BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA JANSSEN,	:	
Claimant,	:	File Nos. 1655320.01 1654046.01 1650201.01
vs.	:	
THOMAS REST HAVEN,	:	
Employer,	:	ARBITRATION DECISION
and	:	
IOWA LONG TERM CARE RISK MGMT ASSOC. C/O CCMSI,	:	
Insurance Carrier, Defendants.	:	Head Note No.: 1100, 1108, 1400, 1402.40, 1402.20, 1803

STATEMENT OF THE CASE

Claimant, Teresa Janssen, filed petitions for arbitration seeking workers' compensation benefits against Thomas Rest Haven, employer, and CCMSI, insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of Coronavirus/COVID-19 Impact on Hearings, the hearing was held on September 27, 2021, via CourtCall, and considered fully submitted on November 1, 2021, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-40 and the testimony of claimant, Shannon Anderson, Frannie Britton, Julie Nielson, Rachel Hofbauer.

ISSUES

File No. 1650201.01

1. Whether claimant is entitled to temporary total, temporary partial, or healing period benefits from November 30, 2018, to the present time;

2. Whether claimant's injury is scheduled member or industrial in nature;

3. Whether claimant sustained a permanent disability; and, if so, the extent of the permanent disability;

4. The commencement date of permanent benefits;

5. Whether claimant is entitled to reimbursement or payment of medical expenses itemized in Joint Exhibit 39;

6. Costs.

File No. 1654046.01

1. Whether claimant is entitled to temporary total, temporary partial, or healing period benefits from November 30, 2018, to the present time;

2. Whether claimant's injury is scheduled member or industrial in nature;

3. Whether claimant sustained a permanent disability; and, if so, the extent of the permanent disability;

4. The commencement date of permanent benefits;

5. Whether claimant is entitled to reimbursement or payment of medical expenses itemized in Joint Exhibit 39;

6. Costs.

File No. 1655320.01

1. Whether claimant sustained an injury on October 13, 2018, which arose out of and in the course of her employment;

2. Whether claimant is entitled to temporary total, temporary partial, or healing period benefits from November 30, 2018, to the present time;

3. Whether claimant sustained a permanent disability; and, if so, the extent of the permanent disability;

4. The commencement date of permanent benefits;

5. Whether claimant is entitled to reimbursement or payment of medical expenses itemized in Joint Exhibit 39;

6. Costs.

STIPULATIONS

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.

The parties stipulate claimant sustained an injury arising out of and in the course of her employment on October 5, 2017. At the time of the October 5, 2017, injury, claimant's gross earnings were $791.85 per week. The claimant was single and entitled to one exemption. Based on the foregoing, the parties believe the weekly benefit rate is $483.83 for the October 5, 2017, injury.

The parties stipulate claimant sustained an injury on January 7, 2018, which arose out of and in course of her employment. At the time of January 7, 2018, injury, claimant's gross earnings were $840.49 per week. She was single and entitled to one exemption. Based on the foregoing the parties believe the weekly benefit rate to be $511.32 for the January 7, 2018, injury.

There are no medical benefits in dispute. Defendants waive all affirmative defenses. There are no credits sought.

The parties stipulate claimant sustained an injury on October 13, 2018. At the time of the October 13, 2018, injury, claimant's gross earnings were $1044.31 per week. She was single and entitled to one exemption. Based on the foregoing, the parties believe the weekly benefit rate to be $653.46 for the alleged October 13, 2018, injury.

FINDINGS OF FACT

At the time of the hearing, claimant was a 56-year-old person. Her past relevant work history is that of a nurse in various nursing homes. (Joint Exhibit 35:407-408) She began working for defendant employer in September 2002. (JE 26:369) Her duties included distributing medications, assisting doctors in rounds, answering call lights of residents, charting residents, assisting CNAs with residents. (JE 23:357-360) The most strenuous part of the job was lifting patients and pushing medication carts.

According to the Charge Nurse job description, claimant would be called upon to lift equipment and supplies weighing up to 50 pounds and occasionally be required to assist with lifting residents over 50 pounds. (JE 23:359) Assistive devices were available for resident lifts. Id. Claimant would also be frequently called upon to carry objects including charts and equipment up to 20 pounds and may be called upon to carry equipment up to 30 pounds. Id. However, carrying equipment in excess of 30 pounds was generally not required. Id.

Claimant's past medical history includes slipping and falling on her coccyx in July 2002. (JE 1:1) In December 2003 she was diagnosed with plantar fasciitis on the left with a history of bottom of the foot pain on the left, on and off for the past several months. (JE 1:2) On July 9, 2004, claimant had an AP pelvis with frogleg view of the left hip which showed mild degenerative spurring at the SI joint on the left. (JE 22:348) On November 8, 2004, she presented for evaluation of discomfort in the arm and leg. (JE 1:3) She reported doing a lot of walking at work. Id.

She was seen by Aaron Pick, D.C., on May 25, 2006, for bilateral mid back and cervicothoracic pain. (JE 2:58) From 2010 through June 3, 2016, claimant returned to

Family & Specialty Medical Center PC for treatment to her bilateral thoracic region at the middle thoracic area, bilateral cervical region at the cervical thoracic area, bilateral lumbar region at the lower back area and bilateral shoulder region at the posterior shoulder area. From August 11, 2017, through December 21, 2017, she received treatment at Family & Specialty Medical Center PC for pain in the aforementioned regions approximately 12 times. (JE 2:85 et seq.) In her July 2018 statement, claimant explained that her rib would pop out and Dr. Pick would realign it. (JE 37:437-38)

August 8, 2013, claimant was seen for an annual health review. (JE 1:5) She was documented as having occasional pain in the knees and shoulders. Id.

Claimant was into Tae Bo. According to a statement given on June 25, 2018, before her second injury, she would engage in the activity at least three times a week. (JE 7:173-74) She was able to kick a light switch into the off position. After hurting her hip, she was unable to kick higher than a foot. Id. She estimated October 2017 was the last time she engaged in Tae Bo. Id. She testified to the same in a deposition taken on November 14, 2019. (JE 38) However, in a visit with Dr. Slattery in December, she appeared to still be performing Tae Bo, refusing to give it up because it was a stress reliever. (JE 1:7) Claimant described Tae Bo as a winter activity. (JE 38)

October 2, 2017, claimant presented for an annual examination with Michael Slattery, M.D., at Family Medicine Carroll a/k/a McFarland Clinic. (JE 1:6) She was taking hypertension and antidepressant medications. Her diagnoses included essential hypertension well-controlled with medication and major depressive disorder well-controlled on Zoloft. (JE 1:6)

On October 5, 2017, claimant suffered the first of three alleged work injuries that serve as the basis of the present claim. On this day she was assisting a patient onto a toilet and hurt her neck and left shoulder.

She was seen on the same day by David P. Nystrom, D.O., who diagnosed claimant with a muscle strain. (JE 3:112, 114) He returned her to work with no lifting more than 5 pounds on the left and referred her to Dr. Pick, a chiropractor at Family & Specialty Center PC. (JE 3:114) Claimant had already been seeing Dr. Pick from August 11, 2017, through December 21, 2017, for pain treatment. (JE 2:85 et seq.)

On October 9, 2017, she returned to Dr. Nystrom. (JE 3:115) At that visit, she related she had her hips adjusted by Dr. Pick and a yearly physical with Dr. Slattery. (See above, JE 1:6) She had resolution of the back discomfort and wanted a full return to work as "most of her discomfort is a chronic issue." (JE 3:115) Dr. Nystrom assessed claimant and found lingering muscle tenderness and tightness but that she was much improved and "fully functional." Id. He returned her to full duty work and planned to speak to defendant employer about future care. Id.

On October 16, 2017, she saw Dr. Nystrom again with concerns over her back pain. (JE 3:117). Dr. Nystrom references a past work comp incident when claimant had been attempting to lower a resident to the floor when “it popped out again.” Id. She experienced increased discomfort and limited range of motion of her shoulder in addition to pain in the back with occasional spasming. (JE 3:117) He provided OMM

treatment after which she felt 70 to 80 percent better. Id. A later note indicates claimant was placed on a six-pound weight restriction. (See JE 3:119)

On December 12, 2017, claimant presented to Dr. Slattery for evaluation of left arm and posterior back pain. (JE 1:7) The pain had been bothering her for a number of months with no particular trauma, injury or fall. (JE 1:7) She had tried different modalities to help including chiropractic care and reducing back activity. Id. She did do some boxing type activity on a daily basis with her shoulders and arms above her shoulder height. Id. She had not tried cutting back on her activities because the boxing was a type of stress reliever. Id. Dr. Slattery felt that the exercise could be the triggering factor of her pain. Id. She localized her pain to her left lateral arm in the posterior rhomboid area near her first paraspinal muscles. She had occasional pain in her left anterior chest corresponding to this as well. Id. Diagnosis was that it was most likely an overuse type of injury, muscular in nature, and he recommended she cut back on the Tae Bo activity and avoid above the shoulder activity. Id.

On December 26, 2017, claimant returned to Dr. Nystrom noting she had near full improvement between October 9, 2017, and October 16, 2017, when she sustained a re-injury. (JE 3:119) She complained that Motrin made her sleepy. Id. She was doing no home exercises or stretching. She felt that her pain worsened when she did certain motions with her arms such as spinning the steering wheel of her car. Id. She felt pressure along her upper arm as if she was wearing a blood pressure cuff. Id. She also felt numbness and tingling from the elbow to the pinky finger along the medial side of the arm into the palm and that finger. Id. She had tenderness at a point over her elbow and across the upper back on the left side. (JE 3:119)

Dr. Nystrom diagnosed claimant with pain in the left shoulder and anterior upper chest, pressure in the upper arm and paresthesias in the left forearm, hand, and fifth digit consistent with the area of T1 and ulnar nerve or distal portion of the C8 dermatome. (JE 3:119) Dr. Nystrom recommended claimant use 800 mg of Motrin at night and Aleve in the morning along with heat and stretching and set her up for physical therapy three times a week for the next four weeks. Id.

On January 7, 2018, claimant helped home health aides move a resident onto the toilet. Following this, she experienced acute low back pain and severe buttock pain radiating to the left lower leg down to the foot. On the next day, she presented to Tina Flores Schechinger, M.D. (JE 3:122) At the appointment, she rated her pain 5 out of 10 on a 10 scale. Id. There was some tenderness to palpation over the left paraspinal muscles at approximately L4-L5 and directly over the left sacroiliac joint. (JE 3:123) Claimant had a fair range of motion but was not able to touch her toes with forward bending. (JE 3:124) She had a negative straight leg raise on the left but positive on the right. Id. She was taken off work. (JE 3:125) Claimant testified she also felt that she had aggravated her left shoulder but the primary care was focused on the low back and leg.

Claimant returned on January 12, 2018, to be seen by Dr. Nystrom. (JE 3:126) He diagnosed her with left piriformis syndrome with associated muscle strains and radiculopathy and recommended she continue with ibuprofen and NSAIDs along with stretches. (JE 3:126) He was willing to send her to PT but felt she could stretch out her

groin pull on her own. (JE 3:126)

On February 7, 2018, she returned for follow-up with Dr. Nystrom for the suspected left piriformis syndrome with associated muscle strains with left radiculopathy. (JE 3:128) She complained of shooting pain down her left leg to the point that she wanted to cut off her leg. (JE 3:128) These symptoms were consistent with L4 radiculopathy. Id. He prescribed Flexeril and insisted she proceed with formal PT. Id.

On March 6, 2018, she was seen by Dr. Nystrom in follow up. (JE 3:131) She had undergone two weeks of PT for the left neck, shoulder, and hip and lower extremity pain but the PT had not helped. (JE 3:131) She had left lower extremity pain between the SI joint all the way through the leg to the foot. Id. He recommended a formal neurologic evaluation and a lumbar spine MRI. Id. He also noted "I do find it curious that every time I have seen her there has been a significant change/escalation of her symptomatology and worsening." (JE 3:131)

On March 12, 2018, her MRI showed decreased T2 signal at L2-L3 and L5-S1 with a minor disc bulge on the right side and nothing related to the left side. (JE 1:9; JE 22:349)

On April 3, 2018, claimant consulted with Edward Clemmons, D.O., for left leg pain as requested by Dr. Nystrom. (JE 1:9) Claimant referred to the January 7, 2018, injury where she scooped up a gentleman off the floor to place him on a stool. Following this, she began noticing severe left leg pain which ran from the hip to the anterior thigh as well as the anterior foreleg with some numbness at the bottom of the foot, the front of the calf, and with any sort of prolonged sitting there was pain in the sacral area wrapping around to the hip. (JE 1:9) Physical therapy and Flexeril had little benefit. There was also a note that she was drinking approximately six alcoholic beverages per day with no issues with her liver as well as a previous diagnosis of fibromyalgia in the record from a physician's assistant. Id.

On examination strength, range of motion, and sensation were normal in her upper and lower extremities. (JE 1:10) Dr. Clemmons recommended an EMG but suspected that the EMG would be negative. Id. He saw no evidence of nerve root compression or significant narrowing of the left neuroforamina consistent with her symptoms. (JE 1:10)

An EMG was conducted on the same date which showed no sign of compressive or polyneuropathy, radiculopathy or plexopathy. (JE1:11; JE 1:12) Claimant was referred back to her provider, Dr. Nystrom, for pain management. Id.

On April 13, 2018, claimant was seen at Iowa Ortho by Todd Harbach, M.D., for an evaluation of her low back pain. (JE 4:145) She described the genesis of the low back and left leg pain as a January 7, 2018, incident wherein she was helping a patient in the bathroom. (JE 4:146) She was experiencing numbness on the bottom of the left foot, pain in the left arch, and a needle-like sensations in the left buttock. Id. She had normal gait and strength and negative straight leg tests. Id. at 147. Dr. Harbach administered a left hip trochanteric bursa injection. Id. Claimant reported minimal, if any, relief after the injection. Id.

Claimant was given work restrictions of no lifting greater than 10 pounds and no repetitive lifting, pulling, pushing, stooping, bending or prolonged walking or standing. (JE. 4:149) Dr. Harbach also referred claimant for an L5-S1 epidural. (JE 4:149)

On April 23, 2018, she was back to Dr. Nystrom with complaints of musculoskeletal chest pain secondary to somatic dysfunction of the left posterior rib. (JE 3:134) OMM was administered. Id. He suggested massage would be of benefit along with stretches for her rhomboids and back. Id.

On May 1, 2018, she was seen by Christopher Hanson, CRNA, as recommended by Dr. Harbach, for sharp, stabbing pain on her left side and down her leg. (JE 3:136) Mr. Hanson administered the interlaminar epidural steroid injection. (JE 3:137) She returned two weeks later stating that the injection provided approximately 25 percent relief of her symptoms. (JE 3:142) She continued to have pain. Mr. Hanson recommended she follow up with the sports medicine provider regarding her gluteus medius tendon insertion tear to evaluate whether she was a surgical candidate or for further treatment. Id. at 143. Claimant was also given a prescription for Celebrex. (JE 3:143)

On May 2, 2018, claimant was seen by James R. McQueen, D.O., at McFarland Clinic for a history of a left shoulder injury. (JE 1:14) She attributed the original injury to her left shoulder as occurring in October with a re-injury in January. (JE 1:14) After the second injury, she underwent about three weeks of physical therapy. Id. Despite this, she continued to have difficulty with shoulder pain particularly with certain areas of range of motion and with trying to lift any object greater than 2 pounds away from the body. X-rays were negative for any fracture or dislocation. Dr. McQueen recommended an MRI to rule out a rotator cuff tear. Id. She was returned to work on May 3, 2018, with no lifting, pushing or pulling over 10 pounds, no repeated lifting of over 10 pounds, and no repeated bending or twisting of the left shoulder. (JE 1:15)

On May 10, 2018, the MRI of her left shoulder showed a full thickness tear involving the anterior aspect of the distal infraspinatus tendon. (JE 22:351; JE 1:16). There was some mild abnormal signal in the anterior superior labrum which could represent a small tear, degenerative changes in the acromioclavicular joint, and fluid within the subacromial subdeltoid bursa. (JE 22:351)

On May 11, 2018, she returned to Dr. Harbach with continued complaints of pain in the left buttock and low back. (JE 4:150) Injections had provided no relief. Id. Dr. Harbach noted claimant's pain was in the left-side ischial tuberosity without radiation and that piriformis syndrome had been previously ruled out by Mr. Hanson. Id. at 151. The lumbar spine MRI did not show any neural encroachment but, because there was a possibility that she tore the hamstring, he ordered a pelvic MRI. Id. The pelvic MRI did not show any tear of the hamstring tendons off the ischial tuberosity but there was a partial thickness tear of the gluteus medius tendon off the greater trochanter as well as trochanteric bursitis. (JE 4:155) Claimant had no relief from the L5-S1 injection. Id. Dr. Harbach concluded that she had referred pain from her sacroiliac joint or that the gluteus medius muscle was irritating where the sciatic nerve exits. Id. He continued her on light duty of no lifting greater than 20 pounds and switched her prescription to

Arthrotec because of gastrointestinal issues with Mobic. (JE 5:154-55) His plan was to release her if she continued in the same state after four weeks. Id. Claimant was unhappy with this assessment, per the notes. Id. at 155.

On May 14, 2018, Dr. McQueen referred claimant to orthopedics for surgical repair of the shoulder. (JE 1:16)

At the request of Dr. Harbach, claimant was seen by Kyle Galles, M.D., for left shoulder pain on June 4, 2018. (JE 6:165) The history given by claimant for this injury was pain following a left shoulder injury assisting someone at work in the bathroom on October 5, 2017. Id. Despite conservative treatment, claimant's left shoulder condition did not improve. Id. The MRI showed a relatively small minimally retracted tear of the supraspinatus on the left shoulder and Dr. Galles recommended surgical repair with a 10-pound lifting restriction. (JE 6:167)

On June 21, 2018, she returned for follow up with Dr. Harbach. (JE 4:157) She complained of lots of left groin pain, left buttock pain, and radiating pain down the leg. (JE 4:157) Claimant was described as "in tears" but as a nurse knew what she was talking about. Id. Dr. Harbach suggested a second opinion with Dr. Aviles and ordered a left hip proper injection to be administered by the pain clinic for diagnostic and treatment purposes. (JE 4:157)

On September 4, 2018, claimant presented to Dr. Slattery for a pre-employment physical. (JE 1:17) She reported the October 5, 2017, incident as the genesis of the acute left shoulder pain. (JE 1:17) Dr. Slattery wrote that the work injury of October 5, 2017, could have triggered the need for the December 2017 visit and that she had symptoms for approximately two months that corresponded to the October 2017 injury date. Id. Dr. Slattery returned claimant to work but with restrictions to the left shoulder. (JE 1:18) He believed claimant needed surgical repair to the left shoulder. Id.

On October 13, 2018, claimant assisted in the transfer of a patient from the bed to a gurney. Also present were two EMTS, an LPN named Frannie Britton, and the patient's daughter, Shannon Anderson. Claimant and Ms. Anderson had no prior knowledge of each other prior to this date.

Claimant was standing on the other side of the gurney which was positioned between claimant and the patient. An EMT by the name of Julie Nielsen was next to the patient. The male attendant, Kent Buelt, was next to claimant who was positioned toward the back of the patient. Ms. Anderson was at the foot of the bed behind claimant.

Claimant testified she scooped her hands underneath the patient's butt. Ms. Anderson confirmed she witnessed claimant touch the patient's butt and also corroborated that her father had made a joke about this. Frannie Britton testified that she was standing at the foot of the bed and did not see claimant assist in the transfer of the patient onto the gurney. (Tr. 43) Ms. Britton testified that she was in the room because she had the paperwork for the transfer in her hands. (Tr. 38) She further testified that only the EMTs performed the transfer. Julie Nielsen testified that she and her husband, Kent Buelt, performed the lift without assistance from claimant. She testified that Frannie Britton was the nurse that braced claimant from behind. (Tr. 49)

This was consistent with the statement that Ms. Nielson gave on July 27, 2020. (JE 29:387) Ken Buelt signed the same exact statement. (JE 29:388) He did not testify at hearing however both were adamant that claimant stood at the head of the bed and did not assist. Both were familiar with claimant prior to this incident.

Claimant testified she assisted the transfer by lifting the patient's butt. The patient's daughter corroborated this. Ms. Nielson testified that Frannie Britton braced the backside of the patient, but Ms. Britton testified that she had paperwork in her hands and that only the EMTs did the lifting. This testimony is in direct conflict with the EMTs who have no motivation for giving false statements. However, claimant and Ms. Anderson were present for cross-examination as was Ms. Nielson. Mr. Buelt was not. Claimant, Ms. Anderson and Ms. Nielson all acknowledged that there was a third person who assisted. Ms. Britton, also subject to in person cross-examination, admitted she did not assist in the lift. It is plausible that Ms. Nielson and Mr. Buelt confused Ms. Britton's position with that of the claimant.

Based on the testimony of the claimant, Ms. Anderson, and Ms. Nielson, and Mr. Buelt who acknowledged that a nurse assisted from the rear of the patient, along with Ms. Britton's admissions that she did not assist in the lift, it is found that claimant assisted in the transferring of the patient by scooping and lifting the patient's butt.

After helping with this lift, she experienced pain in the left shoulder, neck, low back, hip and "general area." (Tr. 24)

In the days following this incident, Ms. Britton stated that claimant continued to work without complaint and that Ms. Britton was unaware that claimant had injured herself until October 18, 2018. On October 18, 2018, claimant filled out an incident form citing an injury from the aforementioned lift and transfer of a patient. (JE 1:20)

On October 18, 2018, claimant was seen in urgent care with a history of shoulder and groin injury. (JE 1:23) It was noted that claimant had a history of rotator cuff tear in the left shoulder which was re-aggravated. (JE 1:23)

Claimant was taking Celebrex and Flexeril. Dr. McQueen advised claimant to continue on her current medications with some added physical therapy to work out the muscle strain. She was returned to work as early as the following day with restrictions on lifting, stooping, bending, pushing and pulling. (JE 1:23)

On October 22, 2018 claimant returned to McFarland Clinic and was seen by NP Greenlee for pain in her low back. (JE 1:26) On examination she exhibited tenderness in the shoulder with normal range of motion and tenderness in the lower back with normal range of motion. (JE 1:26) She was continued on Celebrex and Flexeril, recommended continued work restrictions and referred for physical therapy. (JE 1:27)

On November 5, 2018, claimant returned to McFarland Clinic for pain in the hips and pelvis region. (JE 1:28) Range of motion of the left lower extremity particularly on abduction of the femur away from the body resulted in extreme pain. (JE 1:29) She was diagnosed with acute left groin pull with mild right groin pull. (JE 1:29) There was also concern about depression as claimant suffered long-standing depression symptoms and

the injuries and work-related problems had led to an increase in her depression. Id. There were notes of increased ideology of self-harm and her prescription for Zoloft was increased. (JE 1:29)

On November 12, 2018, claimant was seen at physical therapy for an initial evaluation for the ongoing left shoulder pain, left groin and hip pain, and back pain. (JE 1:32) It was noted that she had sufficient inflammation to affect her walking and function and that claimant would benefit from skilled physical therapy. (JE 1:33)

On November 19, 2018, claimant was seen by Abby L. Greenlee, a nurse practitioner at the McFarland Clinic. (JE 1:35-36) NP Greenlee documents a lengthy history of the left shoulder and bilateral groin pain and left hip pain. Id. She exhibited tenderness along the supraspinatus and infraspinatus, pain and decreased strength slightly weaker than the right, and normal range of motion with some pain upon movement. (JE 1:37) In the left hip she exhibited bony tenderness along the greater trochanter and normal range of motion, normal strength, and normal gait. (JE 1:37)

NP Greenlee diagnosed claimant with chronic left shoulder pain, left hip pain, left groin pain, and recommended continuing physical therapy as claimant stated that physical therapy did help to alleviate pain. (JE 1:38) If the groin pain did not improve an MRI would be ordered. (JE 1:38)

On November 27, 2018, claimant presented at Urgent Care in Carroll a/k/a McFarland Clinic with complaints of chest pain. (JE 1:42) NP Greenlee recommended a workup to include EKG, D-dimer, and cardiac work-up but claimant denied because of cost. (JE 1:42) She felt that the heart condition was induced during therapy and was angered that the costs of care would not be covered and left the clinic in anger. (JE 1:44)

On November 30, 2018, claimant was terminated by defendant employer after there was a report of possible patient abuse. This charge was determined to be unfounded later by state investigators. (Tr. p. 81-82)

On December 3, 2018, claimant called and cancelled her physical therapy appointment. (JE 1:46) It was her last scheduled appointment. Id.

Claimant worked in a bowling alley as a waitress from December 2018 to June 2019. She has not worked since.

On January 4, 2019, she returned to Dr. Slattery for follow up of her left rotator cuff tear and left hip pain. (JE 1:47) She complained of intermittent catching and popping in the anterior inguinal area of the left hip. Id. Dr. Slattery sent claimant to Dr. Nelson for evaluation. (JE 1:47)

On February 5, 2019, claimant was seen by Christopher D. Nelson, D.O., for left hip pain at the request of Dr. Slattery. (JE 8:183) By way of history, claimant related a January 7, 2018, injury to her left shoulder when assisting a patient who fell in the bathroom. Id. She also reported pain after an October 2018 incident when she attempted to catch another patient from falling and lifted him onto a stretcher. Id. Since then, the hip pain became progressively worse, and she had fallen several times due to

her symptoms. (JE 8:183) Dr. Nelson wanted to try conservative, nonsurgical treatment first beginning with an intra-articular steroid injection which was administered the same day. (JE 8:184-85)

On February 25, 2019, claimant was seen by Thomas Dulaney, M.D., for evaluation of her left shoulder at the request of Dr. Nelson. (JE 9:191) Dr. Dulaney recorded that claimant's history of injury included an October 2017 incident and a second injury in January 2018. (JE 9:191) He discussed the risks and benefits of the scopic rotator cuff repair, but claimant was unsure of whether she would like to proceed due to her hip issues. (JE 9:193)

At the follow up visit of March 20, 2019, claimant reported no relief from the injections which led Dr. Nelson to surmise that the pain was coming from an extra-articular source. (JE 8:187) He sent claimant to get an injection to the iliopsoas tendon by Dr. Carlson. Id.

On March 27, 2019, claimant returned to Dr. Slattery for follow up of her left hip pain. (JE 1:48) She had "fairly good" range of motion with no tenderness. Id. Her pain was in the inner aspect of her groin area. Id. The plan was to await direction of the subspecialist. Id. Dr. Slattery appeared to be aware that the gluteal tear was not one that they would repair. Id.

On April 2, 2019, claimant was seen by Chad Carlson, M.D., at Stadia Sports Medicine for the psoas tendon. (JE 12:206) In the history section, the following is recorded:

> History of Present Illness: Teresa Janssen is a 54 y.o. female who presents today from Dr. Chris Nelson's office for further thoughts on left hip pain. She has x-rays that suggest mild cam FAI, and has had two separate intra-articular injections without pain relief. She has had problems with the hip since January 2018 when she felt a sharp pain lifting a patient up off the floor. She aggravated this further in October when she tried to catch a patient from falling. She complains of anterior, lateral and posterior pain. The pain is worse with hip ER, when getting in and out of a car, and when lying with the leg fully extended. She gets a pop in the lateral hip. She walks with a limp and uses a cane. She was fired from her job because she could not return to work. Currently her pain keeps her up at night. She had an MRI of the hip in May of last year that showed a trochanteric bursitis and what appeared to be tearing of the gluteus medius tendon at it's [*sic*] insertion. The hamstring tendons looked normal. She is sent here for evaluation of the psoas tendon.

(JE 12:206)

A diagnostic injection was offered and accepted. (JE 12:207) Two months later, claimant returned but continued to complain of pain in the pubic tubercle along with burning, tingling discomfort into the proximal to mid-medial thigh. (JE 12:208) Dr. Carlson questioned whether the psoas was involved and offered an injection to the left proximal hamstring tendon. (JE 12:209) This was accepted and administered. Id. On or

about July 23, 2019, claimant faxed Dr. Carlson a letter asking whether a person could get carpal tunnel in the hip or groin area. (JE 13:230) She felt her obturator nerve and sciatic nerve in the middle buttock was trapped or pinched. (JE 13:320) She also stated she lost strength in her left arm from disuse and that her ribs would twist or pop out from the muscle. (JE 13:230)

On September 19, 2019, claimant returned reporting ongoing pain in the back of the leg and aching in the anterior groin. (JE 12:210) Dr. Carlson injected the left proximal adductor tendon and anterior branch of the obturator internus nerve. (JE 12:211) On November 20, 2019, claimant reported that the obturator nerve injection took away 70 percent of her anterior pain. (JE 12:214) A new injection was administered in the left greater trochanter/IT band. (JE 12:215) On January 31, 2020, Dr. Carlson injected the piriformis. (JE 12:217) He noted that claimant's recent EMG was normal. (JE 12:216) The piriformis injection was not successful and on February 19, 2020, claimant was administered an injection in the lesser gluteal tendons. (JE 12:219) This injection provided only temporary and partial relief. (JE 12:220) On March 13, 2020, an injection was administered to the left adductor longus. (JE 12:221)

On April 1, 2020, claimant returned to Dr. Carlson reporting temporary relief from the left adductor injection. (JE 12:222) Dr. Carlson recommended physical therapy and a referral for anesthesia pain management. (JE 12:223)

On April 30, 2019, she was seen for an initial evaluation at Central States Pain Clinic with Alison Weisheipl, M.D., for pain in the left buttock and groin radiating into the leg and left foot along with left shoulder pain. (JE 14:234-36) In the pain worksheet, she noted she had suffered three workers' compensation injuries incurred while attempting to prevent a patient from falling. Id. at 234. In the history section, claimant stated that pain began in January 2018. (JE 14:236) She exhibited a moderately antalgic gait, straight leg raising positive on the left, sciatic notch tenderness present on the left, SI joint tenderness, reproducible pain in the groin from the FABER test. (JE 14:239) She had negative results on the Waddell's sign test but for the overreaction element for which she was positive for disproportionate muscle tension and tremor. (JE 14:239)

Dr. Weisheipl explained to claimant she had an atypical presentation for lumbar radiculopathy, hip pathology, pudendal neuralgia and ischial bursitis. (JE 14:240) It was difficult to pinpoint a single source of pain and it may take a number of different injections to determine the cause of the pain. Dr. Weisheipl went on to explain that they may never be able to determine the exact source of pain, but they would be able to control it with medications. (JE 14:240) They started with an ischial bursa injection and a trial of 300 mg of gabapentin. (JE 14:244-45)

Dr. Weisheipl then referred claimant to counselor Sara Mathiasen, LISW, to help claimant manage her chronic pain. (JE 14:241) Claimant shared that in November 2018, she took expired insulin from the place where she worked with the intention of overdosing but did not follow through. (JE 12:241) The patient questionnaire claimant filled out indicated claimant's depression was adequately managed with her current antidepressant medication. (JE 14:242)

In the intervening time, claimant requested Dr. Slattery's office fill out a pre-

employment physical for a daycare provider which Dr. Slattery agreed to do. (JE 1:50)

On May 14, 2019, claimant returned to Dr. Weisheipl's office reporting only a 10 percent improvement. (JE 14:253) The physician's assistant Amber Hemphill, under approval from Dr. Weisheipl, ordered left S2 and S3 injections. Id. Claimant was upset during this visit and wished someone would T-bone her on the road and end it all. Id. Claimant was encouraged to return to Ms. Mathiasen for treatment as claimant had only seen the therapist once. Id.

On September 9, 2019, claimant was seen by Dr. Slattery for left groin pain, chronic left hip pain, obturator neuropathy, fibromyalgia muscle pain, well controlled hypertension, partial remission of major depressive disorder. (JE 1:53)

On October 3, 2019, claimant was seen by Dr. Dulaney in follow up for the left shoulder. (JE 9:193) She had full range of motion of the left shoulder with pain on abduction greater than 90 degrees. (JE 9:193) At this appointment, claimant gave approval for the surgical repair. (JE 9:193) Surgery took place on December 18, 2019. (JE 9:196) During surgery it was found that claimant had a small tear just posterior to the biceps, a high-grade partial thickness tear that extended down easily to the defect in her articular-sided cuff. (JE 9:195)

On January 2, 2020, during a follow up visit, claimant reported to Dr. Dulaney that she was doing much better. (JE 9:197) Claimant was sent for phase 1 physical therapy. Id. At the February 14, 2020, visit, claimant reported stiffness but otherwise no complaints. (JE 9:198) Claimant's range of motion was just shy of full and there was no pain with resisted cuff firing. Id. On May 27, 2020, claimant returned to Dr. Dulaney but at this appointment reported that she was having a difficult time. (JE 9:199) She did not feel like she could work because her shoulder did not function well enough for her to be employed. Id. Her pain was primarily in the anterior portion. Id. On examination, she had full active and passive range of motion in the shoulder with pain with resisted cuff firing. (JE 9:200) Clinically, Dr. Dulaney felt claimant looked "pretty good." Id. He ordered an arthrogram to see if there was a re-tear. Id.

Dr. Dulaney also filled out a worksheet for the social security administration on May 27, 2020. (JE 10:201) He marked her pain as severe and that she would likely miss five plus days a month due to her medical condition (based on a 40-hour work week). Id. However, he also indicated she could sit, stand, walk, and stoop frequently, use her hands for fine and gross manipulation. Id. He believed she could use her right arm over her shoulder but never her left. Id. He also would not authorize her to carry any weight. Id.

On January 6, 2020, physical therapist Jane Brown, whom claimant had begun seeing while under the care of Dr. Carlson, reported that claimant could complete all her exercises without complaint of pain. (JE 12:213; 16:272) She had attended 13 visits from November 5, 2019, through January 6, 2020, with no more visits authorized. (JE 16:272) She was able to walk with a comfortable appearing gait and minimal numbness in the left leg with straight leg raise. Id. She had difficulty with single leg or knee squeeze bridge. (JE 16:272)

On April 24, 2020, claimant returned to Dr. Weisheipl for follow up of the left-sided buttock pain with radiation into the groin, anterior thigh, and anterior shin. (JE 14:260) The May 14, 2019, S2 and S3 injections gave her 100 percent relief of her lower back pain for several months. (JE 14:260) In the interim she also had several injections with Dr. Carlson with varying results. (JE 14:261; See above) At this time, pain was radiating more down the left leg and into the calf consistent with L5 radiculopathy. (JE 14:261) Dr. Weisheipl recommended a transforaminal ESI at L4-5 which took place on June 3, 2020. (JE 14:261, 263-65) Unfortunately, this injection provided no relief and during the June 25, 2020, follow-up visit, Dr. Weisheipl recommended a surgical consult. (JE 14:267) Claimant refused any therapy for her depression. (JE 14:267)

In a May 15, 2020, physical therapy note claimant reported burning in the anterior shoulder. (JE 16:273) Overall, she had good gains in strength and flexibility and was discharged with a reminder that if the claimant did not continue with the exercise program her muscles would become deconditioned leading to a return of pain and limitation. (JE 16:273)

Claimant underwent an L4-5 laminectomy on July 29, 2020, with Dr. Lynn Nelson, for removal of the synovial cyst. (JE 17:281)

On September 16, 2020, claimant was seen at McFarland Clinic for bilateral hand numbness. (JE 1:57) She stated that her discomfort dated back to at least June 2020. Id. Symptoms in the right hand were constant numbness in her hand with intermittent exacerbation of pain with touch or pressure to the elbow. Id. She is left-handed. Id. She has intermittent symptoms in the left hand depending on the movement or position as well. Id. The note referenced her left rotator cuff repair in December 2018 and that claimant experienced occasional sharpness down the left arm and unsteadiness in her legs as a result of pain. (JE 1:57)

On October 8, 2020, claimant was seen in follow up after the laminectomy. (JE 17:283) Claimant reported unchanged left groin, buttock, hamstring, and left lateral thigh discomfort. Id. She denied back pain of significance or lower right extremity pain or pain distal of her left knee. Id. She was able to walk approximately 10 blocks or about 30 minutes while pushing a stroller. Id. Dr. Nelson recommended claimant undergo a course of physical therapy.

On October 21, 2020, during physical therapy, claimant reported improvement in symptoms and that she only noticed symptoms when she reached the end range of her stretching. (JE 16:275) Her last therapy visit in the records was November 23, 2020. (JE 16:280) At that visit, she was able to complete her duration on the Airdyne Bike with no difficulties but was only able to use the elliptical trainer for a short duration. Id. Claimant needed regular verbal cuing for proper form for her home exercises. Id. The plan was to continue with treatment. Id.

On December 3, 2020, claimant returned to Dr. Nelson for follow up. (JE 17:284) She reported left buttock and left lateral thigh and shin area discomfort with prolonged sitting along with some left foot paresthesias with prolonged walking. (JE 17:284) She was undergoing physical therapy twice a week for the last eight weeks, performing

home exercises, and using her prescriptions for Flexeril and gabapentin. (JE 17:284) She also reported some bilateral hand paresthesias in the first, second and third digits. An EMG was positive for right carpal tunnel syndrome. Dr. Nelson believed that her hand numbness was more likely related to a peripheral nerve impingement than the cervical spine and recommended she seek out the consult of an upper extremity surgeon. From the lumbar standpoint, she was doing well. Dr. Nelson recommended continuation of physical therapy for another 4-5 weeks and a lifting restriction of 25 pounds. Id.

Dr. Nelson administered an injection to the left trochanteric bursal area. (JE 17:285)

On February 4, 2021, claimant returned to Dr. Nelson's office with two primary pain locations; left groin pain with sitting and left lateral hip pain with walking. (JE 17:286). At this visit she demonstrated tenderness at the left greater trochanteric bursal area with full range of motion at the hip. Id. She also reported 30-50 percent overall pain relief with the laminectomy. Id. Dr. Nelson advised her to return as needed. (JE 17:287)

On March 26, 2021, claimant was seen by Dr. Carlson again at the request of Todd Troll, M.D., following the removal of the synovial lumbar cyst. (JE 12:224) The cyst removal improved her symptoms by approximately 30 percent, but she continued to have pain in the left buttock, lateral and anterior thigh, and in the knee. (JE 12:224) He suspected her cluneal nerves were responsible and recommended an MRI arthrogram to see if she had widespread degenerative disease. (JE 12:226) On April 22, 2021, claimant had a telemed visit to discuss the MRI arthrogram which showed a worsening of the labrum tear from the 2019 study. (JE 12:228) Dr. Carlson planned to converse with Dr. Nelson on how to treat this chronic left hip and thigh pain.

On June 23, 2021, claimant presented to Dr. Nelson at DMOS as a "new patient" for evaluation of left hip pain. (JE 8:188) Claimant stated the genesis of the pain was a work-related injury in June 2018 when she picked a resident up off the floor. Id. The pain was localized in the groin, lateral aspect, and IT band. Id. She had physical therapy and twelve injections. Id. The April 2021 MRI results were reviewed which showed chronic tearing of the gluteus medius and minimus. (JE 8:189) Together, Dr. Nelson and claimant agreed to begin treatment with physical therapy. (JE 8:190) Claimant testified that she planned to return to Dr. Nelson to have surgery on the gluteus.

On May 24, 2018, Dr. Harbach authored an opinion letter at the request of the defendants. (JE 5:161). In the letter, Dr. Harbach relayed that claimant did hurt her low back and left hip radiating into the left leg on or about January 7, 2018, while at work. (JE 5:161) Within a reasonable degree of medical certainty, he opined that the mechanism of claimant's injury of lifting a resident off the floor could have caused a partial tear of the gluteus medius tendon as well as inflammation in that region. (JE 5:161) He advised that claimant may need physical therapy, medications and possibly more injections but that she was not a surgical candidate. (JE 5:161)

On August 28, 2018, Dr. Harbach issued a second opinion after reading claimant's description of her Tae Bo activities. (JE 5:164) He opined that the kicking

type of activity in Tae Bo was something that could cause or aggravate the condition for which he treated claimant. (JE 5:164) Specifically, he wrote:

> Question #2: Do you think this kind of activity is more likely the source of her problem attempting to hold a resident on January 7, 2018, as she claims?
>
> Answer: Actually that very well could be the case. She has hip and pelvic girdle-type of pain rather than low back pain, and MRI of her low back is unremarkable. It does not show significant neural encroachment, just mild degenerative changes. MRI of her pelvis shows tearing at one of the gluteal muscle insertions into the greater trochanter, and there is a question of whether or not there are any hip issues. Any patient involved in repetitive kicking activities certainly could have this type of picture as a result of those activities. I could not with a reasonable degree of medical certainty rule out her Tea Bo [*sic*] activities as the primary cause of her problem.

(JE 5:164)

In response to an inquiry from defendants, Dr. Galles wrote as follows:

> With regard to Teresa Janssen and your letter dated June 11, 2018, it is curious to me that Ms. Janssen claims she injured her shoulder at work in October of 2017, yet was seen by another physician nearly 2 months later. At that time she demonstrated full shoulder range of motion and normal strength. This is a different finding than when I saw her in my office on June 4, 2018 where she demonstrated limited range of motion and weakness. I do not have a good explanation as to why the range of motion and weakness changed from December of 2017 to June of 2018 unless there was some other episode or injury in that timeframe not reported to me in her history. If in fact the episode where she claims to have injured herself at work were significant, I would have expected different findings on Dr. Slattery's examination of her, again dated December 13, 2017.

(JE 7:170)

Defendants sent Dr. Galles additional documentation including Dr. Slattery's medical record of December 13, 2017, and excerpts from claimant's July 2018 statement describing her Tae Bo activities. (JE 7:174) Dr. Galles responded with another letter on August 16, 2018, noting claimant did not mention anything regarding a left shoulder incident of January 7, 2018, at work but only mentioned the October 5, 2017, incident. (JE 7:179) She also did not mention any extracurricular activities such as boxing or Tae Bo. Id. It was his opinion that the boxing-type activities and the type of workout she engaged in had the capacity of aggravating the shoulder problems or even causing the shoulder problems. Id.

He went on to say that "It would be difficult for me to say that more likely than not the Tae Bo activities were responsible for her shoulder symptoms that she described to

me; however, I do find it interesting that she apparently was seen by a physician 2 months later at which time it was documented she had normal shoulder range of motion and normal strength and apparently no issues with her left shoulder again 2 months after the onset of her claimed injury which would be October 5, 2017." (JE 7:179)

In further response to the defendants, Dr. Galles opined on August 30, 2018, that the October 5, 2017, work injury of claimant was not the cause of the need for surgery to the left shoulder. (JE 7:182) He also wrote that he could not opine that neither the January 2018 incident or her Tae Bo activities was more likely than not the cause of claimant's left shoulder problems and subsequent need for surgery. Id.

In response to an inquiry from the defendants, on July 27, 2020, Dr. Dulaney authored an opinion letter wherein he stated that claimant reached MMI for the shoulder injury in February 2020. (JE 11:205) He made no statement about causation but that the impairment for her shoulder would be limited to her arm and not the body and that it would be small due to residual shoulder symptoms. Id.

On April 1, 2020, Dr. Carlson issued a letter in response to defendants' inquiry. (JE 13:232) He stated that claimant had an underlying hip anatomy issue that contributes to her problem. Id. He noted she had a history of two injuries but that her work up suffered from inconsistency in both complaint and presentation making it extremely difficult to assign causality to anything that she did over two years ago. Id. His ultimate opinion was that most of her problems relate to aggravation of pre-existing pathology. Id.

On December 1, 2020, Dr. Carlson wrote that claimant's synovial cyst, which he surgically removed, was likely related to chronic degenerative changes rather than from any trauma. (JE 13:233) He added that the cyst was not present at the time of the November 20, 2019, MRI which was over a year after her injury at work. (JE 13:233)

In response to an inquiry from the defendants, Dr. Nelson authored an opinion letter on September 10, 2020. (JE 18:290) His opinions were as follows:

> 1. As above, I believe the facet cyst was responsible for at least a portion of her more distal left lower extremity pain, but not her hip or groin area pain. Her March 12, 2018 lumber MRI scan does not demonstrate a facet cyst. Therefore, I cannot attribute her need for lumbar spine surgical treatment of July 29, 2020 to her reported work injury of January 7, 2018.

(JE 18:290)

On August 3, 2021, Dr. Nelson issued the following opinions in response to an inquiry from the defendants:

> 1. I cannot attribute her neck complaints or problems to the work injuries in question. (October 2017 and January 2018)
>
> 2. I cannot attribute possible bilateral carpal tunnel syndrome to the work injuries in question.
>
> 3. I cannot attribute her hip area complaints to the work injuries in

question.

(JE 18:293)

On August 24, 2020, Joseph Chen, M.D. performed a records review and examination of the claimant. (JE 19:298) Claimant described her pain as mainly over the left scapular border and trapezius border, left buttock and thigh. (JE 19:300) She noted pins and needles down both legs symmetrically with standing and pain over the lateral aspect of the left hip. Id. She assigned a pain rating as greater than ten out of ten. Id.

Dr. Chen observed claimant's gait to be slow but symmetrical. Id. at 300. He was not able to reproduce any radiating arm pain. Her muscle stretch reflexes and muscle strength was normal bilaterally. Id. at 301. She was able to raise her arms overhead to her ears indicating forward flexion and abduction to 180 degrees. She was not tender to palpation over the rotator cuff muscles. Shoulder ROM was normal in all directions. Id. In the lumbar region, she had negative straight leg raise tests, no consistent sensory loss in the bilateral L1-L2 dermatomes, sciatic, tibial, peroneal, or sural nerve distributions. Id. at 302. She was tender to palpation along gluteal muscle mass and medial sacral muscle attachment areas. Flexion ROM was at 120 degrees, passive abduction while supine to 30 degrees, passive internal rotation to 20 degrees without groin pain, passive external rotation to 30 degrees with buttock pain. Id. at 302. She was unable to sit comfortably with either leg crossed on top of the other reflecting significant hip and gluteal inflexibility. Id. Her knees were normal and nontender to palpation.

He concluded as follows:

> My interpretation of Ms. Janssen's responses on these health status measures indicate high self-reports of pain severity and intensity, extremely high fear avoidance beliefs and pain catastrophization, and severe depression. All of these conditions are known personal risk factors for the development of a chronic pain syndrome even in the absence of musculoskeletal trauma or injury.

(JE 19:302)

In regard to the October 2017 incident, Dr. Chen opined that claimant sustained a minor soft tissue injury to the left upper back and shoulder that improved with an osteopathic realignment of a posterior rib on the left by Dr. Nystrom. Id. at 303. Claimant requested a full duty release which was granted. Id. A note from Dr. Slattery on December 13, 2017, indicated that claimant presented with left arm and posterior back pain for months after no particular trauma or fall. Dr. Slattery was also aware of claimant's Tae Bo activities, and he recommended she refrain from above the shoulder exercises. In the medical records of Dr. Slattery, it was noted that she needed the exercises for stress management. (JE 19:297; JE 1:7) Dr. Chen therefore concluded that she did not sustain any permanent injury from this incident.

In regard to the January 2018 incident, Dr. Chen opined claimant had sustained

a mild soft-tissue strain of the left buttock muscle while assisting a resident at work. (JE 19:305) He did not believe that the complete rotator cuff tear noted on the May 2018 MRI was related to the January 2018 work injury. (JE 19:306) "Ms. Janssen did not appear to have sought medical treatment from January 12, 2018, until May 2018, when she was found to have a complete left rotator cuff tear noted on MRI. I find it improbable that Ms. Janssen had an undiagnosed left rotator cuff tear from either her October 2017 incident or January 2018 incident due to the minor mechanisms documented by her treating physicians." (JE 19:306) As for her lower body, Dr. Chen opined claimant was suffering from a left trochanteric bursitis which can occur as a result of weakness and inflexibility of the gluteal muscles. (JE 19:306) Her pain was not responsive to a variety of hip related injections leading the hip specialists to conclude that surgery would not resolve her pain. (JE 19:306)

Dr. Chen explained his position to claimant that he believed her lack of improvement following injections into her peripheral nervous system were consistent with the understanding of the biopsychosocial model of chronic pain that involves peripheral nerve stimuli and central nervous system hypersensitivity. (JE 19:307) Claimant had turned down the recommendation to seek additional cognitive behavioral therapy treatment which may help her manage her pain better. Id. Dr. Chen concluded claimant was suffering depression but that these conditions were not related to the work injury of either October 2017 or January 2018. Id.

Claimant then went to Charles Wenzel, D.O., for an IME on July 21, 2020. (JE 20:314) She described her pain as follows:

Intermittent 4-5/10 aching pain in the cervical region that she associated with driving more than one hour

Constant 5/10 aching low back pain with left lower extremity radicular symptoms with prolonged sitting.

Intermittent 7/10 left shoulder area pain associated with dressing/undressing and certain movements, such as reaching for toilet paper.

Intermittent 6/10 left hip/gluteal pain that can increase to 10/10 in severity with prolonged sitting for more than an hour. (JE 20:328)

She was no longer able to take her grandchildren camping, do Tae Bo, or go for prolonged walks. (JE 20:329) Her range of motion in the cervical spine was normal. She had normal gait and negative straight leg raise tests. She did have left gluteal tenderness and pain with a full squat. (JE 20:330)

Dr. Wenzel limited causation to the left supraspinatus tear, left infraspinatus tear, and left gluteus medius tendon tear due to claimant being a poor historian with significant psychosomatic overlay and inconsistencies throughout the record. (JE 20:333) He was unable to state that the current neck and back pain were work related.

However, he concluded that claimant sustained work injuries on October 5, 2017, January 7, 2018, and October 13, 2018 while attempting to support or assist residents. Id. The left supraspinatus/infraspinatus and left gluteus medius tendon tears were

significantly caused, lit-up, aggravated and/or accelerated in the course of claimant's work for defendant employer. Id.

He agreed that Tae Bo could cause or aggravate a shoulder and low back or hip injuries but found it more likely that her work-related activities where she had to support her own bodyweight in addition to the bodyweight of a resident would cause or aggravate the supraspinatus, infraspinatus and gluteus medius tendon tears. (JE 20:333)

Dr. Wenzel noted that Dr. Galles recorded inconsistencies with a 12/12/2017 examination by Dr. Slattery that showed full range of motion and normal strength as compared to Dr. Galles' examination of June 4, 2018. Id. Dr. Wenzel suggested that Dr. Slattery's findings were not as complete given that Dr. Slattery provided no range of motion measurements or list any provocative tests conducted, and that Dr. Galles' examination resulted in only a 20-degree reduction of flexion range of motion. Id. Therefore, he "disagree[d] with Dr. Galles' interpretation that 'the range of motion and weakness changed from December of 2017 to June of 2018 unless there was some other episode or injury in that time frame not reported to me in her history.'" Id. at 334.

As it related to the shoulder, Dr. Wenzel wrote,

> There is inconsistent reporting of left shoulder pain in the provider notes following the 01/07/2018 work injury. The 05/10/2018 MRI of the left shoulder did show a full-thickness tear of the infraspinatus. Ms. Jansen [*sic*] did complain of left shoulder pain to Dr. McQueen on 10/18/2018 following the 10/13/2018 work injury. The 09/26/2019 MRI showed a full-thickness tear of the supraspinatus tendon. Again, I find this more likely related to her work injury then [*sic*] to Tae Bo. Ms. Janssen denied any other left shoulder area injuries following the 10/13/2018 work injury.

Id.

Dr. Wenzel did not have an explanation for claimant's lack of treatment from January or February 2018 until May 2018 when she purportedly had the full thickness tear.

He assigned only a modest impairment rating with the provision that she was not at MMI. For the left shoulder, there was a 1 percent impairment for the range of motion deficits and for the left hip, there was a 2 percent impairment rating for the range of motion deficits for a total of 3 percent whole person impairment. (JE 20:337)

On September 21, 2020, claimant underwent a psychological evaluation from Rosanna M. Jones-Thurman, Ph.D. (JE 21:340) The reason for the referral was a disability determination. Ms. Jones-Thurman found claimant to be suffering from major depressive disorder, recurrent and moderate, and generalized anxiety disorder. (JE 21:344) Ms. Jones found claimant to have a fair prognosis and wrote that "therapy has not been recommended" which was inconsistent from claimant's medical treatment. (JE 21:344) Claimant had been recommended to undergo more counseling or therapy and turned it down. Instead, she reported to Ms. Jones-Thurman that "she saw someone at

the rest home that they recommended one time, and he said she was fine, that they shouldn't have done that." (JE 21:342)

Regardless, Dr. Jones-Thurman concluded claimant could sustain attention and concentration for task completion and may have some difficulty maintaining pace. She could understand and remember short and simple instructions and she would be able to interact appropriately with supervisors, co-workers and the public. She would not have any restrictions in the activities of daily living nor have difficulty maintaining social functioning. Most likely claimant would not be able to do any type of nursing job due to her physical problems. (JE 21:344)

Claimant applied for and was approved for social security disability with an onset date of January 5, 2020. (JE 36:416) The basis for the approval was a finding that claimant suffered from high blood pressure, fibromyalgia, depression, shoulder injury, degenerative disc disease, sciatica, cane usage, inability to stand, sit or walk for extended periods of time, and hip pain. (JE 36:416).

Claimant worked her regular job at the same or increased pay from the time of her initial injury in October 2017 up to the time of termination on November 30, 2018. (Tr. 102-103) Prior to her termination, claimant received excellent performance reviews with the occasional recommendation to avoid drama. (JE 26:369-380)

Following her termination, claimant worked at a bowling alley as a waiter and part-time cook, for a resource center, and daycare with her daughter. (JE 35:411: Tr. 107-108)

Prior to her October injuries, claimant would limit her lifting to around 25 pounds due to a pre-existing injury to her left rib. (Tr. 99-100) Her current position as a daycare provider requires only light duty activities.

CONCLUSIONS OF LAW

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. 6.904(3).

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" 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 Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

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

Claimant's course of medical treatment is complex and considerable. Her medical providers have consistently provided injections, referrals for physical therapy, and even surgery to remove a cyst in claimant's lumbar spine. The source of claimant's pain has not been determined despite multiple diagnostic and treatment injections and various subspecialty consultations.

Part of the challenge for the medical providers is, as noted by experts Dr. Wenzel, Dr. Chen, and Dr. Carlson, that claimant is a poor historian. In her psychological evaluation, she stated that she went to a psychiatrist once and then to

someone recommended by the rest home but that he told her she was fine. Her medical records indicate that it was recommended that she return to counseling, but she turned it down. The objective tests such as the EMGs and MRIs were either normal or did not align with her clinical presentation. For instance, the 2018 lumbar spine MRI did not show any neural encroachment. Claimant was in tears on June 21, 2018, during a medical visit with Dr. Harbach due to left groin pain, left buttock pain, and radiating pain into her left leg. She continued to work and continued to complain of pain in her shoulder. Yet on October 13, 2018, claimant assisted in the transfer of a patient and allegedly re-injured her shoulder. She did not seek immediate treatment but instead worked for nearly a week before reporting the injury.

One large omission is the failure of claimant to report her Tae Bo activities which Dr. Slattery noted in December 2017 could be the trigger for her neck, shoulder, back and groin pain. Dr. Harbach also opined that the Tae Bo activities could be a causative or aggravating factor. Dr. Wenzel disagreed, finding that having to support her own bodyweight was less strenuous than supporting the body weight of a resident. However, claimant was engaging in Tae Bo at least three times a week whereas lifting patients was not a regular duty of the claimant. She would assist when requested. As Dr. Chen noted, the lack of treatment for claimant from January 2018 after approximately three weeks of physical therapy until May 2018 for the shoulder casts doubt as to a causal connection between the January 2018 injury and the infraspinatus tear. During an April 3, 2018, visit to Dr. Clemmons claimant was noted to have normal strength, range of motion, and sensation in both upper and lower extremities. (JE 1:10)

Dr. Carlson and Dr. Galles would not state within a reasonable degree of medical certainty that Tae Bo activities were the cause of claimant's current symptomatology. However, neither did they attribute claimant's current symptomatology to her work incidents.

Claimant characterizes Dr. Carlson as supporting the theory of causation between the work incidences and her current symptomatology. In her brief, she argues that his statement "most of her problems relate to aggravation of pre-existing pathology" refers to the October 5, 2017, and January 7, 2018, work injuries. However, he does not state this and to draw the inference as claimant does would negate the requirement of experts to give opinions based on a reasonable degree of medical certainty. Further, Dr. Carlson stated specifically that while claimant had a history of two injuries, her history and presentation were too inconsistent to assign any causality. To adopt claimant's interpretation is to ignore Dr. Carlson's overt refusal to opine on causation.

This leaves only Dr. Wenzel to support claimant's causation arguments. Dr. Wenzel ruled out claimant's neck and back pain as work related. However, he did conclude that claimant's left shoulder and left gluteus tendon tears were caused or aggravated by claimant's work.

Dr. Wenzel's opinion on the shoulder is given lower weight because of the long gap in treatment for the left shoulder between January 2018 and May 2018 other than three weeks of physical therapy as well as claimant's inconsistent reports of injury. On

December 13, 2017, claimant reported left arm, left shoulder and posterior back pain but without any particular trauma or fall. Dr. Slattery suspected this was related to her boxing activity. She did not report a January 2018 injury to Dr. Galles. In fact, that came as a surprise to him. Following the January 2018 incident, claimant's primary focus was on her low back and left hip and not on the shoulder.

Dr. Wenzel also opined claimant was not at MMI for the left shoulder whereas Dr. Dulaney, who treated claimant's shoulder, found claimant to be at MMI in February 2020. On February 14, 2020, claimant's left shoulder range of motion was just shy of full and there was no pain with resisted cuff firing. On January 6, 2020, claimant was able to perform all of her exercises without pain. Months later in May 2020, claimant returned to Dr. Dulaney with complaints of increased pain in the shoulder. He filled out a social security disability form which limited her to no use of her left shoulder overhead. During her appointment with Dr. Wenzel, claimant described intermittent shoulder pain at 7 on a 10 scale which was a significant difference from her presentation in February 2020.

She has chronic tearing of the gluteus medius and minimus that occurred post her November 2018 termination. Dr. Carlson wondered if claimant had widespread degenerative disease and the MRI arthrogram showed the worsening of the labrum tear from the 2019 study.

Claimant appears to have pain that has waxed and waned for years. She has had numerous shots to diagnose or pinpoint the source of her pain but there has been no definitive answer. Claimant argues in her brief that the gluteal tear is responsible for her hip and groin pain, yet she had a gluteus medius tear in 2019 and underwent over a dozen injections but received no permanent relief. Dr. Weisheipl explained to claimant she had an atypical presentation for lumbar radiculopathy, hip pathology, pudendal neuralgia and ischial bursitis.

Because the workers' compensation claims were denied, claimant sought out her own care. Drs. Nelson, Carlson, and Galles were medical providers she chose rather than medical providers defendants chose for her. Dr. Carlson and Dr. Galles observed claimant's uneven historical presentation as well as her uneven complaints. Dr. Wenzel and Dr. Chen also commented on claimant's lack of reliability as a patient, both historically and by her complaints.

In order to accept Dr. Wenzel's opinions, the opinions of the medical providers claimant chose would have to be ignored as they are contradictory to that of Dr. Wenzel.

Based on claimant's lack of reliability and her uneven presentation of her complaints, the opinions of Dr. Galles, Dr. Carlson, Dr. Harbach, Dr. Dulaney, and Dr. Chen, it is found that claimant has not carried her burden to prove that the October 5, 2017, or January 7, 2018, resulted in injuries that arose out of and in the course or her employment. Neither did claimant carry her burden to prove the October 13, 2018, injuries resulted in a permanent disability. While it was found that claimant did assist in the lift and transfer of a patient, she did not carry her burden to prove that the incident

resulted in an injury that arose out of and in the course of her employment.

ORDER

THEREFORE IT IS ORDERED

Claimant shall take nothing.

The parties are ordered to bear their own costs with the cost of the hearing transcript divided equally between claimant and defendants.

Signed and filed this 21st day of March, 2022.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jason Neifert (via WCES)

Stephen Spencer (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.