BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TERESA MARTIN, Claimant, vs. MAIL CONTRACTORS OF AMERICA, Employer, and ACE AMERICAN INS. CO., Insurance Carrier, Defendants.	File No. 1629403.01 ARBITRATION DECISION Headnotes: 1803, 2907, 3001, 3002

Claimant Teresa Martin filed a petition in arbitration on April 9, 2020, alleging she sustained injuries to her back, neck, and both arms, while working for Defendant Mail Contractors of America ("Mail Contractors") on February 14, 2014. Mail Contractors, and its insurer, Defendant Ace American Insurance Company ("Ace American"), filed an answer on April 21, 2020, admitting Martin sustained a work injury.

An arbitration hearing was held *via* CourtCall video conference on May 6, 2021. Attorney Jerry Jackson represented Martin. Martin appeared and testified. Attorney Kathryn Johnson represented Mail Contractors and Ace American. Joint Exhibits ("JE") 1 through 11, and Exhibits 1 through 3 and A through E were admitted into the record. The record was held open through June 24, 2021, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

The parties submitted a Hearing Report, listing stipulations and issues to be decided. The Hearing Report was approved at the conclusion of the hearing. Mail Contractors and Ace American waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Mail Contractors and Martin at the time of the alleged injury.

2. Martin sustained an injury on February 14, 2014, which arose out of and in the course of her employment with Mail Contractors.

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

4. Temporary benefits are no longer in dispute.

5. The alleged injury is a cause of permanent disability.

6. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.

7. The commencement dates for permanent partial disability benefits, if any are awarded is June 16, 2016, for the shoulder and January 24, 2017, for the back.

8. At the time of the alleged injury, Martin was single and entitled to one exemption.

9. Medical benefits are no longer in dispute.

10. Prior to the hearing Martin was paid 45 weeks of compensation at the rate of $439.48 per week.

11. Costs have been paid.

ISSUES

1. At the time of the alleged injury were Martin's gross earnings $670.22 or $659.62 per week, and is her rate $439.48 or $407.42?

2. What is the extent of disability?

3. Should costs be assessed against either party?

FINDINGS OF FACT

Martin lives in Roseville, Minnesota. (Tr., p. 8) Martin grew up in Iowa and graduated from high school. (Tr., pp. 8, 29) Martin received an associate's degree and a bachelor's degree in accounting from American Institute of Business. (Tr., pp. 9, 29) At the time of the hearing Martin was 61. (Tr., pp. 8, 20)

Martin has experience as an administrative assistant, secretary, and bookkeeper. (Tr., pp. 9, 23-28) Her work has primarily been sedentary. (Tr., pp. 24-26)

Mail Contractors delivers mail for the United States Postal Service. (Tr., p. 9) In 2010 Martin commenced full-time employment as an administrative assistant with Mail Contractors where she was responsible for handling the payroll, accounts payable, and receivables. (Tr., p. 30) Martin worked for Mail Contractors for almost ten years. (Tr., p. 10) Martin testified she regularly worked overtime while working for Mail Contractors to catch up on work. (Tr., pp. 30-31)

On February 14, 2014, Martin was walking out of work down the sidewalk into the parking lot when she slipped and fell on her back on the ground by her car. (JE 1, p. 1; Tr., p. 11) Martin testified her back, arms, and legs hurt. (Tr., p. 12) Martin called her supervisor and went home and rested. (JE 1, p. 1; Tr., p. 12) She rested again on Saturday and then went to work the next day, a Sunday, because a storm was coming. (JE 1, p. 1)

Before she worked for Mail Contractors Martin sustained two injuries. Martin sustained a neck injury from a motor vehicle accident and underwent trigger point injections across her shoulders and neck. (Tr., p. 22) When Martin worked for G&L Clothing she tripped over a piece of carpet in the back room and fell onto her knees. (Tr., p. 22) Before the February 2014 incident, Martin had not sustained any other injuries. (Tr., p. 23)

On February 18, 2014, Martin attended an appointment with Daniel Miller, D.O., an occupational medicine physician, complaining of right-side neck tightness, popping in both shoulders while filing that wakes her up at night and midback pain. (JE 1, p. 1) Martin reported she had received trigger point injections across both shoulders and into her neck about 16 years before the work injury. (JE 1, p. 1) Dr. Miller examined Martin, assessed her contusions on multiple sites, including the shoulders, chest wall, and thoracic back, ordered to ice the affected areas as needed, and released her to full duty. (JE 1, pp. 1-2) Martin continued to treat with Dr. Miller through April 2014 and complained of shoulder discomfort, right side neck stiffness, and stiffness in her back. (JE 1, pp. 3, 7) Dr. Miller ordered physical therapy and released Martin to full duty. (JE 1, p. 4)

On May 6, 2014, Martin underwent left shoulder magnetic resonance imaging. (JE 3, p. 1) The reviewing radiologist listed an impression of:

> 1. Findings consistent with a focal full-thickness component tear involving the distal, anterior fibers of the supraspinatus tendon. Diffuse tendinopathy and partial tearing elsewhere in the supraspinatus tendon with partial extension into the anterior fibers of the infraspinatus tendon. Small amount of associated fluid in the subacromial/subdeltoid bursa.
>
> 2. Mild to moderate hypertrophic changes at the AC joint with subchondral cystic change in the distal clavicle, inferior bony spurring and some mild marrow edema which is presumably reactive or degenerative in nature given the lack of recent trauma history.

(JE 3, p. 1)

On May 16, 2014, Martin underwent lumbar spine magnetic resonance imaging. (JE 3, p. 2) The reviewing radiologist listed an impression of:

> 1. Diffuse posterior disc bulge, degenerative facet changes, ligamentum flavum hypertrophy, and mild stenosis of the central spinal canal at L4-L5. There is narrowing of the lateral recesses and some stenosis of the bilateral neural foramina at L4-L5, left greater than right. There may be mild mass effect on the exiting left L4 and traversing left L5 nerve roots. Correlate with left L4 and/or L5 radicular symptoms.
>
> 2. Posterior disc bulge, degenerative facet changes, ligamentum flavum hypertrophy, and mild stenosis of the central spinal canal at L3-L4.
>
> 3. Small posterior disc bulge, mild degenerative facet changes, and mild ligamentum flavum hypertrophy at L2-L3.

4. Mild convex to the left lumbar scoliosis.

(JE 3, pp. 2-3)

On May 28, 2014, Martin returned to Dr. Miller reporting her left shoulder was continuing to catch occasionally and her mid-back was not as sore as it was. (JE 1, p. 9) Dr. Miller assessed Martin with contusions to multiple sites, including the shoulders, chest wall, and thoracic back, degenerative lumbar disc disease with resolved symptoms, and a left rotator cuff tear, and referred her to an orthopedic surgeon. (JE 1, p. 10)

On June 11, 2014, Martin attended a consultation with Mark Kirkland, D.O., an orthopedic surgeon, complaining of catching in her shoulder with pain and popping in her shoulder without pain. (JE 4, p. 1) Dr. Kirkland examined Martin and sent a letter to Defendants' representative, listing an impression of left shoulder possible small complete supraspinatus tendon tear and possible internal derangement of the left acromioclavicular joint caused by the work injury. (JE 4, p. 2) Dr. Kirkland recommended wall walking exercises for abduction and forward flexion with icing, imposed restrictions of 20 pounds with both hands to waist level and 20 pounds for pushing and pulling with no work above shoulder level. (JE 4, p. 3)

Martin continued to treat with Dr. Kirkland and Dr. Miller. (JE 4, pp. 4-6) Dr. Kirkland prescribed wall walking to work on range of motion, especially abduction, and prescribed a Medrol Dosepak. (JE 4, pp. 4-6)

During an appointment with Dr. Miller on July 23, 2014, Martin reported her back was the same and she was still having pain and muscle spasms and both her legs felt like they were "lazy legs." (JE 1, p. 11) Dr. Miller diagnosed Martin with lumbar pain and imposed restrictions of no lifting over 20 pounds, no pushing or pulling over 50 pounds, and to avoid repetitive bending/twisting. (JE 1, p. 12)

Martin attended a follow-up appointment with Dr. Kirkland on July 14, 2014, complaining of pain in her shoulder. (JE 4, p. 7) Dr. Kirkland prescribed another Medrol Dosepak, ordered her to continue the wall walking exercises, and continued her restrictions. (JE 4, p. 7) Martin continued to treat with Dr. Kirkland, reporting improvement in her shoulder. (JE 4, p. 8)

On August 8, 2014, Martin returned to Dr. Miller, complaining of back pain, muscle spasms, and "lazy legs," noting she gets up to walk because her legs "feel like they are going to sleep." (JE 1, p. 13) Dr. Miller imposed restrictions of no lifting over ten pounds and no pushing or pulling over 20 pounds, ordered Martin to ice her back 20 minutes three times per day or to apply heat to her back for 20 minutes three times per day, and he recommended a TENS unit. (JE 1, p. 14)

On September 2, 2014, Martin attended an appointment with Clinton Harris, M.D., a pain specialist. (JE 5, p. 1) Dr. Harris examined Martin, assessed Martin with lumbar spondylosis and left shoulder pain, and prescribed naproxen and a Lidoderm patch. (JE 5, pp. 1-4)

Martin continued to report back pain and a tired and aching feeling in her legs to Dr. Miller. (JE 1, pp. 15-16) Dr. Harris prescribed a Lidoderm patch and Amrix and monitored her pain. (JE 5, p. 5) During an appointment on September 29, 2014 with Dr. Kirkland, Martin reported her motion was better, but noted she still had some pain and catching in her shoulder, and reported she was experiencing night pain that wakes her up two to three times per week. (JE 4, p. 12) Dr. Kirkland ordered her to continue doing her wall walking exercises and continued her restrictions. (JE 4, p. 12)

On October 29, 2014, Martin returned to Dr. Kirkland, complaining of sharp pain in her left shoulder when it locks on her, but reported she was sleeping better and not waking up during the night. (JE 4, p. 14) Dr. Kirkland continued her restrictions. (JE 4, p. 14) During an appointment on November 26, 2014, Dr. Kirkland observed a considerable decline in her motion, specifically with abduction and continued her restrictions. (JE 4, p. 15)

On March 25, 2015, Martin attended an appointment with Kary Schulte, M.D., an orthopedic surgeon, for evaluation of her left shoulder. (JE 6, p. 1) Dr. Schulte examined Martin, reviewed her imaging, assessed her with left shoulder impingement syndrome and possible rotator cuff tear, recommended a left shoulder arthroscopy, subacromial decompression and arthroscopic versus open rotator cuff repair, and released her to her normal work duties until surgery. (JE 6, pp. 1-3)

On June 17, 2015, Martin attended an appointment with Kyle Galles, M.D., an orthopedic surgeon with Iowa Ortho, regarding her left shoulder pain. (JE 7, p. 1) Dr. Galles examined Martin and reviewed her imaging, assessed her with a left shoulder rotator cuff tear and pain in limb, noted Martin was coping with her condition conservatively and that she would be a candidate for a left shoulder acromioplasty and possible rotator cuff repair, imposed a ten to fifteen pound restriction with no work over shoulder height for the left shoulder, and recommended she continue her stretching exercises. (JE 7, pp. 1-2)

Martin returned to Dr. Miller on October 8, 2015, complaining of low back pain with occasional bilateral radicular leg pain with occasional numbness. (JE 1, p. 17) Martin complained her back would lock up when she did not move around a lot and complained of migraines. (JE 1, p. 17) Dr. Miller recommended a referral to a pain specialist for consideration of an epidural steroid injection given she had proven degenerative disc disease encroaching the nerves. (JE 1, p. 18)

On October 19, 2015, Martin attended an appointment with Kurt Smith, D.O., a physiatrist with Iowa Ortho, regarding her low back pain. (JE 8, p. 1) Dr. Smith examined Martin, assessed her with a bulge of lumbar disc without myelopathy, arthropathy of lumbar facet joint, bilateral low back pain without sciatica, and lumbosacral radiculitis. (JE 8, p. 1) Dr. Smith managed Martin's care. (Tr., p. 13) Dr. Smith referred Martin for pain management, prescribed Aleve and Lidoderm, and imposed restrictions of no lifting over 10 pounds overhead or 20 pounds pushing and pulling. (JE 8, pp. 1-2)

On November 16, 2015, Martin attended an appointment with John Rayburn, M.D., a physiatrist at Iowa Ortho specializing in pain management. (JE 9, p. 1) Dr.

Rayburn assessed Martin with spondylosis of the lumbar region without myelopathy or radiculopathy, chronic pain syndrome, bilateral low back pain without sciatica, and bulge of lumbar disc without myelopathy. (JE 9, p. 2) Dr. Rayburn recommended lumbar blocks. (JE 9, p. 2) Dr. Rayburn administered bilateral L2-L5 medial branch block injections on December 1, 2015, and December 7, 2015. (JE 9, pp. 3-4)

On December 23, 2015, Martin returned to Dr. Smith complaining of aching, lower back pain aggravated by bending, lifting, and twisting. (JE 8, p. 3) Dr. Smith noted Martin responded positively to trial blocks and continued her medications and restrictions. (JE 8, p. 3)

On January 5, 2016, Dr. Galles performed a left shoulder arthroscopic cuff repair and acromioplasty on Martin, listing a postoperative diagnosis of left rotator cuff tear with impingement with small tear. (JE 7, p. 3) Following surgery Dr. Galles released Martin to return to work on January 6, 2016, with no use of the left arm. (JE 7, p. 5)

Dr. Rayburn performed left L2-L5 medial branch radiofrequency ablation on Martin for lumbosacral spondylosis on January 15, 2016. (JE 9, p. 5)

On January 20, 2016, Martin returned to Dr. Galles. (JE 7, p. 6) Dr. Galles ordered physical therapy, prescribed Ultram, and continued Martin's restriction of no use of the left upper extremity. (JE 7, p. 6) During an appointment on February 24, 2016, Dr. Galles noted Martin was doing well, continued her physical therapy, and imposed a one to two pound lifting restriction with no work over shoulder height for her left upper extremity, and refilled her tramadol. (JE 7, p. 8)

On January 25, 2016, Martin returned to Dr. Smith, complaining of aching and diffuse low back pain. (JE 8, p. 4) Dr. Smith noted she received significant improvement after undergoing a lumbar ablation. (JE 8, p. 4) Dr. Smith ordered physical therapy, decreased her tramadol, and agreed she should follow Dr. Galles's restrictions. (JE 8, p. 6)

Martin attended a follow-up appointment with Dr. Smith on February 24, 2016, complaining of lower back pain. (JE 8, p. 7) Dr. Smith documented Martin had minimal pain in her lumbar region, with some discomfort with sitting and low back tightness. (JE 8, p. 7) Dr. Smith continued her physical therapy and restrictions. (JE 8, p. 7)

During an appointment on March 24, 2016, Dr. Smith documented Martin reported she was only experiencing intermittent tightness and that she was able to control her pain with a home stretching program. (JE 8, p. 9) Dr. Smith recommended a home exercise program and imposed no restrictions for her lumbar spine. (JE 8, pp. 9-10)

Martin returned to Dr. Galles on May 19, 2016. (JE 7, p. 9) Dr. Galles noted Martin was still struggling with range of motion and she did not request anything for pain. (JE 7, p. 9) Dr. Galles continued Martin's physical therapy and imposed restrictions of no repetitive work or work over shoulder height with the left upper extremity. (JE 7, p. 9)

On June 8, 2016, Martin attended an appointment with Dr. Smith, complaining of worsening lower back pain aggravated by activities and sitting. (JE 8, p. 11) Dr. Smith assessed Martin with bulge of lumbar disc without myelopathy, chronic pain syndrome, and with being overweight, prescribed a Medrol Dosepak, ordered physical therapy and a re-evaluation by Dr. Rayburn. (JE 8, p. 11)

On June 16, 2016, Martin attended a follow-up appointment with Dr. Galles, reporting general residual stiffness in her left shoulder with mild symptoms. (JE 7, p. 10) Dr. Galles found Martin could perform her exercises independently, determined she had reached maximum medical improvement, and imposed a restriction to minimize repetitive work over shoulder height with her left upper extremity. (JE 7, p. 10)

On September 1, 2016, Dr. Galles sent an impairment rating to the representative for Mail Contractors and Ace American. (JE 7, p. 11) Using the Guides to the Evaluation of Permanent Impairment, (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Galles opined:

> . . . . page 476, Table 16-40, she would have a 2% upper extremity impairment for flexion to 150 degrees. Page 477, Figure 16-43, a 2% upper extremity impairment for abduction to 130 degrees. Page 479, Figure 16-46 a 0% upper extremity impairment for external rotation of 70 degrees and 2% upper extremity impairment for internal rotation of 60 degrees. Total upper extremity impairment, therefore, would equate to 6%.

(JE 7, p. 11) Dr. Galles again recommended Martin minimize repetitive work over shoulder height with her left upper extremity. (JE 7, p. 11) Dr. Galles sent a letter on September 13, 2016, noting a six percent upper extremity impairment is a four percent whole person impairment under page 439, Table 16-3 of the AMA Guides. (JE 7, p. 12)

Martin returned to Dr. Smith on September 15, 2016, for a bilateral sacroiliac injection. (JE 9, p. 6).

On October 5, 2016, Martin returned to Dr. Smith, reporting her low back was improving, but occurring persistently. (JE 8, p. 12) Dr. Smith assessed Martin with bulge of lumbar disc without myelopathy, lumbosacral spondylosis without myelopathy, and with being overweight, noted her symptoms had improved with her most recent injection, and prescribed Robaxin. (JE 8, p. 12)

Martin returned to Dr. Galles on November 9, 2016, reporting she was experiencing moderate to severe, intermittent and fluctuating aching pain aggravated by movement and relieved by rest in her left shoulder. (JE 7, p. 13) Dr. Galles examined Martin, noted she still had limited range of motion, but excellent strength, assessed Martin with secondary adhesive capsulitis of her left shoulder and pain in limb, encouraged her to continue her daily stretching exercises, continued her restriction to minimize repetitive work over shoulder height with her left upper extremity, and prescribed tizanidine. (JE 7, pp. 14-15)

On December 7, 2016, Martin attended a follow-up appointment with Dr. Smith, complaining of low back pain with variable intensity and complaining of side effects from

tizanidine. (JE 8, pp. 13-15) Dr. Smith decreased her tizanidine, noted she would require long-term medical management of her symptoms with medication and intermittent injections to the lumbar region, and stated she would likely reach maximum medical improvement in four to five weeks. (JE 8, p. 15)

Dr. Rayburn performed bilateral sacroiliac injections on Martin on February 7, 2017. (JE 9, p. 7) During an appointment on February 22, 2017, Dr. Rayburn noted Martin received good relief from the injections, which could be repeated every three months, as needed. (JE 9, pp. 8-9)

On March 28, 2017, Martin returned to Dr. Smith complaining of low back pain that is persistent and fluctuates, noting her symptoms were relieved by a sacroiliac joint block and tizanidine. (JE 8, p. 16) Dr. Smith diagnosed Martin with lumbosacral spondylosis without myelopathy, sacroiliitis, determined Martin had reached maximum medical improvement, noted she would need intermittent injections for symptom management approximately every three months, continued her tizanidine, and imposed permanent restrictions to avoid repetitive bending and lifting. (JE 8, pp. 17-18)

On March 31, 2017, Dr. Smith responded to a check-the-box letter, agreeing Martin had reached maximum medical improvement for her low back injury on January 24, 2017. (JE 8, p. 19) Dr. Smith wrote under the AMA Guides Martin had sustained a five percent whole body impairment to her lumbar spine, noting she had continued muscle spasm and limited range of motion. (JE 8, p. 19)

On May 1, 2017, and August 3, 2017, Martin returned to Dr. Rayburn for bilateral sacroiliac joint injections. (JE 9, pp. 10-11)

On May 22, 2017, Jacqueline Stoken, D.O., a physiatrist, conducted an independent medical examination for Martin, and issued her report on June 29, 2017. (Ex. 1) Dr. Stoken reviewed Martin's medical records and examined her. (Ex. 1) Dr. Stoken listed an impression of left shoulder rotator cuff tear and acute back strain, status post left shoulder arthroscopic cuff repair and acromioplasty, chronic low back pain, and left shoulder adhesive capsulitis with chronic pain. (Ex. 1, p. 12) Dr. Stoken observed on physical exam:

> Left shoulder flexion is 100º, extension is 50º, adduction is 0º, abduction is 100º, internal rotation is 30º, and external rotation is 50º. She has a positive Hawkins, Neer, and supraspinatus tests of the left shoulder. There are well-healed scars on the left shoulder from surgery.
>
> Lumbar flexion is 60º, extension is 5º with pain, and sidebending to the right is 10º and to the left is 20º. She has muscle spasms in the lumbar paraspinals. She has a negative straight leg raise bilaterally. She is able to heel and toe walk and ambulates with a normal gait.

(Ex. 1, p. 11)

Using the AMA Guides, Dr. Stoken assigned Martin a 16 percent permanent impairment to the left upper extremity for deficits in range of motion, which she converted to a 10 percent whole person impairment. (Ex. 1, p. 12) For her lumbar

spine, Dr. Stoken found Martin fit in DRE Lumbar Category II and assigned her an 8 percent whole person impairment for her lumbar injury with chronic low back pain. (Ex. 1, p. 12) Using the Combined Values Chart, Dr. Stoken assigned Martin a 17 percent whole person impairment. (Ex. 1, p. 13) Dr. Stoken recommended permanent work restrictions for Martin's back of avoiding repetitive bending, lifting, twisting, and lifting more than 10 pounds on a frequent basis, and for the left shoulder to avoid work at or above shoulder level and to avoid lifting more than 10 pounds on an occasional basis with the left arm. (Ex. 1, p. 13)

On October 30, 2017, Martin returned to Dr. Smith complaining of fluctuating and persistent low back pain. (JE 8, p. 20) Dr. Smith assessed Martin with arthropathy of lumbar facet joint, chronic pain syndrome, low back pain at multiple sites, and lumbosacral spondylosis without myelopathy. (JE 8, p. 20) Dr. Smith noted her last ablation was in 2015 and he recommended a repeat ablation with no changes to her medication. (JE 8, p. 20)

During an appointment with Dr. Rayburn on November 1, 2017, Martin reported her back pain was moderate and occurring persistently, she received about three months of relief from the injections, and she was experiencing more low back pain like before the ablation procedure. (JE 9, p. 12) Dr. Rayburn recommended repeated L2-L5 radiofrequency ablation. (JE 9, pp. 12-13) Dr. Rayburn performed a bilateral L2-L5 medial branch radiofrequency ablation on Martin on November 14, 2017, for lumbosacral spondylosis. (JE 9, p. 15)

On November 28, 2017, Martin returned to Dr. Rayburn for bilateral sacroiliac joint injections. (JE 9, p. 16) During the appointment Martin noted she still had some back pain after the recent ablation. (JE 9, p. 16)

Martin returned to Dr. Rayburn on December 13, 2017, to follow-up from her injections and ablation. (JE 9, p. 17) Martin reported she had received some relief from her prior injections, but she was experiencing more muscle spasms. (JE 9, p. 17)

Martin attended an appointment with Dr. Smith on November 29, 2017, complaining of fluctuating, persistent, and throbbing low back pain, noting her symptoms were relieved by injections and ablation. (JE 8, p. 21)

On January 10, 2018, Martin attended an appointment with Dr. Rayburn regarding her low back pain. (JE 9, p. 18) Dr. Rayburn documented Martin was doing very well, noting she had reached maximum medical improvement with pain management, but she should continue physical therapy. (JE 9, p. 19)

On February 27, 2018, Martin attended an appointment with Dr. Smith for her low back pain. (JE 8, p. 22) Dr. Smith opined Martin continued to be at maximum medical improvement, noted she requires ongoing management of her chronic pain symptoms, and ordered physical therapy. (JE 8, pp. 22-23)

Martin returned to Dr. Rayburn on April 30, 2018, complaining of daily back pain, noting her symptoms were mild, aggravated by activity and relieved by physical therapy. (JE 9, p. 20) Martin requested additional injections and Dr. Rayburn noted she may

need repeat injections every three to four months for the foreseeable future. (JE 9, p. 21)

Martin underwent bilateral sacroiliac injections on May 3, 2018. (JE 9, p. 22) During an appointment on May 9, 2018, Martin reported the injections had relieved her symptoms, she had no pain on her left side and felt an occasional catching feeling along her right low back and a pulling sensation at her groin. (JE 9, p. 23) Dr. Rayburn found Martin had reached maximum medical improvement and that she may need repeat injections every three to four months. (JE 9, p. 24) On May 29, 2018, Martin returned to Dr. Smith reporting she received good relief from the last sacroiliac injections and that she was not taking any medication. (JE 8, p. 24)

Martin attended an appointment with Dr. Smith on August 29, 2018, regarding her low back pain, reporting her symptoms were variable, but increasing again. (JE 9, pp. 25, 27) Dr. Smith referred Martin for interventional pain management. (JE 9, p. 27) On September 12, 2018, Martin returned to Dr. Rayburn reporting she had received good relief from her previous injections, but her pain had returned and she requested repeat injections. (JE 9, p. 28) Dr. Rayburn performed the repeat injections on September 17, 2018. (JE 9, p. 30)

Martin returned to Dr. Smith on September 18, 2019, regarding her low back pain after undergoing lumbar spine magnetic resonance imaging. (JE 8, p. 25) Dr. Smith noted the imaging showed some progression of the L4-L5 degenerative changes and he recommended interventional pain management with injections as needed. (JE 8, p. 26)

On October 3, 2018, Martin attended an appointment with Dr. Rayburn reporting she received good relief from her prior bilateral sacroiliac injections, but she was having pain in one spot a little higher in her low back. (JE 9, p. 31) Dr. Rayburn noted Martin may need additional injections and recommended she continue with a home exercise program. (JE 9, p. 32)

On May 20, 2019, Martin returned to Dr. Rayburn complaining of persistent low back pain radiating into her feet, noting sitting aggravated her symptoms. (JE 9, p. 33) Dr. Rayburn recommended a wedge for long car rides and additional injections. (JE 9, p. 34)

In September 2019, Martin resigned from Mail Contractors and she moved to Minnesota to be closer to her daughter and granddaughter. (Tr., p. 21) Martin's resignation had nothing to do with her work injuries. (Tr., p. 21) Martin resigned for a better opportunity in Minnesota. (Tr., p. 21)

On December 5, 2019, and April 16, 2020, Martin underwent bilateral sacroiliac injections with Dr. Rayburn. (JE 9, pp. 35-37)

On December 9, 2020, Martin attended an appointment with Dr. Rayburn complaining of persistent low back pain she described as burning and shooting. (JE 9, p. 38) Dr. Rayburn noted Martin reported her symptoms were worse in the areas of previous ablation and he recommended additional injections. (JE 9, p. 39)

At the time of the hearing Martin was working for Fairview M Health Hospital in St. Paul, Minnesota as a staffer where she performs telephone and computer work. (Tr., pp. 17-18) Martin works full-time and she earns $22.50 per hour, which is more than she earned when she worked for Mail Contractors. (Tr., pp. 18, 32, 43) Martin reported the cost of living in Roseville is about double what the cost of living is in Des Moines. (Tr., p. 19) Martin informed her employer of her restrictions, but her position does not require much bending, lifting, or stooping. (Tr., p. 18) Martin works using raised tables and she also has headphones so she does not have to move the telephone by her neck. (Tr., p. 18) Martin has been continuously employed since her work injury. (Tr., p. 44)

Martin testified when she returned to Mail Contractors after her work injuries, Mail Contractors gave her a table that could be raised, and she used a speakerphone. (Tr., p. 38) Martin reported she told her employer she could not do all the filing at once because she could not sit for long durations, which Mail Contractors accommodated. (Tr., p. 38) Martin testified before her work injury she could sit down and file quickly for long periods of time. (Tr., p. 38)

Martin testified since her work injury she has to perform everything at a slower pace. (Tr., p. 17) When her mother developed dementia, Martin could not help her because she could not lift her. (Tr., p. 17) Martin reported after the work injury she could not mow anymore because the uneven ground irritated her, so she hired someone to mow and shovel her snow. (Tr., pp. 16-17, 45)

Martin testified she regularly receives injections in her back, approximately every three to four months when her most recent injection wears off. (Tr., pp. 40-41) Three to four months after an injection Martin's symptoms increase and at times she cannot lift up her legs. (Tr., pp. 40-41) Martin testified she is never pain free. (Tr., p. 41) At the time of the hearing Martin was not treating for her shoulder condition. (Tr., p. 41)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves the issues of extent of disability, rate, and entitlement to costs under Iowa Code sections 85.34, 85.36 and 86.40. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. This case involves an injury occurring before July 1, 2017, therefore, the provisions of the new statute involving extent of disability under Iowa Code section 85.34 do not apply to this case.

The calculation of interest is governed by Deciga-Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July

1, 2017, is 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.

II. Rate

The parties stipulated at the time of the alleged injury Martin was single and entitled to one exemption, but disagree upon the rate. Martin avers her gross earnings were $670.22 per week and that her rate is $439.48 per week. Mail Contractors and Ace American aver Martin's gross earnings were $659.62 per week and that her rate is $407.42.

Martin avers the week ending January 17, 2014, where she worked 39.11 hours is not representative. Mail Contractors and Ace American aver this week is representative and should be included. The parties dispute Martin's hours worked for the week ending December 6, 2013. Both parties produced a statement from the employer regarding the hours worked. (Exs. 2; B; C) Martin's copy is more legible. I find she worked 48.06 hours that week.

Iowa Code section 85.36 sets forth the basis for determining an injured employee's compensation rate. Mercy Med. Ctr. v. Healy, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011). The basis of compensation shall be the "weekly earnings of the injured employee at the time of the injury." Iowa Code § 85.36. The statute defines "weekly earnings" as

> gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed . . . rounded to the nearest dollar.

Id. The term "gross earnings" is defined as "recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits." Id. § 85.61. Weekly earnings for employees paid on an hourly basis

> shall be computed by dividing by thirteen the earnings, including shift differential pay but not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

Id. § 85.36(6). Thus under the statute, overtime is counted hour for hour, and shift differential, vacation, and holiday pay are also included. Irregular pay is not included.

The parties did not produce Martin's actual paystubs. A review of Martin's earnings produced by the parties reveals she regularly worked overtime. (Exs. 2; B; C) Martin worked for Mail Contractors for almost ten years. (Tr., p. 10) Martin testified the week she worked 39.11 hours was unusual. (Tr., p. 11) I do not find the week ending January 17, 2014, to be representative, and adopt Martin's rate calculation, as follows:

No.	Week Ending	Hours	Rate	Total
1	2/7/14	49.34	$14.00	$690.76
2	1/31/14	52.05	$14.00	$728.70
3	1/24/14	50.45	$14.00	$706.30
	1/17/14	39.11	$14.00	
4	1/10/14	51.54	$14.00	$721.56
5	1/3/14	45.80	$14.00	$641.20
6	12/27/13	53.99	$14.00	$755.86
7	12/20/13	47.04	$14.00	$658.56
8	12/13/13	53.05	$14.00	$742.70
9	12/6/13	48.06	$12.08	$580.56
10	11/29/13	47.79	$12.08	$577.30
11	11/22/13	47.10	$12.08	$568.96
Total				$7,372.46

(Ex. 2) Adding the eleven weeks and dividing by eleven results in an average weekly wage of $670.22, or rate of $413.14 based on a single and one exemption status.

III. Extent of Disability

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). 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, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

> it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be

> required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (quoting Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 1018, 226 N.W. 719, 723 (1929)).

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, "[i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

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 deputy 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).

It is well-established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Three physicians have provided impairment ratings in this case, Dr. Galles, a treating orthopedic surgeon who performed surgery on Martin's left shoulder, Dr. Smith, a treating physiatrist who managed Martin's care and provided a rating for her lumbar spine, and Dr. Stoken, a physiatrist who performed an independent medical examination for Martin and provided ratings for her shoulder and lumbar spine.

With respect to her left shoulder, on September 1, 2016, Dr. Galles assigned Martin a six percent upper extremity or four percent whole person impairment under the AMA Guides, assigning a two percent upper extremity impairment for flexion to 150 degrees, two percent upper extremity impairment for abduction to 130 degrees, zero percent upper extremity impairment for external rotation of 70 degrees, and a two percent upper extremity impairment for internal rotation of 60 degrees. (JE 7, pp. 11-12) Dr. Galles recommended Martin minimize repetitive work over shoulder height with her left upper extremity. (JE 7, p. 11)

On May 22, 2017, Dr. Stoken assigned Martin a 16 percent permanent impairment to the left upper extremity for deficits in range of motion, which she converted to a 10 percent whole person impairment, noting she had left shoulder flexion to 100 degrees, extension to 50 degrees, adduction to zero degrees, abduction to 100 degrees, external rotation of 50 degrees, and internal rotation of 60 degrees.

While Dr. Galles performed surgery on Martin and he has superior training to Dr. Stoken, Dr. Stoken most recently examined Martin. Her rating is based on objective findings on examination. Dr. Galles has not reexamined Martin's motion or commented on Dr. Stoken's more recent findings. I find Dr. Stoken's opinion regarding Martin's shoulder to be the most persuasive. I also adopt her restrictions for the left shoulder as Martin's permanent restrictions.

On March 31, 2017, Dr. Smith assigned Martin had sustained a five percent whole body impairment to her lumbar spine, noting she had continued muscle spasm and limited range of motion. (JE 8, p. 19) Dr. Smith imposed permanent restrictions to avoid bending and lifting. (JE 8, pp. 17-18) A few months later, Dr. Stoken examined Martin and later assigned her an eight percent whole person impairment. (Ex. 1, p. 12) Dr. Stoken's opinion is conclusory; she did not explain why she assigned an eight percent, as opposed to a five percent impairment. Dr. Smith also treated Martin over time. I find his opinion to be the most persuasive. I adopt his restrictions as Martin's permanent restrictions for her lumbar spine. I also find Martin will likely need continued injections and ablations in the future caused by the work injury.

At the time of the hearing Martin was 61. Martin has graduated from high school and college. She earned a bachelor's degree in accounting and has worked in her field. I found Martin to be extremely articulate at hearing and I believe she is capable of retraining. Martin is a motivated worker and she has continued to work full-time since her work injury. Martin has a history of working in primarily sedentary positions. Her work injury has interfered with her ability to perform filing tasks, to mow, and to shovel snow. Martin has chronic pain and requires continued injections and ablations to cope with her pain caused by the work injury. Based on all of the factors of industrial disability, I find Martin has sustained a 40 percent industrial disability. Martin is

awarded 200 weeks of permanent partial disability benefits, commencing on the stipulated commencement date of June 16, 2016.

IV. Costs

Martin seeks to recover the $103.00 filing fee. (Ex. 3) Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 Iowa Administrative Code 4.33, provides costs may be taxed by the deputy workers' compensation commissioner for: (1) the attendance of a certificated shorthand reporter for hearings and depositions; (2) transcription costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses; (5) the cost of doctors' and practitioners' deposition testimony; (6) the reasonable cost of obtaining no more than two doctors' or practitioners' reports; (7) filing fees; and (8) the cost of persons reviewing health service disputes. The administrative rule expressly allows for the recovery of the filing fee. Mail Contractors and Ace American are assessed $103.00 cost of filing.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay Claimant two hundred (200) weeks of permanent partial disability benefits, at the stipulated rate of four hundred thirteen and 14/100 dollars ($413.14), commencing on the stipulated commencement date of June 16, 2016.

Defendants are entitled to a credit for the permanent partial disability benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants shall reimburse the claimant one hundred three and 00/100 dollars ($103.00) for the cost of filing.

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

Signed and filed this 2nd day of September, 2021.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Jerry Jackson (via WCES)

Kathryn Johnson (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.