BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WENDY S. MUSGROVE, Claimant, vs. L.A. LEASING, INC. a/k/a SEDONA STAFFING, Employer, and ACE AMERICAN INSURANCE CO., Insurance Carrier, Defendants.	FILED JAN 19 2018 WORKERS' COMPENSATION	File No. 5057321 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1402.30, 1402.40, 1802, 1803.1, 2907,

STATEMENT OF THE CASE
AND EVIDENTIARY RULING

Wendy Musgrove, claimant, filed a petition in arbitration and seeks workers' compensation benefits from defendants, L.A. Leasing, Inc. a/k/a Sedona Staffing (hereinafter referred to as "Sedona Staffing"), as the employer and Ace American Insurance Company, as the insurance carrier. Hearing occurred before the undersigned on August 25, 2017, in Davenport.

Prior to trial, claimant filed a motion for continuance. In a ruling filed August 7, 2017, the undersigned denied claimant's request for a continuance. At the commencement of the arbitration hearing, claimant identified causation of the alleged left shoulder injury and permanent disability, if any, related to the left shoulder as disputed issues and requested that these issues be bifurcated for a future hearing. Defendants resisted the request to bifurcate the left shoulder claim. The undersigned reserved ruling on the request for bifurcation pending receipt of any oral testimony and review of the parties' written exhibits.

Having had the chance to hear claimant's testimony on this issue and having reviewed the relevant exhibits, I find that claimant alleged a left shoulder injury in her original notice and petition filed on September 19, 2016. Ms. Musgrove testified that she has had health insurance through a subsequent employer since October 2016. (Transcript, page 44) Yet, she has not asked her personal physician to provide

treatment for her alleged left shoulder injury. Ms. Musgrove did not attempt to obtain medical care for her left shoulder until late Spring or early Summer 2017. She ultimately was not able to find a physician to evaluate or treat her left shoulder prior to the scheduled arbitration hearing. She did not seek an independent medical evaluation prior to trial. She has not obtained any medical opinions pertaining to causation relative to her left shoulder as of the hearing date.

In my ruling on claimant's request for a continuance, I found:

> In this instance, the need for the continuance was caused, at least in part, by claimant's failure to marshal the evidence she now desires to obtain in the future and introduce at hearing. Review of the agency file discloses that claimant alleged in paragraph eight of the original notice and petition that treatment was pending for the alleged left shoulder. Claimant's original notice and petition was filed on September 19, 2016. Therefore, claimant has known for at least 10 months that additional treatment was needed for her left shoulder."

(Ruling on Claimant's Motion for Continuance, August 7, 2017)

Similarly, I found that claimant had not yet scheduled the desired medical appointment as of August 2017 and that it "is not timely discovery or appropriate marshaling of evidence for this scheduled hearing." (Ruling on Claimant's Motion for Continuance, August 7, 2017)

Claimant's testimony and the written evidence demonstrates that claimant was aware of her alleged left shoulder injury for almost a year before the hearing date. (Joint Exhibit 2, p. 25) She did not obtain a timely expert opinion regarding causation. Instead, she seeks to bifurcate the issue that has been pending before this agency for nearly a year before trial.

The delay and need for the requested bifurcation is because claimant did not marshal her evidence timely. It would be prejudicial to defendants to bifurcate this issue and give claimant additional opportunities to marshal evidence that she failed to marshal within the prescribed deadlines. (Hearing Assignment Order; 876 IAC 4.19(3)(b)) Having reviewed the written evidence and listened to claimants' testimony, I conclude that the request for bifurcation of any issues related to the left shoulder injury should be denied.

Ms. Musgrove also appears to seek bifurcation of the issue of permanent disability related to her admitted left elbow injury. However, it appears that the left elbow injury has been declared to be at maximum medical improvement and permanent disability is ripe for determination at this time. If claimant requires additional treatment into the future and her permanent disability changes, she has the remedy of pursuing a timely review-reopening proceeding pursuant to Iowa Code section 86.14(2). Therefore, I perceive no reason to bifurcate the issue of permanent disability relative to

the left elbow. Claimant's request for bifurcation of the left elbow permanent disability is denied.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision. No factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

At the commencement of the arbitration hearing, the undersigned reviewed the hearing report with counsel on the record. Counsel were provided an opportunity to amend or add any additional disputed issues to the hearing report. Counsel did not identify any additional disputed issues to be decided by the undersigned at the time of hearing and the undersigned accepted the parties' hearing report. (Transcript, pages 4 through 13)

In her post-hearing brief, claimant advances and argues a claim for penalty benefits pursuant to Iowa Code section 86.13. The hearing report does not contain any reference to, or make any claim for, penalty benefits. Review of the original notice and petition demonstrates that no penalty claim was asserted therein. Counsel did not identify or assert a penalty claim at the time of the arbitration hearing.

Instead, it appears that claimant is attempting to raise and litigate a penalty benefit claim without proper notice of the claim and after the close of evidence. In their post-hearing brief, defendants specifically object to the assertion of a penalty benefit claim under these circumstances.

Agency rule 876 IAC 4.2 specifically requires, "[e]ntitlement to denial or delay benefits provided in Iowa Code section 86.13 shall be pled." In this instance, claimant did not plead the claim for penalty benefits either in the original notice and petition or in the hearing report. Claimant has not complied with agency rule 876 IAC 4.2.

Claimant argues in a reply brief that she could simply raise the penalty issue at a later date via a separate petition. The undersigned disagrees.

Agency rule 876 IAC 4.2 provides a mechanism in which claimant may bifurcate the penalty benefit claim for a later trial. Pursuant to that administrative rule, "claimant may bifurcate the denial or delay issue by filing and serving a notice of bifurcation at any time before a case is assigned for hearing." 876 IAC 4.2. Again, claimant is clearly not in compliance with agency rule 876 IAC 4.2. Claimant made no attempt to identify the penalty benefit claim during the discovery phase of this case, let alone file a notice of bifurcation before the hearing assignment order was filed.

Claimant's request to bifurcate is not well-founded in the existing rules and law governing cases before this agency. Moreover, a penalty benefit claim includes an evidentiary burden shifting in which defendants are required to produce evidence to

demonstrate the basis(es) for their denial and evidence that they contemporaneously conveyed the basis(es) of denial to the claimant. Iowa Code section 86.13(4)(b)-(c). Requiring defendants to marshal and introduce evidence on a claim that was not identified prior to the close of evidence is prejudicial on its face. Therefore, I conclude that claimant's request to advance a penalty benefit claim after the close of evidence should be denied and that the penalty claim cannot be bifurcated, or raised and litigated at a later date.

The evidentiary record includes Joint Exhibits 1 through 3, Claimant's Exhibits 1 through 5, and Defendants' Exhibits A through J.

Claimant testified on her own behalf. Defendants called Nicollette Parker, Julie White, and Kathy Huchinson to testify. The evidentiary record closed at the end of the arbitration hearing.

However, counsel for the parties requested an opportunity to submit post-hearing briefs. Their request was granted. The parties filed post-hearing briefs on or before the established date of October 27, 2017. Although neither party requested permission to do so, both parties filed reply briefs. Given that both parties filed their briefs, the reply briefs will be accepted and considered. The case is considered fully submitted as of the filing of defendants' reply brief on November 8, 2017.

ISSUES

1. Whether claimant is entitled to temporary total, temporary partial, or healing period benefits from December 1, 2014 through September 21, 2015, including a claim by defendants that claimant forfeited any claim to such benefits by refusing suitable light duty work.

2. Whether claimant sustained a left shoulder injury that is causally related to her October 30, 2014, work injury.

3. Whether claimant's permanent disability should be compensated as a bilateral scheduled member injury pursuant to Iowa Code section 85.34(2)(s) or as an unscheduled injury with industrial disability.

4. The extent of claimant's entitlement to permanent disability benefits.

5. The commencement date for permanent disability benefits.

6. Whether claimant is entitled to future treatment of the left shoulder.

7. Whether costs should be assessed against either party.

FINDINGS OF FACT

Having considered all of the evidence and testimony in the record, recognizing that there may be competing or contradictory facts within this evidentiary record, I find the following facts:

Wendy Musgrove sustained a work-related injury to her left elbow and right carpal tunnel syndrome at Sedona Staffing on October 30, 2014. (Hearing Report) As a result of the left elbow injury, claimant required surgical intervention, including a left ulnar nerve neurolysis and lateral epicondylar release, performed by Suleman M. Hussain, M.D., in late August or early September 2015. (Jt. Ex. 2, pp. 15, 19) Claimant sustained an eight percent permanent impairment of the left arm as a result of the left elbow injury. (Jt. Ex. 2, p. 24)

As a result of the right carpal tunnel syndrome, claimant required surgical intervention performed by Dr. Hussain on March 3, 2015. (Jt. Ex. 2, pp. 7-8) Claimant sustained a two percent permanent impairment of the right arm as a result of the right carpal tunnel syndrome and release. (Jt. Ex. 2, p. 24) Ms. Musgrove has been declared to be at maximum medical improvement both for the left elbow injury and the right carpal tunnel syndrome. (Jt. Ex. 2, pp. 20-21, 25) She has been released to return to work without restrictions and at full-duty from both the left elbow and right carpal tunnel syndrome injuries. (Jt. Ex. 2, pp. 20-21, 25)

Ms. Musgrove asserts she also sustained a left shoulder injury as a result of her work activities on October 30, 2014 or cumulatively manifesting on October 30, 2014. There are no medical opinions contained within this evidentiary record opining that claimant's left shoulder condition is causally related to her work activities at Sedona Staffing. I find that claimant failed to prove a causal connection between her work activities at Sedona Staffing and her left shoulder condition.

As a result of the combined disability of the left elbow impairment and the right carpal tunnel syndrome impairment, Ms. Musgrove sustained six percent permanent impairment of the whole person. (Jt. Ex. 2, pp. 23-24) Given that Ms. Musgrove has been released to full-duty work without permanent work restrictions and given her ability to find alternate employment using her bilateral arms and hands, I find that the six percent permanent impairment offered by Dr. Hussain adequately assesses the functional impairment claimant sustained as a result of her bilateral upper extremity injuries on October 30, 2014.

Ms. Musgrove asserts that she is entitled to an award for healing period benefits. She seeks benefits from December 1, 2014 through September 21, 2015. I find that Ms. Musgrove was working a light duty assignment in a Sedona Staffing office in Monticello, Iowa from December 1, 2014 through December 8, 2014. (Tr., p. 53) When working light duty, claimant was paid her normal wages and did not sustain a wage loss on days she worked light duty.

However, on December 8, 2014, claimant was involved in a domestic incident and left Monticello in the middle of the night. She went to stay with relatives in Muscatine, Iowa. Prior to leaving, Ms. Musgrove had a conversation with someone at Sedona Staffing and was told that she could work a light duty assignment in Muscatine, if she was forced to moved.

On December 9, 2014, claimant called the Sedona Staffing office in Monticello and informed the office that she had moved suddenly. She requested reassignment of light duty work to the Muscatine, Iowa office. However, Sedona Staffing offices are privately owned and it is not a simple corporate transfer between offices. Therefore, no light duty was offered to Ms. Musgrove in Muscatine between December 9, 2014 and December 28, 2014.

Sedona Staffing then made arrangements through its Muscatine, Iowa office to have claimant perform light duty work at a homeless shelter in Muscatine. Claimant reported to work at the homeless shelter on December 29, 2014, the first date such light duty work was offered by Sedona Staffing. Unfortunately, on her first day working at the shelter, she was confronted with a situation in which a male assaulted a female in the shelter. Claimant was very uncomfortable with this development given her own circumstances and recent move due to similar domestic issues.

Additionally, clamant learned that there were concerns about drugs being present at the shelter. Ms. Musgrove is a recovering drug addict and has remained clean for quite some time. She feared with the stress in her life that she would not be able to resist the temptation if directly confronted with drugs at the mission. (Claimant's testimony) She asked to be reassigned by Sedona Staffing for alternate light duty work. Ms. Musgrove declined further assignment at the shelter.

Sedona Staffing did not offer claimant any alternate light duty work in Muscatine between December 30, 2014 and March 3, 2015. On March 4, 2015, Sedona Staffing offered claimant light duty work in Monticello. Claimant was unable to accept the offer because she did not own a vehicle to drive between her then residence in Clinton, Iowa and Monticello to attend work. She offered to return to light duty work in Monticello if the employer would provide transportation. (Claimant's Ex. 3, pp. 19-20) Sedona Staffing apparently declined the invitation to provide transportation each work day between Clinton and Monticello. However, on September 21, 2015, claimant was able to borrow a vehicle from a friend and returned to light duty work for Sedona Staffing in Monticello.

It is approximately an hour and 20-minute drive between Muscatine and Monticello. It would be a similar distance or driving time from Clinton to Monticello.

Under the facts and circumstances of this case, I find that it was not reasonable, or suitable, work to place claimant in a homeless shelter where she was exposed to domestic violence issues and drugs. Given claimant's recent exposure to domestic

violence and her history of drug addiction, it was not reasonable or suitable to place her in a light duty work environment that would exposure her to both violence and drugs.

I find that it was reasonable for claimant to decline light duty work at the homeless shelter after her one day of work there. Given claimant's personal circumstances, history, and difficulties, I find that the light duty work assignment at the shelter was not suitable work consistent with her disability. Placing her in such an environment exposed her to violence and potential drugs. Either or both of these items could place Ms. Musgrove at personal risk to her health, safety and morals.

Similarly, I find that it was not reasonable, or suitable, work to offer claimant light duty work in Monticello after she moved to Muscatine or Clinton. Without a personal vehicle, it was not suitable to expect claimant to be able to commute an hour and twenty minutes each way to attend a light duty work assignment. Given her lack of transportation, I find that the offer of light duty work in Monticello was not a suitable work offer between March 4, 2015 and September 20, 2015.

In summary, I find that Ms. Musgrove was off work and was not offered suitable work on the following inclusive dates: December 9, 2014 through December 28, 2014, December 30, 2014 through September 20, 2015.

CONCLUSIONS OF LAW

The initial dispute in this case is the nature of the claimant's permanent disability. Specifically, the parties dispute whether claimant's alleged left shoulder injury arose out of and in the course of her employment on October 30, 2014. If the left shoulder injury is found to be causally related to the October 30, 2014 work injury, Ms. Musgrove's claim will be compensated as an unscheduled injury with industrial disability. Iowa Code section 85.35(2)(u). If the alleged left shoulder injury is not causally related to the work injury, claimant's injury will be compensated as a bilateral scheduled member injury. Iowa Code section 85.34(2)(s).

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).

Having found that claimant failed to prove she sustained a left shoulder injury as a result of the October 30, 2014 work injury, I conclude that claimant has failed to establish she sustained an unscheduled injury that is compensable with industrial disability benefits. Iowa Code section 85.34(2)(u). Instead, claimant's claim is limited to two scheduled member injuries, including the left arm (elbow) and right arm (carpal tunnel syndrome). Accordingly, claimant's injuries will be compensated based upon her functional loss, using a 500-week schedule pursuant to Iowa Code section 85.34(2)(s).

Claimant is entitled to a proportional award using the 500-week schedule. Iowa Code section 85.34(2)(v). Having found that claimant sustained a six percent of the whole person impairment as a result of the combined functional impairment caused by the right carpal tunnel syndrome and left elbow injuries, I conclude that claimant is entitled to 30 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(s), (v).

Permanent disability benefits commence upon the termination of the initial healing period. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 373-374 (Iowa 2016). Therefore, claimant's request for healing period benefits must be considered before a determination of the commencement of permanent partial disability benefits can be established.

Ms. Musgrove seeks the award of healing period benefits from December 1, 2014 through September 21, 2015. Defendants dispute claimant's entitlement to

healing period benefits and assert that claimant forfeited any claim to healing period benefits because she refused an offer of suitable work.

Iowa Code section 85.33(3) provides:

> If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

Under the specific facts and circumstances of this case, I found that Ms. Musgrove worked a light duty assignment in Monticello between December 1, 2014 and December 8, 2014. Having found that she did not lose wages during this period of time, I find that claimant failed to prove entitlement to any healing period benefits between December 1, 2014 and December 8, 2014.

Ms. Musgrove also worked a light duty assignment on December 29, 2014 and lost no wages. Therefore, I conclude claimant failed to prove entitlement to any healing period benefits on December 29, 2014.

On the other hand, I found that claimant was off work and was not offered suitable light duty work between December 8, 2014 and December 28, 2014. I found that claimant was not offered suitable light duty work between December 30, 2014 and September 20, 2015. She commenced a light duty assignment in Monticello on September 21, 2015 and is not entitled to healing period benefits on September 21, 2015.

The major dispute between the parties pertaining to healing period is whether the light duty work offers extended by Sedona Staffing are "suitable" under Iowa Code section 85.33(3). Claimant contends that the offers were not suitable under her particular circumstances. The employer contends that the light duty work offered was at the location where claimant was employed, later in Muscatine where she lived, and that all offered light duty work was within claimant's medical restrictions and, therefore, suitable and consistent with claimant's disability.

The specific facts of this case do not appear to have been considered by an Iowa appellate court. The Iowa Supreme Court did address the issue of "suitable work" in Neal v. Annett Holdings, Inc., 814 N.W.2d 512 (Iowa 2012). In Neal, the Court concluded that the distance from a claimant's residence to the location of the offered light duty work is relevant to a determination of whether the work offered is "suitable." The Court did not draw a black and white line as to what constitutes a reasonable or

suitable travel distance. Instead, the Court held that the determination of what is suitable work is a factual issue to be determined by the agency. Id. at 524.

In its analysis, the Neal Court noted that offering light duty that is consistent with medical restrictions meets the first prong of Iowa Code section 85.33(3), which requires that the work be "consistent with the employee's disability." However, the Court noted that there is a second requirement: that the light duty work offered also be "suitable." Id. at 519-520.

The Court determined that the statute did not specifically define "suitable work." Therefore, the Court looked at workers' compensation statutes from other states, as well as reviewing the definition of "suitable work" in other areas of the law such as employment discrimination and unemployment. Id. at 520-524.

The Iowa Supreme Court noted that unemployment law considers several factors when determining whether work is "suitable." See Iowa Code section 96.5(3); 871 IAC 24.24(15). Among the factors that are considered are distance from the claimant's residence to the available work and whether there is any risk to the employee's health, safety and morals presented by the available work. 871 IAC 24.24(15)(a), (g); Neal, 814 N.W.2d at 522-523.

In this instance, I found that the work offer in Monticello was not suitable given the distance of required travel and particularly since claimant did not have a vehicle to travel back and forth to the offered light duty work. Similarly, I noted potential risks to claimant's health and safety involved with working at the homeless shelter in Muscatine, including exposure to violence and drugs.

Given claimant's background and personal circumstances, the exposure to violence and drugs presented risk to claimant's health and safety. Therefore, if the unemployment standards are implemented to interpret what is "suitable work," as suggested by Neal, I conclude that the light duty work offered to claimant in Monticello, while she lived in Muscatine, was not suitable. Similarly, I conclude that the light duty work offered to claimant at the homeless shelter in Muscatine was not suitable.

Ultimately, I conclude that the Iowa Supreme Court is directing that the claimant's individual circumstances must be considered when rendering a determination of whether offered light duty work is both consistent with the employee's disability and suitable work. Nevertheless, I concede that the result may not be entirely fair and just from the defendants' perspective. Claimant's domestic incident caused her to leave Monticello. The employer had no control over claimant's domestic situation. Certainly, there is no proof that the work injury caused or even contributed to the domestic situation that ultimately caused claimant to move from Monticello to Muscatine.

If the same domestic incident occurred while claimant was working full duty or without a work injury, claimant's employment would likely have been terminated because she failed to appear for work in Monticello. Yet, because claimant was working

light duty under medical restrictions from a work injury, she maintains her employment and the employer is obligated to either pay healing period benefits or find light duty for the employee in a different town. Clearly, Sedona Staffing would have no such obligation if claimant was not under medical restrictions or involved in a workers' compensation claim.

Nevertheless, the work injury is what placed claimant in a compromised position. It is the work injury that caused claimant to have work restrictions. It is the work restrictions that rendered claimant unable to move to Muscatine and compete for all available competitive work. It was the work injury that placed claimant under restrictions that hampered her life style and caused a reduction in earnings. In this sense, it would be unfair and unjust to an injured worker to terminate all benefits simply because an injured worker elected to, or was forced by life's circumstances, to move after a work injury.

The Iowa workers' compensation system permits a claimant to move his or her residence and continue to receive medical treatment. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999); Brigance v. Krysilis, Inc., File No. 5038685 (Alternate Medical Care Decision November 2011) (2011 WL 13186167); Lucas v. USA Truck, File No. 5005417 (Alternate Medical Care Decision September 2002) (2002 WL 32125052). The Iowa workers' compensation system also considers the injured worker's area of residence as of the date of maximum medical improvement, even if the claimant moved while in his or her healing period. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995); Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985); Second Injury Fund of Iowa v. Shank, 516 N.W.2d 808 (Iowa 1994). Sustaining a work injury does not thereby foreclose an injured worker's right, or freedom, to move and establish residence in a locality of his or her choosing. Generally, an injured worker is not punished, or benefits reduced, because the worker elects to move after an injury is sustained. Again, it is claimant's work injury and resulting restrictions that precluded her from obtaining any and all types of employment upon moving to Muscatine.

Although the result may be a bit harsh or unfair from the employer's perspective, it has long been held that the purpose of the workers' compensation statute is for the benefit of the injured worker. Holstein Elec. v. Breyfogle, 756 N.W.2d 812, 816 (Iowa 2008); Cedar Rapids Community School v. Cady, 278 N.W.2d 298, 299 (Iowa 1979); Disbrow v. Deering Implement Co., 233 Iowa 380, 9 N.W.2d 378 (1943). It is also established that the defense asserted by defendants of a refusal of suitable work is an affirmative defense. Schutjer v. Algona Manor Care Ctr, 780 N.W.2d 549, 559 (Iowa 2010). Defendants bear the burden to establish that suitable work was offered and that claimant refused the offer of suitable work. Id.

Interpreting the statute to the benefit of the worker, consistent with the holding in Neal, other areas of employment law, and placing the burden of proof on defendants, I conclude that defendants failed to establish that suitable work was offered to and refused by claimant in this situation. Therefore, I conclude that claimant has established entitlement to healing period benefits from December 9, 2014 through

December 28, 2014 and from December 30, 2014 through September 20, 2015. Iowa Code section 85.34(1).

Defendants did establish that claimant worked light duty following her October 30, 2014 work injury through December 8, 2014. As such, no healing period benefits were owed between October 31, 2014 and December 8, 2014. Having determined that claimant returned to work in a light duty status as of October 31, 2014, I conclude that the first factor of Iowa Code section 85.34(1) occurred upon the return to work in light duty status on October 31, 2014. Permanent disability benefits commence upon the termination of healing period. Iowa Code section 85.34(1). In this instance, permanent disability benefits commence on October 31, 2014. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 373-374 (Iowa 2016).

Finally, claimant also seeks assessment of her costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Claimant prevailed on the healing period claim but failed to establish a left shoulder injury. Claimant failed to establish the penalty benefit claim, failed to properly marshal evidence or prepare this case for trial. Therefore, exercising the agency's discretion in this situation, I conclude that the parties should be ordered to bear their own costs related to this contested case proceeding.

ORDER

THEREFORE, IT IS ORDERED:

Claimant's motion to bifurcate the left shoulder claim is denied.

Claimant's motion to bifurcate the left elbow permanent disability claim is denied.

Claimant's request to assert a penalty benefit claim, or to bifurcate that issue, is denied.

Defendants shall pay claimant thirty (30.0) weeks of permanent partial disability benefits commencing on October 31, 2014.

All weekly benefits shall be paid at the rate of two hundred forty-six and 81/100 dollars ($246.81) per week.

Defendants shall pay all accrued benefits in lump sum with interest pursuant to Iowa Code section 85.30.

Defendants shall be entitled to credit for all benefits paid to date pursuant to the parties' stipulation on the hearing report.

Claimant remains entitled to all causally related future treatment of the left elbow and right carpal tunnel syndrome.

All parties shall bear their own costs with defendants bearing the cost of the transcript unless the case is appealed and the transcript is assessed differently as an appeal cost.

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 19th day of January, 2018.

WILLIAM H. GRELL
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.