

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALICIA FISHER,

Claimant,

vs.

JOHN DEERE WATERLOO WORKS,

Employer,
Self-Insured,
Defendant.

FILED

MAR 05 2018

File No. 5061028

WORKERS COMPENSATION A R B I T R A T I O N

D E C I S I O N

Head Note Nos.: 1802, 1803, 2500

STATEMENT OF THE CASE

Alicia Fisher, claimant, filed a petition in arbitration seeking workers' compensation benefits from John Deere Waterloo Works, self-insured employer, as a result of an injury she allegedly sustained on February 4, 2016 that allegedly arose out of and in the course of her employment. This case was heard in Waterloo, Iowa and fully submitted on August 2, 2017. The evidence in this case consists of the testimony of claimant, Keith Pitzen and Joint Exhibits 1 - 8, Claimant's Exhibits 1 - 6 and Defendant's Exhibits A - H. Both parties submitted briefs.

ISSUES

Whether claimant sustained an injury to her shoulder on February 4, 2016 which arose out of and in the course of employment;

Whether the alleged shoulder injury is a cause of temporary disability and, if so, the extent;

Whether the alleged injury to the shoulder and the left wrist is a cause of permanent disability and, if so;

Whether the alleged disability is a scheduled member disability or an unscheduled disability.

The extent of claimant's disability.

The commencement date for temporary and permanent benefits.

Payment for medical expenses.

Payment for an independent medical examination (IME).

Assessment of 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 agreed that claimant sustained a left carpal tunnel injury to her left wrist. The parties are now bound by their stipulations.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Alicia Fisher (Alicia), claimant, was 46 years old at the time of the arbitration hearing. Alicia graduated from high school. She attended one semester at Iowa State, received CNC training at Hawkeye Community College and an AAS in medical assisting from Kaplan University. (Exhibit 4, page 22; Transcript page 11) Her complete work history is found at Exhibit 4, page 23. Significant work, prior to her work with John Deere, has been in meatpacking and customer service. Alicia also worked assisting mentally challenged adults. (Tr. p. 14) She began her work at John Deere Waterloo Works (Deere) in 2011 and was working at Deere at the time of the hearing.

Alicia worked in both Deere's Waterloo and Dubuque locations. Alicia had a physical before she started working for Deere. Initially she was not cleared to work due to a low back issue. (Joint Ex. 5, p. 50) Alicia testified she received a steroid injection in her back and was cleared for work. (Tr. p. 16)

Alicia is five foot four inches tall and right handed. (Tr. p. 23) Alicia has had a number of jobs with Deere. The jobs have generally involved working on the assembly line and a number of positions involved using a torque gun. Some of her work for Deere required her to work above her head. (Ex. 4, p. 25) From September 2015 through December 2015 claimant was working in the Waterloo Deere location. She was working doing assembly on cabs during this time. Alicia said she had difficulty in timely doing her work and would sometimes take up to 15 minutes to do some of the assembly.

In 2015 Alicia was laid off from the Waterloo plant and worked at the Dubuque plant from July 2015 through September 2015. (Tr. pp. 20, 23)

Alicia was working at the Waterloo Deere plant in September 2015 until the December 2015 shut-down putting on a main wiring harness on the roof of a tractor cab. (Tr. p. 25) Upon the return from the shut-down she worked on the main cab line which included some work above her head. (Tr. pp. 26, 27-31)

On February 4, 2016, Alicia reported to Deere that she was experiencing tingling and numbness. (Tr. pp. 32, 31) She reported shoulder and neck pain. Alicia said that

she was told that after she had carpal tunnel surgery her shoulder pain should subside. (Tr. p. 33) Alicia had carpal tunnel surgery on March 7, 2017. Alicia was released to return to work with no restrictions and was at maximum medical improvement (MMI) as of June 21, 2016 for her carpal tunnel surgery. (Tr. p. 52; JE 5, p. 71) Alicia was paid temporary total disability from March 7, 2016 through June 21, 2016 for her carpal tunnel injury. (Ex. E, p. 9)

After the wrist surgery Alicia had an MRI which showed two tears in her shoulder. (JE 6, p. 90) Deere did not accept this as a work related injury. She went to her family physician, who referred her to Robert Bartelt, M.D. (Tr. p. 35) Claimant was on disability leave for her shoulder, weekly indemnity¹ (WI), after she was released to return to work after her carpal tunnel surgery. (Tr. p. 36; Ex. E, p. 9) Alicia had shoulder surgery on September 6, 2016. The postoperative diagnosis was "[l]eft shoulder partial thickness rotator cuff tear and subacromial bursitis." (JE 6, p. 91)

Alicia returned to work in April 2017. (Tr. p. 38) Alicia was working in the Deere Dubuque plant and had restrictions that the Deere Dubuque plant was unaware of. When Deere learned she still had restrictions it put her back on WI. (Tr. p. 41) Deere paid claimant WI for her left shoulder from June 22, 2016 through March 28, 2017. (Ex. E, p. 9)

Claimant worked part time performing telephone work for a collection agency, when she was receiving WI. (Tr. p. 42) She stopped this work when she returned to work full time to Deere in April 2017. (Tr. p. 43) Alicia did not remember telling the medical providers she was working part time doing telephone debt collection work when she was on WI.

Alicia said that she has some difficulty with her hand grasping if she uses her hand for long periods of time. She also feels aching in her shoulder and her left shoulder feels like it pinches when she lifts. (Tr. pp. 45, 46)

Alicia testified that she received treatment for fibromyalgia and did not know if she told any of the providers who treated or evaluated the carpal tunnel or shoulder injury. (Tr. p. 50)

Alicia testified she did not believe she could continue to stay on WI and asked her physician to take off any restrictions so she could work at Deere. (Tr. pp. 65, 66) Claimant admitted in the hearing and in her deposition that she could not identify a specific job at Deere that caused her shoulder issues. (Tr. p. 69) She did identify a number of positions that she believed could have contributed to her shoulder symptoms. (Ex. 3, pp. 14 – 19; Ex. 4, p. 25)

Keith Pitzen, Safety Analyst at Deere, testified that if Alicia took longer than the allotted time (split time) the line would back up and she would be disqualified from

¹ WI is provided to employees at Deere under the union contract at no cost to employees. (Ex. E, p. 2)

performing that position. He testified that Alicia's statement that she would have to take up to 15 minutes to complete her assembly work was not accurate as the split time was close to 10 minutes and the assembly line could eventually back up. (Tr. pp. 75, 77)

Alicia's past medical history is relevant to her current claim. On July 17, 2002 Alicia was complaining of left wrist pain after she got in the middle of a fight. X-rays were negative. (JE 1, p. 1) On October 19, 2009 Alicia was seen for muscle pain. The assessment was fibromyalgia. (JE 2, p. 3) On November 3, 2009 she also complained of left wrist pain at a follow-up fibromyalgia appointment. A ganglion cyst was suspected on the wrist. (JE 2, p. 6; JE 3, p. 12) The records show her last treatment for her fibromyalgia was in June 2010. (JE 2, p. 11)

Alicia reported to Deere occupational health on February 4, 2016 numbness in the left hand that she had been having for about a month. (JE 5, p. 51) On February 11, 2016, Brian Sires, M.D. wrote, "The electrodiagnostic study did not demonstrate evidence of cervical nerve root injury with association with symptoms at this time. A minor carpal tunnel syndrome was identified. I suspect the carpal tunnel syndrome and either tendonitis or mild rotator cuff problems at the shoulder are likely responsible for symptoms." (JE 7, p. 101)

Alicia was seen by Jonathon Fields, M.D. at Deere Occupational Health on February 23, 2016 for her left carpal tunnel syndrome. Alicia denied dropping items or having problems at her job. Dr. Fields noted Alicia had carpal tunnel and that she was symptomatic at that time. (JE 5, p. 57)

On February 24, 2016, Dr. Bartelt saw claimant for her carpal tunnel syndrome. He noted claimant had a six week history of numbness and tingling of the left upper extremity, with pain radiating from her hand to her shoulder region. Alicia reported, "[s]he feels that she drops things. She has trouble sleeping at night." (JE 4, p. 22) Dr. Bartelt noted claimant had significant carpal tunnel syndrome and recommended surgery. (JE 4, p. 23)

On March 10, 2016, Alicia reported left shoulder pain to Dr. Bartelt with a February 4, 2016 date of injury. (JE 4, pp. 19, 20)

On March 7, 2016, Alicia had left carpal tunnel release surgery. (JE 6, p. 85) On March 22, 2016, Alicia had not seen improvement in her left wrist. (JE 4, p. 24) On May 3, 2016, an electrodiagnostic test of the left wrist was normal. (JE 7, p. 103) On May 10, 2016, Alicia reported some improvement with her left wrist. Dr. Bartelt noted that Alicia requested care for her shoulder, however the shoulder claim had been denied as not being a workers' compensation claim. (JE 4 p. 26; JE 5, p. 60) According to an April 27, 2016 progress note, a job review was completed and Alicia's injury was not considered to be work related. (JE 5, p. 62) On April 29, 2016, Dr. Fields wrote to Deere concerning claimant's carpal tunnel. Dr. Fields reviewed Alicia's job she was performing when she claimed her injury. Dr. Fields concluded that the work performed by Alicia did not and was not a contributing factor to claimant's carpal tunnel syndrome. (JE 5, p. 63) Dr. Fields put an addendum on this report that concluded that

Alicia's work in department 626 was not a contributing factor or a material aggravation to Alicia's partial rotator cuff tears. (JE 5, pp. 63, 64) Deere sent Alicia a notice on April 29, 2016 that it did not consider the left shoulder injury to be work related. (JE 5, p. 65)

On May, 17, 2016, Dr. Bartelt noted an MRI of the left shoulder showed a low grade partial-thickness tearing of the rotator cuff. Dr. Bartelt provided an injection in the shoulder. (JE 4, p. 28) A physical therapy note of May 27, 2016 stated Alicia felt discomfort in her entire arm on February 4, 2016 and that claimant could benefit from physical therapy to the shoulder. (JE 8, p. 10) On June 21, 2016, Dr. Bartelt noted that the most recent EMG was normal. Alicia reported that most of the time her hand felt fine, but she was still having some tingling in her fingers. Dr. Bartelt placed claimant at MMI as of June 21, 2016 and provided no restrictions. (JE 4 p. 29) On July 11, 2016, Dr. Fields provided a zero (0) percent impairment rating for Alicia's left carpal tunnel syndrome. (JE 5, p. 73) Dr. Bartelt provided a 20 pound lifting limitation due to her shoulder. (JE 4, p. 30) On August 2, 2016, Dr. Bartelt and Alicia agreed that she should have shoulder surgery. (JE 4, p. 31) Alicia had left shoulder arthroscopy with debridement of joint, subacromial decompression on September 6, 2016. (JE 4, p. 33)

Alicia had 32 physical therapy visits. The last note of December 28, 2016 indicated that Alicia only had functional difficulty with overhead reaching. (JE 8, p. 143)

On March 27, 2017, an MRI of the shoulder showed,

FINDINGS: Postoperative changes from previous rotator cuff repair.

No recurrent supraspinatus tendon tear.

Partial tear of the infraspinatus muscle, muscle-tendon junction and proximal tendon that was not evident on the prior exam. Tendon distally intact.

Postoperative subchondral cyst or postsurgical change lateral margin of the acromium. Mild osteoarthritis of the acromioclavicular joint producing no bony outlet impingement, Type II acromium.

....

IMPRESSION:

1. No recurrent supraspinatus tendon tear.

2. Partial tear infraspinatus muscle and proximal tendon.

(JE 4, p. 38) Dr. Bartelt reviewed the MRI on March 28, 2017 and did not see any surgical indications. He returned Alicia to work without restrictions. (JE 4, p. 39; Tr. p. 58) On March 29, 2017 claimant called and requested restrictions for her shoulder. Dr. Bartelt re-imposed a ten pound restriction at that time. (JE 4, p 40; Tr. p. 59)

On April 4, 2017, Alicia had an injection in her left shoulder due to persistent shoulder pain. (JE 4, p. 41) On April 25, 2017, Jill Hunt, M.D. medically cleared claimant to work without restrictions. (Tr. p. 63; JE 5, p. 76) I find this is the date that claimant was able to return to work at Deere. On May 25, 2017, Alicia was released to return to work with no restrictions by Dr. Bartelt. (JE 4, p. 43)

On April 10, 2017, Robert Broghammer, M.D. performed an IME of Alicia. (Ex. C, pp. 1 - 39) Dr. Broghammer's assessment was,

1. History of left carpal tunnel syndrome, appropriately decompressed with surgical intervention.
2. Left shoulder arthropathy with appropriate age-related degenerative changes in the rotator cuff.

(Ex. C, p. 35) Dr. Broghammer agreed that claimant had a zero percent impairment rating for her left carpal tunnel syndrome. He also opined that Alicia's job duties at Deere Waterloo did not cause nor were they a substantial contributing factor in her left shoulder condition. He stated that Alicia's shoulder condition was entirely due to personal preexisting conditions of her shoulder. (Ex. C, p. 35) Dr. Broghammer said claimant reached MMI for her shoulder injury as of March 28, 2017 and that her current symptoms were due to a new injury. (Ex. C, p. 36) He provided a five percent whole body impairment for the shoulder injury. (Ex. C, p. 38)

On May 17, 2017, Farid Manshadi, M.D. issued an IME report based upon a March 29, 2017 examination. Dr. Manshadi opined that Alicia's work activities at Deere were a substantial contributing cause for her carpal tunnel and shoulder injuries and that she had reached MMI. He provided an 8 percent rating for the shoulder and 25 percent rating for the carpal tunnel for a combined rating of 31 percent. (Ex. 2, pp. 11, 12) Dr. Manshadi noted the claimant's height as a factor in the amount of overhead work she would be exposed to at Deere. (Ex. 2, p. 12)

On May 18, 2017, Arnold Delbridge, M.D. issued his IME report. Dr. Delbridge noted that the claimant was five feet four inches or five feet four and one-half inches tall and wrote that this height can be a big difference in how she has to perform a job compared to a six foot person. (Ex 1, pp. 3, 5) Dr. Delbridge opined that the work activities around February 4, 2016 were a substantial contributing cause to her left shoulder and left carpal tunnel injuries. He provided a two percent impairment rating. (Ex. 1, p. 5) Dr. Delbridge provided an MMI date of April 24, 2017. (Ex. 1, p. 6)

Dr. Broghammer reviewed additional medical reports including the IMEs of Arnold Delbridge, M.D. and Farid Manshadi, M.D. Dr. Broghammer did not agree with Dr. Manshadi's opinions that claimant spent a substantial time working above her head and did not agree with his causation opinions and his impairment rating. (Ex. C, pp. 43, 44) Dr. Broghammer agreed with Dr. Delbridge's rating of Alicia's shoulder, but disagreed with his causation opinion. (Ex. C, pp. 44, 45)

On June 16, 2017, Dr. Fields commented upon the IMEs performed by Dr. Broghammer and Dr. Manshadi. Dr. Fisher, based upon his observation of the type of work Alicia performed, disagreed with Dr. Manshadi's opinion concerning the amount of overhead work. (Ex. D, p. 1) Dr. Fields wrote that based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, claimant had no ratable impairment for her carpal tunnel syndrome. (Ex. D, p. 2)

Based upon Alicia's demeanor at the hearing, from my observation of her eye contact, body posture and vocal inflections, I find claimant's testimony to be credible.

Considering Alicia's age, educational background, employment history, ability to retrain, motivation to maintain her employment, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that she has sustained a 20 percent loss of future earning capacity as a result of her work injury with Deere.

I find Alicia's gross weekly income to be \$1,377.59. She is single with 3 exemptions. Alicia's weekly workers' compensation rate is \$808.36.

Alicia has requested \$2,256.29 in costs. These costs are the filing fee (\$100.00), deposition transcript of claimant (\$156.20) and the cost of a report from Dr. Delbridge (\$2,000.00). (Attached to hearing report)

RATIONALE AND CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

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).

Deere has admitted claimant sustained an injury to her left wrist and arm – carpal tunnel syndrome. Deere did not agree Alicia had a permanent impairment due to her carpal tunnel syndrome. Deere disputed Alicia had a temporary or permanent injury to her left shoulder that arose out of and in the course of her employment.

There are some medical records that show claimant did not always mention her shoulder pain. Alicia would request that restrictions either be removed or lifted so she could keep working. The record does disclose Alicia would attempt to minimize her complaints concerning her carpal tunnel and left shoulder to Deere so she could keep working. It was physicians who made the ultimate decisions about restrictions however. I do not find defendant's theory that claimant has deceived and lied about her injuries as a means to improperly manipulate the WI or workers' compensation systems to be supported by the evidence and testimony.

I do not find the opinions of Dr. Fields and Dr. Broghammer to be as convincing as those of Dr. Delbridge and Dr. Manshadi. As pointed out by Drs. Delbridge and Manshadi, Alicia's stature is small. She would have more overhead work than an average worker. There are many records that show claimant reported her shoulder pain became significant on or about February 4, 2016. She has had pain and limitations with her shoulder since that time.

In this case Deere chose not to accept the April 26, 2016 opinion of Dr. Fields concerning claimant's left hand numbness and tingling syndrome as not being work related. Deere did decide to accept the left carpal tunnel syndrome claim. I find the opinions of Dr. Delbridge and Dr. Manshadi most convincing on the causation of Alicia's left shoulder injury. The evidence is generally consistent with Alicia developing a cumulative injury in her left shoulder on or about February 4, 2016. Dr. Delbridge and Dr. Manshadi state Alicia's short stature was specifically considered in their causation opinions. I do not find the opinions of Dr. Fields and Dr. Broghammer as convincing. I did not find their evaluation of her stature and the number of positions claimant worked for Deere to be convincing.

I find that Alicia has proven a cumulative injury to her left wrist and left shoulder due to cumulative trauma that arose out of and in the course of her employment with Deere on or around February 4, 2016. I find that claimant has failed to prove a permanent impairment for her carpal tunnel. The post-surgery EMG and opinions of Dr. Fields, Dr. Broghammer and Dr. Delbridge are the most convincing evidence in this case as to the lack of permanent impairment for her carpal tunnel. Dr. Manshadi's rating and conclusions as to permanency are not supported by the testing and convincing evidence.

Alicia has met her burden of proof that she has a permanent impairment to her shoulder that arose out of and in the course of her employment at Deere.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

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

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent

disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009)

At the time of the hearing Alicia's work activity above her head was difficult, although she has no formal restrictions. Alicia has some post-high school education and has experience in fields of work other than manufacturing. She is motivated to work.

Based on the above findings of fact, I conclude that claimant has carried her burden of proof to show by a preponderance of the evidence that she sustained 15 percent industrial disability as a result of the work injury. I do consider the fact that claimant was able to perform her work for Deere at the time of the hearing. Alicia has demonstrated entitlement to 75 weeks of permanent partial disability benefits. These benefits shall commence on the date of April 25, 2017. I find that Alicia has demonstrated that she is entitled to 75 weeks of permanent partial disability benefits.

Healing period benefits are payable to an employee who has sustained a permanent partial disability "beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first." Iowa Code section 85.34(1).

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.

I find that Alicia was entitled to healing period benefits from June 22, 2016 through April 24, 2017, the date Alicia went on WI until Dr. Hunt released her without restrictions.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Alicia has requested Deere pay medical expenses not paid concerning her left shoulder. (Attachments to Hearing Report) I found that the left shoulder is a compensable work related injury and Deere shall pay any medical provider and

reimburse any of the medical costs that Deere has not already paid for the shoulder injury.

Iowa Code section 85.39 provided in part, "If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination."

Alicia has requested costs for Dr. Manshadi's IME of \$1,600.00. I find this cost is allowable under Iowa Code section 85.39 and award it. Deere-retained physician, Dr. Fields, opined that claimant did not have work related ratable impairment. This is a zero percent impairment rating, which entitles Alicia to obtain another rating.

Alicia has requested the reimbursement of a report of Dr. Delbridge. (Ex. 1, pp. 2 – 6) Dr. Delbridge states that his report is an independent medical examination. (Ex. 1, p. 2) Alicia has also requested the payment for the IME of Dr. Manshadi. Alicia is entitled to reimbursement for one IME. Under Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009) the claimant may be reimbursed for the cost of the report but not examinations. Under the law an employee is not entitled to two IMEs. Dr. Delbridge did itemize the time he spent on the IME report. The itemization states the exam was \$200.00, X-rays \$99.00, review of records \$1,200.00 and letter was \$800.00. (Attachment to Hearing Report) I find that claimant is entitled to reimbursement of \$2,000.00 as this represents the cost of the report and not the examination portion of Dr. Delbridge's report.

Using my discretion I award the filing fee and costs of the claimant's deposition for a total of \$256.20 pursuant to 876 IAC 4.33.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant seventy-five (75) weeks of permanent partial disability at the weekly rate of eight hundred eight and 36/100 dollars (\$808.36) commencing April 25, 2017.

Defendant shall pay claimant healing period benefits for her shoulder injury at the weekly rate of eight hundred eight and 36/100 dollars (\$808.36) from June 22, 2016 through April 24, 2017.

Defendant shall pay claimant one thousand six hundred and 00/100 dollars (\$1,600.00) for the IME costs.

Defendant shall pay claimant two thousand two hundred fifty-six and 20/100 dollars (\$2,256.20) for costs.


Defendant shall pay the medical costs as set forth in this decision.

Defendant shall receive a credit for prior workers' compensation benefits paid, including an overpayment of benefits.

Defendant shall receive a credit of benefits paid under Iowa Code section 85.38(2).

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 5th day of March, 2018.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/srs

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.