

2. Temporary benefits are no longer in dispute.
3. If the alleged injury is found to be a cause of permanent disability, the disability is an industrial disability.
4. At the time of the alleged injury Jones's gross earnings were \$517.45 per week, she was single and entitled to one exemption, and the parties believe the weekly rate is \$326.06.
5. Costs have been paid.

ISSUES

1. Did Jones sustain an injury on December 14, 2016, which arose out of and in the course of her employment with Aluma?
2. Is the alleged injury a cause of temporary disability during a period of recovery?
3. Is the alleged injury a cause of permanent disability?
4. If the alleged injury is a cause of permanent disability, what is the extent of disability?
5. If the alleged injury is a cause of permanent disability, what is the commencement date for permanency?
6. Is Jones entitled to payment of medical expenses?
7. Is Jones entitled to recover the cost of an independent medical examination?
8. Should costs be assessed against either party?

FINDINGS OF FACT

Jones lives in Clear Lake, Iowa. (Transcript, page 8) Jones is divorced and is the mother of three children. (Tr., p. 15) At the time of the hearing Jones was thirty-six. (Tr., p. 8)

Jones graduated from Nevada High School and attended college at Waldorf College, Iowa State University, and Iowa Lakes Community College. (JE 4, p. 24; Tr., pp. 8-9, 55) Jones has good reading, writing, and math skills. (Tr., p. 55) Jones received a scholarship to Waldorf College and served as an English tutor. (JE 4, p. 24; Tr., p. 55) Jones studied interior design at Iowa State University and nursing at Iowa

Lakes Community College. (Tr., p. 8) Jones did not graduate from college or complete any program of study. (JE 4, p. 24; Tr., p. 8)

Jones has worked for many employers. (JE 1) Jones has worked as a detasseler, call salesperson, line worker in egg production, bartender, waitress, environmental aide, youth counselor, certified nursing assistant (“CNA”), factory worker for Winnebago Industries, homemaker service provider, welder, and warehouse operator. (JE 1; Tr., pp. 10-12) The egg production job required Jones to stand for long periods of time, bend over, and reach. (Tr., p. 12) Bartending and waitressing required fast movement. (Tr., p. 13) Waitressing required Jones carry heavy trays and bartending required her to lean over the bar. (Tr., p. 13) While working as a CNA Jones had to lift and transfer residents. (Tr., p. 14) Her position with Winnebago Industries required frequent bending and crouching and she worked with heavy parts. (Tr., pp. 14-15)

In August 2016, Aluma hired Jones as a welder. (JE 3; Tr., pp. 18-19, 59, 93) Aluma manufactures motorcycle, car, boat, small utility, and ATV trailers. (Tr., p. 20) Jones did not have experience welding and received on-the-job training from Aluma. (Tr., p. 20) Jones reported the work was repetitive. (Tr., p. 22)

When welding Jones held a five-pound gun attached to a long lead that was twenty-five feet long she would drag around the trailer. (Tr., pp. 22-23) Jones testified the gun and lead were “super heavy.” (Tr., pp. 22-23) The position required frequent lifting. (Tr., p. 23) Jones testified most of the parts were not heavy, with the exception of the flipper and moving the trailer and flipping it, which she described as involving “heavy-duty lifting.” (Tr., p. 23) Jones estimated the flipper, which was made of cast iron steel weighed seventy-five pounds. (Tr., p. 24) Jones reported each trailer had a flipper she had to put on and take off during fabrication. (Tr., pp. 24-25) Jones testified Aluma had hoists to assist with the lifting, but she was not permitted to use the hoists. (Tr., p. 25) Working on the trailers required Jones to crouch down while putting clamps in place. (Tr., p. 24)

Braun, the human resources director for Aluma, disagreed the flippers weigh seventy-five pounds. (Tr., p. 106) Braun testified the flippers weigh just under thirty pounds. (Tr., p. 107) Jones reported there are different flippers on different lines and some are very light, but the flipper she was working with when she was injured was not one of the lighter ones. (Tr., p. 116)

Jones had performance issues and interpersonal difficulties while working for Aluma. (JE 3, pp. 16, 20, 94) Aluma determined Jones was making frequent mistakes at work, which improved over time. (JE 3, p. 16) Jones continued to receive wage increases in January 2017, April 2017, and July 2017, until she left Aluma for a position with 3M. (JE 3, p. 18; Tr., p. 42) Jones was eligible for rehire when she left Aluma.

On December 14, 2016, Jones went to speak to Braun. (Tr., p. 26) Jones testified she told Braun she was having trouble with her back, but she could not recall if they discussed whether her back issues were due to her work. (Tr., p. 26)

Braun kept contemporaneous records of her conversations with Jones and of the documents she received from Jones. (JE 3) Braun documented on December 14, 2016, Jones came to her office and asked if Aluma had any light duty work for her. (JE 3, p. 17) Braun wrote,

I asked her why she needed light duty and she told me that she hurt her back over the weekend and it was acting up. I asked if she did something here at Aluma that caused the pain and she said no. I then told her the Aluma policy is we do not have light duty for non-work related injuries and Jennifer said “that is fine but I am going to go home today.”

(JE 3, p. 17) Braun noted Jones punched out and left the building, and the next day she called into work and stated she would not be in. (JE 3, p. 17)

Jones testified at hearing she did not want to report she had sustained a work injury, noting “I was trying to kind of be vague about it and kind of work around saying that Aluma was causing these – the injury” because she did not want to lose her job. (Tr., pp. 26-27) Braun testified Aluma had provided Jones with instruction on reporting work injuries the first day of her employment. (Tr., pp. 94-95)

Jones further testified she felt pressured not to report her injury because the Aluma workers received a bonus, as follows:

[t]hat you go – that the whole company goes accident-free and injury-free. They give you free stuff for reaching a certain date. I think it was maybe 150 days accident-free, and then I think one other time we got chairs and another time maybe blankets. It just depended. There wasn’t – there always seems to be injuries so it didn’t happen very often.

(Tr., pp. 27-28) Jones relayed other workers would “really get after you” for reporting a work injury. (Tr., p. 28)

Braun testified Aluma has never had a bonus plan for safety, reporting “[w]e don’t have a benefit plan, no. For safety, no.” (Tr., p. 111) Jones did not present any witness testimony or documents supporting the existence of the alleged bonus plan.

On December 14, 2016, Jones attended an appointment with Jennifer VonBank, PA-C. (JE 6, p. 30) VonBank documented Jones complained of back pain and a urinary tract infection and reported, “I threw my back out at work today.” (JE 6, p. 30) Jones relayed the pain was radiating into her buttocks and down her right leg to the level of her posterior knee. (JE 6, p. 30) VonBank documented Jones relayed she had back pain in the past. (JE 6, p. 30) VonBank assessed Jones with lumbar back pain

with radiculopathy affecting the right lower extremity and prescribed a Medrol Dosepak. (JE 6, p. 30) On March 6, 2017, VonBank issued an addendum to the note, writing Jones's visit was not scheduled as a workers' compensation visit and Jones did not mention her employer during the visit, but reported she had back pain when VonBank asked her whether she had back pain and then relayed she had thrown out her back at work. (JE 6, p. 31) VonBank did not explain her reason for writing the addendum.

Jones testified she had back pain before working for Aluma, but it had been "really mild, you know, compared to what it had been. It was nothing more than, you know, maybe getting out of the car and feeling sore, but, you know, you stretch a couple times and you're done and, like, you would just automatically think 'Oh, I have a bad back,' you know." (Tr., p. 34) Jones denied having recurring back pain and stated she had not sought treatment for her back before December 2016. (Tr., pp. 34, 57) Jones testified she had back pain when she was pregnant, and not through her whole pregnancy. (Tr., p. 57)

Braun documented she received a faxed work excuse from VonBank for Jones for December 19, 2016, but she did not receive a work excuse for the previous week. (JE 3, p. 17; JE 6, p. 32) Braun documented she received work excuses from VonBank for Jones for December 20, 2016, December 21, 2016, and December 22, 2016 through January 1, 2017. (JE 3, p. 17; JE 6, pp. 33-35) Braun noted there was no production the week of December 25, 2016 because the plant was closed. (JE 3, p. 17)

Braun testified Jones did not report a work injury to Aluma in December 2016 or January 2017. (Tr., p. 98) Braun testified on February 27, 2017, Jones called and left a voicemail message, asking Braun to call her back because she had hurt her back before Christmas and it was acting up. (Tr., p. 99) The next day, on February 28, 2017, Jones completed a report of injury form for Aluma. (JE 3, p. 19) Jones reported she had been injured while working on the back of a trailer on December 15, 2016, at 10:00 a.m., and that she told Melissa Orr and Ron Blocker about it. (JE 3, p. 19) Jones testified she put the wrong date of injury on her injury report, noting "I missed it by a day. I don't know. I'm not good with dates, I guess." (Tr., p. 87) Jones documented she was injured when "[p]utting light bar on back of trailer. Twisted to put it on there & bending over." (JE 3, p. 19) When asked to describe, step by step, what led to the injury, Jones wrote:

[b]ack aggravated & sore from lifting heavy flippers. Soreness started on a Friday morning. Soreness increased on Mon, Tue & Wed. Wednesday morning I twisted to bring light bar to back of trailer & legs gave out. I told Melissa & Tiffany & Ron Blocker. I walked to HR to tell April but at the time, I didn't believe it was work related because I've had back soreness prior to working at Aluma.

(JE 3, p. 19) Jones relayed she injured her "[b]ack, down legs to feet. Numbness, tingling, burning & weakness. Legs giving out." (JE 3, p. 19)

At hearing Jones testified she did not report the work injury before because

I just really was not wanting to put the blame on them because I still had to work there. So I guess that was more like I just didn't really want to directly say, like, you know, "This is your fault. You're liable." You know, I just didn't really want to come out and say, like, "It's all your fault." You know, I didn't want them to, you know, try to get rid of me, try to get me out of there.

I wanted them to know, like, "I'm sorry. I'm trying to still work." But I had had, like, I guess, back pain from when I was pregnant, but I was just trying to come up with anything just to try to, you know, make it not seem like it was their fault.

(Tr., pp. 28-29)

Jones admitted she did not provide Aluma with any information her back condition was related to her employment in 2016, noting, "I was pretty vague about it." (Tr., p. 85) Jones reported before she filed the injury report she told her lead person and supervisor at Aluma she was having problems with the flipper, which was making her back hurt. (Tr., p. 86) Jones testified she did not tell her supervisor specifically about the December 14, 2016 incident. (Tr., p. 86)

Braun testified she spoke with Melissa, Tiffany, and Ron, after Jones identified them in her February 28, 2017 injury report. (Tr., p. 100) Braun reported Melissa and Ron told her they had not heard Jones talk about injuring her back and they did not know anything about an injury. (Tr., p. 100) Braun stated Tiffany reported Jones "stated that at one time she recalled helping her outside to her car, but from the comments made, her inclination was that it was something that happened outside of work." (Tr., p. 101) Braun testified Melissa, Tiffany, and Ron did not tell her Jones had sustained a work injury based on their observations of Jones or based on conversations with her. (Tr., p. 101)

Jones returned to VonBank on March 6, 2017, complaining of back pain. (JE 6, p. 37) VonBank documented Jones told her "when it happened I didn't even think about it being work related. I have a history of a recurring sore back," and noted she had been lifting at work that day and her back felt "tired." (JE 6, p. 37) Jones denied at hearing she reported having a history of recurring back pain. (Tr., p. 57)

VonBank documented she saw Jones as part of a typical workup for a urinary tract infection and questioned her about back pain. (JE 6, p. 37) VonBank documented she did not know on that visit whether the back pain was secondary to a work injury or whether it was being exacerbated by a urinary tract infection. (JE 6, p. 37) VonBank documented Jones reported she discussed her back pain with some coworkers and

they encouraged her to report it as a workers' compensation injury. (JE 6, p. 37) No coworkers testified or provided written affidavits for Jones at hearing.

VonBank documented Jones reported the radiculopathy in her legs had resolved and the Medrol Dosepak resulted in significant improvement, but relayed she was experiencing pain across her low back. (JE 6, p. 37) VonBank assessed Jones with chronic low back pain and documented, "I told patient that I could not conclusively prove that her low back pain in December was caused by a work injury. She has underlying history of chronic low back issues which are recurrent," and noted she presented with urinary complaints that could have contributed to her discomfort. (JE 6, pp. 37-38) VonBank prescribed a Medrol Dosepak and released Jones to return to work with a ten pound lifting restriction. (JE 6, p. 38)

The claims adjuster for Aluma and Depositors sent a missive to VonBank asking for her opinion on Jones's injury. (JE 6, p. 39) VonBank responded she had diagnosed Jones with an exacerbation of chronic back pain and opined Jones had not sustained a work injury, documenting there was no way to concretely prove Jones's low back pain was secondary to a work injury because she has a history of chronic back pain. (JE 6, p. 40)

On March 7, 2017, Braun sent Jones a letter, which provided, in part:

[t]his morning you had a doctor appointment and submitted a note that included work restrictions to no lifting above 10 pounds. After looking at the note closer, it was noted that the injury is not caused by work. Because this is not a work-related injury and Aluma has a policy to not honor work restrictions when they are from a non-work-related injury, we are unable to accommodate the work restrictions set in place by your physician.

You began working for Aluma on August 8, 2016 and because you have not yet completed 12 months of service and you have not worked 1,250 hours for Aluma, you are not eligible for FMLA leave. However, Aluma will grant you a short term, 1 week, personal leave of absence as your follow-up appointment for a re-check is scheduled for 1 week. At your follow up appointment, if you receive a return to work note without any restrictions you will be able to return to work after completing a PCP screening. The PCP screening will not be completed until you are cleared to work with no restrictions as we do not want to aggravate your condition.

(JE 2, 3, p. 8)

VonBank issued a work release on March 13, 2017, releasing Jones to return to work without restrictions. (JE 6, p. 41) The next day Jones underwent a physical capacity profile for her position with Aluma. (JE 3, p. 9) The tester noted Jones's

position fell in the category of heavy work, requiring the ability to exert fifty to 100 pounds of force occasionally, and/or twenty-five to fifty pounds of force frequently, and/or ten to twenty pounds of force constantly. (JE 3, p. 9) The tester found Jones could not physically perform her position, but she could perform medium work, requiring the ability to exert twenty to fifty pounds of force occasionally, and/or up to ten to twenty-five pounds of force frequently, and/or greater than negligible up to ten pounds of force constantly. (JE 3, p. 9) The tester noted Jones complained of significant low back pain with associated muscle weakness in either or both legs and using the AMA Guides 5th Edition, Jones had a job placement presumptive impairment of 25 percent. (JE 3, p. 10)

On March 15, 2017, Jones returned to work. (JE 3, p. 20) Braun documented because of her score on the physical capacity profile she was moved to assembly by the robot because the area does not have any heavy lifting. (JE 3, p. 20)

Jones testified the welding robot has two different sides. (Tr., p. 32) One side made ATV ramps and the other made tailgates. (Tr., p. 32) Jones reported her job was to put the pieces "in there" and the robot would weld it together, and then she would take off the item and fix any of the welds that needed to be fixed. (Tr., p. 32) Jones reported the position with the robot involved "a lot of lifting all day long. . . instead of welding," which aggravated her back. (Tr., pp. 32-33) Jones relayed the assembly department would have been an easier assignment for her and she does not know why Aluma did not assign her there. (Tr., p. 33)

The robot is located in the assembly department. (Tr., p. 109) Braun testified the robot assembly area does not have any heavy lifting. (Tr., p. 103) Braun testified Jones was not actually using the robot, she was working in front of the robot. (Tr., p. 109)

On August 18, 2017, Jones attended an appointment Josiah Brinkley, M.D. for an employment physical for a position with 3M. (JE 6, p. 42) Dr. Brinkley documented Jones reported a history of bipolar disorder, but he did not believe she had ever had bipolar disorder. (JE 6, p. 42) Dr. Brinkley's record does not discuss any back pain or back problems Jones was having or had in the past. (JE 6)

On September 5, 2017, Jones resigned from Aluma after accepting a position with 3M. (JE 3, p. 23; Tr., p. 42) Braun testified from the time Jones returned to work in March 2017 until she left in September 2017, Jones's work performance was fantastic and she received two pay increases. (Tr., p. 105) Braun testified when Jones resigned, she did not tell her she was resigning due to her back issues, noting Jones told Braun she was excited to be working in a building that was air-conditioned and that she did not like the heat on the production floor at Aluma, which is not air-conditioned. (Tr., p. 105) Jones was eligible for rehire at Aluma when she resigned.

During her employment with Aluma Jones worked as a waitress and bartender for Pep's restaurant in Algona. (Tr., p. 59) Jones continued to work for Pep's until September 2017. (Tr., pp. 59-60)

At 3M Jones worked as a warehouse operator where she operated a forklift with a pallet to pick up boxes to fill orders. (Tr., p. 44) Jones testified she enjoyed working at 3M, but over time she was missing work due to her back and she not meeting her goals and her position ended when 3M let her go. (Tr., pp. 45, 64)

On October 5, 2017, Jones attended an appointment with Twyla Ostercamp, D.O. with MC Forest City, regarding urinary symptoms and back pain. (JE 7, p. 43) Jones complained of low back pain for ten months that "occurs occasionally," radiating into her right calf and thigh she described as burning, deep, and cramping, and recurring urinary tract infections. (JE 7, p. 43) Dr. Ostercamp documented Jones reported the "[t]rauma occurred due to lifting while at work, 10 [m]onths ago, on 12/5/2016," and that her symptoms were aggravated by lying/rest and intimacy, and relieved by movement. (JE 7, p. 43) Dr. Ostercamp assessed Jones with acute midline low back pain with sciatica, acute cystitis, and dysuria, ordered x-rays of her spine, and treated her urinary symptoms. (JE 7, p. 44) Jones received the imaging and the reviewing radiologist listed an impression of some disc narrowing from L4 through L6. (JE 7, p. 45)

Jones attended a follow-up appointment with Dr. Ostercamp on October 12, 2017, complaining of urinary problems, back pain, and a mood disorder aggravated by conflict or stress and chronic low back pain. (JE 7, p. 46) Dr. Ostercamp assessed Jones with acute cystitis, leg cramps, and anxiety, and prescribed Lexapro. (JE 7, p. 48)

On December 18, 2017, Jones returned to Dr. Ostercamp regarding her mood disorder and back pain. (JE 7, p. 49) Jones described her back pain as an ache and dull, reported it was worsening, and relayed it was aggravated by bending, changing positions, daily activities, lifting, standing, twisting, and walking, and relieved by lying down and rest. (JE 7, p. 49) Jones complained of leg cramps "usually every night." (JE 7, p. 49) Dr. Ostercamp assessed Jones with anxiety and leg cramps and continued her Lexapro. (JE 7, p. 51)

Jones attended an appointment with Dr. Ostercamp on December 29, 2017, complaining of piercing and sharp musculoskeletal pain with an onset four months before the appointment that was occasional and fluctuating in her calf without radiation or an injury and a mood disorder. (JE 7, p. 52) Dr. Ostercamp assessed Jones with leg cramps and anxiety and prescribed Prozac. (JE 7, pp. 53-54) Jones underwent a Doppler exam of her legs for her leg cramps, which was normal. (JE 7, pp. 55-56)

On January 24, 2018 and February 13, 2018, Jones attended appointments with Dr. Ostercamp regarding her leg pain, leg swelling, and depression. (JE 7, pp. 57-62)

On March 2, 2018, Jones attended an appointment with Jessica Koppen, ARNP, with MC Forest City, complaining of upper back pain radiating into her right thigh and problems with anxiety. (JE 7, p. 63) Koppen documented Jones reported she had injured her back eighteen months ago when she was lifting something at work. (JE 7, p. 63) Koppen assessed Jones with acute midline low back pain with right-sided sciatica and anxiety with depression, referred Jones for physical therapy, and prescribed prednisone. (JE 7, p. 65)

On March 26, 2018, Jones attended an appointment with Mercy Clinics Family Medicine in Fort Dodge, complaining of lower back pain and right leg and foot pain for eighteen months, and reporting she recently reinjured herself while moving things two to three weeks ago. (JE 8, p. 75) Jones reported she had injured her back while lifting at work eighteen months ago and noted the pain was worse for the past two weeks with severe pain down her right leg. (JE 8, p. 75) John Birkett, M.D., examined Jones, assessed her with acute lumbar radiculopathy, and encouraged Jones to return to her regular physician for magnetic resonance imaging and a neurosurgical evaluation, if needed. (JE 8, pp. 75-76)

Mercy Clinics Family Medicine submitted an attending physician statement to 3M, documenting Jones had injured her back at work eighteen months before and had reinjured herself while moving. (JE 8, p. 77) Mercy Clinics Family Medicine restricted Jones from working from March 26, 2018 through April 10, 2018, and released her to return to work on April 11, 2018. (JE 8, p. 78)

Jones testified at hearing she reinjured her back when pulling her mattress away from the wall so she could clean behind it. (Tr., pp. 37, 65, 72) Jones reported her symptoms eventually returned to her baseline. (Tr., p. 37)

Jones applied for a welder position with JetCo. (Tr., p. 40) Jones reported on her way to her interview she fell and knocked herself out. (Tr., p. 40)

On April 5, 2018, Jones underwent a pre-employment physical for a welder position with JetCo with Jacob Miller, ARNP, CRNA with Humboldt County Public Health. (JE 9, p. 79) Jones reported she had injured her back in December 2016, but had no restrictions. (JE 9, p. 80) After examining Jones, Miller opined Jones could not perform the essential functions of the position. (JE 9, p. 82)

On April 10, 2018, Jones attended an appointment with Mark Palit, M.D., an orthopedic surgeon with Iowa Specialty Hospitals and Clinics. (JE 10, p. 90) Dr. Palit documented Jones reported she injured her back eighteen months ago when she twisted her back while carrying a light bar, and complained of low back pain radiating into her right leg. (JE 10, p. 90) Dr. Palit documented Jones had asymmetrical reflexes and recommended magnetic resonance imaging. (JE 10, p. 91)

Jones underwent lumbar spine magnetic resonance imaging on April 11, 2018. (JE 10, p. 93) The reviewing radiologist listed an impression of “(Hypertrophic) degenerative changes (exaggerated throughout the lower lumbar spine facet joints with a mild lumbar facet joint arthropathy) with (developing) L4-L5 and L5-S1 degenerative disc disease (without significant central canalicular stenosis and/or foraminal stenosis).” (JE 10, p. 94)

On April 12, 2018, Jones returned to Dr. Palit after reviewing her imaging. (JE 10, p. 95) Dr. Palit diagnosed Jones with spinal stenosis of the lumbar region with neurogenic claudication and L5-S1 stenosis, recommended a right-sided selective nerve root block at L5 and S1, and released Jones to return to work on April 18, 2018, following the injection. (JE 10, pp. 95-99)

On April 17, 2018, Jones attended an appointment with Miller for an initial consultation and right L5 nerve root injection on a referral from Mark Palit, M.D. (JE 9, p. 83) Jones complained of axial lower back pain symptoms in her right hip, right leg, and right foot. (JE 9, p. 83) Miller assessed Jones with lumbosacral radiculopathy unresponsive to conservative treatment, noted her level of disability was moderate to severe, and administered a right L5 selective nerve root block. (JE 9, pp. 86-89)

Jones returned to Dr. Palit on May 10, 2018, following the injection and reporting her shooting pain was better, but she still had constant pain mostly in her right leg and thigh that becomes worse by the end of the day. (JE 10, p. 100) Dr. Palit examined Jones and ordered physical therapy. (JE 10, p. 101)

Jones testified she injured her left clavicle when she fell after her leg gave out when she was going down some stairs at a park. (Tr., p. 41) Jones made an appointment with Kristina Johnson, PA-C who works under Emile Li, M.D. at Iowa Specialty Hospitals and Clinics. (JE 10, p. 102; Tr., p. 41) Dr. Li documented Jones reported on June 20, 2018, “two men were fighting. The altercation came towards her and she states she was ‘slammed into the wall.’” (JE 10, p. 102) Dr. Li diagnosed Jones with a displaced left midshaft clavicle fracture and recommended she wear a sling. (JE 10, p. 103) Jones testified at hearing she told Johnson and Li her leg had given out and denied she told them she was slammed into a wall when two men were fighting, explaining “nobody was fighting. It’s, like – it was friends that were just kind of horsing around, and I got pushed into the wall. I didn’t even – I don’t know why it’s even in quotes because I didn’t say I was slammed into any wall.” (Tr., pp. 75-76) Jones agreed her medical records did not document she fell after her leg gave out when she was going some stairs at a park. (Tr., p. 77)

During a follow-up appointment with Johnson on July 13, 2018, Jones reported she had tripped and fell the day before while getting ready and landed with her left arm extended. (JE 10, p. 104) Johnson ordered and reviewed additional imaging, assessed Jones with a resolving fracture without complication, and recommended she continue wearing the sling. (JE 10, p. 105)

Jones received surgery for her left clavicle in October 2018. (Tr., p. 41)

On November 6, 2018, Jones returned to Dr. Palit complaining of low back pain. (JE 10, p. 106) Dr. Palit documented Jones had not pursued physical therapy due to economic and financial reasons and he prescribed prednisone. (JE 10, p. 107)

Jones attended an appointment with Dr. Palit on November 20, 2018, and relayed she had received minimal pain relief from the prednisone taper. (JE 10, p. 108) Dr. Palit ordered additional physical therapy. (JE 10, p. 109) Dr. Palit did not impose any permanent restrictions. (Tr., p. 82)

IMT hired Jones as a body welder. (Tr., pp. 45-46) Jones was moved to the crane weld department, where she was paid \$17.00 per hour. (Tr., pp. 45-46) Jones reported her position with IMT ended because the lifting was heavier than the lifting at Aluma and she was experiencing a lot of pain and cramping. (Tr., pp. 46-47)

After leaving IMT, Jones went to work for Bennigan's, but reported she was having a lot of pain and tripping a lot, so she applied for a position with Dollar General. (Tr., pp. 47-48) At the time of the hearing Jones was still working for Dollar General as a cashier, earning \$9.75 per hour. (Tr., p. 48) She was also working for Apple Valley Assisted Living as a medication manager, passing medication to the residents, and earning \$12.00 per hour. (Tr., pp. 48-49) Jones helps with laundry, setting up meals, giving meals, cleaning up after meals, and assisting the residents with taking showers. (Tr., p. 48) Jones works for Dollar General and Apple Valley a total of fifty-five hours per week. (Tr., p. 82)

On July 31, 2019, Jones attended an appointment with Burt Bottjen, M.D., with MC Forest City, complaining of back pain and musculoskeletal pain. (JE 7, p. 69) Jones relayed she had low back pain and aching, dull, and piercing pain in her right leg with associated numbness. (JE 7, p. 69) Dr. Bottjen assessed Jones with lumbar back pain with radiculopathy affecting the lower extremity and leg cramps, and ordered magnetic resonance imaging. (JE 7, pp. 72-73)

Sunil Bansal, M.D., an occupational medicine physician, conducted an independent medical examination for Jones on January 23, 2020 and issued his report on January 31, 2020. (JE 11) Dr. Bansal examined Jones and reviewed her medical records. (JE 11) Dr. Bansal documented Jones reported on December 20, 2016, she sustained an injury to her back when:

[s]he was welding, and began to develop pain in her back. She went to Human Resources and asked if she could be placed on light duty, but this request was denied and she was returned to work. She bent forward and lifted a flipper made of cast iron and steel approximately 14 times per day. She had already lifted it and set it down three times that day. The day prior to this she had lifted the flipper all day long. As she lifted a lighter

object and twisted, she had sharp severe pain in her right lower back, with no radiating pain.

(JE 11, pp. 117, 119) Dr. Bansal noted Jones reported no previous injuries or problems with her back. (JE 11, p. 117)

Dr. Bansal diagnosed Jones with a disc bulge at L5-S1 with an annular tear. (JE 11, p. 119) Dr. Bansal opined Jones aggravated a disc bulge at L5-S1 with annular tearing “from repeatedly bending and lifting the flippers, coming forward to December 20, 2016.” (JE 11, p. 119)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) (“AMA Guides”), Dr. Bansal opined “based on her current symptomatology and physical examination, she meets the criteria of a DRE Category II Impairment. She has radicular complaints, loss of range of motion, and guarding,” and he assigned her a five percent whole person impairment based on Table 15-3. (JE 11, p. 119) Dr. Bansal recommended permanent restrictions of no lifting over twenty-five pounds, no frequent bending or twisting, and no prolonged sitting greater than 30 minutes at a time. (JE 11, p. 120)

Jones testified day-to-day she has constant pain in her lower back and pain that goes down the middle of her leg. (Tr., p. 49) Jones described the pain as sciatica, a burning, strong ache, twitching in her calf muscle, pain in her foot and ankle, with tingling, numbness, and weakness. (Tr., p. 49) Jones relayed “I have just the feeling of weakness in my leg where it feels like it’s going to go out underneath me. And starting to get pains where my big toe is starting to hurt from – I’m starting to walk differently so my leg, you know, doesn’t teeter on me.” (Tr., pp. 49-50) Jones stated the pain sometimes feels like she has been stung by a hornet, noted her leg will jerk randomly, her foot and ankle will turn inward on her. (Tr., p. 50)

Jones reported she has difficulty with reaching and carrying her children. (Tr., p. 50) Jones relayed she has to spend a lot of time lying down flat. (Tr., p. 51)

At the time of the hearing Jones was living alone. (Tr., p. 85) Jones reported she does her own laundry, housecleaning, and meal preparation. (Tr., p. 85) Jones has to carry smaller loads of laundry and cannot dance, or go for long walks, or snowmobile anymore. (Tr., pp. 50-51)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including nature and extent of disability, recovery of the cost of an independent medical examination, recovery of costs, and interest under Iowa Code sections 85.34, 85.39, 86.40, and 535.3. In March 2017, the legislature enacted changes (hereinafter “Act”) relating to workers’ compensation in

Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code section 85.34 apply to injuries occurring on or after the effective date of the Act. This case involves an alleged work injury occurring before July 1, 2017, therefore, the provisions of the new statute do not apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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.

II. Arising Out of and in the Course of Employment

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held an injury occurs "in the course of employment" when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

Whether a claimant's injury arises out of the claimant's employment is a "mixed question of law and fact." Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007). The Iowa Supreme Court has held,

[t]he factual aspect of this decision requires the [trier of fact] to determine "the operative events that [gave] rise to the injury." Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). Once the facts are determined, a legal question remains: "[W]hether the facts, as determined, support a conclusion that the injury 'arose out of . . . [the] employment,' under our workers' compensation statute."

Id.

Aluma and Depositors contend Jones did not sustain an injury arising out of and in the course of her employment with Aluma alleging Jones is not a credible witness, relying on the testimony of Braun, and records in the case. Jones alleges Dr. Bansal's opinion is un rebutted and supports she sustained a work-related injury. During the hearing I assessed the credibility of Jones and Braun by considering whether their testimony was reasonable and consistent with other evidence I believe, whether they made inconsistent statements, their "appearance, conduct, memory and knowledge of the facts," and their interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990).

Jones has an obvious interest in the outcome of this case. Braun is employed by Aluma and also has an interest in this case. I had the opportunity to observe Braun and Jones testify under oath. During their testimony Braun and Jones engaged in direct eye contact, their rate of speech was appropriate, and they did not engage in any furtive movements. Braun's memory was clear and consistent. Braun maintained contemporaneous records of her interactions with Jones and of the documents she received regarding Jones. (JE 3) I find Braun's testimony reasonable and consistent with the other evidence I believe. I can understand a claimant may be off by one day in reporting a work injury like Jones did in this case, however, Jones's testimony is replete with inconsistencies, from the alleged bonus plan, to her conversations with co-workers about the alleged injury, to her preexisting back pain, to the story regarding her clavicle fracture. I do not find Jones's testimony she sustained an injury to her back while working for Aluma on December 14, 2016, reasonable and consistent with the other evidence I believe.

Jones testified on December 14, 2016, she told Braun she was having trouble with her back. (Tr., p. 26) Jones reported " I don't really remember if we talked about why. I think she just kind of knows that with that job, there comes a lot of pain with it. I don't know if she -- if we talked about it. I don't remember exactly what was said." (Tr., p. 26) Braun documented on December 14, 2016, Jones came to her office and asked if Aluma had any light duty work for her. (JE 3, p. 17) Braun wrote,

I asked her why she needed light duty and she told me that she hurt her back over the weekend and it was acting up. I asked if she did something here at Aluma that caused the pain and she said no. I then told her the Aluma policy is we do not have light duty for non-work related injuries and Jennifer said “that is fine but I am going to go home today.”

(JE 3, p. 17) Braun testified Aluma had provided Jones with instruction on reporting work injuries the first day of her employment. (Tr., pp. 94-95) December 14, 2016 was a Wednesday. At the time of her alleged work injury, Jones was also working for another employer, Pep’s as a bartender and waitress. (Tr., p. 59)

Jones testified at hearing she did not want to report she had sustained a work injury, noting “I was trying to kind of be vague about it and kind of work around saying that Aluma was causing these – the injury” because she did not want to lose her job. (Tr., pp. 26-27) There is no evidence Jones’s job was in jeopardy. Jones continued to receive raises from Aluma following the alleged work injury and when she resigned to take the position with 3M, Jones was eligible for rehire.

Jones’s testimony is also inconsistent with her written statement on the February 28, 2017 injury report, where she wrote, “I didn’t believe it was work related because I had back soreness prior to working at Aluma.” (JE 3, p. 19)

Jones testified she felt pressured not to report her injury because the Aluma workers received a bonus for maintaining an accident or injury free workplace. Jones explained,

[t]hat you go – that the whole company goes accident-free and injury-free. They give you free stuff for reaching a certain date. I think it was maybe 150 days accident-free, and then I think one other time we got chairs and another time maybe blankets. It just depended. There wasn’t – there always seems to be injuries so it didn’t happen very often.

(Tr., pp. 27-28) Jones relayed other workers would “really get after you” for reporting a work injury. (Tr., p. 28)

There are 365 days in a year. Jones worked for Aluma for thirteen months until she resigned to take a position with 3M. (JE 3, p. 23; Tr., p. 42) Her testimony that the “bonuses” did not happen often because “there always seems to be injuries” does not make sense. According to her testimony, the plant was accident free two-thirds of the time, but injuries were “always” happening.

Contrary to Jones’s testimony, Braun testified Aluma has never had a bonus plan reporting “[w]e don’t have a benefit plan, no. For safety, no.” (Tr., p. 111) Braun reported there were no departmental goals for safety; workers are not given a prize or

benefit for being injury-free. (Tr., p. 111) Jones did not present any documentary or witness testimony concerning the alleged bonus plan.

When she completed the injury report form on February 28, 2017, Jones documented she told three of her coworkers, Ron, Melissa, and Tiffany about her work injury. (JE 3, p. 19) Braun testified she spoke with Melissa and Ron and they told her they had not heard Jones talk about injuring her back and they did not know anything about an injury. (Tr., p. 100) Braun testified Tiffany told her Jones “stated that at one time she recalled helping her outside to her car, but from the comments made, her inclination was that it was something that happened outside of work.” (Tr., p. 101) Braun testified Melissa, Tiffany, and Ron did not tell her Jones had sustained a work injury based on their observations of Jones or based on conversations with her. (Tr., p. 101) Jones did not call any witnesses at hearing or submit any affidavits to contradict Braun’s testimony.

Jones also made inconsistent statements concerning a preexisting back condition. Her medical records document a recurring back problem. Jones explained she had intermittent back pain during pregnancy. Her medical records do not reference back pain during pregnancy, but rather document preexisting back pain. This is also supported by Jones’s statement on the report of injury form, “I didn’t believe it was work related because I’ve had back soreness prior to working at Aluma.” (JE 3, p. 19)

Jones’s testimony regarding the clavicle fracture is also troubling. Jones testified she injured her left clavicle when she fell after her leg gave out when she was going down some stairs at a park. (Tr., p. 41) Dr. Li documented Jones reported she was injured when “two men were fighting. The altercation came towards her and she states she was ‘slammed into the wall.’” (JE 10, p. 102) Jones testified at hearing she told Johnson and Li her leg had given out and denied she told them she was slammed into a wall when two men were fighting, explaining “nobody was fighting. It’s, like – it was friends that were just kind of horsing around, and I got pushed into the wall. I didn’t even – I don’t know why it’s even in quotes because I didn’t say I was slammed into any wall.” (Tr., pp. 75-76) Jones agreed her medical records did not document she fell after her leg gave out when she was going down some stairs at a park. (Tr., p. 77)

Based on the foregoing, I do not find Jones to be a credible witness. I do not believe Jones sustained an injury arising out of and in the course of her employment with Aluma. Jones has not met her burden of proof in this case. Based on this finding the issues of permanency and recovery of medical bills are moot.

III. Independent Medical Examination

Jones seeks to recover the \$2,632.00 cost of Dr. Bansal’s independent medical examination. Iowa Code section 85.39 (2016), provides, in part:

[a]fter an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. . . . If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. . . .

No physician retained by Aluma or Depositors made an evaluation of permanent disability before Dr. Bansal conducted his independent medical examination. Jones is not entitled to recover the cost of Dr. Bansal's independent medical examination under Iowa Code section 85.39.

IV. Costs

Jones seeks to recover \$100.00 for the filing fee, \$13.40 for service, \$182.60 for a deposition copy, and the \$2,632.00 cost of Dr. Bansal's independent medical examination. (JE 13) Iowa Code section 86.40 provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." And rule 876 Iowa Administrative Code 4.33(6), provides

[c]osts 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.

Jones was not successful in proving her claim. I find the parties should bear their own costs.

ORDER

IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing in this proceeding.

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

Signed and filed this 22nd day of April, 2020.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Janece M. Valentine (via WCES)

Anne Clark (via WCES)

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