

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAWN BROWN,

Claimant,

vs.

WITHAM AUTO CENTERS, INC.,

Employer,

and

SOCIETY INSURANCE,

Insurance Carrier,
Defendants.

File No. 5054260

A P P E A L

D E C I S I O N

Head Notes: 1402.40, 1501, 1802,
1803, 2502

FILED
MAY 15 2019
WORKERS' COMPENSATION

STATEMENT OF THE CASE

Defendants Witham Auto Centers, Inc. (Witham), employer and Society Insurance, insurer, appealed from an arbitration decision filed August 10, 2017. Claimant filed a cross-appeal.

The detailed arguments of the parties have been considered and the record of evidence has been reviewed de novo. Upon written delegation of authority by the workers' compensation commissioner under Iowa Code section 86.3, I render this decision as a final agency decision on the behalf of the Iowa Workers' Compensation Commission.

Claimant also has an appeal concerning a petition for a partial commutation that was dismissed by an August 17, 2017 ruling. Because the appeal concerning the petition for partial commutation, and the appeal concerning the August 10, 2017 arbitration decision, concern separate petitions, separate appeal decisions were issued for each. This appeal will only concern the appeal of the August 10, 2017 arbitration decision.

ISSUES

1. Did the claimant establish entitlement to temporary benefits from January 26, 2014 through April 20, 2015?

2. The extent of claimant's entitlement to permanent partial disability benefits.
3. Is claimant due a reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39?

FINDINGS OF FACT

The arbitration decision in this case does an excellent job of chronicling claimant's detailed medical history. This appeal decision will only reference to highlights of claimant's medical history.

On August 2, 2013 claimant sustained a work injury. At hearing claimant testified she set a container of transmission fluid on the floor, turned, and felt a popping in her lower back. Claimant said she had lower back pain and pain in her bilateral legs. Claimant said she was unable to walk and fell into boxes until symptoms improved. Claimant returned to her vehicle and completed her delivery route. Claimant said the pain in her right leg improved, and leg pain in the left leg continued. Claimant said she continued to work, as she believed she only pulled a muscle. When her pain continued, claimant asked for medical care. (Transcript pages 37-40; Exhibit V, Deposition pages 80-90)

On August 15, 2013 claimant was evaluated at Allen Occupational Health (AOH) Services. Claimant was assessed as having a work-related lumbar strain with radiculopathy on the left. Claimant was limited to lifting up to five pounds. (Ex. 7A, pp. 54-55; Ex. L, p. 31)

Claimant returned to AOH on August 23, 2013. She was evaluated by Robert Broghammer, M.D. Claimant was assessed as having lower back strain with left leg pain. (Ex. F, pp. 6, 17)

Claimant testified that from August through September of 2013 she continued to work and did light-duty work. She said on or about September 4, 2013 she was approached by a representative from defendant employer who sent her home due to concerns claimant could potentially further injure herself. (Ex. V; Depo. p. 34)

On September 11, 2013 claimant underwent an MRI. It showed a disc protrusion on the right at L3-4. This was found not significant, as claimant had no right-sided complaints at that time. The MRI also showed a disc bulge at L4-5 with no evidence of nerve compression. (Ex. 7B, p. 68)

Claimant returned to Dr. Broghammer on September 13, 2013. Dr. Broghammer reviewed the MRI. Because the MRI revealed nerve compression on the opposite side of claimant's symptoms, he opined an MRI could not explain claimant's symptoms. Dr. Broghammer referred claimant to a pain clinic. (Ex. 7A, p. 56; Ex. F, pp. 7, 18)

Claimant was seen by Frank Hawkins, M.D. on October 8, 2013. Claimant indicated the right leg improved shortly after the injury but symptoms had returned and

both legs now had symptoms. Dr. Hawkins noted he had a “. . . hard time understanding and putting together [claimant’s] symptoms and the way that she is carrying about in regards to her pain with the paucity of symptoms that I am seeing on her MRI.” Dr. Hawkins gave claimant a lumbar epidural steroid injection (ESI). (Ex. 7C, p. 70)

Claimant returned to AOH on October 17, 2013. As Dr. Broghammer was absent, claimant was evaluated by Kenneth McMains, M.D. After the appointment, Dr. McMains wrote a letter to defendant insurer. He indicated claimant’s September 11, 2013 MRI was normal for a person of claimant’s age and he saw no evidence of nerve compression. (Ex. 7A, pp. 59, 62-63; Ex. F, pp. 8-9)

Dr. McMains assessed claimant as having bilateral extremity weakness, symptom magnification and potential for a vascular problem. He believed claimant’s continued symptoms were due to a vascular problem and not a spine impairment. Dr. McMains released claimant from care at AOH and directed her to care with a vascular specialist. He found claimant had no evidence of permanent impairment or permanent restrictions regarding the work injury. (Ex. 7A, p. 63; Ex. F, p. 9)

Claimant underwent bilateral venous and arterial testing. Claimant was evaluated by Eromosele Otoadese, M.D. He opined it was unlikely claimant’s symptoms were due to a peripheral artery disease and claimant’s problems were probably caused by degenerative disc disease. (Ex. 7D, p. 75; Ex. 7J, p. 88)

Claimant underwent EMG/NCV testing on December 11, 2013. Claimant’s testing was normal with no evidence of lumbosacral radiculopathy. (Ex. 7E, p. 76)

Claimant returned to Dr. Broghammer on December 20, 2013 with complaints of low back and leg pain along with problems with incontinence. Dr. Broghammer reviewed the EMGs and MRI results. He diagnosed claimant with idiopathic lumbago, found she was at maximum medical improvement (MMI), and released her from care. He opined claimant’s condition was no longer work related and released claimant to return to work with no permanent impairment or permanent restrictions. (Ex. 7A, p. 65; Ex. F, pp. 11, 19-20)

In a December 20, 2015 letter, Dr. Broghammer noted he reviewed claimant’s treatment records. Records showed claimant’s symptoms increased with each visit without reason. He opined claimant demonstrated significant aspects of symptom magnification. He indicated it did not make sense for patient to have a muscle strain and continue to have increased symptoms. He found claimant’s ongoing symptoms were no longer work related. He found claimant at MMI and released her from care. He also opined claimant had no permanent impairment or permanent restrictions. (Ex. 7A, p. 66. Ex. F, p. 12)

Claimant was evaluated by Jonathon Hennings, ARNP on December 20, 2013. He took claimant off work. He assessed claimant as having a back injury, neuropathy. (Ex. 7J, p. 89; Ex. H, p. 1)

At the referral of Nurse Practitioner Hennings, claimant saw David Beck, M.D., a neurosurgeon, on January 8, 2014. He reviewed claimant's MRI and found no explanation for claimant's symptoms. EMG studies were also normal. Following a review of test results and examination, Dr. Beck indicated there was not "anything wrong" with claimant. He prescribed gabapentin and referred to claimant's leg pain as "rather bizarre." (Ex. 7G, pp. 79-80)

Claimant was seen by Chad Abernathey, M.D. He reviewed claimant's MRI and found it unrevealing with only mild degenerative, age-related changes and no significant neural compression. Claimant was assessed as having a chronic lumbosacral strain. Dr. Abernathey found claimant was not a surgical candidate given a "paucity" of clinical and diagnostic findings. He opined claimant did not appear well and thought claimant could be suffering from an illness not related to a workers' compensation claim. (Ex. 7H, p. 81; Ex. E, p. 2)

In a letter to Dr. Broghammer, Dr. Abernathey indicated claimant's complaint of pain would possibly be related to a medical condition, not her work injury. (Ex. E, p. 3)

Claimant returned to Nurse Practitioner Hennings and received pain medication from February of 2014 through May of 2014. On May 15, 2014 Nurse Practitioner Hennings indicated claimant could return to work in a clerical position. He restricted claimant from lifting, carrying and bending. (Ex. 7J, p. 95) On May 16, 2014 he opined claimant should not return to work until further notice. (Ex. 5, p. 41)

Nurse Practitioner Hennings referred claimant to Gayathry Inamdar, M.D., a pain specialist on May 20, 2014. Dr. Inamdar gave claimant an L4-S1 ESI. (Ex. 7I, p. 84) Claimant underwent later ESIs with Dr. Inamdar on June 10, 2014, July 17, 2014, August 11, 2014, September 23, 2014, and January 15, 2015. (Ex. 7K, pp. 100-113; Ex. 7I, pp. 85-86)

On August 21, 2014 claimant underwent a second lumbar MRI. It showed a small intraforaminal protrusion at L3-4, and minimal contact of an L3 nerve root, but no other changes. (Ex. K, p. 1)

In August of 2014 claimant applied for Social Security Disability benefits on the basis of her back, neuropathy and arthritis. Claimant testified she was found eligible for Social Security Disability benefits. (Ex. 20, pp. 197-204; Ex. V; Depo. p. 58)

In a letter, written by claimant's counsel, Nurse Practitioner Hennings agreed that after the work injury of August 2, 2013, claimant complained of lower back pain radiating into the legs. He did not believe claimant was malingering. He opined claimant's work injury materially aggravated her lower back condition and the aggravation might be

permanent. He also opined the work injury was a substantial contributing factor for claimant's bilateral lower extremity symptoms and her incontinence. (Ex. 5, pp. 42-43)

In a May 20, 2015 report Robin Sassman, M.D. gave her opinions of claimant's condition following an independent medical evaluation (IME). Claimant complained of lower back pain radiating into the legs. Claimant said her right leg had given out, causing her to fall, and she used a cane. (Ex. 1, pp. 5-7)

Claimant was assessed as having lower back pain with radiculopathy. Dr. Sassman opined claimant's work injury of August 2, 2013 was directly and causally related to claimant's lower back pain, radiculopathy and abnormalities on claimant's MRI. (Ex. 1, p. 7)

Based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Sassman found claimant had a 25 percent permanent impairment to the body as a whole. She restricted claimant to lifting up to 10 pounds rarely, sitting, standing and walking occasionally and no use of ladders. (Ex. 1, pp. 7-9)

In a June 10, 2015 report Dr. Broghammer indicated he reviewed Dr. Sassman's IME report. He reviewed claimant's medical records. He opined claimant's ongoing subjective symptoms were unrelated to the work injury. He again opined claimant had no permanent impairment or permanent restrictions due to the work injury. He opined the ongoing care claimant received after his release was not related to or necessitated by the work injury. (Ex. F, pp. 17-22)

Regarding Dr. Sassman's IME report, Dr. Broghammer noted Dr. Sassman's rating was based solely on claimant's subjective complaints and did not account for a finding of a lack of radiculopathy in the EMG/NCV studies. He noted if claimant required further treatment that treatment was not related to the work injury. (Ex. F, p. 22)

In a February 10, 2016 letter, Dr. Beck indicated claimant's EMG/NCV studies were normal. Claimant's MRI was normal. Claimant's neurological exam was normal. He indicated there was nothing in objective testing to support claimant's subjective complaints. (Ex. B, p. 4)

In a February 12, 2016 letter, Dr. McMains indicated claimant went through a thorough exam and diagnostic testing that showed no objective findings beyond age appropriate degenerative changes in the lumbar spine with no nerve compression. He opined claimant's ongoing complaints from 2013 were not caused by the work injury. He found claimant had no permanent impairment or permanent restrictions from the work injury. (Ex. F, p. 25)

In a February 18, 2016 letter Dr. Broghammer indicated claimant went through a thorough exam and diagnostic testing, which showed only age-related degenerative changes. He indicated claimant's ongoing subjective complaints were not explained by

diagnostic studies. He found claimant's ongoing complaints from 2013 were not caused by the work injury. (Ex. F, p. 31)

In a February 24, 2016 letter Dr. Abernathey indicated claimant's complaints were consistent, but noted claimant did not have specific objective findings. He found claimant's complaints were causally related to the work injury. However, because of the paucity of clinical and radiographic findings, he found claimant had no permanent impairment or permanent restrictions. (Ex. E, pp. 4-6)

In a March 16, 2016 statement, written by claimant's counsel, Dr. Abernathey indicated he found nothing during claimant's interview or evaluation that led him to doubt claimant's report of symptoms. He indicated the reported mechanism of injury was consistent with reported symptoms. He indicated he did not see any findings in the MRI to explain claimant's symptoms but agreed it was "possible" for claimant to experience symptoms with no MRI findings. He again indicated he did not find claimant had permanent restrictions or permanent impairment but agreed claimant may have permanent impairment or permanent restrictions. (Ex. 6, pp. 44-45)

In a May 12, 2016 report Kent Jayne gave his opinions of claimant's vocational opportunities. Mr. Jayne opined it was unlikely claimant would have success in retaining competitive employment. (Ex. 3)

After termination, claimant contacted eight potential employers for employment. (Ex. 17, pp.181-183)

Claimant testified at hearing she continued to have lower back pain. She also said she had leg pain, right greater than left. Claimant said she could sit for 15-20 minutes at a time. She said she uses a cane and has difficulty with her right leg giving out.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant has carried her burden of proof she is entitled to temporary benefits. Defendants contend claimant is not entitled to any temporary benefits beyond October 17, 2013. Claimant argues she is entitled to temporary benefits from January 26, 2014 through April 20, 2015.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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. Cihā, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer 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 number of experts have opined regarding causation of claimant's ongoing symptoms.

Claimant underwent treatment with Dr. Broghammer in September of 2013. Dr. Broghammer noted claimant's September of 2013 MRI could not explain claimant's symptoms. (Ex. 7A, p. 56; Ex. F, pp. 7, 18)

Claimant was sent to a pain specialist, Dr. Hawkins, in October of 2013. Dr. Hawkins did give claimant a lumbar ESI. However, Dr. Hawkins also noted, "... I am having a hard time understanding and putting together her symptoms and the way that she is carrying about in regards to her pain with the paucity of symptoms that I am seeing on her MRI. . ." (Ex. 7C, p. 70)

Claimant was treated by Dr. McMains in October of 2013. Dr. McMains noted claimant had a normal MRI with no evidence of nerve compression. He believed claimant's symptoms might be caused by vascular problems. He found claimant had no

permanent impairment or permanent restrictions regarding her work injury. (Ex. 7A, pp. 59, 62-63; Ex. F, pp. 8-9)

Testing revealed claimant did not have evidence of deep vein thrombosis or venous insufficiency. Claimant was assessed as having degenerative disc disease. (Ex. 7D, pp. 73-75)

Claimant underwent EMG/NCV studies in December of 2013. The results were normal with no evidence of radiculopathy. (Ex. 7A, p. 66)

On December 20, 2013 Dr. Broghammer noted claimant had a normal MRI and normal EMG/NCV studies. He found it did not make any sense for claimant to have a muscle strain and yet have worsening symptoms. He believed claimant showed signs of symptom magnification. He found claimant at MMI as of December 20, 2013. (Ex. 7A, p. 65; Ex. F, pp. 11, 19-20)

On the same date Nurse Practitioner Hennings found claimant had a back injury and took claimant off work. (Ex. 7J, p. 89)

Nurse Practitioner Hennings referred claimant to Dr. Beck, a neurosurgeon. Dr. Beck evaluated claimant in January of 2014. He noted claimant's MRI was normal. He found the EMG/NCV studies were normal. He indicated there was no explanation for symptoms. He found nothing wrong with claimant. (Ex. 7G, pp. 79-80)

In February of 2014 claimant was evaluated by Dr. Abernathey, a neurosurgeon. Dr. Abernathey noted that given the paucity of clinical and diagnostic findings, claimant was not a surgical candidate. He also noted her symptoms were unrelated to her work comp injury. (Ex. 7H, p. 81; Ex. E, pp. 2-3)

In a January of 2015 letter, Nurse Practitioner Hennings indicated claimant was not malingering. He opined claimant's work injury materially aggravated claimant's lower back condition. He also opined claimant's work injury was a substantial contributing factor to the radicular symptoms and incontinence. (Ex. 5, pp. 42-43)

Nurse Practitioner Hennings' opinions regarding causation are problematic. Nurse Practitioner Hennings does not offer any rationale or analysis why the work injury aggravated claimant's symptoms and caused radiculopathy, in light of the fact claimant had a normal MRI, and normal EMG/NCV studies. In short, Nurse Practitioner Hennings' opinions do not address the lack of objective findings regarding claimant's symptoms. Given this issue, it is found Nurse Practitioner Hennings' opinions regarding causation are not convincing.

Dr. Sassman evaluated claimant once for an IME. In a May of 2015 report, Dr. Sassman found claimant's work injury was related to her lower back pain and radiculopathy. Dr. Sassman also found claimant had a 25 percent permanent impairment to the body as a whole. (Ex. 1, pp. 7-9)

However, like Nurse Practitioner Hennings, Dr. Sassman does not offer any analysis or rationale for the normal diagnostic testing. She opines claimant's work injury directly and causally related to her ongoing lower back symptoms. However, Dr. Sassman gives no explanation or rationale for the normal MRI findings. She offers no explanation or rationale for the normal EMG/NCV studies. Because of this, it is found Dr. Sassman's opinions regarding causation are found not convincing.

In a June 2015 letter Dr. Broghammer opined claimant's ongoing subjective complaints were not related to her work injury and were not explained by claimant's diagnostic testing. (Ex. F, pp. 17-22, 31)

In a February 2016 letter Dr. Beck indicated claimant had a normal MRI, normal neurological exam, and normal EMG/NCV testing. He indicated there was nothing to support claimant's subjective complaints. (Ex. B, p. 4)

In a letter from the same month, Dr. McMains reiterated his opinion that claimant's subjective complaints were not caused by the work injury. (Ex. F, p. 25)

In a February 16, 2016 letter Dr. Abernathey noted claimant's complaints were consistent. However, because claimant had a paucity of clinical and radiographic findings, he found no permanent impairment or permanent restrictions. (Ex. E, pp. 4-5)

Dr. Abernathey later indicated it was "possible" for claimant to experience symptoms with no MRI findings. (Ex. 6, pp. 44-45)

I recognize a few experts have referred to claimant's consistent report of symptoms to buttress the finding that claimant's ongoing complaints are related to her August of 2013 work injury. However, as noted above, the record indicates claimant had a normal MRI. Claimant had normal EMG/NCV testing. Claimant had a normal neurological exam. While claimant may consistently report symptoms, these are reports without an objective basis for the symptoms.

Dr. Broghammer and Dr. McMains both opined claimant's subjective complaints were not causally related to the work injury and not supported by diagnostic testing. Dr. Beck found claimant had a normal MRI, a normal neurological exam and normal nerve conduction studies. He found there was no objective testing to support claimant's subjective complaints. Dr. Abernathey found claimant had a lack of clinical and radiologic findings, and as a result had no permanent impairment or permanent restrictions. Several practitioners referred to the "paucity" of objective findings to support claimant's subjective complaints. (Ex. 7C, p. 70; Ex. 7H, p. 81; Ex. E, pp. 2, 4-5) Dr. Sassman's opinions regarding causation are found not convincing. Nurse Practitioner Hennings' opinions regarding causation are found not convincing.

Given this record, claimant has failed to carry her burden of proof her ongoing symptoms are related to the August 2, 2013 work injury.

Dr. Broghammer found claimant was at MMI as of December 20, 2013 after reviewing claimant's normal EMG/NCV testing. (Ex. 7A, p. 66; Ex. F, p. 12) Based on this, it is found claimant was at MMI for the August 2, 2013 work injury as of December 20, 2013. The hearing report and record indicate claimant sought temporary benefits from January 26, 2014 through April 20, 2015. As a result, defendants are not liable for any further temporary benefits.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

If claimant has an impairment to the body as a whole, an industrial disability would be 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).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

As detailed above, Drs. Broghammer, McMains, Beck, and Abernathey all found claimant had no permanent impairment or permanent restrictions. As detailed above, Dr. Sassman did find claimant had permanent impairment and permanent restrictions. However, as noted, her report fails to address diagnostic testing that failed to support claimant's subjective complaints. For that reason, Dr. Sassman's opinions regarding permanent impairment and permanent restrictions are found not convincing. Based on these facts, and as detailed above, claimant has failed to carry her burden of proof she is entitled to any permanent partial disability benefits.

The final issue to be determined is whether claimant is due reimbursement for an IME.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes

that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Claimant seeks reimbursement for Dr. Sassman's IME under Iowa Code section 85.39. As noted in the arbitration decision, prior to Dr. Sassman's IME, both Dr. McMains and Dr. Broghammer opine claimant had no permanent impairment. Given the chronology of these reports, claimant is due reimbursement for Dr. Sassman's IME.

Defendants contend that because claimant makes reference, in Exhibit 21, to reimbursement of the IME under Iowa Code sections 622 and 625, this somehow releases defendants from any responsibility for reimbursement of the IME. This is incorrect. Claimant clearly notes in the hearing report and in the record that claimant was seeking reimbursement for the IME under Iowa Code section 85.39.

Dr. Sassman charged \$3,390.00 for the IME. Given the bulk of records Dr. Sassman had to review, there is nothing unreasonable with these charges. Defendants offered no evidence at hearing that would indicate the charges are excessive. Given this record, claimant has proven she is entitled to reimbursement of the Sassman IME.

ORDER

IT IS THEREFORE ORDERED:

That the arbitration decision of August 10, 2017 is affirmed in part and reversed in part.

Claimant is not entitled to any additional temporary benefits.

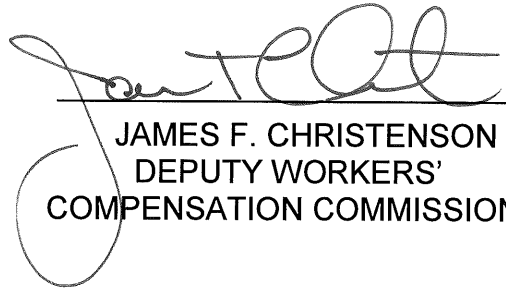
Claimant is not entitled to any permanent partial disability benefits.

That defendants shall reimburse claimant for the costs associated with the Sassman IME.

That both parties shall pay their own costs.

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

Signed and filed this 15th day of May, 2019.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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