BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIA CISNEROS,	:	
Claimant,	:	File No. 5066832
vs.	:	A R B I T R A T I O N
OSCEOLA FOODS, INC.,	:	D E C I S I O N
Self-Insured Employer, Defendant.	:	Head Note Nos.: 1802, 1803.1, 2501, 2503, 2907

STATEMENT OF THE CASE

Claimant, Maria Cisneros, filed a petition in arbitration seeking workers' compensation benefits from Osceola Foods (Osceola), self-insured employer, as defendant.

This matter was heard on January 30, 2020 by Deputy Workers' Compensation Commissioner Benjamin Humphrey, with a final submission date of February 28, 2020.

By order of delegation of authority, Deputy Workers' Compensation Commissioner Jim Christenson was appointed to prepare the findings of fact and proposed decision in this case due to the unavailability of Deputy Workers' Compensation Commissioner Humphrey. As part of that order of delegation, the parties were given 14 days to notify the undersigned if they believed demeanor was a substantial issue in this matter, and whether a rehearing of the demeanor testimony was required.

Neither party filed a request within 14 days identifying demeanor as a substantial issue in this case, or if a demeanor hearing was required. Under 17A.15(2), and the Commissioner's order of delegation, the undersigned performed a review of the evidentiary record in this case and issues this arbitration decision under the direction of the Commissioner. The record in this case consists of Joint Exhibits 1-10 and 12, Claimant's Exhibits 1-11, Defendant's Exhibits A-E, and the testimony of claimant, Manuel Cisneros, Oxana Sells, and Ben Green. Serving as interpreter was Rafael Geronimo.

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 and 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.

ISSUES

Whether the injury resulted in a temporary disability;

Whether the injury resulted in a permanent disability; and if so,

The extent of claimant's entitlement to permanent partial disability benefits;

Commencement date of benefits;

Whether there is a causal connection between the injury and the claimed medical expenses; and

Costs.

Claimant raised the issue of interest due as an issue in dispute in this case. The order section of this decision should remedy this dispute. If not, the parties may file an application for rehearing if necessary.

Defendant appeared to argue at hearing that a credit for alleged payment of disability benefits was due. (Transcript page 34) This was not an issue identified in the hearing report, and there is no evidence in the record to support defendant is due credit under Iowa Code section 85.38(2). As a result, the issue of a credit under Iowa Code section 85.38(2) is not discussed as an issue in dispute in this case.

FINDINGS OF FACT

Claimant was 51 years old at the time of hearing. Claimant was born in Mexico. Claimant came to the United States in 1985. She finished up to the eleventh grade. Claimant does not have a GED. (Tr. pp. 11-12)

Claimant has worked packing dried flowers. Claimant has also worked in a meat production facility in Marshalltown, Iowa. (Tr. pp. 12-13)

Claimant began working for Osceola in 1999. (Tr. p. 13)

At the time of injury, claimant worked on a production line known as the ham-pack line. Claimant packaged hams that came down a conveyor belt. Claimant said that workers on the ham-pack line rotated positions during the course of the shift. (Tr. pp. 13-14)

Claimant testified her job requires her to lift between 10 to 12 pound hams, up to 40 pounds. (Tr. p. 15) Claimant said she stands at work all day. (Tr. p. 29)

Oxana Sells, testified she is claimant's current supervisor at Osceola on the ham-pack line. (Tr. pp. 40-41) Ms. Sells testified the ham-pack line has approximately three different stations that employees rotate throughout the shift. (Tr. pp. 41-42) Ms. Sells testified that the most claimant would have to lift on the ham-pack line would be 24 to 25 pounds. She said there is nothing in the ham-pack line that weighs 40 pounds.

Kevin Green testified he was one of claimant's supervisors on the ham-pack line during the past 3 years. (Tr. pp. 47-48) Mr. Green testified he has seen claimant work every day over the past 3 years. He said that the most claimant lifts is 25 pounds. (Tr. p. 48) Mr. Green said that claimant works 8-hour shifts between 5 to 6 days a week. (Tr. p. 51)

Claimant testified that on April 14, 2015, she was putting plastic over a machine when she felt something stretch from the back of her leg up to her back. Claimant testified she treated for this injury with the nurse at Osceola approximately from April of 2015 through March of 2016. (Tr. p. 16)

Nursing records for this period of time indicate that claimant complained of a leg injury. There is no mention in any of the nursing records from this period of a back injury. (Ex. C, pp. 25-28; Ex. E, pp. 32-33)

On March 8, 2016, claimant was evaluated by Lorie Cannon, DNP. Claimant noted pain in her leg and calf. There is no mention of back pain in this record. Claimant eventually underwent an ultrasound to rule out a DVT. The ultrasound was negative. Claimant was referred to physical therapy. (Joint Exhibit 2, pp. 1-6)

Claimant returned to Nurse Practitioner Cannon on May 5, 2016. Claimant complained of continued leg pain. Claimant was assessed as having left posterior leg pain, radiating up to the low back. Nurse Practitioner Cannon recommended an MRI for claimant. (JE2, pp. 30-31)

An MRI showed findings consistent with a partial tear or strain of the bicep femoris tendon. Claimant was referred for an orthopedic evaluation. (JE2, p. 38)

On May 18, 2016, claimant was evaluated by Kirk Green, D.O. Claimant complained of a one-year history of left posterolateral knee pain with occasional distal thigh and calf pain. Claimant did not complain of back pain. Dr. Green believed claimant had a left iliotibial band syndrome. An injection was given. Claimant was given a 25-pound weight restriction. (JE2, pp. 39-40)

Claimant returned to Dr. Green in follow up on June 8, 2016. Claimant's left leg symptoms were unimproved. Claimant complained of back pain and gait problems. X-rays of the lumbar spine were normal. Claimant was prescribed medication and physical therapy. (JE2, pp. 45-51)

Claimant returned to Nurse Practitioner Cannon on July 11, 2016. Claimant had continued left leg pain. Claimant had pain in the low back. (JE2, p. 70)

On August 6, 2016, claimant was evaluated by Jose Angel, M.D. Claimant had left posterior leg pain. Claimant did not have back pain. Claimant was recommended to get a knee brace. Claimant was prescribed medication and told she needed more physical therapy. (JE3, p. 1)

Claimant returned to Dr. Angel on September 6, 2016. Claimant had left leg pain. Claimant was also assessed as having L4-5 back pain. Claimant was recommended to see an orthopedic surgeon. (JE3, pp. 2-3)

Claimant was evaluated by Todd Harbach, M.D., on October 6, 2016. Claimant complained of back pain. Dr. Harbach assessed claimant as having low back pain and radicular pain in the left leg. Dr. Harbach ordered an MRI of the lumbar spine. He prescribed medication and restricted claimant to working six days per week. (JE4, pp. 10-12)

An MRI of the lumbar spine, done on October 13, 2016, was found to be normal. (JE4, p. 15)

Claimant returned to Dr. Harbach on October 20, 2016. He noted the MRI showed no structural or neural impingement. Dr. Harbach ordered EMG/NCV testing. (JE4, pp. 20-22)

On November 10, 2016, claimant saw Dr. Harbach. Records indicate claimant's EMG/NCV tests were normal. Dr. Harbach told claimant, given the two diagnostic tests, the claimant's pain was probably coming from her hamstring and not her back. Claimant was recommended to see Kurt Smith, D.O., a physiatrist. (JE4, pp. 26-28)

Claimant saw Dr. Smith on November 15, 2016. He assessed claimant as having a partial tear of the left bicep femoris tendon distally. He prescribed claimant medication and recommended physical therapy. (JE4, pp. 39-40)

Claimant was evaluated by Jenny Butler, M.D. Dr. Butler also assessed claimant as having a partial tear of the left bicep femoris tendon distally. Dr. Butler prescribed medication. She returned claimant to work at full duty and recommended she wear a knee sleeve. (JE2, pp. 77, 84)

Claimant returned to Dr. Butler on January 5, 2017. Claimant indicated physical therapy worsened her symptoms. Claimant was recommended to get inserts for her work boots. (JE2, pp. 88-89)

On February 2, 2017, claimant saw Dr. Butler again with continued complaints of left leg pain. Dr. Butler suggested the plant adjust the steps in claimant's work area to help with claimant's leg pain. (JE2, pp. 94-96) Records indicate adjustments were made at claimant's work area regarding steps which claimant believed helped her symptoms. (Ex. E, p. 36)

Claimant saw William Ralston, M.D., (check MD or DO) on May 9, 2017. Claimant was given platelet-rich plasma (PRP) injection. Claimant was returned to work without restrictions. (JE2, pp. 117, 121) Claimant testified the injection gave her no relief. (Tr. p. 22)

Claimant returned to Dr. Ralston on May 30, 2017, indicating the PRP injection gave her no benefit. Based on this, Dr. Ralston recommended against further injections. He indicated claimant had reached maximum medical improvement (MMI). Claimant was returned to work without restrictions. (JE2, pp. 122-123, 128)

In a June 1, 2017 report, Dr. Butler found that claimant had an eight percent permanent impairment to the lower extremity. (JE2, pp. 129-130)

Claimant was evaluated by Benjamin Beecher, M.D., on April 12, 2018. Claimant had continued left leg pain. Dr. Beecher believed claimant had chronic left hamstring tendonitis. An MRI of the left knee was recommended. There is no mention of lower back pain on this visit. (JE4, p. 55)

Claimant testified she told Dr. Beecher about back pain, but Dr. Beecher told her that he had nothing to offer. (Tr. p. 23)

Claimant returned to Dr. Beecher on May 3, 2018. Dr. Beecher reviewed claimant's MRI and found it was normal. Dr. Beecher felt the only thing to offer claimant was continued physical therapy. (JE4, p. 63)

Claimant returned to Dr. Beecher on June 14, 2019. Claimant indicated physical therapy made her symptoms worse. He told claimant that strengthening her muscles would be the best treatment for her symptoms. He found claimant at MMI. (JE4, pp. 66-67.1)

In an August 8, 2018 report, Dr. Beecher agreed claimant had reached MMI in June of 2017. He found that she had no permanent impairment. He recommended claimant take anti-inflammatories and continued physical therapy. (Ex. D, pp. 29-30)

Claimant was evaluated by Thomas Lower, M.D., on December 31, 2018 for lower back and left leg pain. Dr. Lower believed claimant had a lumbar radiculopathy. He recommended an MRI. Dr. Lower took claimant off work from December 31, 2018 through January 22, 2019. (JE1, pp. 1-4)

In a January 3, 2019 report, Sunil Bansal, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant had constant left knee pain. After standing at work, claimant's back pain increased. Claimant indicated she was only able to lift ten pounds from the floor. (Ex. 7, pp. 1-10)

Dr. Bansal assessed claimant as having a strain of the left distal bicep femoris tendon and sacroiliitis in the back. He opined that both conditions were caused by claimants' April 2015 work injury. (Ex. 7, p. 12)

Dr. Bansal agreed that claimant reached MMI for the knee on June 14, 2018. He found that claimant reached MMI for the back on November 10, 2016. He opined claimant should do strengthening exercises for the knee and have pain management for her back. (Ex. 7, p. 13)

Dr. Bansal found claimant had 12 percent permanent impairment to the left leg and a 3 percent permanent impairment to the body as a whole for the back. He restricted claimant to no frequent bending or twisting, no prolonged standing or walking more than 5 hours, and lifting up to 25 pounds occasionally. (Ex. 7, p. 14)

Claimant was evaluated by Zachary Ries, M.D., on March 8, 2019. Claimant was having some pain relief with gabapentin. Dr. Ries did not believe claimant had any abnormality of the spine. He believed claimant had arthritis of the left hip that might be contributed to her symptoms. Dr. Reis recommended intra-articular left hip injections. (JE8, p. 2)

Claimant had the injection as recommended by Dr. Reis on March 19, 2019. (JE8, p. 4) Records indicate the injection gave claimant a 50 percent reduction in her symptoms. (JE8, p. 8; Ex. E, p. 38) Claimant testified at hearing, the injection gave her little relief. (Tr. p. 25)

In a June 14, 2019 report, John Kuhnlein, D.O., gave his opinions of claimant's condition following an IME. Claimant indicated intermittent back pain radiating through the left buttock along a left thigh. Claimant had medial and lateral knee pain. Claimant said that after working five hours, she began having problems in the left iliac crest area. (Ex. E, pp. 38-39)

Dr. Kuhnlein opined claimant sustained a left bicep femoris muscle strain as a result of the April 2015 injury. Dr. Kuhnlein also noted there was no record indicating claimant complained of back or hip pain for approximately one year after the injury.

Due to this one-year gap in the record, he was unable to state claimant's hip pain was an acute injury or aggravation of any lumbar or sacroiliac condition. (Ex. E, pp. 48-49)

Dr. Kuhnlein found claimant at MMI as of June 14, 2018. He doubted that physical therapy would help claimant. He found claimant had a 10 percent permanent impairment to the left lower extremity. Dr. Kuhnlein suggested claimant be restricted to lifting 20 pounds occasionally from waist to shoulder and 10 pounds occasionally above shoulder. (Ex. E, pp. 46-48)

On July 19, 2019, claimant was given a left sacroiliac joint and left ischial bursa injection. (JE10, pp. 16-22) Claimant testified at hearing, the injection gave her a little relief. (Tr. p. 26) Records from August 15, 2019 indicate the injection gave claimant 70 percent relief of symptoms. (JE10, p. 25) A December 16, 2019 visit indicated claimant had 60 percent relief of pain as of that date. (JE10, p. 28)

In an October 14, 2019 supplemental report, Dr. Bansal indicated he had reviewed Dr. Kuhnlein's IME report and the records from Drs. Lower, Reis and other providers. Dr. Bansal disagreed with Dr. Kuhnlein's opinion regarding claimant's left hip pain. He opined that Dr. Harbach also identified the SI joint as a pain generator for claimant. (JE7, pp. 16-21)

Claimant testified that, at the time of hearing, she was still doing the ham-pack job. (Tr. p. 16) Claimant said she stands at work all day. She said that after four to five hours, she puts most of her weight on her right leg, as her left leg hurts. (Tr. p. 28)

Claimant indicated she has difficulty sleeping and doing chores due to her injury. Claimant testified she was unable to play with her kids in the park due to her injury. Claimant said she can walk one to two hours. (Tr. p. 30)

Claimant testified she has done the ham-packing job for the last five years with no restrictions. (Tr. p. 35) Claimant testified her hourly earnings have increased since the date of injury. (Tr. p. 36)

Manuel Cisneros testified that he is claimant's husband. (Tr. p. 38) Mr. Cisneros said claimant still has problems with her left leg and back. He testified claimant is limited in cleaning and playing with kids and doing other activities due to her leg and back pain. (Tr. pp. 38-39)

Ms. Sells testified that for the last three years, she has not seen claimant limp at work. She said she has only seen claimant limp at the hearing. (Tr. p. 43) Ms. Sells testified claimant mostly speaks English at the plant. (Tr. pp. 43-44) She said that claimant does not sit at all during her shift. (Tr. p. 46)

Mr. Green testified that in the past three years he has not seen claimant limp. Mr. Green said claimant speaks English at work and is used as a translator at work. (Tr. p. 49)

Mr. Green testified that claimant frequently took vacations at the end of December through early January. (Tr. p. 50)

CONCLUSIONS OF LAW

The first issue to be determined is the extent of claimant's entitlement to temporary benefits.

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 Rule of Appellate Procedure 6.14(6).

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides

that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

Claimant seeks temporary benefits from December 31, 2018 through January 22, 2019. This is for the period of time she was taken off of work by Dr. Lower. (JE1, p. 4) Claimant testified Dr. Lower took her off of work during this period. (Tr. p. 24) Claimant did not receive any weekly benefits for the period that she was off work. (Tr. p. 24)

Ben Green testified that he is claimant's supervisor. (Tr. pp. 47-48) Mr. Green testified that claimant frequently took off this period of time for work for her vacation. (Tr. p. 50)

Claimant testified Dr. Lower took her off work from December 31, 2018 through January 22, 2019. The records at Joint Exhibit 1, page 4 corroborate this testimony. Claimant has not received any benefits for this period. Given this record, claimant is due temporary benefits from December 31, 2018 through January 22, 2019.

The next issue to be determined is whether the injury resulted in a permanent disability.

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).

There is no evidence in the record claimant had any leg or back problems prior to the April 2015 work injury. Claimant initially injured herself in April of 2015. At the time of the hearing, claimant was still experiencing symptoms. Claimant has seen a number of providers for her injury. She has had a number of injections for pain. Claimant has not had surgery. Drs. Butler, Bansal and Kuhnlein all opine that claimant has a permanent impairment. (JE2, pp. 129-130; JE7; Ex. E) Only Dr. Beecher opined that claimant has no permanent impairment. (Ex. D, p. 29)

Drs. Kuhnlein, Butler and Bansal opined that claimant has a permanent impairment based, in part, on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Dr. Beecher gives little explanation for his finding that claimant has no permanent impairment. Given this record, it is found the opinions of Dr. Beecher regarding permanent impairment are not convincing.

Claimant has had symptoms from her injury since April 2015. The opinions of Drs. Butler, Kuhnlein and Bansal regarding permanent impairment are found convincing. The opinion of Dr. Beecher regarding permanent impairment is found not convincing. Given this record, claimant has carried her burden of proof she sustained a permanent disability regarding her April 2015 work injury.

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

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

If 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 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.

Claimant contends she has a work-related injury to her low back or hip regarding her April of 2015 work injury. Defendant contends claimant's injury is to her lower extremity only.

Two experts have opined regarding whether claimant's work injury caused a back or hip condition.

Dr. Bansal opined claimant sustained a work-related sacroiliitis. (JE7, pp. 12, 21) Dr. Bansal's opinion regarding causation of sacroiliitis is problematic for one reason. As detailed in the findings of fact, and in Dr. Kuhnlein's report, there is not one record indicating a complaint of back or hip pain from the date of injury on April 14, 2015 until May of 2016.

As Dr. Kuhnlein noted in his report:

> If this was an acute injury, the symptoms would have shown up sooner to the time of the injury for reasons discussed above. If this developed as a sequela to the limp, she would have been limping during that 13-month timeframe, and that would be adequate time for gait changes to cause low back pain. That did not seem to happen, and it was not mentioned in medical records by her own provider, in addition to the plant nurse. This was not an exacerbation, aggravation, or "lighting up" of a pre-existing condition as the initial studies were essentially negative of the lumbar spine, with the development of degenerative changes at a later date, consistent with her age.
>
> Simply stating that she did not have back and sacroiliac pain before, and she does now is not a valid argument for causation in this case, because it is not documented that she complained of back or sacroiliac pain initially when she said they occurred and the records suggest that they would have been documented had she complained. It is not documented that she complained of back or sacroiliac pain after the five month gap when the records suggest that she made complaints of another painful body part

> that was documented . . . [f]or these reasons, I am not able to state that this was acute injury, an exacerbation, aggravation, or "lighting up" of any lumbar or sacroiliac condition.

(Ex. E, p. 45)

Dr. Bansal gives little analysis regarding this anomaly in the record. There is no mention in the records for approximately 13 months from the date of injury of a lower back or hip injury, or a limp or a gait problem. Dr. Bansal does not explain how claimant has a work-related sacroiliac condition, given the gap in time between the reporting of the condition and the first mention of any hip or back complaint. As Dr. Bansal fails to adequately address this inconsistency with the gap in the record, his opinions regarding a work-related sacroiliac condition are found not convincing.

As noted, Dr. Kuhnlein opined claimant's hip or back condition was not caused or aggravated by the work injury. As detailed, this is based on a 15-month gap between the time of injury and the very first report of any low back or hip pain. As Dr. Kuhnlein's opinions regarding claimant's low back/hip pain comport with the records in this case, it is found his opinions regarding the lack of causation of a work-related low back/hip condition are found more convincing.

Given this record, claimant has failed to carry her burden of proof that she sustained a work-related back or hip injury.

Dr. Butler found that claimant had an 8 percent permanent impairment to the lower extremity. (JE2, pp. 129-130) Dr. Bansal opined that claimant had a 12 percent permanent impairment to the lower extremity. (JE7, p. 14) Dr. Kuhnlein opined that claimant had a 10 percent permanent impairment to the lower extremity. (Ex. E, p. 47)

Dr. Kuhnlein's opinions regarding impairment of the left lower extremity are more detailed than those of Drs. Butler or Bansal. Based on this, it is found that claimant has a 10 percent permanent impairment to the left lower extremity. This entitles claimant to 22 weeks of permanent partial disability benefits (10 percent x 220 weeks).

The next issue to be determined is commencement of benefits. As detailed above, permanent partial disability benefits commence upon the first of three events. They are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Kubli, 312 N.W.2d at 65. Dr. Bansal, Dr. Kuhnlein and Dr. Butler all found that claimant was MMI as of June 14, 2018. (Ex. E, p. 46; JE7, p. 13) Given this record, permanent partial disability benefits shall commence as of June 14, 2018.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

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 16, 1975).

Under Iowa Code section 85.27, the employer has the right to choose medical care as long as it is offered promptly and is reasonably suited to treat the injury without undue inconvenience to the employee. An employer is not responsible for the cost of medical care that is not authorized by section 85.27. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190 (Iowa 2003). A claimant can seek payment of unauthorized medical care if there is a preponderance of the evidence the care was reasonable and beneficial. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010). To be beneficial, the medical care must provide a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. The claimant has a significant burden to prove the care was reasonable and beneficial. Id. at 206.

In the hearing report, defendant disputes that the medical expenses at issue were authorized by defendant. There is little evidence in the medical bills found in Claimant's Exhibits 5 through 11, that any of this care was authorized by defendant. The record of claimant's testimony at hearing is that most of the treatment she received gave her little or no relief at all. (Tr. pp. 18-19, 22, 25) It is unclear if any of the medical records claimant now seeks payment for are authorized by defendant. There is little evidence in the record that the bills claimant seeks payment for gave a more favorable outcome than the care provided by defendant. Given this record, it is found claimant failed to carry her burden of proof that defendant is liable for the requested medical bills found at Exhibits 5 through 11, including medical mileage.

The final issue is costs. Costs are assessed at the discretion of the agency. Claimant seeks reimbursement for $394.00 for a supplemental IME report by Dr. Bansal. Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009). As claimant has already had one IME by Dr. Bansal, defendant is not liable for the costs of the supplemental report by Dr. Bansal.

Given this record, claimant is due reimbursement of costs shown in Exhibits 1 and 2.

ORDER

THEREFORE, IT IS ORDERED:

That defendant shall pay claimant healing period benefits from December 31, 2018 through January 22, 2019 at the rate of five hundred thirty-five and 47/100 dollars ($535.47) per week.

That defendant shall pay claimant twenty-two (22) weeks of permanent partial disability benefits at the rate of five hundred thirty-five and 47/100 dollars ($535.47) commencing on June 14, 2018.

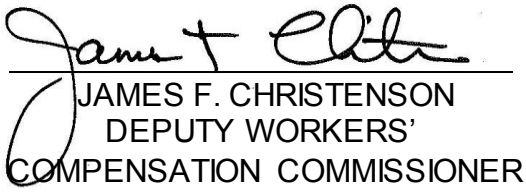
Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

That defendant shall receive a credit for benefits previously paid.

That defendant shall pay costs identified in Exhibits 1 and 2, but is not liable for the supplemental report from Dr. Bansal.

That defendant shall file subsequent reports of injury as required by rule 876 IAC 3.1(2).

Signed and filed this 3rd day of September, 2020.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Greg A. Egbers (via WCES)

Abigail A. Wenninghoff (via WCES)

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