BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JAN 24 2018
WORKERS' COMPENSATION

EMI L. O'NEALL, Claimant, vs. GREATER REGIONAL MEDICAL CENTER, Employer, and WEST BEND MUTUAL INSURANCE CO., Insurance Carrier, Defendants.	File No. 5057463 ARBITRATION DECISION Head Note Nos.: 1402.40, 1803

Claimant Emi O'Neall filed a petition in arbitration on October 12, 2016, alleging she sustained injuries to her left shoulder and body as a whole while working for the defendant, Greater Regional Medical Center ("GRMC"), on October 18, 2014. GRMC, and its insurer, the defendant, West Bend Mutual Insurance Company ("West Bend"), filed an answer on November 16, 2016, admitting O'Neall sustained a work injury.

An arbitration hearing was held on November 8, 2017, at the Division of Workers' Compensation, in Des Moines, Iowa. Attorney Richard Schmidt represented O'Neall. O'Neall appeared and testified. Attorney Mark Woollums represented GRMC and West Bend. Amy Reick appeared on behalf of GRMC and West Bend, but she did not testify. Joint Exhibits ("JE") 1 and 2, Exhibits A through F, and Exhibit 1 were admitted into the record. The record was held open through November 27, 2017, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided. GRMC and West Bend waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between GRMC and O'Neall at the time of the alleged injury.

2. O'Neall sustained an injury on October 18, 2014, which arose out of and in the course of her employment with GRMC.

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

4. Temporary benefits are no longer in dispute.

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

6. If the injury is found to be a cause of permanent disability, the commencement date for permanent partial disability benefits, if any are awarded, is July 8, 2015.

7. At the time of the alleged injury, O'Neall's gross earnings were $516.31 per week, she was single and entitled to three exemptions, and the parties believe the weekly rate is $345.83.

8. Medical benefits are no longer in dispute.

9. Prior to the hearing O'Neall was paid fifteen weeks of compensation at the rate of $294.54 per week.

10. GRMC and West Bend are entitled to no credits under Iowa Code section 85.38 for payment of sick pay or disability income.

11. Costs have been paid.[1]

ISSUES

1. Is the alleged injury a cause of permanent disability?

2. If the alleged injury is a cause of permanent disability, what is the extent of disability?

FINDINGS OF FACT

O'Neall is single and lives with her two children in Creston, Iowa. (Transcript, pages 6-7) O'Neall graduated from high school in 2009. (Tr. p. 7) After high school O'Neall attended community college where she studied nursing and liberal arts. (Tr., pp. 7-8; Exhibit B, p. 1) O'Neall did not obtain a degree. (Tr., pp. 7-8; Ex. B, p. 1) O'Neall reported she was a good student. (Tr., p. 68) O'Neall is right-hand dominant. (Tr., p. 41) At the time of the hearing she was twenty-eight. (Tr., p. 6)

---

[1] O'Neall did not submit any exhibits or other documents requesting costs at hearing.

After leaving school, O'Neall accepted a position with Southern Iowa Resources for Families ("SIRF"), where she assisted persons with disabilities with completing activities of daily living in their homes. (Tr., p. 9) O'Neall assisted clients with cooking, laundry, vacuuming, and other tasks. (Tr., p. 9) O'Neall worked full time, and earned $8.50 per hour. (Tr., p. 10) O'Neall worked for SIRF from 2009 until 2011. (Tr., p. 10)

While working for SIRF, O'Neall accepted a position with Hardee's. (Tr., p. 10) O'Neall became pregnant and left SIRF because her hours were less with Hardee's. (Tr., p. 10) While working for Hardee's O'Neall took orders, and handed out food and drinks to consumers in the drive-through. (Tr., pp. 10-11)

O'Neall worked for Hardee's until November, 30, 2011, when she accepted a position with GRMC, as a certified nursing assistant ("CNA"), on the medical/surgical floor, earning $9.58 per hour. (Tr., pp. 11, 13; Ex. A, p. 1) O'Neall assisted patients with bathing, feeding, and transfers. (Tr., pp. 11-12) After a period of time O'Neall applied for and accepted a position as a ward clerk on the medical/surgical floor. (Tr., p. 13) O'Neall was responsible for keeping track of the medical records for the staff. (Tr., p. 13) When she accepted the ward clerk position O'Neall received a pay increase. (Tr., p. 13)

O'Neall had a back condition involving her thoracic spine and T6 through T-7 before her employment with GRMC. (Tr., p. 8) O'Neall testified, "I was working at SIRF, and it had snowed, and there was a corner piece of the gutter. So it would drip down on the steps, and I was going into my client's apartment downstairs and slipped on the steps". (Tr., p. 14) O'Neall filed a workers' compensation claim, but reported she did not receive any permanent restrictions or limitations as a result of her work injury. (Tr., pp. 14-15) O'Neall entered into a settlement agreement in January 2009, releasing SIRF for back and possible left and right shoulder injuries. (Tr., p. 59)

When GRMC hired O'Neall, she was able to perform her duties as a CNA, and later as a ward clerk. (Tr., p. 15) O'Neall testified the ward clerk position was less physical, but occasionally when the nurses were busy and the call lights would go off, she would answer the calls. (Tr., p. 15)

O'Neall applied for and accepted a position in clinical registration for GRMC. (Tr., pp. 15-16) As a ward clerk she worked twelve hour shifts overnight, which was difficult with her young children. (Tr., p. 16) O'Neall applied for the clinical registration position because she could work day shift. (Tr., pp. 16, 25) O'Neall checked in patients in clinical registration. (Tr. pp. 16, 25)

October 18, 2014, was O'Neall's last day as a ward clerk. (Tr., p. 15) An employee from obstetrics called and asked O'Neall if she would assist by holding a baby's feet for an IV placement. (Tr., p. 16) O'Neall reported it was warm in the room and as she was holding the baby's feet, "I just hear my heart beating in my ears, and that was all I remember." (Tr., pp. 16-17) O'Neall woke up in a "pile of sweat" and she was transferred to the emergency room at GRMC. (Tr., p. 17) O'Neall testified when

she woke up she saw a bilirubin light next to her and her head was "cocked against the wall because [she] had hit the wall, and then the patient's table and couch were right next to [her] as well." (Tr., p. 17) O'Neall believes she struck the left side of her body. (Tr., pp. 17-18) GRMC transported O'Neall to the GRMC emergency room, where she was examined and discharged. (JE 1, pp. 1-11; Tr., pp. 17-18)

O'Neall was referred to Steven Reeves, M.D., an internal medicine physician in Creston. (JE 2, p. 1) Dr. Reeves assessed O'Neal with a syncopal episode, neck, and upper back pain with point tenderness over the upper thoracic spine. (JE 2, pp. 1-2) O'Neall continued to complain of pain, and underwent a cervical computerized tomography scan on November 4, 2014. (JE 1, p. 13; JE 2, p. 3) The reviewing radiologist listed an impression of "mild uniform bulging of the disc at the C5-6 and C6-7 levels with no significant appearing narrowing of either lateral recess or the neural foramen and no cord compromise." (JE 1, p. 13) Dr. Reeves diagnosed O'Neall with neck pain with radicular symptoms, ordered physical therapy, and released her without restrictions. (JE 2, pp. 3-7) O'Neall received physical therapy through January 14, 2015, for left-sided cervical neck pain with an associated left scapular contusion. (JE 1, pp. 16-23)

O'Neall was referred to William Ralston, D.O., an orthopedic surgeon, on January 8, 2015. (JE 1, p. 26) Dr. Ralston assessed O'Neall with left shoulder scapular thoracic dysfunction with pain along the medial border of the scapula. (JE 1, p. 26) Dr. Ralston ordered magnetic resonance imaging of the left upper extremity and shoulder, physical therapy, and cortisone injections. (JE 1, p. 26) The reviewing radiologist listed an impression of "[v]ery mild supraspinatus tendinopathy." (JE 1, p. 28) During a follow-up visit on February 5, 2015, Dr. Ralston noted O'Neall's imaging was essentially normal, and he ordered additional physical therapy and a postural shirt. (JE 1, p. 29)

O'Neall continued to report she was experiencing left shoulder pain, and relayed the pain was "worsening somewhat with certain activities such as lifting and carrying activities." (JE 1, p. 34) O'Neall testified she initially complained of sharp pain and numbness in her shoulder, and experienced difficulties in "a triangle from [her] neck down to [her] scapula to [her] rotator cuff", she described as "tingling, numbing, burning." (Tr., p. 19) O'Neall testified her position in clinical registration required repetitive typing, which caused shooting pain down her arms. (Tr., pp. 25-26)

During a visit on March 26, 2015, Dr. Ralston ordered O'Neall to continue with physical therapy and wear a postural shirt, and he administered a cortisone injection. (JE 1, p. 34) O'Neall had continued to take Percocet and Soma related to her preexisting thoracic spine injury that had been prescribed by her primary care physician and she did not receive any additional medication from Dr. Ralston. (Tr., p. 20)

During an appointment on July 8, 2015, Dr. Ralston assessed O'Neall with scapulothoracic syndrome and left shoulder pain. (JE 1, p. 41) Dr. Ralston noted he was uncertain if O'Neall's condition would ever improve 100 percent, recommended she

continue to perform therapy exercises, and opined she was at maximum medical improvement. (JE 1, p. 41) Dr. Ralston imposed permanent restrictions of no lifting, pushing, pulling, or carrying over forty pounds, and no repetitive overhead tasks. (JE 1, p. 41) O'Neall was still working for the GRMC at that time and her restrictions did not impact her job duties. (Tr., pp. 43-44)

Dr. Ralston issued an impairment rating on August 31, 2015. (JE 1, p. 42) Using Tables 16-40, 16-43, 16-44, 16-46, and 16-3 of the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Ralston assigned a three percent upper extremity impairment, or two percent whole person impairment. (JE 1, pp. 42-43)

GRMC terminated O'Neall's employment in August or September 2015 for poor attendance. (Tr., pp. 22-23; Ex. A, p. 11) O'Neall testified she was sick with strep throat and had gone to a doctor in the clinic where she worked and she sent her home for two or three days, with a doctor's note, and when she returned, GRMC had terminated her employment. (Tr., p. 23) O'Neall reported that at the time of her termination she earned $12.00 per hour. (Tr., p. 32)

After her termination, O'Neall struggled to find work. (Tr., pp. 26-27) In March 2016, O'Neall secured employment as a wellness and sports coordinator for the YMCA in Creston. (Tr., pp. 27-28, 31; Ex. B, p. 9) O'Neall supervised twelve fitness instructors and made their schedules. (Tr., pp. 28, 70) O'Neall completed an ACE certification online to teach classes at the YMCA, and she filled in for absent instructors. (Tr., pp. 30-31) The ACE certification is just for YMCA group fitness courses. (Tr., p. 36) The YMCA paid O'Neall $10.00 per hour. (Tr., p. 32; Ex. B, p. 8) O'Neall continued to work for the YMCA until July 2017. (Tr., p. 32)

At the YMCA, O'Neall engaged in cardiovascular exercise and occasional weight lifting with dumbbells, including bicep curls. (Tr., pp. 61-62) O'Neall participated in boot camp where she squatted down, lifted, and pushed over tires. (Tr., pp. 33-34, 62) O'Neall reported she did not lift the tires. (Tr., p. 34) O'Neall testified she did not go as fast as she could, and she limited how many tires she would flip because of her shoulder condition. (Tr., p. 34) O'Neall lifted kettlebells as part of boot camp, and reported she experienced numbness and tingling in her left arm when using her arm repetitively. (Tr., pp. 38-39) O'Neall performed alternative pushups on her knees and not on her toes. (Tr., pp. 39, 65) She also performed burpees, where she would jump back into a plank and then back up, which she would limit. (Tr., pp. 39, 72) O'Neall also engaged in "fake" jump rope where she would jump up and down, and move her arms next to her legs. (Tr., p. 42) In addition, O'Neall used a sledgehammer weighing eight pounds, and used her left arm to brace or assist with it, but she did not swing it over her head and swung it on her right side. (Tr., pp. 53, 62)

O'Neall participated in boxing with lightweight gloves at the YMCA and testified, "I would limit my left shoulder, and then I would mostly use my right shoulder." (Tr., p.

37) O'Neall worked with a partner who would hold mitts, and she would hit the mitts with her gloves. (Tr., p. 37)

During her employment with the YMCA, O'Neall participated in fitness courses and the above activities, and lost 147 pounds. (Tr., p. 33) O'Neall testified the physical activities she performed at the YMCA did not improve the symptoms or the condition of her left shoulder. (Tr., p. 33) O'Neall relayed she continued to experience pain from her neck to her shoulder blade and shoulder when she used her arm repetitively or overused it while working for the YMCA. (Tr., p. 29)

In May 2016, Brian Crites, M.D., an orthopedic surgeon, conducted an independent medical examination of O'Neall. (Ex. 1) Dr. Crites reviewed O'Neall's medical records and examined her. (Ex. 1, pp. 3-4) Dr. Crites opined the October 18, 2014 work injury was a substantial causal, contributing, and aggravating factor in bringing about O'Neall's left shoulder condition. (Ex. 1, p. 4)

Using the AMA Guides, Dr. Crites opined:

> [b]ased on her range of motion in her physical exam, I would assign three (3) percent impairment due to forward flexion of 140 degrees based on Figure 16-40 on Page 476 . . . . I would assign her one (1) percent impairment to the upper extremity based on her abduction of 150 degrees based on Figure 16-43 on Page 477 of the same publication. I would assign one (1) percent impairment rating due to external rotation of 50 degrees based on Figure 16-46 on Page 479 of the same publication. This is a total of five (5) percent upper extremity impairment. Based on Table 16-3 of Page 439 of the AMA Guides, five percent upper extremity impairment equals three (3) percent whole body impairment.

(Ex. 1, p. 4) Dr. Crites agreed with Dr. Ralston that O'Neall reached maximum medical improvement on July 9, 2015, and he recommended restrictions of working at or below shoulder height with no repetitive lifting greater than five to ten pounds. (Ex. 1, p. 5) Dr. Crites testified O'Neall is not restricted on her right side. (Ex. F, p. 10) Dr. Crites reported that tendinopathy is not normally seen in someone as young as O'Neall, unless an individual had been a pitcher from high school through college, or a professional pitcher. (Ex. F, p. 14)

O'Neall accepted a position as a coach-in-training with Hibbett Sports, a sporting goods store, in Creston in July 2017. (Tr., pp. 44-45) O'Neall worked underneath the manager. (Tr., p. 45) O'Neall worked thirty hours per week and she was paid $11.25 per hour. (Tr., p. 45) When she left the YMCA, O'Neall was earning $10.00 per hour and she worked between twenty and twenty-five hours per week. (Tr., p. 46) Hibbett Sports also provided her with health insurance and retirement benefits that she did not have at the YMCA. (Tr., p. 46)

At Hibbett Sports O'Neall helps customers find shoes, and once a week she scans in inventory. (Tr., pp. 46-47) Other employees take the clothes off the hangers, and O'Neall scans in the clothing, and the other employees hang the clothing on new hangers. (Tr., p. 47)

Three weeks before the hearing O'Neall was promoted to the store manager or head coach, and she is paid a salary of $34,000.00 per year. (Tr., pp. 49-50) O'Neall works forty-eight hours per week and she supervises five employees. (Tr., pp. 50, 71) O'Neall testified she does not perform all of the duties of the head coach listed in the job description. (Tr., p. 48) O'Neall reported she cannot lift twenty-five to 100 pounds, and relayed if she lifts over ten pounds she experiences burning in her left shoulder. (Tr., p. 48)

Since leaving the YMCA, O'Neall has not continued to exercise. (Tr., p. 41) O'Neall is able to bowl, but she does not use her left arm for bowling. (Tr., p. 41) O'Neall testified that since her work injury she cannot engage in repetitive work like hanging up hangers at work and taking clothes off hangers at work, and she cannot lift her children. (Tr., p. 51) O'Neall testified she continues to experience the pain, numbness and tingling when she overuses her arm. (Tr., pp. 29, 51) O'Neall reported her ability to use her left arm has not changed since she last saw Dr. Crites. (Tr., p. 52)

During cross-examination, counsel for GRMC and West Bend inquired whether there was anything that would preclude O'Neall from returning to school to complete her nursing degree. (Tr., p. 68) O'Neall replied she would not be able to meet the physical demands of a registered nurse position because registered nurses have to lift patients. (Tr., p. 68)

CONCLUSIONS OF LAW

I. Nature and 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. Willis, 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 the employer.*

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (emphasis in original).

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).

A. Credibility

GRMC and West Bend contend O'Neall is not a credible witness and the greater weight of the evidence shows she grossly exaggerated her symptoms, and she provided incomplete and inaccurate information to her treating and evaluating physicians, which precludes her from recovering workers' compensation benefits. When assessing witness credibility, the trier of fact "may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of the facts, and the witness's interest in the [matter]." State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990).

O'Neall has an obvious interest in the outcome of this case. I had the opportunity to observe her testify, under oath, during the hearing. During her testimony, O'Neall engaged in direct eye contact, her rate of speech was appropriate, and she did not make any furtive movements. Her testimony was consistent throughout the hearing, and I find it reasonable and consistent with the other evidence I believe. Based on my personal observations at hearing, I find O'Neall is a credible witness.

GRMC and West Bend aver O'Neall's failure to explain her duties at the YMCA to Dr. Crites, undermines his opinion. (Ex. F, p. 6) Dr. Crites testified O'Neall informed him she was working as a healthy living coordinator for the YMCA. (Ex. F, p. 6) There is no evidence Dr. Crites inquired into her job duties, or that she was concealing her activity. With respect to the tire flipping activity, Dr. Crites testified flipping tires would not necessarily exceed his recommended restrictions because the activity would not necessarily be overhead. (Ex. F, p. 11) With respect to the sledgehammer activity, Dr. Crites testified the activity could, but would not necessarily, exceed his recommended restrictions and he would need to watch her engage in the activity. (Ex. F, p. 11)

O'Neall did not inform Dr. Crites she had a prior thoracic spine injury. (Ex. F, p. 7) O'Neall alleges she sustained an injury to her left shoulder, not her thoracic spine. (Ex. F, p. 7) The fact that she entered into a settlement agreement, releasing a prior employer from liability for any left or right shoulder injuries and back injuries, does not support a finding her left shoulder injury was preexisting. No prior medical records were produced at hearing showing O'Neall was being treated for a prior left shoulder injury.

GRMC and West Bend contend O'Neall's work and fitness activities at the YMCA are inconsistent with her claimed injury. At hearing O'Neall testified how she modified or reduced activities due to her left shoulder condition. I do not find the defendants' argument persuasive.

GRMC and West Bend aver O'Neall exaggerated her symptoms, and objective findings do not support she sustained a permanent impairment. Imaging revealed O'Neall has mild tendinopathy. Dr. Crites reported that tendinopathy is not normally seen in someone as young as O'Neall, unless an individual had been a pitcher from high school through college, or a professional pitcher. (Ex. F, p. 14) I do not find the argument persuasive. Based upon my personal observations of O'Neall, I find her to be a credible witness.

B. Permanency

Dr. Crites, an orthopedic surgeon who conducted an independent medical examination of O'Neall, and Dr. Ralston, a treating orthopedic surgeon, have issued permanent impairment ratings in this case. Both physicians opined O'Neall has sustained a permanent impairment due to her work injury, and agree on the date she reached maximum medical improvement. Their opinions are similar with Dr. Ralston assigning a three percent upper extremity impairment, or two percent whole person

impairment, and Dr. Crites assigning a five percent upper extremity impairment, or three percent whole person impairment. (JE 1, pp. 42-43; Ex. 1, p. 4)

Where their opinions really differ is with respect to permanent restrictions. Dr. Crites recommended restrictions of working at or below shoulder height with no repetitive lifting greater than five to ten pounds on the left side only. (Ex. 1, p. 5; F, p. 10) When he released O'Neall from care, Dr. Ralston imposed permanent restrictions of no lifting, pushing, pulling, or carrying over forty pounds, and no repetitive overhead tasks. (JE 1, p. 41) O'Neall was still working for the GRMC at the time Dr. Ralston issued his opinion and testified his restrictions did not impact her job duties. (Tr., pp. 43-44) In a later opinion Dr. Ralston notes he released her without restrictions, which appears to be in error, given his earlier record releasing her from care with permanent restrictions. (Compare JE 1, p. 41, with JE 1, p. 43) There is no evidence Dr. Ralston examined O'Neall on another occasion. Dr. Crites also failed to identify his personal diagnosis of O'Neall's condition. Both experts in this case opined O'Neall sustained a permanent impairment as a result of her October 2014 work injury and issued permanent impairment ratings. I also found O'Neall's testimony concerning her limitations credible. O'Neall has proven she sustained a permanent impairment as a result of the October 2014 work injury.

C. Extent of Disability

"Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Indus., Inc., 818 N.W.2d 360, 370 (Iowa 2016).

O'Neall is a young woman. At the time of the hearing O'Neall was twenty-eight. (Tr., p. 6) The injury O'Neall sustained was to her left shoulder. O'Neall is right-hand dominant. (Tr., p. 41) Dr. Ralston's permanent restrictions did preclude O'Neall from performing her normal duties for GRMC and he placed her at maximum medical improvement. O'Neall is currently the store manager at Hibbert Sports, where she earns substantially more than she did at the time of her work injury. O'Neall changed positions from clerical work, to managerial work successfully. She was also a good student who graduated from high school and later attended college. O'Neall does not

have a difficult time learning. O'Neall credibly testified that she is unable to engage in repetitive activities with her left shoulder. Considering all of the factors of industrial disability, I find O'Neall has sustained a ten percent loss of earning capacity based upon her work injury.

ORDER

IT IS THEREFORE ORDERED, THAT:

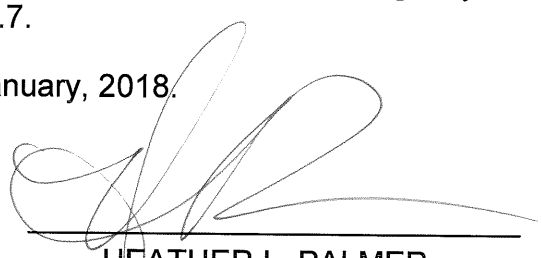
Defendants pay the claimant fifty (50) weeks of permanent partial disability benefits, at the rate of three hundred forty-five and 83/100 dollars ($345.83) per week, commencing on July 8, 2015.

Defendants shall take credit for all benefits previously paid.

Defendants shall pay accrued benefits in a lump sum with interest on all weekly benefits provided by law.

Defendants 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 24th day of January, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Richard R. Schmidt
Attorney at law
2423 Ingersoll Ave.
Des Moines, IA 50312-5233
Rick.schmidt@sbsattorneys.com

Mark A. Woollums
Paul M. Powers
Attorneys at Law
1900 E. 54th St.
Davenport, IA 52807-2708
maw@bettylawfirm.com
pmp@bettylawfirm.com

HLP/sam

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.