BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIA HERRERA, Claimant, vs. UNIVERSITY OF IOWA HOSPITALS & CLINICS, STATE OF IOWA, Employer, Self-Insured, Defendant.	:	File Nos. 19004324.01, 20700953.01 ARBITRATION DECISION Head Note Nos.: 1801, 1803, 1700, 1703, 1108

STATEMENT OF THE CASE

The claimant, Maria Herrera, filed two petitions for arbitration seeking workers' compensation benefits from self-insured employer University of Iowa Hospitals & Clinics (hereinafter "UIHC"). Emily Schott appeared on behalf of the claimant. Sarah Timko appeared on behalf of the defendant.

The matter came on for hearing on September 16, 2021, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred via CourtCall. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-10, Claimant's Exhibit 1-6, and Defendant's Exhibits A-K. The claimant testified on her own behalf with the assistance of interpreter Rafael Geronimo. Amy Pederson was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on October 29, 2021, after briefing by the parties.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

File No. 19004324.01

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury which arose out of, and in the course of employment, on September 20, 2019.

3. The alleged injury is a cause of temporary disability during a period of recovery.

4. The commencement date for permanent partial disability benefits, if any are awarded is December 18, 2020.

5. The claimant's gross earnings were six hundred thirteen and 43/100 dollars ($613.43) per week. She was married, and entitled to three exemptions. This results in a weekly compensation rate of four hundred twenty five and 15/100 dollars ($425.15).

Entitlement to temporary disability and/or healing period benefits is no longer in dispute. The defendant waived their affirmative defenses.

File No. 20700954.01

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury which arose out of, and in the course of employment, on July 14, 2020.

3. The claimant's gross earnings were five hundred ninety eight and 16/100 dollars ($598.16) per week. She was married, and entitled to three exemptions. This results in a weekly compensation rate of four hundred seventeen and 67/100 dollars ($417.67).

Entitlement to temporary disability and/or healing period benefits is no longer in dispute. Entitlement to permanent disability benefits is no longer in dispute. The defendant waived their affirmative defenses. The claimant originally sought payment for medical expenses and reimbursement of an independent medical evaluation ("IME") pursuant to Iowa Code section 85.39; however, the parties noted at the outset of the hearing that the defendant issued payments. In their posthearing briefing, the claimant indicated that payment from the defendant was received for these costs, and confirmed that these were no longer at issue. Credits against any award are no longer in dispute.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

File No. 19004324.01

1. Whether the alleged injury is a cause of permanent disability.

2. The extent of permanent disability benefits, if any are awarded.

3. Whether the defendant is entitled to credit for overpayment of forty one and 78/100 dollars ($41.78) in temporary total disability benefits against permanent partial disability benefits awarded.

4. Whether the claimant is entitled to a taxation of costs.

5. Whether the costs in Claimant's Exhibit 4 have been paid.

File No. 20700954.01

1. Whether the alleged injury is a cause of temporary disability during a period of recovery.

2. Whether the alleged injury is a cause of permanent disability.

3. Whether the claimant is entitled to a taxation of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Maria Herrera, the claimant, works at the UIHC as a housekeeper and cleaner. (Testimony). She cleans and disinfects medical facilities. (Testimony). Part of her job involves being around cleaning chemicals like bleach and Tilex. (Testimony). Ms. Herrera has a history of asthma. (Testimony). When she has an asthma attack, she experiences difficulty breathing, she wheezes, coughs, and becomes short of breath. (Testimony). She treated her asthma attacks with albuterol. (Testimony).

As part of her asthma treatment, Ms. Herrera had a chest CT at UIHC on August 22, 2019. (Joint Exhibit 4:70-71). The CT showed mild large and small airway inflammatory disease with post-inflammatory scarring of the right upper lobe. (JE 4:70-71). Pulmonary function testing performed at the same time showed results that were within the noted normal limits. (JE 6:83-84).

Ms. Herrera testified that on September 20, 2019, she was taking trash to the trash room. (Testimony). She lifted a trash bag out of her cleaning cart, twisted her body and fell. (Testimony). She heard something pop and experienced pain. (Testimony). She reported having pain and issues with bending, twisting, walking, standing, and sitting. (Testimony).

Ms. Herrera reported to UIHC's emergency department where she was examined by Rachel Walsh, PA-C. (JE 4:56-61). Ms. Herrera recounted pulling a heavy garbage bag and feeling a pop and pain in the left rib area. (JE 4:56). X-rays of the chest were normal. (JE 4:57, 61). Ms. Walsh provided Ms. Herrera with Toradol and Tylenol, diagnosed her with rib pain, and discharged her home. (JE 4:58). Ms. Walsh recommended that the claimant follow-up with her primary care physician. (JE 4:58). She excused Ms. Herrera from work on September 21, 2019, and September 22, 2019. (JE 4:59).

On September 25, 2019, the claimant visited UIHC Occupational Health North Liberty. (JE 3:34-37). Claudia Corwin, M.D., examined Ms. Herrera. (JE 3:34). Ms. Herrera told Dr. Corwin that she had left upper quadrant and chest wall pain for the past five days. (JE 3:34). She reiterated that the pain started when she pulled a trash bag out of a bin. (JE 3:34). Dr. Corwin reviewed the emergency room records, and noted that the claimant reported continued pain without improvement. (JE 3:34). Ms. Herrera had difficulty laying down for her exam, and thus stood for her examination and interview. (JE 3:35). Dr. Corwin diagnosed the claimant with a strain of muscle and tendon of the front wall of the thorax. (JE 3:36). Dr. Corwin ordered left rib x-rays, and recommended that Ms. Herrera place ice on her thorax. (JE 3:36-37). The x-rays showed no acute cardiopulmonary findings, and no visible rib fractures. (JE 5:82). Dr. Corwin also restricted Ms. Herrera to primarily sit down work with no bending, stooping, or squatting. (JE 3:37).

Dr. Corwin examined the claimant again on October 16, 2019. (JE 3:39-42). Ms. Herrera reported no improvement since her last visit. (JE 3:39). Ms. Herrera used ibuprofen and heat to provide pain relief. (JE 3:39). An ultrasound and x-ray of the left upper quadrant were negative. (JE 3:39). Dr. Corwin observed that Ms. Herrera changed position slowly. (JE 3:39). Dr. Corwin recommended physical therapy to improve range of motion, flexibility, and function. (JE 3:39). Dr. Corwin kept the claimant on modified duty with restrictions of no lifting, pushing or pulling more than 5 pounds, and no bending, stooping, or squatting. (JE 3:42).

On October 30, 2019, Ms. Herrera returned to Dr. Corwin's office at UIHC Occupational Health North Liberty, for her continued left upper quadrant and lower chest wall pain. (JE 3:43-47). She worked within her restrictions, but had pain at work. (JE 3:43). Dr. Corwin ordered a CT scan focusing on the left lower chest wall. (JE 3:44). Dr. Corwin ordered a hold on physical therapy, and continued the previous restrictions of modified duty. (JE 3:47).

Eventually, Ms. Herrera was diagnosed with broken ribs. (Testimony). She was referred to a pain management specialist. (Testimony). Despite visiting a pain management specialist, she testified that her symptoms did not improve. (Testimony).

On November 14, 2019, Ms. Herrera reported to Select Physical Therapy. (Joint Exhibit 1:1-3). The record notes the claimant's history including her report that she lifted a trash bag from a bin and felt a pop in her abdomen. (JE 1:1). She reported attempting to continue the lift, but had significant pain. (JE 1:1). She was restricted to

modified duty and lifting only 5 pounds. (JE 1:1). She also could not repetitively bend or twist. (JE 1:1). Physical examination of the proximal oblique revealed tenderness, and tenderness over the tenth rib. (JE 1:2). The therapist observed that Ms. Herrera was severely limited by pain in her left abdomen and right shoulder. (JE 1:2). The therapist was unable to reach Ms. Herrera on multiple occasions, and discharged her from care. (JE 1:3).

As indicated in the above records, Ms. Herrera was discharged from physical therapy due to noncompliance and missing appointments in 2019. (Testimony; JE 1:3). Her testimony was a bit unclear as to why she missed a number of appointments. She attempted to claim that the doctor was no longer allowing appointments, but the records indicate that she was simply not showing up to appointments. (Testimony; JE 1:3).

Ms. Herrera continued her follow-up care with Dr. Corwin on November 18, 2019. (JE 3:48-51). She felt no improvement in her pain since her last visit. (JE 3:48). She described the pain as “poking” and “pressure” over her left upper abdomen and chest wall. (JE 3:48). Her pain was constant and rated 7 to 8 out of 10. (JE 3:48). Upon physical examination, Dr. Corwin found her to be tender over the anterior-lateral lower chest wall and left upper quadrant. (JE 3:48). Dr. Corwin provided restrictions of no bending, twisting or stooping, and no over the shoulder work with the right shoulder. (JE 3:50). Dr. Corwin also recommended maximum pushing, pulling, and lifting of 5 pounds on a seldom basis. (JE 3:50).

Based upon Dr. Corwin’s orders, Ms. Herrera reported to UIHC Radiology for a chest CT. (JE 4:62-63). The CT showed diffuse osteopenia and healing nondisplaced fractures of left ribs 7, 8, and 9, “near the costochondral junction.” (JE 4:63). The CT also showed stable mild large and small airway inflammatory disease with post-inflammatory scarring in the right upper lobe. (JE 4:63).

On November 27, 2019, Dr. Corwin visited with Ms. Herrera regarding her anterior left chest wall pain. (JE 3:52-55). Ms. Herrera opined that she had no significant improvement to her pain. (JE 3:52). Prolonged standing and walking increased her pain. (JE 3:52). She used Tylenol, heat and Biofreeze to relieve her pain. (JE 3:52). She was not working at the time due to UIHC being unable to accommodate her restrictions. (JE 3:52). Dr. Corwin reviewed the results of the CT scan with Ms. Herrera. (JE 3:54). She noted that the CT showed anterior rib fractures on the left from ribs 7 to 9. (JE 3:54). Dr. Corwin recommended that Ms. Herrera discuss her bone density with her primary care physician. (JE 3:54). She kept Ms. Herrera on modified duty, which included no twisting, bending, stooping, squatting, kneeling, or crawling. (JE 3:55). Dr. Corwin also recommended that the claimant seldom lift, carry, push, or pull 5 pounds. (JE 3:55).

Amy Pearson, M.D., examined Ms. Herrera on February 14, 2020, for her continued complaints of chronic left rib/chest pain. (JE 7:85-92). The claimant indicated that she continued to have pain, and found modest improvement with Biofreeze. (JE 7:85). She stopped using Tylenol and ibuprofen after having stomach issues. (JE 7:85). Dr. Pearson reviewed the results of the CT scan. (JE 7:88). Upon

physically examining Ms. Herrera, Dr. Pearson found tenderness in the left paraspinal muscles. (JE 7:89). Dr. Pearson opined that Ms. Herrera suffered slow healing left rib fractures and myofascial pain. (JE 7:89). Dr. Pearson discussed intercostal nerve blocks, but Ms. Herrera wished to consult with her pulmonologist regarding the use of steroids. (JE 7:89). Dr. Pearson also discussed use of a lidocaine patch and a TENS unit. (JE 7:89). She ordered an abdominal brace for Ms. Herrera. (JE 7:92). Dr. Pearson provided no changes to the previous restrictions. (JE 7:90).

On March 6, 2020, the claimant returned to Dr. Pearson's office at UIHC for a left 7-9 intercostal nerve block injection. (JE 7:93-97). The injection occurred with no complications. (JE 7:95-96).

Ms. Herrera reported to UIHC Holiday Road Occupational Health on March 18, 2020, as a follow up for her rib fractures. (JE 2:13-15). She had not worked since November 18, 2019, and recently had a nerve block at the pain clinic. (JE 2:13). Despite the recent nerve block, she still rated her pain 8-9 out of 10. (JE 2:13). Upon physical examination, the claimant displayed tenderness to palpation over the lateral anterior chest wall over the ribs. (JE 2:14). Ms. Herrera was asked to return in six weeks, and follow up with pain medicine on June 8, 2020. (JE 2:15). Patrick Hartley, M.B., allowed Ms. Herrera to continue to perform modified duty employment. (JE 2:16).

On April 8, 2020, Dr. Pearson examined Ms. Herrera for her continued complaints of left rib pain. (JE 7:98-104). Ms. Herrera told Dr. Pearson that she had a bad reaction to the previously provided intercostal nerve block injection. (JE 7:98). She had facial flushing and swelling, a feeling of warmth in her face, and irritation around the injection site. (JE 7:98). The claimant found "no discernible benefit" from the injection, as she continued to rate her pain 8 out of 10. (JE 7:98). Dr. Pearson discussed a trial of duloxetine, and recommended that Ms. Herrera continue wearing her brace and using topical Biofreeze. (JE 7:102). She also recommended that the claimant use a TENS unit. (JE 7:102).

In 2020, Ms. Herrera attempted physical therapy again. (Testimony). She reported to Select Physical Therapy on April 14, 2020. (JE 1:5-9). As of this visit, she had 13 visits and had missed four. (JE 1:5). Ms. Herrera reported that she was not working due to her pain. (JE 1:5). She felt constant pain in her left lower thoracic spine. (JE 1:6). She described the pain as a frequent, deep and burning. (JE 1:6). She recently began taking Cymbalta due to symptoms of nerve pain. (JE 1:6). She claimed that she always went to appointments, or told the office that she would be late. (Testimony). She again seemed confused on the issue and testified that a doctor discontinued the physical therapy. (Testimony).

Dr. Hartley visited with Ms. Herrera again via telemedicine on May 7, 2020. (JE 2:17-18). Ms. Herrera continued to have left chest wall pain. (JE 2:17). She recently attempted to lift an eight pound trash bag at home and felt significant pain up to 9 out of 10 while doing so. (JE 2:17). Dr. Hartley declined to alter the claimant's restrictions, which included no lifting, carrying, pushing or pulling greater than 5 pounds to the left arm. (JE 2:17-18).

On June 10, 2020, Dr. Pearson examined Ms. Herrera again for evaluation of her chronic left rib pain. (JE 7:105-111). The claimant's pain worsened since her last visit. (JE 7:105). She also noted difficulty turning or moving while home. (JE 7:105). She rated her pain 8 out of 10. (JE 7:105). Dr. Pearson opined that Ms. Herrera's pain "may be related to more myofascial pain as it is likely her ribs are healing or have healed." (JE 7:109). She then recommended that Ms. Herrera continue physical therapy. (JE 7:111).

The claimant returned to Dr. Hartley's office on June 12, 2020. (JE 2:20-22). Dr. Hartley reviewed Ms. Herrera's visit to the UIHC pain clinic. (JE 2:20). Ms. Herrera still had restrictions of no lifting, carrying, pushing, or pulling more than 5 pounds. (JE 2:20). She continued to complain of chest pain on the left side. (JE 2:20). Dr. Hartley prescribed a Lidocaine patch, physical therapy, and continued work hardening. (JE 2:22).

On June 26, 2020, Ms. Herrera continued her care with Dr. Hartley at UIHC Holiday Road Occupational Health. (JE 2:24-27). She told Dr. Hartley that she had worsening back pain, which led her to report to the emergency room the night before. (JE 2:24). She continued to complain of left anterior chest wall and thoracic paraspinal muscle pain. (JE 2:24). At worst, the pain was 10 out of 10. (JE 2:24). She continued to work, and complained of pain after standing on cement. (JE 2:24). She told Dr. Hartley that she was not going to physical therapy because of "concerns with covid [*sic*]". (JE 2:24). Dr. Hartley maintained the restrictions of no lifting, pushing, pulling or carrying over 5 pounds with her left hand and arm, and no working more than 8 hour shifts including time in physical therapy. (JE 2:26). Dr. Hartley also recommended that the claimant continue physical therapy and work hardening, and emphasized the importance of Ms. Herrera attending physical therapy visits in person. (JE 2:26).

Ms. Herrera testified that on July 14, 2020, she was emptying chemicals in a washroom at UIHC. (Testimony). The chemicals mixed, causing a reaction. (Testimony). She began to feel a burning sensation in her throat. (Testimony). She told her supervisor, who sent her to the emergency room. (Testimony).

The claimant returned to the UIHC emergency room on July 15, 2020, with complaints of shortness of breath after working with "strong chemicals." (JE 4:64-69). Upon physical examination, the provider noted that Ms. Herrera's breathing was not labored. (JE 4:67). The provider diagnosed Ms. Herrera with mild chemical inhalation. (JE 4:67). A chest x-ray performed at the time was normal and showed clear. (JE 4:69).

On July 15, 2020, the claimant reported to her pulmonologist, Sara Kraus, A.R.N.P., on the advice of the emergency room doctor. (Testimony; JE 9:121-128). She treated with Ms. Kraus for three years prior to this visit. (Testimony). Ms. Kraus noted that Ms. Herrera was following-up on "poorly controlled severe persistent asthma. . . ." (JE 9:121). Ms. Kraus also commented that Ms. Herrera has "a history of multiple cancellations and no-shows to clinic visits." (JE 9:121-122). Ms. Kraus further noted that since her last visit in December of 2019, Ms. Herrera did not maintain regular

injections of Fasenra to mitigate her asthma symptoms. (JE 9:121). Some other treatment options were not available to the claimant for her asthma due to her history of non-compliance. (JE 9:122). Ms. Kraus wrote that Ms. Herrera, "did not attend clinic visits a recommended in the past 2 years and was lost to follow-up from 12/17 to 4/19." (JE 9:127). Ms. Kraus further wrote that Ms. Herrera's asthma was "very poorly controlled." (JE 9:127). Ms. Herrera told Ms. Kraus that she recently had increased chest tightness, wheezing, and dyspnea, prior to the exposure to cleaning products. (JE 9:121). She had the same symptoms after the exposure. (JE 9:121-122). Upon examination, Ms. Kraus found the claimant to be stable with no wheezing. (JE 9:127). Ms. Kraus recommended that Ms. Herrera avoid known triggers of her asthma and wear a mask while at work. (Testimony; JE 9:127).

On July 17, 2020, Ms. Herrera returned to Select Physical Therapy for her thirty second physical therapy visit. (JE 1:10). She missed or canceled 10 visits. (JE 1:10). Ms. Herrera was working light duty with a 5 pound lifting restriction. (JE 1:10). She also was to alternate standing for 30 to 40 minutes and sitting for 10 minutes. (JE 1:10).

The claimant also visited Dr. Hartley on July 17, 2020. (JE 2:28-30). Ms. Herrera reported an exposure to bleach earlier that week, which caused "increased breathing symptoms." (JE 2:28). She complained of continued shortness of breath and chest tightness. (JE 2:28). Dr. Hartley did not change Ms. Herrera's work restrictions, and recommended that she continue physical therapy and work hardening. (JE 2:30).

On September 21, 2020, Joseph Chen, M.D., of Rehab Medicine & Pain Coaching, LLC, conducted an IME with Ms. Herrera. (Defendant's Exhibit A:1-9). Dr. Chen is board certified in spinal cord injury medicine, and physical medicine and rehabilitation. (DE A:9; D:23-24). Dr. Chen reviewed Ms. Herrera's medical history and pertinent medical records. (DE A:1-3). Ms. Herrera reported that she continued to have severe pain with twisting, moving, or lifting. (DE A:3). Her pain was over the left side of her ribs with associated tingling. (DE A:3). Like the observations of the FCE, Dr. Chen observed that Ms. Herrera showed poor effort with grip strength. (DE A:4). Physical examination revealed tenderness "diffusely throughout the entire left anterior, lateral, and posterior thorax in a distribution that exceeds the expected boundaries of focal tenderness over her left 7th, 8th and 9th ribs." (DE A:4-5). Ms. Herrera completed several questionnaires which indicated that she had "high self-reports of pain severity and intensity and extremely high fear avoidance beliefs." (DE A:5).

Dr. Chen opined that Ms. Herrera suffered a left rib contusion as a result of lifting a heavy bag of garbage. (DE A:6). He noted that the mechanism of the left rib injury was inconsistent with one that would result in fractured ribs. (DE A:6). Dr. Chen further agreed with Dr. Pearson's diagnosis of chronic myofascial chest wall pain. (DE A:6). Dr. Chen opined that Ms. Herrera's chronic myofascial chest wall pain was "not caused by nor accelerated by her work activities." (DE A:6). Dr. Chen attributed Ms. Herrera's ongoing issues to "misunderstandings about her pain and ongoing fear avoidance behaviors." (DE A:6). Dr. Chen counseled Ms. Herrera on pain management and stated that Ms. Herrera's chronic myofascial chest wall pain was not the result of her September 20, 2019, work incident. (DE A:7). Based upon Dr. Chen's examination, he

felt that Ms. Herrera required no additional supervised medical care. (DE A:7). Dr. Chen allowed Ms. Herrera to return to work full duty with no permanent work restrictions. (DE A:7-8). Dr. Chen placed Ms. Herrera at maximum medical improvement ("MMI") by January 1, 2020. (DE A:8). Finally, Dr. Chen opined that Ms. Herrera had no ratable permanent impairment as a result of her left chest wall injury, rib fractures, or chronic myofascial chest wall pain. (DE A:8).

Ms. Herrera testified that she felt as though Dr. Chen was trying to intimidate her. (Testimony). She recorded the interview surreptitiously. (DE A:8). That recording is not in the record. She noted that Dr. Chen talked to her about losing her job and her health insurance. (Testimony). She estimated that Dr. Chen examined her for 10 minutes and did not look at her ribs during that time. (Testimony). This conflicts with Dr. Chen's report, which indicates that Dr. Chen examined Ms. Herrera for one hour. (DE A:8).

Ms. Herrera returned to Dr. Hartley's office on December 18, 2020, due to continued complaints of chest wall pain. (JE 2:31-33). The claimant reiterated her dissatisfaction with the evaluation performed by Dr. Chen. (JE 2:31). She told Dr. Hartley that she had no change in her chest wall pain. (JE 2:31). Upon physical examination, Ms. Herrera "exhibited pain behavior with facial grimacing, moaning with deep inspiration. . . ." (JE 2:32). She also displayed tenderness to palpation over the thoracic paraspinal muscles. (JE 2:32). Dr. Hartley told the claimant that he had nothing further to offer for treatment options. (JE 2:32). He indicated an agreement with Dr. Chen that Ms. Herrera has achieved MMI. (JE 2:32). He also agreed with Dr. Chen that Ms. Herrera had no ratable impairment. (JE 2:32). Finally, Dr. Hartley released Ms. Herrera to work full duty. (JE 2:32-33).

Ms. Herrera also provided some conflicting testimony with regard to her work around bleach. (Testimony). She first indicated that she had not worked around bleach since July of 2020 due to her restrictions. (Testimony). She then remembered that she was exposed to bleach on one occasion, about two months before the hearing. (Testimony). She was reminded that in March of 2021, during her deposition, she testified that she worked around bleach about six weeks earlier. (Testimony).

Ms. Herrera returned to Select Physical Therapy on August 6, 2020. (JE 1:11-12). This was the claimant's ninth visit with two cancelations. (JE 1:11). She reported pain of 9 out of 10. (JE 1:11). She worked light duty with a five pound lifting restriction. (JE 1:11). She completed three weeks of work conditioning, and continued to report a high level of pain across her ribs that radiated up her spine to her neck. (JE 1:11).

On August 31, 2020, the claimant had a functional capacity evaluation ("FCE") conducted by Matthew Smalling, P.T., at Athletico Physical Therapy. (JE 8:112-120). Ms. Herrera demonstrated capabilities and functional tolerances within the sedentary physical demand level with the heaviest weight to lift being 10 pounds. (JE 8:113). Mr. Smalling determined that the results were invalid due to range of motion being inconsistent during the course of the evaluation, non-reproducible grip testing during repeated tests, a lack of correlation between baseline testing and lever arm testing,

failing validity criteria during XRTS hand strength assessments, and subjective complaints that do not correlate with objective findings. (JE 8:112). Also, Mr. Smalling noted that Ms. Herrera frequently displayed exaggerated pain behaviors during testing. (JE 8:112). Mr. Smalling observed that the claimant feigned paralysis during hand strength testing, and stated, "[s]trength in the hands does not randomly appear or disappear." (JE 8:112).

In a letter dated November 12, 2020, Dr. Chen reviewed Ms. Herrera's medical treatment and discussed her allegations of chemical exposure. (DE B:10-16). Dr. Chen agreed that Ms. Herrera sustained a mild chemical exposure while working on July 14, 2020. (DE B:14). Based upon his review of Ms. Kraus' records, Dr. Chen opined that Ms. Herrera achieved MMI for her chemical exposure on July 15, 2020, and required no additional treatment related to the work-related chemical exposure. (DE B:15). Dr. Chen concluded that Ms. Herrera required no permanent work restrictions related to the chemical exposure. (DE B:16).

On June 8, 2021, Ms. Kraus responded to a "check box" letter drafted by claimant's attorney. (Claimant's Exhibit 2:17-19). Ms. Kraus agreed that on one or more occasions, bleach or other cleaning chemicals exacerbated Ms. Herrera's asthma while at work and that these substances "trigger" her asthma. (CE 2:18). She also agreed that bleach and other cleaning chemicals trigger asthma attacks for the claimant. (CE 2:18). Ms. Kraus further agreed that "[w]ithout medical care, exposure to bleach or other cleaning chemicals is likely to worsen the severity of Maria's asthma attacks." (CE 2:18). Finally, Ms. Kraus agreed that she recommended a permanent restriction of avoiding bleach or other cleaning chemicals. (CE 2:18).

On June 16, 2021, Dr. Chen wrote another letter to counsel for the defendant regarding his opinions on Ms. Herrera's chemical exposure. (DE C:17-21). Dr. Chen continued to opine that Ms. Herrera did not need permanent restrictions that include avoidance of cleaning chemicals at work. (DE C:21). Dr. Chen also opined that Ms. Herrera recovered from her minor chemical exposure and did not require any medical treatment from July 15, 2020, until September 9, 2020, from Ms. Kraus. (DE C:21).

Farid Manshadi, M.D., examined Ms. Herrera on June 17, 2021, for an IME. (CE 1:1-3). Dr. Manshadi is a fellow with the American Academy of Physical Medicine and Rehabilitation, a diplomate with the American Board of Physical Medicine and Rehabilitation, and a diplomate of the American Academy of Pain Management. (CE 1:7). Dr. Manshadi reviewed Ms. Herrera's report of the incident, her work history, her medical history, and several prior injuries. (CE 1:1-2). Ms. Herrera told Dr. Manshadi that she continued to have constant pain in her left rib cage area. (CE 1:2). Dr. Manshadi observed tenderness to palpation over Ms. Herrera's anterior and posterior T6, T7, and T8, regions. (CE 1:2). She also displayed "half a range" of thoracic flexion and minimal rotation to either side due to pain. (CE 1:2). Dr. Manshadi agreed that Ms. Herrera suffered rib fractures from T7 to T9 on the left side as a result of the September 20, 2019, work injury. (CE 1:3). He further opined that the fractures "resulted in sensory changes involving the affected nerve roots." (CE 1:3). Based upon Table 15-4 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr.

Manshadi placed Ms. Herrera in the DRE Thoracic Category 2, and assigned a 6 percent impairment of the whole person. (CE 1:3). Dr. Manshadi recommended that the claimant continue to use a TENS unit, Lidocaine patches, and have repeat nerve blocks. (CE 1:3). Dr. Manshadi provided permanent work restrictions of avoiding activities which require repetitious bending or twisting or reaching, and no lifting more than 20 pounds. (CE 1:3).

Ms. Herrera returned to her primary care physician, Padmalatha Collappakkam, M.D., on June 23, 2021. (JE 10:129-132). She reported to Dr. Collappakkam that she had "a lot of pain" in her left sided ribs. (JE 10:129; Testimony). Ms. Herrera described her pain as "pins and needles." (JE 10:129). Upon physical examination of the left side of her chest, Ms. Herrera displayed point tenderness of the left seventh, eighth, and ninth ribs. (JE 10:131). Dr. Collappakkam diagnosed the claimant with a closed fracture of left ribs 7, 8, and 9, and myofascial pain syndrome. (JE 10:131). The doctor recommended that Ms. Herrera use a daily Lidocaine patch, and take Gabapentin for her pain. (JE 10:131). Ms. Herrera requested that Dr. Collappakkam issue a note with work restrictions, which the doctor provided. (JE 10:129; Testimony). The restrictions are that Ms. Herrera is not to lift more than 5 pounds, nor pull and push more than 5 pounds. (JE 10:133). She also is restricted from working more than 40 hours per week for three months. (JE 10:133).

Ms. Herrera still works at UIHC. On an average, non-work day, Ms. Herrera reported that she has pain, is very uncomfortable, and that her pain affects her activities with her family. (Testimony). She cannot pick up her grandchildren due to her pain. (CE 3:22). When she works, she has constant pain that sometimes worsens. (Testimony). The claimant testified that, when the pain is unbearable, she takes medications and sometimes takes a break in a bathroom to cry. (Testimony).

Ms. Herrera indicated that she cannot move well. (Testimony). She further testified that she has a difficult time lifting and pushing and that her range of motion with her back is worse on the right than the left. (Testimony).

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).

Temporary Disability

The claimant alleges that the July 14, 2020, work injury caused her temporary 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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

Ms. Herrera has a history of asthma. She did not properly control her "severe persistent asthma," according to Ms. Kraus. She also had a history of "multiple cancellations and no-shows to clinic visits" for her asthma treatment. Ms. Herrera emptied chemicals in a washroom at UIHC on July 14, 2020. She felt a burning sensation in her throat and reported to the UIHC emergency room, where she was diagnosed with mild chemical inhalation. The emergency room provider recommended she follow up with Ms. Kraus. Ms. Herrera told Ms. Kraus that she experienced increased chest tightness, wheezing, and dyspnea, even prior to the exposure to the cleaning products. During her July 15, 2020, appointment, Ms. Kraus observed no wheezing and recommended that Ms. Herrera avoid known asthma triggers and wear a mask while at work. Dr. Chen opined that Ms. Herrera achieved MMI for her chemical exposure on July 15, 2020, and required no additional treatment or permanent work restriction. Ms. Kraus replied to a "check box" letter and agreed that cleaning chemicals trigger asthma attacks for the claimant. Further, Ms. Kraus recommended a permanent restriction of avoiding bleach or other cleaning chemicals.

The claimant contends that her chemical inhalation incident was a cause of temporary disability. Based upon the information in the record, Ms. Herrera sustained a temporary disability due to her inhalation of bleach or other cleaning chemicals as it

aggravated her asthma. An exposure to certain chemicals could cause any employee to have a reaction; however, an employee with asthma is even more uniquely prone to issues with chemical exposure. I would note that, based upon her testimony, and the information in the record, the claimant's temporary disability only occurred on July 14, 2020, and July 15, 2020.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefits depends on whether or not the employee has a permanent disability. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury.

Iowa Code 85.33(1) provides:

> [T]he employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the first employment in which the employee was engaged at the time of injury, whichever occurs first.

Temporary total disability benefits cease when the employee returns to work, or is medically capable of returning to substantially similar employment.

Iowa Code 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until: (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or, (3) the worker has achieved maximum medical recovery. The first of the three items to occur ends a healing period. See Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Evenson v. Winnebago Indus., 881 N.W.2d 360 (Iowa 2012); Crabtree v. Tri-City Elec. Co., File No. 5059572 (App., Mar. 20, 2020). The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Compensation for permanent partial disability shall begin at the termination of the healing period. Id.

The claimant is not seeking an adjudication of the length of her temporary disability benefit claim and only asked for a ruling on the causation of the temporary disability. Nevertheless, I found above that the claimant was temporarily disabled on July 14, 2020, and July 15, 2020.

Permanent Disability

There are disputes as to whether or not Ms. Herrera sustained a permanent disability caused by her employment with UIHC. Similar to the causation questions for temporary disability noted above, 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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

The claimant alleges that she suffered three fractured ribs, and myofascial pain in her thoracic spine and chest as the result of a September 20, 2019, work incident. At that time, Ms. Herrera alleges that she lifted a bag of trash out of her cleaning cart, twisted her body, heard something pop and experienced immediate pain. Ms. Herrera immediately reported to UIHC's emergency department where she told the provider that she had pain in the area of her left ribs. X-rays done in the emergency department did not show any fractures, but the interpreting physician noted that osteopenia present in the area could obscure subtle nondisplaced rib fractures.

Ms. Herrera continued to complain of chest wall and left upper quadrant pain. X-rays done on September 25, 2019, did not show visible rib fractures. Dr. Corwin eventually ordered a CT scan which showed "diffuse osteopenia" and healing nondisplaced fractures of left ribs 7 through 9. The results of the CT scan are consistent with Ms. Herrera's pain complaints and the diffuse osteopenia could be a reason that the nondisplaced fractures were not seen on earlier x-rays based upon the comments of an interpreting radiologist. During this time, Ms. Herrera continued physical therapy, and operating on modified duty with restrictions provided by Dr. Corwin.

Eventually, Ms. Herrera had a nerve block in her left 7-9 intercostal area. This injection was not successful, so Ms. Herrera started physical therapy again for pain in her left quadrant and left lower thoracic spine. Ms. Herrera's record of attending physical therapy visits was a bit spotty, as she missed or canceled several visits.

UIHC retained Dr. Chen to examine Ms. Herrera. Dr. Chen examined Ms. Herrera for an IME on September 21, 2020. Ms. Herrera claims that Dr. Chen only examined her for 10 minutes, but the medical record from the visit indicates that Dr. Chen examined her for at least one hour. Ms. Herrera also alleges that Dr. Chen attempted to intimidate her and scare her. Dr. Chen felt that the mechanism of the left rib injury was inconsistent with the injury itself. He concluded that Ms. Herrera suffered chronic myofascial chest wall pain, which was not caused or accelerated by her work activities. Dr. Chen blamed Ms. Herrera's pain on her "misunderstandings about her pain and ongoing fear avoidance behaviors." He placed her at MMI effective January 1, 2020, and opined that Ms. Herrera had no ratable permanent impairment from the September 20, 2019, work incident. There is no indication that Dr. Chen did significant range of motion testing in his examination.

Ms. Herrera returned to Dr. Hartley, who examined her and found tenderness to palpation over the thoracic paraspinal muscles. Dr. Hartley then told the claimant that he had nothing further to offer her, agreed with Dr. Chen's date for MMI and agreed with Dr. Chen that Ms. Herrera suffered no ratable impairment. Dr. Hartley released Ms. Herrera to work full duty.

Ms. Herrera then had an odd FCE wherein the results were invalid due to her range of motion being inconsistent during the course of the evaluation, her showing non-reproducible grip testing during repeated tests, a lack of correlation between baseline testing and lever arm testing, her failing validity criteria during XRTS hand strength assessments, and subjective complaints that do not correlate with objective findings. The FCE examiner also determined that Ms. Herrera feigned paralysis in her hands during testing.

The claimant retained Dr. Manshadi to perform an IME. Dr. Manshadi performed and documented extensive range of motion testing and examination of the claimant. He concluded that the fractures sustained by Ms. Herrera resulted in sensory changes involving the affected nerve roots from 7 to 9 on the left side. Dr. Manshadi based his rating on Table 15-4 in the AMA Guides to the Evaluation of Permanent Impairment,

Fifth Edition. He recommended continued work restrictions and medical care and assigned a 6 percent whole person impairment rating.

Ms. Herrera testified that she continues to be uncomfortable at work. Her shifts are marked by pain and instances where her pain becomes unbearable, causing her to duck into a bathroom to cry. She also cannot lift her grandchildren due to pain. She cannot move well, and has worsening range of motion in her back.

There are several concerning aspects of the evidence in the record. The first concern is the failed FCE, wherein Ms. Herrera feigned paralysis and had subjective complaints that did not align with her objective complaints. Another concern is Dr. Chen's IME examination. It appears that Dr. Chen doubted the veracity of Ms. Herrera's claims as to how her injuries occurred, and thus determined that she could not have fractured her ribs despite the objective evidence. Finally, I am concerned that Dr. Manshadi did not more specifically elucidate how he arrived at his impairment rating pursuant to Table 15-4.

Even with my concerns, I find the opinions of Dr. Manshadi to be the most persuasive. I cannot accept the opinions of Dr. Chen on the issues pertaining to Ms. Herrera's September 20, 2019, date of injury. Even in her initial emergency room visit, it is noted that her pain was in the area where her rib fractures were later found, and that her diffuse osteopenia could obscure visualization of a nondisplaced fracture in the area. Additionally, later imaging shows the healing rib fractures. Dr. Manshadi provides the best explanation for the continued pain experienced by Ms. Herrera. Therefore, I find that Ms. Herrera sustained a permanent impairment based upon her work injury on September 20, 2019.

With regard to her claim of chemical inhalation on July 14, 2020, Dr. Chen opined that Ms. Herrera achieved MMI on July 15, 2020, and required no additional treatment related to the work-related chemical exposure. Dr. Chen also opined that Ms. Herrera required no permanent work restrictions related to the exposure. Ms. Kraus disagreed and opined that cleaning chemicals exacerbated Ms. Herrera's asthma and triggered asthma attacks. She recommended a permanent restriction of avoiding bleach or other cleaning chemicals. Ms. Herrera testified that she had not worked around bleach much since her July of 2020 incident, but later changed her testimony to indicate that she worked around bleach two months before the hearing and about six weeks before her discovery deposition in March of 2021.

The dispute here again involves the opinions of medical providers. While Dr. Chen is not a pulmonologist, he is a licensed physician who is board certified in physical medicine and rehabilitation. Ms. Kraus, on the other hand, is a nurse practitioner. There is no indication that she possesses any board certification. Additionally, there is no indication in the record that Ms. Herrera sustained anything more than a temporary aggravation of her pre-existing asthma.

The parties agree in their posthearing briefs, and the evidence shows, that Ms. Herrera returned to work at the same or greater salary. Pursuant to Iowa Code section 85.34(2)(v), she is limited to compensation only for her functional disability, and not her loss of earning capacity. There is also no indication in the record that Ms. Herrera is working less hours after returning to work.

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. Iowa Code section 85.34(2)(v).

Iowa Code section 85.34(2)(x) provides:

> In all cases of permanent partial disability described in . . . . paragraph "v" when determining functional disability and not loss of earning capacity, the extend of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to . . . . paragraph "v" when determining functional disability and not loss of earning capacity.

In this case, the only impairment rating provided is 6 percent by Dr. Manshadi. I previously found Dr. Manshadi's opinions to be the most convincing based upon the evidence in the record. Therefore, awarding the claimant a 6 percent impairment rating is appropriate. This equates to 30 weeks of benefits at the stipulated weekly rate (.06 x 500 weeks = 30 weeks).

Credit for Overpayment

The defendant claims a credit for overpayment of temporary total disability benefits. The defendant contends that this credit should be applied to their liability for permanent partial disability benefits as awarded above. The defendant claims a credit of forty-one and 78/100 dollars ($41.78). The claimant did not present a counterargument in her posthearing brief or the record regarding this issue.

The burden of proving an entitlement to a credit falls on the employer seeking the credit. Albertsen v. Benco Manufacturing, File No. 5010764 (App. Dec. July 27, 2007)(further citations omitted). Iowa Code section 85.34(4) provides the basis for a credit. It states

> If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due for an injury to that employee, provided that the employer or the employer's

> representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

Iowa Code section 85.34(4). Iowa Code section 85.34(5) continues

> If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for any current or subsequent injury to the same employee.

The defendant alleges that prior to the hearing, they paid the claimant 31 weeks and 6 days of temporary total disability benefits at a weekly rate of four hundred twenty-six and 45/100 dollars ($426.45), totaling thirteen thousand five hundred eighty-five and 84/100 dollars ($13,585.84). In the hearing report, the parties stipulated that the claimant's correct weekly compensation rate is four hundred twenty-five and 15/100 dollars ($425.15). The result is an overpayment of forty-one and 78/100 dollars ($41.78). The defendant indicated in the hearing report that a credit is not an issue; however, under section 10 of the hearing report, the defendant asserted the credit.

Based upon the information in the record, the defendant paid the claimant thirteen thousand five hundred eighty-five and 84/100 dollars ($13,585.84) in benefits. At the stipulated rate, the proper amount would have been thirteen thousand five hundred forty-four and 06/100 dollars ($13,544.06). The difference between the amount paid and the amount owed is forty-one and 78/100 dollars ($41.78). The defendant is entitled to a credit for this amount.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 10. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (nothing additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056587 (App., September 27, 2019).

In her posthearing brief, the claimant noted that she is no longer requesting an assessment of costs for the reports of Ms. Kraus and Dr. Manshadi, nor reimbursement for medical expenses. The remaining costs sought are the filing fee for each date of alleged injury, the costs of serving the petition in each matter on UIHC, the cost of the court reporter for the deposition, and the costs of an interpreter for the IME with Dr. Manshadi.

In my discretion, I award the cost of the filing fee for the September 20, 2019, date of injury, along with the costs of service of the petition for that date of injury. I also award the costs of the court reporter for the claimant's deposition. Based upon the language of the statute, assessing costs for the presence of an interpreter at Dr. Manshadi's IME, and for obtaining medical records, would be inappropriate. In my discretion, I decline to award costs solely related to the July 14, 2020. Therefore, the total amount of costs assessed are two hundred four and 40/100 dollars ($204.40).

ORDER

THEREFORE, IT IS ORDERED:

That the claimant sustained a brief period of temporary disability from July 14, 2020, to July 15, 2020.

That the claimant sustained no permanent disability related to the July 14, 2020, date of injury.

That the defendant is to pay unto the claimant thirty (30) weeks of permanent partial disability benefits at the rate of four hundred twenty-five and 15/100 dollars ($425.15) per week, commencing on December 18, 2020.

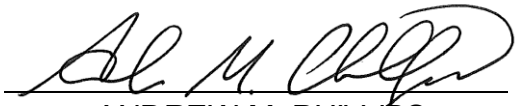
That the defendant shall reimburse the claimant two hundred four and 40/100 dollars ($204.40) in costs.

That the defendant is to be given credit for forty-one and 78/100 dollars ($41.78) in overpayments.

That the 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).

The defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 30th day of December, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nate Willems (via WCES)

Emily Schott (via WCES)

Sarah Timko (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.