

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CANDACE STEVENS,

Claimant,

vs.

EASTERN STAR MASONIC HOME,

Employer,

IOWA LONG TERM CARE RISK
MANAGEMENT ASSOCIATION,

Insurance Carrier,
Defendants.

File No. 5049776

ARBITRATION
DECISION

Head Note Nos.: 1802, 1803,
1803.1, 2701, 2907, 3001

STATEMENT OF THE CASE

Candace Stevens, claimant, filed a petition for arbitration against Eastern Star Masonic Home, the employer, and Iowa Long Term Care Risk Management Association, the insurance carrier. An in-person hearing occurred on April 11, 2016 in Des Moines, Iowa.

The evidentiary record includes claimant's Exhibits 1 through 20 and defendants' Exhibits A through L. Claimant's exhibits were received without objection. Claimant objected to receipt of defendants' Exhibit I, pages 22 through 32. Claimant's objection was overruled but claimant was permitted the opportunity to file a rebuttal report from her vocational expert after the date of the live arbitration hearing. Claimant filed the rebuttal report on April 22, 2016. All of defendants' exhibits and claimant's rebuttal exhibit (labeled as Exhibit 9, pages 189a-b) were received into the evidentiary record.

Claimant was the only witness called to testify live at the hearing. The evidentiary record closed on April 22, 2016 upon receipt of claimant's rebuttal vocational report. However, counsel for the parties requested the opportunity to file post-hearing briefs. The parties were given until May 11, 2016 to file and serve their post-hearing briefs, at which time the case was considered fully submitted to the undersigned.

The parties introduced voluminous exhibits, including numerous duplicate medical records. Certainly, the amount of duplication contained within this evidentiary record should be discouraged, and counsel should strive to work more cooperatively in the future to avoid the amount of duplication of exhibits as occurred in this case.

Given this amount of duplication, the undersigned will refer to and cite evidence in whatever location is more expeditious to locate the evidence while writing this decision. Citation to an exhibit is not meant to suggest that other duplicate pieces of evidence were not fully reviewed. Rather, the undersigned attempts to issue this decision as expeditiously as possible without having to cross-index various pieces of evidence to ensure they are cited at each location within the evidentiary record. Therefore, evidence will be cited once and in the location where first identified while preparing this decision.

ISSUES

The parties entered into several stipulations on the hearing report. Those stipulations were accepted and the parties are now bound by their stipulations.

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's entitlement to temporary total disability, temporary partial disability or healing period benefits.
2. The nature and extent of claimant's entitlement to permanent disability benefits, including a dispute about whether the injury was a scheduled member limited to the right arm or an industrial disability.
3. The proper commencement date for permanent disability benefits.
4. Claimant's average weekly wage, or gross earnings, prior to the March 23, 2013 injury date and the corresponding applicable weekly compensation rate.
5. Whether claimant is entitled to reimbursement of her independent medical evaluation pursuant to Iowa Code section 85.39.
6. Whether claimant is entitled to an order for alternate medical care for her right shoulder injury.
7. The extent of defendants' entitlement to credit for benefits paid against any award rendered in this decision.
8. Whether defendants are entitled to a credit for temporary disability benefits paid against any award of permanent disability pursuant to Iowa Code section 85.34(4).
9. Whether costs should be assessed against either party.

FINDINGS OF FACTS

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

Candace Stevens is a 57-year-old, left-hand dominant woman, who sustained a work-related injury at Eastern Star Masonic Home in Boone, Iowa on March 23, 2013. Specifically, claimant slipped on some ice and fell. (Claimant's testimony) Defendants admit that claimant sustained a traumatic and horrific injury to her right arm as a result of this fall. However, defendants dispute claimant's assertion that she developed complex regional pain syndrome as a result of her right arm fractures or that claimant sustained a right shoulder injury as a result of the March 23, 2013 fall. (Hearing Report)

The initial orthopaedic records from March 26, 2013 demonstrate that claimant sustained a severely comminuted displaced distal radius fracture. Those same records also indicate that claimant complained of and received an x-ray for right shoulder symptoms following the March 23, 2013 fall. (Exhibit A, pages 1, 5)

Her initial treating orthopaedic surgeon, Sarkis Kaspar, M.D. performed what sounds like an excruciating closed reduction of claimant's right arm in an effort to "set" her fracture. Following the closed reduction, claimant's arm was placed into a splint, later casted, and she went through a course of physical therapy. During this treatment, Dr. Kaspar several times noted the possibility that claimant was developing CRPS and he recommended preventative physical therapy because of this possibility.

Claimant credibly testified that she lost the use of some of her fingers after the injury and that she required physical therapy to be able to open her hand from a fist. Nevertheless, claimant was released to return to light duty work and actually returned to light duty work on April 27, 2013. (Transcript, p. 43) Claimant was not medically capable of returning to substantially similar work between the date of injury and April 26, 2013. However, her wage records depict that she was paid wages after her date of injury. I find the wage records located at Exhibit 14 to be the most reliable source of documentation of claimant's earnings after the injury.

I find that claimant was paid the following wages after her March 23, 2013 work injury:

Pay Period End Date	Gross Wages Paid
4/6/13	\$483.84
5/4/13	355.95
5/18/13	623.70
6/1/13	598.50

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6/15/13	611.10
6/29/13	576.45
7/13/13	630.00
7/27/13	614.25
8/10/13	604.80
8/24/13	617.40
9/7/13	606.69
9/21/13	456.75
10/5/13	70.56
10/5/13	611.10
10/19/13	598.50
11/2/13	611.10
11/16/13	570.15
11/30/13	175.95
1/25/14	127.50
2/8/14	51.00
2/22/14	51.00
3/8/14	51.00
3/22/14	51.00
4/5/14	51.00
4/19/14	51.00
5/3/14	51.00
5/17/14	51.00
5/31/14	51.00

6/14/14	51.00
6/28/14	204.00
7/12/14	465.38
7/26/14	503.63
8/9/14	612.00
8/23/14	481.31
9/6/14	404.81
9/20/14	474.50
10/4/14	477.75
10/18/14	204.75
11/1/14	338.00
11/15/14	338.00
11/29/14	204.75

Unfortunately, claimant's right arm fractures did not heal and she continued to experience symptoms in her right arm and hand. In the fall of 2013, Dr. Kaspar referred claimant to a hand specialist, James A. Friederich, M.D., who first evaluated claimant's right hand and arm on October 24, 2013. (Ex. 3, pp. 12-14)

Dr. Friederich diagnosed claimant with a right distal radius fracture and with malunion of the radius and nonunion of the ulnar styloid. (Ex. 3, p. 12) Dr. Friederich recommended surgery and took claimant to surgery on November 19, 2013. Dr. Friederich performed an osteotomy of the right distal radius fracture with internal fixation using a putty bone graft. (Ex. 3, p. 19) Claimant again submitted to physical therapy.

Despite the nonsurgical and surgical treatment, claimant's right hand and arm have residual problems. Claimant testified that she continues to experience temperature differences in her hands, she is unable to fully extend her right hand, cannot turn her right hand palm up and she has trouble with both her right index and right small finger. (Tr., p. 58)

Ms. Stevens was terminated by the employer on November 20, 2014. Ms. Stevens was not medically capable of performing substantially similar work to the

work she performed immediately prior to the date of injury. In fact, she was terminated because she could not physically handle that type of work. Claimant remained unemployed between November 20, 2014 and the date of the arbitration hearing. However, Dr. Bansal declared her to be at maximum medical improvement (MMI) on March 4, 2016, which is accepted to be convincing and accurate as to the date claimant achieved MMI. (Ex. 7, p. 178)

Defendants contend that claimant did not sustain a right shoulder injury as a result of the March 23, 2013 fall. Defendants rely upon the fact that there are no references to a right shoulder injury in later medical records authored by Dr. Kaspar or Dr. Friederich. Defendants also point out that there are no references to claimant's alleged right shoulder injury in her Social Security disability application. Defendants obtained an independent medical evaluation performed by Todd Harbach, M.D. on December 10, 2015. (Ex. D) Dr. Harbach opines that claimant did not sustain a right shoulder injury as a result of the March 23, 2013 fall. (Ex. D, p. 7)

Claimant, on the other hand, proffers the opinion of Sunil Bansal, M.D., who performed an independent medical evaluation on March 4, 2016 at the request of claimant's attorney. Claimant also puts forth a medical opinion by her personal physician, Eric M. Peterson, M.D., who opines that the right shoulder condition is causally related to the March 23, 2013 fall at work. (Ex. 6, p. 162q)

Dr. Bansal notes that claimant had initial right shoulder complaints and diagnosed claimant with a frozen right shoulder, which he attributes to the March 23, 2013 fall at work. (Ex. 7) Claimant also points out that there are references to right shoulder symptoms in the initial medical records, in the physical therapy notes, and that claimant was provided an x-ray of the right shoulder. Claimant argues, as does Dr. Peterson, that a right shoulder x-ray would be unnecessary if claimant did not injure her right shoulder in the fall. (Ex. 6, p. 162p-q)

Both parties present reasonable arguments regarding the right shoulder. However, review of the initial medical records reflects complaints of right shoulder symptoms. Claimant testified that she reported right shoulder symptoms to Dr. Kaspar and requested treatment. Claimant's testimony in this respect was credible and consistent with the initial reports of right shoulder symptoms. I find Dr. Peterson's and Dr. Bansal's causation opinions pertaining to claimant's right shoulder to be the most convincing medical opinions in this record.

I find that claimant has proven by a preponderance of the evidence that she sustained a permanent right shoulder injury as a result of the March 23, 2013 fall at work. I find that the right shoulder injury has caused a permanent loss of earning capacity.

Ms. Stevens also contends that she has developed complex regional pain syndrome (CRPS) as a result of her right arm fractures. Claimant again relies upon the medical opinions of Dr. Bansal, who diagnoses claimant with CRPS and causally relates

that condition to the March 23, 2013 work injury. Dr. Bansal provides a thorough explanation of the current medical literature and standards for diagnosing CRPS. He provides a convincing and credible explanation of claimant's condition.

Defendants, on the other hand, rely upon the treating hand surgeon, Dr. Friederich. Dr. Friederich confirmed that he made no diagnosis of CRPS during his treatment of claimant. (Ex. A, p. 105) Defendants also rely upon the opinions of their IME physician, Dr. Harbach, who also opines that claimant does not meet the diagnosis for CRPS. (Ex. D, p. 7)

Review of the initial orthopaedic records demonstrates that Dr. Kaspar was concerned about the development of CRPS. (Ex. 3; Ex. A) Claimant was clearly reporting symptoms consistent with CRPS. Claimant testified credibly that she experiences temperature differences in her hands and arms. (Tr., pp. 58, 80) Ultimately, I find that Dr. Bansal's opinions pertaining to CRPS are most consistent with the reported symptoms from claimant and the concerns noted by Dr. Kaspar. I find Dr. Bansal's diagnosis and causal connection opinion pertaining to CRPS to be the most convincing and credible medical opinions in this evidentiary record.

Therefore, I find that Ms. Stevens has proven by a preponderance of the evidence that she has developed complex regional pain syndrome as a result of the right arm fractures she sustained on March 23, 2013. The CRPS has resulted in the imposition of permanent work restrictions and significant loss of function of claimant's right arm. I find that the CRPS has resulted in a permanent loss of earning capacity for claimant.

When considering claimant's assertion that she sustained industrial disability as a result of the March 23, 2013 work injury, I find that Ms. Stevens dropped out of school after the tenth grade. (Claimant's testimony; Ex. I, p. 8) She has not obtained a GED and notified defendants' vocational expert that she does not have a desire to obtain a GED at this point in her life. (Ex. I, p. 8) Claimant has obtained a food safety certificate but has no higher level education. (Claimant's testimony)

Prior to the date of injury, claimant has worked as a housekeeper, as an auto parts store merchandiser, counter attendant and delivery driver, as a counter helper and press operator for a dry cleaner, as a cook at Iowa State University, and as a waitress. She worked as a dietary aide at the employer's nursing home facility on the date of injury. (Claimant's testimony; Ex. 8, pp. 185-186; Ex. I, p. 8)

With respect to claimant's residual physical capabilities, claimant submitted to a functional capacity evaluation (FCE) performed at the recommendation and request of Dr. Friederich. (Ex. E) Dr. Friederich adopted the findings of the FCE and imposed permanent work restrictions that include a 15 pound occasional lift and a five pound frequent lifting restriction. (Ex. 3, p. 37)

Dr. Harbach also concurred with the recommendations of the FCE and Dr. Friederich and opined that claimant remains capable of lifting 15 pounds on an occasional basis. (Ex. D, p. 8) Dr. Bansal recommends similar restrictions but includes additional and more preclusive restrictions. Dr. Bansal offers restrictions that include no lifting greater than 15 pounds with both arms floor to table occasionally, 5 pounds frequently. Dr. Bansal also placed restrictions limiting claimant to no lifting greater than 5 pounds with the right arm rarely, avoidance of prolonged gripping or grasping with the right arm, limitation of any lift, grip or grasp to a rare basis with the right arm, and no overhead lifting. (Ex. 8, p. 180)

Although I accepted Dr. Bansal's opinions pertaining to the issue of whether claimant's right shoulder is causally connected and whether claimant has CRPS, I find that Dr. Bansal's permanent work restrictions are overly restrictive and not reflective of claimant's actual capabilities. Given the findings and documented abilities in claimant's physical therapy notes and her demonstrated capabilities in the FCE, I find that the opinions of Dr. Friederich and Dr. Harbach are more consistent with claimant's actual, objectively demonstrated abilities. I find the restrictions outlined by Dr. Friederich and Dr. Harbach to be most convincing and applicable.

Dr. Bansal opines that claimant has sustained a 25 percent permanent impairment of the whole person. (Ex. 7, p. 179) Dr. Bansal provides an impairment rating with respect to the right upper extremity that is essentially the same as that offered previously by Dr. Friederich and Dr. Harbach. However, Dr. Bansal's impairment rating also includes permanent impairment for claimant's CRPS and right shoulder injuries. Neither Dr. Friederich nor Dr. Harbach offer permanent impairment for either CRPS or the right shoulder. Having found that claimant proved she has CRPS and that she sustained a permanent right shoulder injury as a result of the March 23, 2013 work injury, I find that Dr. Bansal's impairment rating most accurately reflects the permanent impairment sustained by claimant as a result of this work injury.

Both parties submitted vocational expert opinions. Neither opinion was terribly helpful to the undersigned in reaching the above conclusions. Claimant's vocational expert relied upon the permanent restrictions imposed by Dr. Bansal. I did not accept those restrictions as the most accurate restrictions. Therefore, claimant's vocational expert opinion is based upon inaccurate medical restrictions and is not completely accurate. I place very little weight on this opinion.

Defendants' vocational expert opinion carries slightly more weight. It identified alternate potential positions and the vocational expert contacted employers to verify position availability and potential accommodations to be made for someone like the claimant. The defendants' vocational opinion carries slightly more weight. However, in the end, claimant's lack of effort to secure alternate employment and her residual physical abilities weighed much more heavily in reaching my findings and ultimate decision.

Considering Ms. Stevens' age, educational background, employment history, Dr. Bansal's permanent impairment rating, the permanent work restrictions from Dr. Friederich and Dr. Harbach, claimant's lack of motivation or any realistic attempts to seek alternate employment, her ongoing symptoms, the vocational opinions offered by both parties, as well as all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Ms. Stevens has proven she sustained a sixty percent (60%) loss of future earning capacity as a result of the March 23, 2013 work injury.

The parties also dispute the weekly rate at which benefits should be paid in this case. Specifically, the parties dispute claimant's average weekly wage, or gross earnings immediately preceding the injury on March 23, 2013. This dispute primarily revolves around whether claimant was a full-time employee or a part-time employee. I find that claimant was a full-time employee until 2011. At her late-husband's request she converted from being a full-time employee to a part-time employee with the employer in 2011. (Ex. 17, p. 287; Tr., p. 24, 102) At the time of the injury, claimant was a part-time employee. There were clearly other full-time employees working for this employer at the time of claimant's injury. (Tr., p. 103)

When reviewing defendants' calculations with claimant's Exhibit 14, I find that the defendants' brief at pages 27-28 accurately calculated claimant's wages for the 52 weeks immediately preceding the date of injury. Claimant introduced no other earnings records for the 52 weeks immediately preceding her injury. Therefore, I find that claimant earned \$14,535.36 during the 12 calendar months immediately preceding the March 23, 2013 injury. When this is divided by 50, I find that claimant's gross average weekly earnings immediately preceding the March 23, 2013 work injury were \$290.71.

Ms. Stevens also asserts a claim for alternate medical care for her right shoulder. Claimant has treated with her personal, family physician for the right shoulder during the period of defendants' denial of this claim. Review of Dr. Bansal's report indicates that he recommends potential future medical treatment for claimant's right shoulder, including the potential need for future cortisone injections, physical therapy and/or surgical manipulation. (Ex. 7, p. 179) Dr. Bansal is not recommending imminent or urgent care that is being denied. Rather, he offers potential future treatment needs for claimant's right shoulder. Dr. Bansal does not identify a particular specialist or physician that would be recommended or necessary to treat claimant's right shoulder.

CONCLUSIONS OF LAW

The parties have stipulated that claimant sustained a work related injury on March 23, 2013. The parties also stipulate that the injury caused both temporary and permanent disability. However, there is a dispute about whether the injury should be compensated as a scheduled member injury to the arm pursuant to Iowa Code section 85.34(2)(m) or as an unscheduled injury pursuant to Iowa Code section 85.34(2)(u). (Hearing Reports)

The initial dispute between the parties is the extent of claimant's entitlement to healing period benefits. Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant testified and I accepted that claimant did not return to work for the employer until April 27, 2013. However, the payroll records from the employer demonstrate that claimant was paid wages prior to April 27, 2013. Wages paid in lieu of compensation are credited against the employer's liability. 876 IAC 8.4.

Having found that claimant was not capable of substantially similar work and that she did not return to work after the date of injury until April 27, 2013, I conclude that claimant is entitled to temporary partial disability benefits during this period of time as outlined below. Iowa Code section 85.34(1); Iowa Code section 85.33(3). Claimant's initial healing period terminated upon her return to work on April 27, 2013.

Claimant's payroll records demonstrated that she returned to work April 27, 2013 and continued to work periodically through November 19, 2014. Claimant qualifies for intermittent healing periods, including healing period and temporary partial disability benefits as detailed below. Iowa Code section 85.34(1); Teel v. McCord, 394 N.W.2d 405 (Iowa 1986); Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012).

The employer terminated claimant on November 20, 2014. Having found that claimant was not capable of substantially similar employment after that date and that she remained unemployed through the date of hearing, I also found Dr. Bansal's MMI date of March 4, 2016 to be appropriate. Pursuant to Iowa Code section 85.34(1), the healing period terminates upon achieving MMI. Therefore, I conclude that claimant has proven a third period of intermittent healing period from November 20, 2014 through March 4, 2016. Iowa Code section 85.34(1); Teel v. McCord, 394 N.W.2d 405 (Iowa 1986); Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012).

For any weeks from March 24, 2013 through March 4, 2016 not otherwise detailed below as having wages paid, claimant is entitled to healing period benefits.

An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. 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. Temporary partial benefits are not payable upon termination of temporary disability, healing period, or permanent partial disability simply 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. Section 85.33(2).

Having found that claimant's payroll records at Exhibit 14 accurately represented the wages paid to claimant, I conclude that claimant is entitled to the following temporary partial disability benefits:

Pay Period End Date	Gross Wages Paid	Amount Less than AWW	TPD Owed
4/6/13	\$483.84	\$97.58	\$65.06
5/4/13	355.95	225.47	150.32
5/18/13	623.70	N/A	0.00
6/1/13	598.50	N/A	0.00
6/15/13	611.10	N/A	0.00
6/29/13	576.45	4.97	3.31
7/13/13	530.00	51.42	34.28
6/29/13	576.45	4.97	3.31
7/13/13	530.00	51.42	34.28
7/27/13	614.25	N/A	0.00
8/10/13	604.80	N/A	0.00
8/24/13	617.40	N/A	0.00
9/7/13	606.69	N/A	0.00
9/21/13	456.75	124.67	83.12
10/5/13	70.56	510.86	340.59
10/19/13	598.50	N/A	0.00
11/2/13	681.66	N/A	0.00
11/16/13	598.50	N/A	0.00
11/30/13	175.95	405.47	270.33
1/25/14	127.50	453.92	302.63

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2/8/14	51.00	530.42	353.63
2/22/14	51.00	530.42	353.63
3/6/14	51.00	530.42	353.63
3/22/16	51.00	530.42	353.63
4/5/14	51.00	530.42	353.63
4/19/14	51.00	530.42	353.63
5/3/14	51.00	530.42	353.63
5/17/14	51.00	530.42	353.63
5/31/14	51.00	530.42	353.63
6/14/14	51.00	530.42	353.63
6/28/14	204.00	377.42	251.63
7/12/14	465.38	116.04	77.36
7/26/14	503.63	77.79	51.86
8/9/14	612.00	N/A	0.00
8/23/14	481.31	100.11	66.74
9/6/14	404.81	176.61	117.75
9/20/14	474.50	106.92	71.28
10/4/14	477.75	103.67	69.12
10/18/14	204.75	376.67	251.13
11/1/14	338.00	243.42	162.29
11/15/14	338.00	243.42	162.29
11/29/14	204.75	376.67	251.13

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the

permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

In this instance, I found that the claimant sustained complex regional pain syndrome (CRPS) as a result of the March 23, 2013 work injury. Injuries that result in the development of CRPS are considered to be systemic injuries and are compensated as unscheduled injuries under an industrial disability analysis. Collins v. Department of Human Services, 529 N.W.2d 627 (Iowa App. 1995).

I also found that claimant sustained a permanent right shoulder injury as a result of the March 23, 2013 work injury. When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., 11 Iowa Industrial Comm'r. Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole.

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Having found that claimant proved she sustained a 60 percent loss of future earning capacity as a result of the March 23, 2013 work injury, I conclude that claimant is entitled to a 60 percent industrial disability award, or 300 weeks of benefits. Iowa Code section 85.34(2)(u).

The parties dispute the proper commencement date for permanent partial disability benefits. Permanent partial disability benefits commence on the earliest of the factors set forth in Iowa Code section 85.34(1). Evenson v. Winnebago Industries, Inc., ___ N.W.2d ___ (Iowa 2016) (2016 WL 3125846) (unpublished decision as of the date of filing this decision). In this instance, I found that claimant returned to light duty work on April 27, 2013. That date represents the end of the initial healing period. Therefore, claimant's entitlement to permanent partial disability benefits commenced on April 27, 2013. Id.

The parties dispute the rate at which weekly benefits should be paid to claimant. Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee

worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

Having found that Ms. Stevens worked part-time for the employer at the time of the work injury and having found that there were other full-time employees working in the same position, I conclude that claimant's weekly rate should be calculated pursuant to Iowa Code section 85.36(9). That statutory section requires that the sum of all claimant's earnings for the 12 months preceding the injury date be divided by 50 to reach an average gross weekly earnings.

In this instance, I found that claimant's earnings for the 12 months preceding the injury date totaled \$14,535.36. Dividing those earnings by 50, I found that claimant's average weekly wage at the time of the work injury was \$290.71.

The parties stipulated that claimant was single and entitled to only one exemption. Utilizing the Iowa Workers' Compensation Manual (rate book), I conclude that claimant is entitled to healing period and permanent partial disability benefits at the rate of \$199.27 per week.

Ms. Stevens seeks an order for alternate medical care for her right shoulder. 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.

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975).

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

In this instance, I found that Dr. Bansal had additional medical recommendations for claimant's right shoulder, including potential need for future intermittent cortisone

injections, physical therapy and/or surgical manipulation. Having found that these potential modalities are broad in range and not specific, immediate treatment needs, I conclude that the employer should be permitted to select the authorized medical provider to render any future right shoulder treatment. Assuming that the defendants authorize prompt future medical care, they shall be permitted to select the medical provider for the right shoulder.

Ms. Stevens seeks reimbursement of her independent medical evaluation fee pursuant to Iowa Code section 85.39. Claimant established that defendants' chosen physicians, Dr. Friederich and Dr. Harbach, both offered permanent impairment ratings for claimant's work injury prior to Dr. Bansal's independent medical evaluation. Claimant has complied with the provisions of Iowa Code section 85.39 and is entitled to reimbursement of Dr. Bansal's fee totaling \$3,985.00 and her mileage to and from the examination in the amount of \$43.87. Des Moines Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015).

Finally, claimant seeks an assessment of her costs. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that claimant has prevailed on the majority of issues, claimant's filing fee of \$100.00 in each file shall be assessed pursuant to 876 IAC 4.33(7). Claimant seeks service fees upon defendants totaling \$12.96. I conclude it is appropriate to assess the service fees as costs pursuant to 876 IAC 4.33(3).

Claimant also seeks assessment of the cost (\$148.35) of obtaining a copy of her deposition transcript. Claimant's deposition was introduced into evidence at Exhibit 17. I conclude it is appropriate to assess claimant's deposition transcript expense totaling \$148.35 pursuant to 876 IAC 4.33(2).

Claimant seeks assessment of \$350.00 for a medical report. The records attached at Exhibit 19 demonstrate that this expense includes \$50.00 for a medical report from Boone County Family Medicine (Ex. 19, p. 316) and \$300.00 for collection of copies of claimant's records and/or a medical conference between claimant's attorney and Dr. Peterson. (Ex. 19, p. 317) Collection of medical records and/or a medical conference fee are not permitted and are not equivalent to obtaining a doctor's report. That fee is not permissible under 876 IAC 4.33. The \$50.00 expense associated with the physician's report is assessed pursuant to 876 IAC 4.33(6).

Claimant finally seeks assessment of her vocational expert's fee. In this case, I did not give significant weight to Ms. Mitchell's report. Therefore, I do not assess her fees as a cost in this matter.

Therefore, exercising the agency's discretion, I conclude that claimant's costs totaling \$311.31 should be assessed against defendants.

Finally, no findings or conclusions are entered in this decision with respect to the credit sought by defendants for benefits paid. Counsel notified the undersigned they would be able to calculate the applicable credit based upon the weekly rate at which benefits are awarded. (Tr., pp. 14-15) Counsel are expected to make the necessary calculations and reach agreement on this issue. If agreement cannot be reached, the parties should file a request for rehearing and the issue will be decided by the undersigned.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant healing period and temporary partial disability benefits from March 24, 2013 through March 4, 2016 as detailed in the conclusions of law section of this decision.

Defendants shall pay claimant three hundred (300) weeks of permanent partial disability benefits commencing on April 27, 2013.

All healing period and permanent partial disability benefits shall be paid at the rate of one hundred ninety-nine and 27/100 dollars (\$199.27) per week.

Defendants shall be entitled to a credit for all weekly benefits paid to date, including any potential overpayment of temporary disability benefits. If the parties cannot agree on the amount of the credit, counsel shall file a request for rehearing and each party will be required to outline the claimed credit.

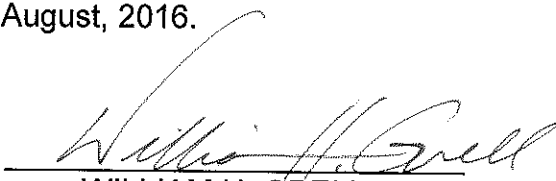
Defendants shall authorize a treating physician to provide care for claimant's right shoulder into the future should additional medical treatment be required and desired by claimant.

Defendants shall reimburse claimant three thousand nine-hundred eighty-five and 00/100 dollars (\$3,985.00) for Dr. Bansal's independent medical evaluation as well as forty-three and 87/100 dollars (\$43.87) for claimant's mileage to and from that examination.

Defendants shall reimburse claimant's costs totaling three hundred eleven and 31/100 dollars (\$311.31).

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

Signed and filed this 2nd day of August, 2016.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Jean Mauss
Attorney at Law
6611 University Ave, Ste. 200
Des Moines, IA 50324-1655
jmauss@smalaw.net

Stephen J. Brown
Attorney at Law
1307 - 50th St.
West Des Moines, IA 50266
sbrown@cutlerfirm.com

WHG/sam

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