BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEAH BAGLEY,

Claimant,

vs.

CIVCO,

Employer,

and

NEW HAMPSHIRE INS. CO.,

Insurance Carrier,
Defendants.

File Nos. 5049017, 5049018

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Leah Bagley, claimant, filed petitions in arbitration seeking workers' compensation benefits from CIVCO and its insurer, New Hampshire Insurance Company as a result of injuries she allegedly sustained on April 3, 2012 and June 25, 2013 that allegedly arose out of and in the course of her employment. This case was heard in Davenport, Iowa, and fully submitted on November 17, 2014. The evidence in this case consists of the testimony of claimant, Tayvon Bagley and Dee Swayze and Joint Exhibits A – U and X – MM. Both parties submitted briefs, which were considered.

ISSUES

For File No. 5049017- date of injury - April 3, 2012:

1. Whether the alleged injury is a cause of permanent disability and, if so;

2. The extent of claimant's disability.

3. Assessment of costs.

The stipulated weekly rate of $308.75 is accepted for this claim file. The parties agreed defendants are entitled to a credit of $1,226.85 for short-term disability payments. The parties agree that if permanent partial disability benefits are awarded, the commencement date is April 3, 2012.

For File No. 5049018 - date of injury – June 25, 2013:

1. Whether claimant sustained an injury on June 25, 2013, which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

3. Whether the alleged injury is a cause of permanent disability and, if so;

4. The extent of claimant's disability.

5. The commencement date of any permanent partial disability benefits.

6. Whether claimant is entitled to certain medical expenses.

7. Assessment of costs.

The parties agree that claimant was off work from June 25, 2013 through February 24, 2014. The stipulated weekly rate of $347.34 per week is accepted for this claim file. The parties agreed defendants are entitled to a credit of $1,226.85 for short term disability payments.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Leah Bagley, claimant, was 35 years old at the time of the hearing. She did not graduate high school. She obtained a GED in 1998. Claimant started college in 2003 and was a few credits shy of an Associate's Arts Degree in liberal studies and social science. Before April 3, 2012 claimant's health was generally good. She had no restriction in her work abilities. At the time of the hearing, claimant had restrictions on her ability to lift and work overhead.

Claimant worked a number of jobs before she started for CIVCO in September 2011. (Exhibit DD, page 4) She was a cashier at a home improvement store. Claimant did not think she could perform that job now due to her lifting restriction. Claimant worked in customer service and made manifests for deliveries for a bedding chain. Claimant could perform that job with her current restrictions. Claimant worked as a housekeeper in a motel. She did not believe she could perform that job due to her restrictions. Claimant worked in a day care. She did not believe she could lift the children given her current restrictions. Claimant also did not believe she could return to her position caring for disabled adults. Claimant was an assistant manager in a café. This position required physical activities like cleaning, mopping, as well as supervision of four to five employees. Claimant did not believe she could perform the cleaning aspects of this job. On February 25, 2014, claimant started working as a kitchen

associate for Casey's General Stores. (Ex. EE, p. 3) Her employment ended September 12, 2014 when she walked off the job after receiving a written warning. (Ex. HH, p. 2) Claimant was looking for work, at the time of the hearing. Claimant said she would like to be in an office setting.

Claimant began her employment with CIVCO in September 2011. She was sent a letter stating that she was being terminated for unexcused absences and attendance issues on July 31, 2013 and was officially terminated on August 12, 2013. (Ex. R, p. 41; Ex. T, p. 10) The last day she worked at CIVCO was June 25, 2013. Claimant performed a number of tasks in the CIVCO clean room. (Transcript, page 20) Claimant would wrap and seal medical devices. Her work was repetitive. She would shift to a different task every hour.

On April 3, 2012, claimant was working at a poling station in the clean room. Claimant felt pain in her neck and shoulders. She reported this to her supervisors. Claimant continued to work in the clean room. CIVCO referred claimant for medical treatment at Mercy Occupational Health.

Claimant was released to return to work by Sarvenaz Jabbari, M.D., on July 12, 2012. (Ex. A, p. 20: Tr. p 69) Claimant did not receive any additional medical care for her shoulder until June 2013.

Claimant said that in the weeks before her June 25, 2013 injury she was experiencing flare-ups at work of her shoulder. At that time, she was working ten-hour days, four-days a week and would recover over the three-day weekend. Claimant said she was unable to get her flare-up under control before work on June 25, 2013. There was no specific incident at work that caused her flare-up. (Ex. FF, p. 19) Claimant said on June 24, 2013 she had concerns about her shoulder, as well as her son Tayvon Bagley. Her son was providing supervision for her other children when she was at work and was threatening to leave her children unsupervised. Claimant said she stayed home on Monday June 24, 2013. She would have come into work on Monday if she was not having problems with her shoulder, but claimant said she would have reported her shoulder problems. (Tr. p. 77) Claimant testified that she and her son did not get into a physical altercation on that day. Claimant talked to Mr. Swayze, her supervisor, on June 25, 2013. She said she did not tell Mr. Swayze that she had a physical altercation, [Ex. M, p.1], and had no idea why he would write about such an event, three months after this events were supposed to have happening. (Tr. pp. 49, 50)

Claimant told the head of human resources, Laura Jaeger, she believed that her June 25, 2013 injury was shoulder related to her April 2012 injury. (Tr. p. 51) Claimant applied for short term disability (STD) benefits at the suggestion of Ms. Jaeger. Initially, she was denied as her injury was considered work related. Eventually, claimant was

approved for STD[1]. Claimant applied for FMLA. Her application was denied and she was terminated on August 12, 2013. (Tr. p. 62) Claimant was told by Ms. Jaeger that without a specific incident she could not file an incident report and without an incident report claimant could not file for workers' compensation. (Tr. p. 64) Ms. Jaeger wrote a memo to herself on July 8, 2013. (Ex. R, p. 27) Ms. Jaeger wrote:

> Leah Bagley called me today to ask me about STD. She called to open her claim and was concerned that they were going to deny it because of Work Comp. I asked her if she let them know it was a personal injury. She then told me that she isn't sure it is a personal injury as much as a flare up of the injury she had in June of 2012 at CIVCO in her neck and shoulders. Leah told me that it does flare up on occasion and has done so since the original treatment of her injury. She noted that it can flare up due to a variety of things including sleeping on it wrong.
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> . . . .
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> I told Leah that if she feels she can pinpoint the occurrence that caused the flare up, and feels that it is work related, we would have her stop her current course of treatment and see our company physician for a review and potential treatment – at which time it would be covered by WC unless our physician could not correlate it to work. If that were the case, we would refer her back to her personal physician for treatment. I asked her what she would like to do. She thought for a bit and told me that she thinks it is getting aggravated by more than just work and that she would like to continue to treat with her physician and go to Steindler. I told her that once she is released to return to work, we will still need to have a release from our company physician and at that time, we can ask whether or not our physician feels that her current role in the clean room will add to the aggravation. Leah agreed that this would be a good way to handle her case.

(Ex. R, p. 27)

Claimant has limitations in how she performs household tasks due to her injury. Folding laundry, moving garbage, lifting her daughter, yard work and repetitive use of her arm can aggravated her shoulder. (Tr. pp. 42, 43)

At the time of the hearing claimant was receiving care from Brian Wolf, M.D., at the University of Iowa Sports Medicine. Claimant said she was given the option of conservative care or surgery. The claimant was choosing conservative care.

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[1] Claimant was initially denied for STD based upon the finding that her injury was work related. (Ex. N, p. 1) This finding was later reversed and the claimant was found eligible for STD. Neither of these findings are binding or persuasive in this case. (See Ex. N, p. 12 and Ex. N, p. 26)

Mr. Swayze is the first shift clean room supervisor at CIVCO. He has held that position since May 2013. He described the work in the clean room as light assembly, but repetitive in nature. (Tr. p. 92) Mr. Swayze said he talked to the claimant on June 25, 2013. Mr. Swayze said that claimant told him that there was a physical altercation with her son and her friend had to restrain her son. (Tr. p. 94) Mr. Swayze noted that claimant was having some difficulties with her shoulder and he asked her if she needed to see a doctor. Mr. Swayze said claimant told him that her shoulder problem did not happen at work. (Tr. p. 95) This was reported as a non-work related injury and claimant was advised to see her personal physician. (Ex. I, p. 4) When Mr. Swayze was told by Ms. Jaeger in September 2013 that claimant was filing a workers' compensation claim, he prepared his statement found at Exhibit M and Exhibit I, page 1.

On April 5, 2012, Tina Stec, M.D., examined claimant for injury to claimant's neck and left shoulder. Dr. Stec's assessment was, "Left-sided cervical, trapezius, and scapular pain, with mild right trapezius pain." (Ex. A, p. 6) Dr. Stec imposed restrictions and ordered physical therapy. (Ex. A, p. 6) On July 12, 2012, claimant was examined by Dr. Jabbari. At that examination, claimant's neck and shoulder had improved. Claimant had had one bad day last week and told Dr. Jabbari that it was usually toward the end of the week she was experiencing problems. (Ex. A, p. 19) Dr. Jabbari's impression was, "Left scapula/trapezius pain – resolving." (Ex. A, p. 20) Dr. Jabbari returned claimant to work without restriction and recommended physical therapy for two more weeks, continued use of the TENS unit and ice/heat to the shoulder. She discharged claimant from care at that time. (Ex. A, p. 20)

The deposition testimony of Jane Morrow and Susan Melzow was generally supportive of the fact that claimant was experiencing pain at work in her shoulder leading up to June 25, 2013.

Claimant went to her primary care provider Meagan Squiers ARNP, FNP-C on June 25, 2013. (Ex. C, p. 21) ARNP Squiers took claimant off work until testing results were evaluated. (Ex. C, p. 3) A MRI showed, "Mild superior rotator cuff tendinopathy and mild subacromial/subdeltoid bursitis." (Ex. C, p. 12) ARNP Squiers referred claimant to the Steindler Orthopedic Clinic. She wrote on November 4, 2013 that the claimant did not provide her with any information in her history that claimant was injured at home and that ARNP Squiers was told by claimant that her injury was related to her 2012 work injury. (Ex. C, p. 12) On September 2, 2014, ARNP Squiers stated again that she was unaware that claimant had an incident at home with her child that caused her injury. (Ex. C, pp. 18, 19)

On July 15, 2013, Michael Curley, M.D., examined claimant. Claimant told Dr. Curley she was having symptoms for about three to four weeks and the onset was acute. Claimant told Dr. Curley she injured her shoulder 1.5 years ago and about a month ago her shoulder flared-up. (Ex. D, p. 1) His impression was tendonitis of the shoulder and he provided an injection that day. (Ex. D, pp. 2, 3) On August 8, 2013, Dr. Curley returned claimant to work at light duty as of August 13, 2013. He provided restrictions of no lifting greater than 15 pounds, no lifting above the shoulder and to

avoid repetitive reaching, pulling or pushing. (Ex. D, p. 8) On October 1, 2013, Dr. Curley responded to a request from the Hartford Insurance Company representative about the cause of claimant's symptoms. He wrote:

> I did not get a history from the patient that there was an incident at home that caused this flare. Therefore, the history as related to me by the patient is one of a work comp injury in February 2012 with marked improvement from the initial injury but occasional recurrent exacerbations in an individual whose occupation requires repetitive use of the upper extremities.

(Ex. D, p. 12) On January 10, 2014, Dr. Curley responded to a letter written by claimant's counsel. Dr. Curley agreed that claimant's left upper extremity condition was caused by her work at CIVCO. He also stated that the history given to him by claimant was that of a work injury and flare-up of her condition and not related to any personal injury at home. (Ex. D, p. 14; Ex. R, 35)

On September 18, 2013, Dr. Wolf examined claimant. In his history, he stated that the claimant's pain came back on June 18, 2013. (Ex. E, p. 1) His assessment was:

> Assessment:
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> Scapulothoracic pain with concomitant neck pain and shoulder pain.

(Ex. E, p. 3)

On January 16, 2014, Dr. Wolf responded to a letter from claimant's attorney. He stated:

> It is my opinion with a resonable [sic] degree of medical certainty that Leah's condition was caused by her Civco work, or was at least substantially aggravated by her Civco work. Her symptoms continue to be consistent with the injury that is reported dating back to April 2012 in the Mercy Occupational Health notes.

(Ex. E, p. 12) On September 17, 2014, Dr. Wolf's impression was, "Left shoulder pain, likely symptoms of scapulothoracic bursitis as well as impingement." (Ex. E, p. 34)

On July 15, 2014, Richard Kreiter, M.D., performed an independent medical examination (IME) of the claimant. After his examination of the claimant his impression was,

> IMPRESSION:
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> 1. Synovitis with possible early degenerative changes in the left acromioclavicular joint with mild adhesive capsulitis. No significant rotator cuff tear.

2. Cervical disc syndrome or disease, primarily at the L4-5 level with degenerative changes in the mid cervical area, neurologically intact.

3. Subscapular bursitis with upper thoracic chronic pain and myositis with tension headaches.

4. Ulnar nerve irritation, left elbow, with possible entrapment.

(Ex. G, p. 13)

In response to questions posed by claimant's counsel Dr. Kreiter held that conditions caused or aggravated by her work would include synovitis or strain of the left acromiclavicular joint with adhesive capsulitis, aggravation of the pre-existing cervical disc pathology, subscapular bursitis with upper thoracic myositis. He found claimant reached maximum medical improvement (MMI) three months prior to his evaluation. He provided a 10 percent impairment rating to the whole body and recommended restrictions of no overhead work on the left side and 10 to 15 pound floor to bench on an occasional basis. He also recommended claimant restrict pushing and pulling with her left arm. (Ex. G, p. 10)

I find that the restriction recommended by Dr. Kreiter are claimant's restrictions and are related to her June 25, 2014 injury.

Barbara Laughlin, M.A., performed an employability assessment of the claimant on August 28, 2014. (Ex. S, pp. 1 – 12) Ms. Laughlin found a loss of 29 percent of directly transferable occupations and a 49.1 percent loss of unskilled occupations. (Ex. S, p. 8) Ms. Laughlin did not provide enough weight in her report concerning the claimant's computer skills and her success in community college to fully credit all of her conclusion as to claimant's loss of access to the labor market.

Claimant's lifting and weight restrictions are significant limitations. Claimant has attended community college and at the time of the hearing was just a few credits shy of obtaining an Associate Arts Degree. Claimant is able to use a computer. It is not likely that she can return to work in light assembly that requires repetitive use of her left arm or repetitive lifting using her left arm. Likewise, cashier or food service work that requires repetitive lifting or living above her restrictions is no longer available to her. Claimant's age is a positive factor. She did obtain employment at Casey's. She lost that position for reasons unrelated to her work injury. Claimant has not had surgery. Considering the above factors, I find claimant has a 45 percent loss of earning capacity.

Claimant has submitted medical bills for the June 25, 2013 injury date. (Ex. II, pp. 1 – 13) These records show a total of $11,247.70 in total medical bills. Some have been paid by CIGNA, Medicaid and a small amount by claimant. The records also reflect a Medicaid lien. (Ex. GG, pp. 1 – 5) Defendant did not dispute these figures. I find that these expenses are a result of the June 25, 2013 injury.

I find that claimant has proven by a preponderance of the evidence she had permanent injury on June 25, 2013. I find that June 25, 2013 is the manifestation date of claimant's injury. That is the date ARNP Squiers took claimant off work.

The parties agreed claimant had an injury on April 3, 2012. Claimant returned to her position without restrictions. Claimant has not proven she had a permanent impairment for this injury.

CONCLUSIONS OF LAW

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

I find the opinions of the medical experts, Drs. Curley, Kreiter and Wolf, in this case are persuasive that claimant suffered an injury at work on June 25, 2013. Defendant has argued that I should not afford significant weight to the medical opinions based upon incomplete or inaccurate information. It is true that the medical opinions did not consider that the claimant suffered an injury due to restraining her son, however since the convincing evidence, both medical and lay, is that she did not injure herself trying to restrain her son, I find the medical reports to be convincing as to causation and that claimant suffered cumulative trauma caused by her work at CIVCO.

There is the matter of the difference between claimant and Mr. Swayze concerning whether claimant was in a physical altercation with her son on June 23 or 24, 2023. Mr. Swayze's statement was written three months after the alleged event. This lessens the strength of this document and his version of events.

There is no medical record that claimant ever told any health care provider she was in a physical altercation with her son. There is absolutely no medical evidence to support the defendant's assertion that claimant's injury was caused or permanently aggravated by a physical altercation with her son. Claimant credibly testified that she felt her injury flare-up. I find it more probable than not that claimant would have told her medical providers if she had been injured by her son.

Both parties have, to some extent, tried to impinge the motivations of the other party. There is nothing nefarious about the testimony claimant or conduct of the defendants. The record fairly shows the claimant consistently told medical providers after June 24, 2013 she felt her shoulder was a flare-up of her prior injury. She told her employer she thought it was a flare-up. Claimant is not sophisticated as to cumulative trauma and workers' compensation. Defendants' records that reflect that at times claimant did not exactly know if her injury was personal or work related does not seriously detract from claimant's testimony that she believed she had a flare-up of her prior injury in June 2013. Claimant's confusion about whether the injury was personal or work related is not uncommon, nor unbelievable.

There is no medical evidence the claimant was ever injured in the alleged physical altercation with her son. Assuming arguendo an altercation took place, I see no medical evidence that it is the cause of claimant's current physical problems. Ms. Jaeger, wanted claimant to pinpoint an injury date so that claimant could file a workers' compensation claim. Cumulative trauma does not require a specific pinpoint in time to show a work-related injury. The human resource department's desire for claimant to pinpoint her injury is understandable, but is not required. The injury must arise out of and in the course of her employment. Claimant has shown by a preponderance of the credible evidence that she injured her neck and left shoulder while working for CIVCO.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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).

I found claimant has a 45 percent loss of earning capacity. Based upon all of the factors for industrial disability I find claimant has a 45 percent industrial disability entitling claimant to 225 weeks of permanent partial disability benefits.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. 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 October 1975).

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

I previously found that the medical expenses submitted by claimant in Exhibit II were related to claimant's June 25, 2013 work injury. As such, defendants are liable for such expenses and the Medicaid lien.

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 last worked for defendants on Friday June 22, 2013. She was taken off work by ARNP Squiers on June 25, 2013. Claimant returned to similar work when she started working at Casey, on February 24, 2014. Defendants shall pay healing period benefits from June 25, 2013 through February 24, 2014.

Claimant has requested costs of $2,371.11 in this case. The costs are attached to the hearing report.

The filing fee of $100.00 and deposition costs of $134.45 and $228.50 are clearly allowed under 876 IAC 4.33. In my discretion, I award them to claimant. Claimant has requested $933.16 for the practitioner's report of Ms. Laughlin. I find this is allowable under rule 4.33 and in my discretion award it to claimant.

Claimant has requested $975.00 for a report of ARNP Squiers. Her report is an allowable report as a practitioner's report. However, it appears she also charged for a

phone call with claimant's attorney and a phone call to Dr. Kreiter, as part of her $975.00 charge. As only the report is an allowable cost I am awarding 1/3 of her bill as attributable to the report. Claimant is awarded $325.00. Total costs awarded is $1,721.11

ORDER

For File No. 5049017- date of injury - April 3, 2012:

Claimant takes nothing.

For File No. 5049018 - date of injury – June 25, 2013:

Defendants shall pay claimant healing period benefits from June 25, 2013 through February 24, 2014 at the weekly rate of three hundred forty-seven and 34/100 dollars ($347.34) per week.

Defendants shall pay claimant two hundred twenty five (225) weeks of permanent partial disability benefits at the weekly rate of three hundred forty-seven and 34/100 dollars ($347.34) per week commencing February 25, 2014.

Defendants shall pay the medical expenses as set forth in this decision.

Defendants shall pay any past due amounts in a lump sum with interest as provided by law.

Defendants shall file subsequent reports of injury, as required by this agency under rule 876 IAC 3.1(2).

Defendants shall pay the costs in the amount of one thousand seven hundred twenty one and 11/100 dollars ($1,721.11) this matter as required under rule 876 IAC 4.33.

Signed and filed this 21st day of May, 2015.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.