacobson found that Young had not reached MMI for her knee injuries and did not give an opinion on the extent of her permanent disability on February 10, 2017. However, Dr. Jacobson opined that he did not anticipate Young would have a permanent impairment to either knee. Thus, Dr. Jacobson did not provide an expert opinion on Young's permanent disability, if any. He merely speculated when putting what he anticipated in his report.

Dr. Bansal is the only doctor who found Young at MMI for her bilateral knee injuries and opined on the permanent partial disability of them. He found Young had reached MMI, and assigned an impairment rating for each lower extremity of five percent lower extremity impairment. Dr. Bansal's opinion on Young's permanent disability is persuasive and satisfies the claimant's burden of proof.

"The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five hundred weeks and shall be compensated as such" Iowa Code § 85.34(2)(s); see also Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983). Since Young has suffered a permanent functional loss of five percent of each leg, these ratings are appropriately converted to three percent of the body as a whole. Three percent of 500 weeks is 15 weeks. Young is entitled to 15 weeks of benefits for the permanent partial disability in her bilateral legs.

2. Medical Expenses

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.

Young sustained injuries relating to work as follows:

- 1) Temporary left wrist injury which reached MMI on February 2017;
- 2) Left knee; and
- 3) Right knee.

Therefore, the defendants are responsible for the care for those injuries.

The parties stipulated that the listed expenses in Claimant's Exhibit 11 are at least causally connected to the injuries upon which the claim of injury is based. But in the defendants' brief, they argue that the bills on Pages 5 and 10 of Claimant's Exhibit 11 are not related to a work injury. Based on the evidence, the defendants are responsible for the bills on the following pages of Claimant's Exhibit 11: 1, 2, 3, 4, 6, 7, 8, and 9.

3. Penalty

If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996). Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It also is not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d

194 (Iowa 2001). An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbenolt, 555 N.W.2d at 238.

Young seeks a penalty because of the defendants' delay in paying TPD benefits and PPD benefits. The record does not establish why the defendants refused to pay Young TPD benefits while she was on leave and receiving STD benefits. It could be that they felt Dr. Jacobson's opinion, which they used as a basis to refuse to offer medical care, provided a sufficient basis. Or, it could be that the defendants believed her receipt of STD benefits meant she was not entitled to workers' compensation benefits. Because the basis for their refusal is unknown, it would be speculative to find it reasonable.

Further, the defendants articulate no reason for not revisiting the question of Young's entitlement to permanent partial disability benefits after receipt of Dr. Bansal's IME report. As of hearing, they had not paid Young any benefits or, as far as the record shows, sought any additional medical information relating to her knee injuries. It would require engaging in more speculation to determine why the defendants did not investigate Young's injury further after receipt of Dr. Bansal's report.

Given the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties, a penalty of 15 percent is appropriate in the current case.

4. Credit

The parties dispute whether the defendants are entitled to a credit under Iowa Code section 85.38(2) for payment of STD benefits in the amount of \$4,928.57. The claimant contends the defendants failed to meet their burden of proof. The defendants did not address the credit issue in their brief.

"The obvious purpose of Iowa Code section 85.38(2) is to avoid duplication of payments by an employer to an employee." Midwest Ambulance Serv. v. Ruud, 754 N.W.2d 860, 867 (Iowa 2008). Disability benefit payments made to the claimant are credited to or against any workers' compensation payments made under Iowa Code chapters 85, 85A, or 85B, if:

- 1) The employer contributed in whole or in part to a group insurance plan for the benefit of the claimant; and

- 2) Benefits should not have been paid or payable to the claimant if any rights to recovery existed under Iowa Code chapters 85, 85A, or 85B. Iowa Code § 85.38(2); Midwest Ambulance, 754 N.W.2d at 867.

The employer has the burden to prove entitlement to such a credit. See Midwest Ambulance, 754 N.W.2d at 867; see also Stevens v. Eaton Corp., File No. 5049606 (App. Jan. 26, 2018).

Here, the defendants failed to meet their burden of proof to establish that East Penn contributed wholly or partially to the group plan and that benefits should not have been paid or payable to Young if she had any rights to recovery under Iowa Code chapter 85. While Defendants' Exhibit D contains information about eligibility and the third-party administrator, it contains no information about East Penn's contribution to the plan. Defendants' Exhibit D expressly states that an employee cannot collect unemployment insurance benefits while receiving STD benefits under the plan. It also prohibits an employee from receiving STD benefits simultaneously with benefits under a "state disability plan." However, there is no mention of workers' compensation benefits in the document. Consequently, there is insufficient evidence from which to conclude that STD benefits should not have been paid or payable to Young if any rights to recovery existed under Iowa Code chapter 85. The defendants shall receive no credit for the STD benefits paid to Young.

5. Cost of IME

Young seeks reimbursement for the cost of the IME performed by Dr. Bansal under Rule 876 IAC 4.33 and Iowa Code section 85.39. The defendants dispute that Young is entitled to the cost of Dr. Bansal's IME because no doctor retained by them evaluated Young's permanent disability.

On the one hand there's Iowa Code section 85.39, which governs examination of employees for purposes of treatment and permanent disability. Section 85.39(1) authorizes the employer to choose the claimant's treating physician. But if the employer-chosen doctor "provides an evaluation of permanent disability" that the claimant believes is too low, the claimant may apply to the Commissioner and obtain an independent medical examination (IME) with a doctor of the claimant's choosing and at the employer's expense. Iowa Code § 85.39(2).

On the other hand is Iowa Code section 86.40, which states that "[a]ll costs incurred in the hearing . . . shall be taxed in the discretion of the commissioner." The commissioner issued a rule on the taxation of costs pursuant to section 86.40, which states that costs that are taxed by the commissioner or deputy commissioner include "the reasonable costs of obtaining no more than two doctors' or practitioners' reports." 876 IAC 4.33.

The Iowa Supreme Court considered the interplay between these two statutory provisions, and the administrative rule on taxation of costs, in Des Moines Area

Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015) (*DART*). In the court's decision, it states that "the issue . . . pits the assessment-of-costs rule against the statute governing evaluations for purposes of disability ratings" and that "[t]he question to be resolved is whether the commissioner can tax the fees of a physician arising from the evaluation of an employee done outside the process set forth in Iowa Code section 85.39 as 'costs incurred in the hearing' when the employee submits a written report of the evaluation at the hearing." *DART*, 867 N.W.2d at 844.

The court read the two statutory provisions in harmony while interpreting the scope of Rule 4.33 in holding that:

- 1) Taxable hearing costs under section 86.40 and Rule 876 IAC 4.33 include only the costs to obtain the report and not the underlying expenses of examination or records review; and
- 2) An IME is reimbursable under section 85.39 only if the conditions of that statutory provision are met and is not taxable as a cost under section 86.40. *Id.* at 846.

Thus, the cost of the examination of the claimant, records review, and report are all reimbursable when they are part of an IME under section 85.39 and no itemization is required of the claimant's chosen physician. See Plew, Jr. v. AJS of Des Moines, Inc., File No. 5056490 (App. Feb. 11, 2019). However, when a claimant seeks to tax "the reasonable costs of obtaining no more than two doctors' or practitioners' reports" under section 86.40 and the administrative rule when the examination is not a qualifying IME under section 85.39, such itemization is necessary in order to make a determination on taxation because the only taxable cost is that of "obtaining no more than two doctors' or practitioners' reports" under *DART*. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018); see also Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec. 18, 2018).

As discussed above, no treating physician gave Young an evaluation of permanent impairment to any body part she alleges she injured while working at East Penn. Dr. Jacobson performed an evaluation of permanent disability of Young's left wrist, finding none. He also concluded that Young had not reached MMI as of the date of the defense IME, so he could not perform an evaluation of her permanent disability. Dr. Bansal did not address Young's left wrist; he evaluated her hip or back and both knees. Thus, Dr. Bansal's IME does not qualify under the requirement in section 85.39(2) because no doctor retained by the defendants made an evaluation of permanent disability that Young believed to be too low.

6. Costs

Iowa Code section 86.40 states:

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 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.

Rule 876 IAC 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). Therefore, the cost of Dr. Bansal's report may be taxed as a cost to defendants.

The record establishes that Young paid the filing fee of one hundred dollars (\$100.00) when she filed her petition initiating this case. She also paid six dollars and seventy-seven cents (\$6.77) for certified service. Additionally, Young paid two hundred sixteen dollars and ten cents (\$216.10) for a deposition transcript.

Because Young prevailed, these costs are taxed to the defendants under Rules 876 IAC 4.9 and 4.33.

ORDER

It is therefore ordered:

- 1) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).
- 2) The defendants shall pay Young the taxed costs of:
 - a) The filing fee for her petition of one hundred dollars and 00/100 (\$100.00);
 - b) The cost of certified service by U.S. Mail of six and 77/100 dollars (\$6.77);
 - c) The cost of the deposition transcript of two hundred sixteen and 10/100 dollars (\$216.10) for the deposition transcript; and
 - d) The cost of two thousand one hundred seventy-eight and 00/100 dollars (\$2,178.00) for Dr. Bansal's report.
- 3) The defendants shall pay Young temporary total disability benefits for the time period beginning on May 7, 2017, and ending on September 16, 2017, at the weekly rate of five hundred twelve and 27/100 dollars (\$512.27).
- 4) The defendants shall pay Young penalty benefits in the amount of fifteen (15) percent of the total amount of temporary total disability benefits they are ordered to pay in this decision.
- 5) The defendants shall pay Young permanent partial disability benefits for fifteen (15) weeks at the weekly rate of five hundred twelve and 27/100 dollars (\$512.27) commencing on March 1, 2018.
- 6) The defendants shall pay Young penalty benefits in the amount of fifteen (15) percent of the total amount of permanent partial disability benefits they are ordered to pay in this decision.
- 7) The defendants shall pay Young all weekly benefits owed in a lump sum.
- 8) The defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. 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).

- 9) The defendants shall reimburse Young for the medical expenses on pages one (1), two (2), three (3), four (4), six (6), seven (7), eight (8), and nine (9) of Claimant's Exhibit 11.

Signed and filed this 28th day of February, 2020.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joseph Powell (via WCES)

Tiernan Siems (via WCES)