

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEISA A. BROWN,
Claimant,

File No. 21000859.01

vs.

FORT DODGE CSD,
Employer,

ARBITRATION
DECISION

EMCASCO INSURANCE COMPANY,
Insurance Carrier,

Head Notes: 1108.50, 1402.40, 1803,
2907, 3203

SECOND INJURY FUND OF IOWA,
Defendant.

STATEMENT OF THE CASE

Leisa Brown, claimant, filed a petition in arbitration seeking workers' compensation benefits from Fort Dodge Community School District, employer and EMCASCO Insurance Company, insurance carrier, and the Second Injury Fund of Iowa, all as defendants. Hearing was held via Zoom December 2, 2022.

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. The parties are now bound by their stipulations.

Claimant, Leisa Brown was the only witness to testify live at trial. The evidentiary record also includes joint exhibits 1-6, claimant's exhibits 1-5, defendants' exhibits A-C, and the Second Injury Fund's exhibits AA-GG. All exhibits were received without objection. Pursuant to the request of the attorney for the defendant-employer and insurance carrier, the undersigned took administrative notice of Chapter 17 of the AMA Guides, 5th Edition. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on February 3, 2023, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. The extent of permanent functional loss, if any, as the result of the stipulated December 11, 2020 work injury.

2. The appropriate commencement date for any permanent partial disability benefits.
3. Whether claimant sustained a prior qualifying injury for purposes of a Second Injury Fund Claim.
4. If so, the extent of permanent partial disability benefits claimant is entitled to receive from the Second Injury Fund of Iowa.
5. Assessment of costs against defendant-employer/insurance carrier.

FINDINGS OF FACT

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

Claimant, Leisa Brown, sustained an injury to her right lower extremity on December 11, 2020, while working for the Fort Dodge Community School District, ("the District"). She injured her right knee when the legs of the chair she was sitting on broke. (Transcript pages 18-19; Claimant Exhibits 2, p. 13) After the injury she had problems with her right knee. She had pain and heavy limping. (Tr. p. 19) She reported the injury to the district who sent her to occupational therapy at UnityPoint. (Tr. p. 20) Ms. Brown's first appointment at UnityPoint was on December 18, 2020. (Joint Exhibit 1, p. 1)

Prior to the December 11, 2020 work injury, Ms. Brown had problems with her right knee. On January 15, 2020, Ms. Brown saw Joshua J. Mason, D.C. She reported an acute complaint in the front of her right knee region which occurred after sitting in one place for too long. She reported on and off discomfort which she described as aching, burning, intolerable, stabbing/throbbing, stiffness, tightness, and tingling. She rated her pain as 10/10. Her pain was relieved with cold packs and aggravated by changing positions, getting out of bed, car, or chair, lying down, getting or falling asleep, sitting, squatting or bending and walking or running. The diagnoses included sprain of ligaments of lumbar spine, initial encounter; segmental and somatic dysfunction of lumbar region, pelvic region, thoracic region; and pain in the right knee. Treatment included right knee adjustment low volt EMS applied to right anterior knee region(s). (JE 2, pp. 1-3)

Ms. Brown saw Dr. Mason on several occasions throughout 2020 with right knee pain and received treatment for her right knee. During that timeframe, the level of her reported pain ranged from 4-9 out of 10. The last time she saw Dr. Mason before the December 11, 2020 work injury was on December 7, 2020. At that time, she reported neck and head pain. She also reported pain in the right anterior knee region after running into a bar stool. She reported knee pain at 9 out of 10 for the past three days. Her pain was aggravated by almost any movement, climbing stairs and walking and relieved by nothing. The records note she received treatment for her right knee. (JE2, pp. 4-24)

We now turn to her treatment following the December 11, 2020 work injury. Ms. Brown returned to Dr. Mason on December 16, 2020. The notes indicate that she had acute dull and aching discomfort of right anterior knee pain after running into a bar stool. There is no mention of the incident with the broken chair. Her pain was aggravated by almost any movement including climbing stairs and walking. Her pain was relieved by nothing. She rated her pain as 9 out of 10. (JE2, pp. 25-26)

On December 18, 2020, Ms. Brown saw Morgan Flaherty, ARNP, at UnityPoint. She relayed the December 11, 2020 broken chair incident to ARNP Flaherty. She reported moderate stabbing pain in the right knee. Her pain was made worse by walking and was improved with Aleve. She rated her pain level as 8 out of 10. Ms. Brown advised Ms. Flaherty that she had been seen at Active Health for a previous right knee injury in January. ARNP Flaherty's diagnoses included sprain of medial collateral ligament of right knee, initial encounter; fall from chair, initial encounter; middle school as the place of occurrence of the external cause; and civilian activity done for income or pay. An MRI was recommended to rule out internal derangement. Ms. Brown was to return after the MRI was performed. (JE1, pp. 1-10)

On January 28, 2021, Ms. Brown saw Benjamin R. Beecher, M.D., at Iowa Ortho. Her right knee pain was level 9 out of 10. She reported that while working in January 2020 she had some right knee pain. She went to the chiropractor, and she got significantly better over the summer of 2020 and her baseline pain was 7-8 out of 10. Ms. Brown told Dr. Beecher about her work injury on December 11, 2020. Since the work injury, her pain had been 9 out of 10. An MRI demonstrated a medial meniscal tear. She had a steroid injection that did not provide any relief. Dr. Beecher felt that the meniscal tear was somewhat symptomatic, but it was difficult to tell how much of her pain was related to the tear. He noted she had underlying arthritis which was not caused by the work injury. Dr. Beecher felt that surgery for the tear would not help any pain related to her arthritis. It was decided that Ms. Brown would undergo physical therapy and return in four weeks for a Visco injection, if approved by workers' compensation. (JE3, pp. 1-11)

On February 3, 2021, Dr. Beecher authored a missive to the defendants. He was asked to provide his opinion on whether the injury to her left knee was due to the incident that occurred on December 11, 2020 or rather due to a pre-existing condition. He replied:

I did see her and evaluate her in clinic on January 24, 2021. Prior to that visit, we did obtain an MRI of her left knee that showed degenerative changes. Her x-rays also showed degenerative changes. She has no acute injury consistent with a meniscal tear. She has been having issues with her left knee for several months. With a reasonable degree of medical certainty, her left knee is related to underlying arthritis. I believe this is a pre-existing condition for her and she did not suffer a new injury to her left knee as a result of the incident from December 11, 2020.

(JE3, p. 12)

Ms. Brown underwent physical therapy at E3 Millennium Therapy Services beginning on February 2, 2021. She was discharged from physical therapy on April 14, 2021. (JE4, pp. 1-22)

The last time Ms. Brown was seen at Iowa Ortho was on April 8, 2021. She reported her right knee pain was at a level 2. She described her pain as aching. Her pain was aggravated by being up on her feet and relieved by rest and walking heel to toe. The assessment was primary right knee osteoarthritis as well as meniscal tear. She was better after treatment of arthritis. She was allowed to return to work without restrictions. She was to follow-up in one month. If she was doing well, she will be placed at maximum medical improvement at that time. (JE3, pp. 19-21) There are no further treatment records from Iowa Ortho in the evidentiary record.

On May 20, 2021, Dr. Beecher authored a missive regarding Ms. Brown to defendants. He stated:

She had imaging studies including x-ray and MRI. MRI showed degenerative changes as well as meniscal tear and difficult to ascertain how much pain is related to each of those, as well as if her meniscal tear is new or old. We treated her conservatively. Ultimately, she was given a Visco injection that helped her significantly and she was able to return to her functions. She was last seen on May 6, 2021 and placed at maximum medical improvement at that time. She has no permanent restrictions. She has no permanent impairment.

(Def. Ex. A, p. 1)

Over one year later on July 6, 2022, at the request of her attorney, Ms. Brown underwent an independent medical examination with Jacqueline M. Stoken, D.O. As the result of that examination and review of the records, Dr. Stoken issued a report dated July 27, 2022. Dr. Stoken noted that Ms. Brown stated that on December 11, 2020, she was leaning forward to reach for something when her chair broke causing her to fall to the floor and her right knee twisted and popped. (Claimant's Ex. 3, p. 7) Ms. Brown reported to Dr. Stoken that one year prior to the work injury she heard a pop in her right knee, but she did not seek care for her right knee. (Cl. Ex. 3, p. 7) At the time of her evaluation with Dr. Stoken, Ms. Brown reported pain in her right knee which she described as aching, throbbing, stabbing, sharp, burning, and penetrating. The pain ranged from 5-8 out of 10 and averaged 6.

Under the work related injury section of her report, Dr. Stoken did not address whether Ms. Brown had reached maximum medical improvement or not. (Cl. Ex. 3, pp. 13-14) She did address the issue of permanent impairment. Dr. Stoken cited the AMA Guides to the Evaluation of Permanent Impairment, 5th edition, Chapter 17, table 17-10, page 537, and assigned 20 percent of the right lower extremity due to flexion

contracture of 10 degrees of the right knee. (Cl. Ex. 3, p. 13) Dr. Stoken stated that the “incident at issue” was a substantially contributing factor to the impairment. (Cl. Ex. 3, p. 13) Dr. Stoken does not provide any rationale or explanation of how the mechanism of injury contributed to the impairment.

The first issue to be addressed is whether Ms. Brown sustained permanent impairment to her right lower extremity as the result of the December 11, 2020 work injury. There are two physicians who have rendered opinions regarding permanent impairment in this case.

Dr. Beecher provided treatment to Ms. Brown and saw her on more than one occasion. He opined that she sustained no permanent impairment. (Def. Ex. A, p. 1) Unfortunately, Dr. Beecher did not provide any insight as to how he reached that conclusion. It is not known if his opinion is based on the AMA Guides, Fifth edition. Without some insight into how he reached this conclusion it is impossible for the undersigned to know if his opinion regarding permanent impairment is based solely on The Guides. For these reasons, I find Dr. Beecher’s opinion regarding permanent impairment cannot be relied on.

The other physician in this case to render an opinion on impairment is Dr. Stoken who conducted an IME at the request of Ms. Brown’s attorney. Dr. Stoken assigned permanent impairment to the right lower extremity which she causally connected to the work injury. As noted, Ms. Brown told Dr. Stoken that one year before the work injury she had problems with her right knee but did not seek treatment for her knee. However, the evidentiary record in this case reveals that Ms. Brown did seek treatment for her right knee prior to the December 11, 2020 work injury. (JE2) In her report Dr. Stoken noted medical records from 2016 for treatment of bilateral feet pain when Ms. Brown lived in California. (Cl. Ex. 3, p. 8; JE6) However, it appears she failed to realize that Ms. Brown received treatment at Active Health Clinic for her right knee prior to the work injury. In her report, Dr. Stoken stated she received 26 pages of notes from Active Health Clinic. Dr. Stoken noted “[o]n 01/15/2020 she was seen and evaluated by Joshua Mason, DC with complaints of right knee pain after sitting too long. She was given chiropractic care to the lumbar pelvic and thoracic region. She was last seen on 12/16/2020.” (Cl. Ex. 3, p. 8) Unfortunately, Dr. Stoken makes no mention of the approximately a dozen treatments Ms. Brown received for her right knee from January 15, 2020 through December 7, 2020. (JE2, pp. 3, 4, 6, 8, 10, 12, 14, 15, 18, 20, 22, 24, 26). Dr. Stoken either does not know of or does not acknowledge Ms. Brown’s treatment for her right knee which continued until four days before the work injury. Thus, it appears Dr. Stoken’s opinions regarding the extent of permanent impairment and whether the impairment is related to the work injury are based on an incomplete and incorrect history. At best, Dr. Stoken was aware of Ms. Brown’s prior knee treatment but failed to provide any explanation or rationale as to how the prior knee problems and treatment factored into her opinions. For these reasons, I find that Dr. Stoken’s opinions causally connecting impairment to the work incident are not persuasive.

As noted, Dr. Stoken opined that Ms. Brown sustained permanent impairment to her right knee which she causally connected to the “incident at issue”. (Cl. Ex. 3, p. 13) Dr. Stoken is the only physician in this case to assign any permanent impairment for the work injury. Even if Dr. Stoken’s rating was based on a complete and accurate history, defendants contend Dr. Stoken’s rating is not valid under the The Guides. In the physical examination portion of her report Dr. Stoken noted Ms. Brown’s right knee flexion was 110 degrees and extension was 10 degrees. (Cl. Ex. 3, p. 12) Dr. Stoken cited table 17-10, page 537, placed Ms. Brown in the moderate category and assigned 20 percent lower extremity impairment due to flexion contracture of 10 degrees of the right knee. (Cl. Ex. 3, p. 13)

Table 17-10 Knee Impairment

Whole Person (Lower Extremity) Impairment (%)

Motion	Mild 4% (10%)	Moderate 8% (20%)	Severe 14% (35%)
Flexion	Less than 110°	Less than 80°	Less than 60° + 1% (2%) per 10° less than 60°
Flexion contracture	5°-9°	10*-19°	20°+
Deformity measured by femoral-tibial angle; 3° to 10° valgus- is considered normal			
Varus	2° valgus-0° (neutral)	1°-7° varus	8°-12° varus; add 1% (2%) per 2° over 12°
Valgus	10°-12°	13°-15°	16°-20°; add 1% (2%) per 2° over 20°

In support of their position the defendants point out The Guides, section 17.2f states:

17.2f Range of Motion

Lower extremity impairment can be evaluated by assessing the range of motion of its joints, recognizing that pain and motivation may affect the measurements. If it is clear to the evaluator that a restricted range of motion has an organic basis, **three measurements** should be obtained and the greatest range measured should be used. **If multiple evaluations exist, and there is inconsistency of a rating class between the findings of tow observers, or in the findings on separate occasions by the same observer, the results are considered invalid.**

Figures 17-1 to 17-6 illustrate one method of measuring range of motion in the lower extremity. The ranges listed in Tables 17-9 through 17-14 are

examples of mild, moderate, and severe impairments and are to be used as guides. Range-of-motion restriction in multiple directions do increase the *impairment*. Add range -of-motion impairments for a single joint to determine the total joint range -of motion-impairments. For example, hip motion is evaluated and any impairment *added* in each of the six principal directions of motion.

AMA Guides to the Evaluation of Permanent Impairment, 5th edition, p. 533.
(emphasis added)

Defendants contend section 17.2 of the Guides requires the evaluator to perform three measurements of range of motion. However, Dr. Stoken's evaluation only shows one range of motion measurement for Ms. Brown's loss of extension.

Defendants also argue that Dr. Stoken's rating is invalid because, "the Guides specifically provide that a rating for range of motion is 'invalid' if different rating classes are found by different observers." (Def. Post-hearing brief, p. 8) In Ms. Brown's case, her physical therapists noted she had 0% loss of extension, a/k/a flexion contracture, of her right knee on at least six occasions. (JE4, pp. 1, 9, 11, 13, 16, and 19) Defendants urge that pursuant to The Guides, Table 17-10, the range of motion noted by the physical therapists would have resulted in no impairment. (The Guides, Table 17-10, p. 537). On November 7, 2022, Dr. MacMaster noted Ms. Brown had 5% loss of extension, a/k/a flexion contracture of her right knee with active range of motion. (Def. Ex. C, p. 4) Under Table 17-10, Ms. Brown would be placed in the "Mild" class of impairment, and result in a 10% right lower extremity impairment. Dr. MacMaster noted Ms. Brown had 0% loss of extension of her right knee with passive range of motion, which would result in no impairment. (Def. Ex. C, p. 4)

To recap, under Table 17-10 of The Guides, Dr. Stoken's range of motion measurements for extension, a/k/a Flexion contracture, places Ms. Brown in the "Moderate" class of impairment. (CE 3, pp. 12-13) Dr. MacMaster's active range of motion measurements place Ms. Brown in the "Mild" category. The physical therapist' range of motion measurements place Ms. Brown in no class of impairment. (JE4, pp. 1, 9, 11, 13, 16, and 19). Thus, defendants contend that because the evidence demonstrates that there are multiple range of motion findings by different evaluators in this case which result in the inconsistencies of the rating class among different observers a rating of permanent impairment under Table 17-10 of the Guides is invalid. I find defendants' argument to be persuasive. Because the impairment rating to the right lower extremity assigned by Dr. Stoken is not valid under the Guides I find the rating is not based solely on the Guides and cannot be relied on. Thus, I find Ms. Brown has failed to demonstrate by a preponderance of the evidence that she sustained any permanent disability as the result of the December 11, 2020 work injury.

We now turn to Ms. Brown's claim against the Second Injury Fund of Iowa ("the Fund"). Ms. Brown alleges she sustained an injury to her left foot in 2016. In 2016, Ms. Brown received two injections in each of her feet for plantar fasciitis. (JE6, pp. 1-2) Ms.

Brown's deposition was taken in connection with this case on December 2, 2022. At that time, she testified that she had not had any left foot pain for six months. (Tr. p. 38) At the hearing, Ms. Brown testified that there are long periods of time she does not have any pain in her feet. (Tr. p. 39)

In the non-work related injury section of her July 27, 2022 IME report Dr. Stoken addressed the following question that was posed by claimant's attorney: "[h]as Leisa sustained permanent impairment to any body part that is causally connected to the incident at issue, including, but not limited to Leisa's (a) right foot and (b) left foot?" (Cl. Ex. 3, p. 14). Dr. Stoken replied, "Leisa sustained permanent impairment to her right and left foot that is causally connected to the incident at issue." (Cl. Ex. 3, p. 14) Unfortunately, Dr. Stoken does not explain what she understood the "incident at issue" to be, nor does she explain how the "incident at issue" caused any permanent impairment. Dr. Stoken proceeds to assign 2 percent right lower extremity impairment and 2 percent left lower extremity impairment. (Cl. Ex. 3, p. 14) I find that Dr. Stoken's opinion that the impairment ratings she assigned for the right foot injury and left foot injury are not persuasive. Dr. Stoken does not provide any explanation of what the incident in question is or how that incident caused any impairment. Dr. Stoken does not indicate that the impairment to the right or left foot preexisted Ms. Brown's right knee injury on December 11, 2020. Dr. Stoken does not list any restrictions in the non-work related injury section of her report. For these reasons, I find Ms. Brown has failed to demonstrate by a preponderance of the evidence that she sustained a functional loss to her left foot prior to December 11, 2020.

Ms. Brown is seeking an assessment of costs against the defendants in this case. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. I find that Ms. Brown was not successful in her claim against the defendants and therefore exercise my discretion to not assess costs against the defendants. Each party shall bear their own costs.

Because Ms. Brown failed to demonstrate entitlement to any permanent partial disability benefits against the defendants or the Fund all other issues are rendered moot.

CONCLUSIONS OF LAW

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).

Claimant is seeking permanent partial disability benefits from the defendants for the stipulated December 11, 2020, work injury to her right knee.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or as an unscheduled injury pursuant to the provisions of section 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

In 2017, the legislature modified Iowa Code section 85.34 regarding permanent disabilities. Iowa Code section 85.34(x) permanent disabilities states:

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

Iowa Code section 85.34 (x) (emphasis added).

This agency has adopted The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association for determining the extent of loss or percentage of impairment for permanent partial disabilities. See 876 IAC 2.4.

This agency is bound by statute to only consider the functional disability ratings issued by the various medical providers. The Commissioner has addressed the 2017 legislative changes to Iowa Code section 85.34(x). He stated,

Though the legislature indicated only impairment ratings with a basis in the Guides are to be utilized for determining the extent of scheduled member impairment, the legislature did not set forth what can and cannot be considered by the agency when addressing the credibility, persuasiveness, and accuracy of two or more competing ratings. In other words, deputy commissioners still have to weigh evidence to determine which rating is most convincing. See *Ramirez v. Arconic, Inc.*, File No. 5066573 (Arb., Dec., Jan. 30, 2020) (“However, the new statute does not appear to prohibit using lay testimony in aiding to ascertain which of the two ratings in this case is more convincing or credible.”)

Bryan Heeren, Claimant, File No, 5067250, 2020 WL 8297383, at *3 (Dec. 30, 2020).

This agency has cautioned against impairment ratings that do not comply with the Guides. See Hill v. Vermeer Corp., File No. 5066032 (App. January 30, 2020). Given the discrepancies set forth above between Dr. Stoken’s rating and the AMA Guides instructions, I cannot accept Dr. Stoken’s impairment rating for claimant’s right knee because her rating does not comply with the Guides. Given Dr. Beecher’s failure to cite to The Guides, I cannot accept his impairment rating. Therefore, I conclude claimant failed to demonstrate by a preponderance of the evidence that she sustained any permanent impairment or functional loss to her right knee as the result of the work injury. Claimant is not entitled to any permanent partial disability benefits as the result of the December 11, 2020 work injury.

We now turn to claimant’s claim against the Second Injury Fund of Iowa (“the Fund”). Section 85.64 governs Second Injury Fund liability. The Iowa Supreme Court has stated:

To trigger the application of section 85.64, the employee must establish that (1) the employee has either lost, or lost the use of a hand, arm, foot, leg, or eye; (2) the employee sustained the loss, or loss of use of another such member or organ through a work related—that is, compensable—injury; and (3) there must be some permanent disability from the injuries. *Anderson*, 262 N.W.2d at 790. The prior loss or loss of use need not be work related. *Second Injury Fund v. Neelans*, 436 N.W.2d 355, 357 (Iowa 1989). Nor does the prior loss or loss of use have to be a total loss or loss of use. *Second Injury Fund v. Braden*, 459 N.W.2d 467, 469 (Iowa 1990).

Second Inj. Fund of Iowa v. Shank, 516 N.W.2d 808, 812–13 (Iowa 1994).

Because the claimant has failed to demonstrate by a preponderance of the evidence that she sustained permanent disability for the December 11, 2020 work injury, she has failed to demonstrate entitlement to any benefits from the Fund.

Furthermore, even if claimant had demonstrated that she sustained permanent disability for the December 11, 2020 work injury, based on the above findings of fact, I conclude she also failed to demonstrate that she sustained a first qualifying loss. Claimant has failed to demonstrate entitlement to any benefits from the Fund.

Claimant is seeking an assessment of costs against the defendants. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. 876 IAC 4.33. Because claimant was not successful in her claim against the defendants, I exercise my discretion and do not assess costs against the defendants. All parties shall bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

All parties shall bear their own costs.

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

Signed and filed this 26th day of April, 2023.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Erik A. Luthens (via WCES)

David Brian Scieszinski (via WCES)

Meredith C. Cooney (via WCES)

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FUND OF IOWA

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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.