

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GRISELDA PEREZ-AVINA,

Claimant,

vs.

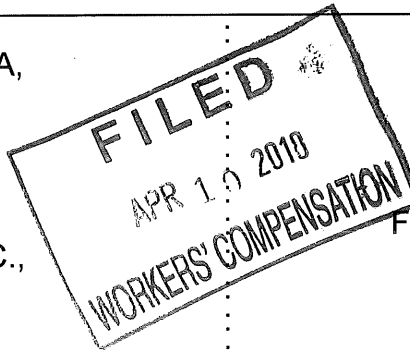
BRENNEMAN PORK, INC.,

Employer,

and

FARM BUREAU PROPERTY &
CASUALTY INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File Nos. 5050212, 5050213

ARBITRATION
DECISION

Head Notes: 1402.40, 1403.10, 1804
2204, 2501, 2504, 4100

Claimant Griselda Perez-Avina filed two petitions in arbitration on December 13, 2016, File Numbers 5050212 and 5050213. In File Number 5050212 Perez-Avina alleges she sustained a mental injury, complex regional pain syndrome, and injuries to her upper and lower extremities, back, and neck while working for the defendant, Brenneman Pork, Inc. ("Brenneman Pork") on February 26, 2014. In File Number 5050213, Perez-Avina contends she sustained a mental injury, complex regional pain syndrome, and injuries to her upper and lower extremities, back, and neck while working for Brenneman Pork on April 16, 2014. Brenneman Pork and its insurer, the defendant, Farm Bureau Property and Casualty Insurance Company ("Farm Bureau"), filed answers to the petitions on January 3, 2017.

An arbitration hearing was held on December 19, 2017, at the Division of Workers' Compensation, in Des Moines, Iowa. Attorney Andrew Bribriesco represented Perez-Avina. Perez-Avina appeared and testified. Eric Turner, a physical therapist, and Cornelio Sahagun, Perez-Avina's husband, appeared and testified on her behalf. Attorney James Russell represented Brenneman Pork and Farm Bureau. Ernest Nino-Murcia provided Spanish interpretation services during the proceeding. Joint Exhibits ("JE") 1 through 10, Exhibits 1 through 32, and Exhibits A through G were admitted into the record. The record was held open until January 30, 2018, 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. Brenneman Pork and Farm Bureau waived all affirmative defenses.

FILE NUMBER 5050212

STIPULATIONS

1. An employer-employee relationship existed between Brenneman Pork and Perez-Avina at the time of the alleged injury.
2. Perez-Avina sustained an injury on February 26, 2014, which arose out of and in the course of her employment with Brenneman Pork.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. Temporary benefits are no longer in dispute.
5. At the time of the alleged injury Perez-Avina's gross earnings were \$525.45 per week, she was married and entitled to five exemptions, and the parties believe her weekly rate is \$374.19.
6. Costs have been paid.

ISSUES

1. What is the nature of the injury?
2. Is the alleged injury a cause of permanent disability?
3. What is the extent of disability?
4. Has Perez-Avina established she is permanently and totally disabled under the statute or under the odd-lot doctrine?
5. What is the commencement date for permanent partial disability benefits?
6. Is Perez-Avina entitled to payment of medical expenses?
7. Is Perez-Avina entitled to alternate medical care?
8. Should costs be assessed against either party?

FILE NUMBER 5050213

STIPULATIONS

1. An employer-employee relationship existed between Brenneman Pork and Perez-Avina at the time of the alleged injury.

2. Perez-Avina sustained an injury on April 16, 2014, which arose out of and in the course of her employment with Brenneman Pork.

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 the cause of permanent disability, the disability is an industrial disability.

6. At the time of the alleged injury Perez-Avina's gross earnings were \$525.45 per week, she was married and entitled to five exemptions, and the parties believe her weekly rate is \$374.19.

7. Costs have been paid.

ISSUES

1. What is the nature of the injury?

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

3. What is the extent of disability?

4. Has Perez-Avina established she is permanently and totally disabled under the statute or under the odd-lot doctrine?

5. What is the commencement date for permanent partial disability benefits?

6. Is Perez-Avina entitled to payment of medical expenses?

7. Is Perez-Avina entitled to alternate medical care?

8. Should costs be assessed against either party?

FINDINGS OF FACT

Perez-Avina lives with her husband, Sahagun, and their four children in Washington, Iowa. (Transcript, pages 51-52, 67; Exhibit 30, p. 5) Perez-Avina attended school in Mexico through middle school. (Ex. 27, p. 127; Tr., p. 67) Perez-Avina left Mexico and moved to California where she studied English and took classes to become a secretary. (Ex. 30, pp. 9-10; Tr., p. 67) Perez-Avina left California and moved to Washington, Iowa, where she received a general education diploma. (Exs. 27, p. 127; 30, p. 10; Tr., p. 67) Perez-Avina's primary language is Spanish, and she describes her English ability as "very limited." (Tr., p. 68) At the time of the hearing she was thirty-four. (Tr., p. 66)

While living in California, Perez-Avina worked as an inspector for a wooden blind manufacturer, taking telephone orders in Spanish for a music company that produced and packed compact discs, and as a produce packer. (Exs. 27, p. 126; 30, pp. 11-14; Tr., p. 68) While working as a produce packer Perez-Avina developed carpal tunnel syndrome, she underwent carpal tunnel release surgery, and she received a settlement from her employer. (Ex. 30, pp. 14-16)

Perez-Avina stopped working as a produce packer and she stayed at home and cared for her children for seven years. (Ex. 30, pp. 17-18; Tr., p. 61) After Perez-Avina moved to Iowa she decided to return to work and applied for a position with Brenneman Pork. On November 6, 2013, Brenneman Pork hired Perez-Avina as a laborer in farrowing. (Ex. 27, p. 126) Perez-Avina assisted sows giving birth, she provided medicine to the piglets, and she assisted with other duties, including cleaning the bathrooms and offices. (Ex. 30, pp. 19-20; Tr., pp. 68-69)

On February 26, 2014, Perez-Avina was assisting a sow that was giving birth. (Tr., p. 69) Perez-Avina placed her left arm inside the sow up to her shoulder to help remove a piglet. (Tr., p. 69) The sow opened the door above her with her snout and the door came toward Perez-Avina's face. (Tr., p. 69) Perez-Avina testified she tried to shield her face by covering it with her right hand, "but the door hit me hard on my right hand . . . [b]ecause that metal piece was going to hit me straight in the face." (Tr., p. 69) Perez-Avina received emergency medical treatment at Washington County Hospital. (JE 1, pp. 1-4) An x-ray of her right hand was negative, and Perez-Avina received a thumb splint. (JE 1, pp. 4-5)

On March 4, 2014, Perez-Avina attended an appointment with Sarvenaz Jabbari, M.D., an occupational medicine physician, complaining of right arm pain extending from the palm of her hand and around her wrist up through her arm around her shoulder and neck. (JE 2, pp. 52-54) Dr. Jabbari documented he observed "no erythema, edema or ecchymosis," in her right hand, noted her right hand was "cold to the touch as compared to the left prior to the exam, however, at the end of the exam, both hands are equally cold," she had limited range of motion of her fingers and right wrist, but she had full range of motion of the right elbow and right shoulder. (JE 2, p. 55) Dr. Jabbari diagnosed Perez-Avina with a right hand crush injury, ordered she be weaned from her splint, prescribed physical therapy, home exercises, and use of heat, and directed Perez-Avina to take Naproxen. (JE 2, pp. 52, 55) The x-rays did not reveal any fractures, arthritis, or bone lesions. (JE 2, pp. 56-57) Dr. Jabbari released Perez-Avina to return to work with restrictions of no forceful gripping of the right hand and no lifting more than ten pounds with the right hand. (JE 2, p. 52)

On March 18, 2014, Perez-Avina attended a follow-up appointment with Dr. Jabbari complaining of pain from her hand up through her shoulder and neck, intermittent tingling in her hand, and coldness in her fingers all of the time. (JE 2, p. 59) Dr. Jabbari continued Perez-Avina's restrictions, ordered physical therapy and use of Aleve, and to use a right rigid splint at night only. (JE 2, p. 58)

During her appointment with Dr. Jabbari on April 1, 2014, Perez-Avina complained of right hand coldness and pain in the right lateral rib cage radiating into her neck. (JE 2, p. 63) Perez-Avina relayed the use of the rigid wrist splint at night was helping and her range of motion had improved. (JE 2, p. 63) Dr. Jabbari again documented "no erythema, edema or ecchymosis" in the right hand, but documented the right hand "is mildly colder to the touch as compared to the left." (JE 2, p. 64) Dr. Jabbari released Perez-Avina to return to work without restrictions on April 1, 2014, with home exercises, and referred her for a neurology consultation. (JE 2, pp. 62, 64)

On April 15, 2014, Perez-Avina attended an appointment with David Robinson, M.D., a neurologist, with Mercy Neurology Clinic, complaining of numbness, tingling, and coldness in her right hand. (JE 3, p. 65) Dr. Robinson assessed Perez-Avina with right hand trauma, prescribed prednisone and a splint, and ordered electromyography testing. (JE 3, pp. 65-66)

On April 16, 2014, Perez-Avina went to check on the sows at work and she felt dizzy after taking her medication. (Tr., p. 70) Perez-Avina testified,

[a]nd so I was doing all of my regular job but with only my left arm. And so I had a basket on my left arm with everything I needed, medication, gloves, gel to be able to take care of the sows. And so my job was to go from right to left to see which of the sows were in labor to be able to help them, and so I went into the room and I stepped in and tripped. And so I tripped on a steel bar and I fell face first with my arms behind me.

(Tr., p. 70) Perez-Avina recalled hitting the left side of her chest, shoulder, arm, and neck. (Tr., pp. 70-71)

Perez-Avina sought emergency medical treatment at Washington County Hospital. (JE 1, pp. 6-10) Hospital staff administered a Toradol injection and prescribed tramadol and prednisone. (JE 1, pp. 6-9)

On April 23, 2014, Perez-Avina returned to Dr. Robinson, reporting she had fallen at work and landed on the left side of her body and she was experiencing pain in her left shoulder with burning sensations down her hand and bruises on her left leg. (JE 3, p. 67) Dr. Robinson noted the electromyography testing had not shown evidence of carpal tunnel syndrome, he prescribed Vicodin, and he recommended a referral to orthopedics. (JE 3, p. 67)

During an appointment with Dr. Robinson on April 28, 2014, Perez-Avina complained of right arm pain extending up into her shoulder, neck, and head, blurred vision, and balance problems. (JE 3, p. 69) Dr. Robinson noted cervical spine magnetic resonance imaging did not show any severe disease. (JE 3, p. 69) Dr. Robinson ordered electromyography, Vicodin, and trigger point injections. (JE 3, p. 69) The radiologist who performed the electromyography testing noted the testing was normal. (JE 4, p. 85)

On May 9, 2014, Perez-Avina attended an appointment with James Milani, D.O., an occupational medicine physician. (JE 5, pp. 86-92) Dr. Milani reviewed Perez-Avina's medical records and examined her. (JE 5, pp. 86-92) Dr. Milani documented Perez-Avina reported initial swelling, which had improved, and bruising, which had resolved. (JE 5, p. 87) Dr. Milani noted Perez-Avina's right hand fingers "feel a little 'cold,'" but noted no change in color, her skin was not shiny, she had normal hair distribution, and she had no erythema, edema, or warmth of the joints of her lower extremities. (JE 5, pp. 90-91) Dr. Milani assessed Perez-Avina with a right hand injury, found she was at maximum medical improvement, released her to return to work without restrictions, and opined Perez-Avina's continued and worsening symptoms were not related to the February 2014 work injury. (JE 5, pp. 86, 91-93)

During a subsequent exam on May 20, 2014, Dr. Milani documented he observed "[n]o bruising, erythema, edema, or warmth" in the left upper extremity, and he assessed her with "status post fall at work" on April 16, 2014. (JE 5, pp. 97-98) Dr. Milani opined while Perez-Avina needed additional medical evaluation and treatment, but her symptoms were out of proportion, inconsistent with, and unrelated to the April 2014 work injury. (JE 5, p. 98)

On May 30, 2014, Perez-Avina told Dr. Robinson she was frustrated because she was not getting better. (JE 3, p. 73) Dr. Robinson increased Perez-Avina's gabapentin dose, refilled her Vicodin, and recommended a referral to an orthopedic surgeon, possible trigger point injections, and physical therapy. (JE 3, p. 75)

On September 2, 2014, Perez-Avina returned to Washington County Hospital, and she was examined by Curtis Frier, D.O., a family medicine physician, complaining of bilateral arm, back, and neck pain that was radiating down her arm to her fingertips with "shakiness," and facial pain on the left side. (JE 1, p. 11) Dr. Frier prescribed Cymbalta, gabapentin, and hydrocodone. (JE 1, p. 13)

During a follow-up appointment with Dr. Frier on September 28, 2014, Perez-Avina complained of bilateral arm, neck, and shoulder pain, with limited range of motion in her bilateral arms, and reported her shoulder and elbow were popping. (JE 1, p. 14) Dr. Frier documented Perez-Avina needed therapy, and noted "[a]ll issues stem from her work related injury where the gate came down on neck and shoulder in my opinion. I believe she has progressed to reflex somatic dystrophy." (JE 1, p. 16) Dr. Frier diagnosed Perez-Avina with neck pain, radicular syndrome of the arms, and reflex sympathetic dystrophy. (JE 1, p. 15)

On October 26, 2014, Perez-Avina returned to Dr. Frier, reporting her pain was better, but complaining of left side lower back pain, radiating into her left leg that comes and goes. (JE 1, p. 17) Dr. Frier assessed Perez-Avina with neck pain and reflex sympathetic dystrophy. (JE 1, p. 18) Perez-Avina continued to treat with Dr. Frier and she received a shoulder injection, and pharmacological treatment. (JE 1, pp. 21-23)

On November 26, 2014, Frederick Dery, M.D., a physiatrist with the Steindler Orthopaedic Clinic, examined Perez-Avina, and noted she did not have any swelling, color changes, skin, nail or hair changes on her forearms and hands, normal skin temperature, and she had "patchy allodynia to light touch left greater than right." (JE 6, p. 101) Perez-Avina reported an intense cold sensation in her hands and forearms. (JE 6, p. 101) Dr. Dery observed Perez-Avina had a tremor that "is much more marked in the fingers bilaterally than in the upper arms bilaterally. This is much worse with intention of grasp bilaterally. Her grip is weaker than what I would expect for a 31-year-old female." (JE 6, p. 101) Dr. Dery diagnosed Perez-Avina with pain in the joint of her forearm, pain in the joint of her hand, numbness and tingling, and complex regional pain syndrome type I. (JE 6, p. 102) Dr. Dery discontinued her prescription for gabapentin, prescribed Lyrica, Norvasc, and physical therapy, imposed a ten-pound lifting restriction with occasional lifting, and encouraged Perez-Avina to use both of her upper extremities as much as possible. (JE 6, pp. 102-03)

Perez-Avina attended a follow-up appointment with Dr. Frier on February 15, 2015, reporting her symptoms were interfering with her activities of daily living, sleep, work, and household activities. (JE 1, p. 24) Dr. Frier diagnosed Perez-Avina with neck pain, radicular syndrome of the arms, reflex sympathetic dystrophy, and depression, and prescribed Cymbalta and tramadol. (JE 1, pp. 25-26)

During an appointment on March 4, 2015, Dr. Dery noted Perez-Avina "has pain and symptoms that do not meet classic CRPS type I but she has many of those criteria based on history," with her left arm being primarily affected. (JE 6, p. 109) Dr. Dery reduced her Lyrica, prescribed propranolol, continued her Norvasc, and prescribed physical therapy. (JE 6, p. 109)

Perez-Avina continued to complain of pain, and reported pain traveling down her hip and leg. (JE 6, p. 112) During her appointment on March 11, 2015, Perez-Avina reported she was experiencing color changes and swelling in her arm and hand. (JE 6, p. 112) Dr. Dery documented he observed "a little bit of swelling in the hand and fingers on the left," but he did not document any abnormal temperature sensation or color changes. (JE 6, p. 113) Dr. Dery listed an impression of "CRPS type I affecting the left upper extremity," which is a work-related injury, and recommended a referral to John Dooley, M.D., an anesthesiologist specializing in pain management. (JE 6, p. 113)

On May 11, 2015, Alicia Liebe, PT, issued a letter stating she had treated Perez-Avina since September 23, 2014, for a total of 97 visits. (JE 7, p. 116) Liebe noted Perez-Avina had excellent compliance at therapy and at home and gave "100% of her effort every visit." (JE 7, p. 116)

On June 4, 2015, Perez-Avina attended an appointment to establish care with Dr. Dooley at Pain Centers of Iowa. (JE 8, p. 121) Dr. Dooley's staff examined Perez-Avina and documented she had excessive sweating and diaphoresis of the skin, but no rashes, swelling, or redness. (JE 8, pp. 121-22)

On June 12, 2015, Perez-Avina attended an appointment with Dr. Dooley complaining of arm pain. (JE 8, p. 124) Dr. Dooley examined Perez-Avina, and documented “[o]verall examination of the patient’s skin reveals – no suspicious lesions. **Color** – normal coloration of skin. **Skin Moisture** – normal skin moisture.” (JE 8, p. 125) With respect to her upper and lower extremities, Dr. Dooley documented, “**Upper Extremity: Inspection – Bilateral** – Pink nail beds, Pink skin and Rapid capillary refill. No loss of hair, Shiny atrophic skin or Thick rigid nails. Not Acrocyanotic, Blanched or Pale. **Lower Extremity: Inspection – Bilateral** – Inspection Normal.” (JE 8, p. 126) Dr. Dooley assessed Perez-Avina with chronic pain due to trauma, opined she is not a candidate for “ITD or SCS,” recommended she be weaned from opioids, and recommended an evaluation for psychiatric origins of her discomfort. (JE 8, p. 127) Dr. Dooley opined,

[t]here is no ongoing tissue damage or neruopathic [sic] etiology supported by exam; history is subjective and the story related to me not supportive of either source of pain either. Story Patient has failed neuromodulator, PT offers slight improvement in functioning; however ADL’s are severely limited due to pain, opioids offer minimal pain relief. Pt has reported changes in color and temperature of affected limbs. No objective findings from previous physicians on their exams in terms of sympathetic instability. Only sx of CRPS is pain out [of] proportion to what one would expect.

(JE 8, p. 127)

On August 6, 2015, Perez-Avina attended an appointment with Dr. Frier complaining of pain in the entire left side of her body and in her right wrist, neck, and shoulder, and bumps from sweating. (JE 1, p. 27) Dr. Frier diagnosed Perez-Avina with complex regional pain syndrome and folliculitis. (JE 1, p. 29)

Pursuant to a request from Perez-Avina’s counsel, Dr. Dery wrote a letter in September 2015, opining,

I believe Griselda’s injuries and pain stem from an injury she received while at work where a metal bar or rail fell and hit her right arm/hand causing her current symptoms. She continued to work and had a fall a coupld [sic] of months later while at work and hurt her left arm/hand. Her symptoms are most consistent with Complex Regional Pain Syndrome (CRPS) type 1 although she doesn’t demonstrate many objective findings and has primarily subjective complaints. A more generic term to describe her pain would be atypical and complicated pain since she doesn’t truly meet the criteria for a CRPS diagnosis. . . .

(Ex. 17, p. 62)

Pursuant to a request from Perez-Avina's counsel, Dr. Frier provided an opinion letter in September 2015, agreeing with Dr. Dery's diagnosis "that her symptoms are most consistent [with] CRPS and I feel she does meet criteria for CRPS," caused by her work injuries on February 26, 2014 and April 16, 2014. (Ex. 9, pp. 48-49) Dr. Frier opined, "I do not believe Griselda can return to work at this time due to her pain & motion limitations." (Ex. 9, p. 50)

Joseph Chen, M.D., a physiatrist with the University of Iowa Hospitals and Clinics ("UIHC"), conducted an independent medical examination for Brenneman Pork and Farm Bureau on November 30, 2015. (Ex. A) Dr. Chen reviewed Perez-Avina's medical records and examined her. (Ex. A) Dr. Chen noted,

[s]he exhibits dramatic pain behavior including rhythmic shaking of the right arm with voluntary movements that stop after 15 seconds due to fatigue and pain. This is not a tremor as it was not present except when she was asked to activate her right arm. Left arm was similarly notable for shaking that stopped after 15 seconds of vigorous movement. She tried to stand but also had give-way weakness throughout her legs but she was able to bear weight on both legs. She was tender over the neck and low back.

Gross motor function and balance were normal despite pain behavior. Upper and Lower Extremity Strength were notable for give-way weakness bilaterally. Coordination in the upper and lower extremities was poor likely due to effort. Upper and lower extremity muscle stretch reflexes are normal bilaterally. No dermatomal loss of sensation is noted. Her hands were warm and had normal perspiration. Nail color was normal. Cervical spine range of motion was reduced by 25% in all directions due to pain. Inspection and palpation of the spine, upper, and lower extremities is normal. Joint ROM: Normal without obvious instability or laxity in all four extremities. No gross appendicular deformities. Provocative maneuvers: Sitting straight leg raise, hip, and knee provocative maneuvers are negative. No knee effusion. Gross inspection of the skin is unremarkable for erythema, breakdown, or concerning lesions. Peripheral Vascular: Distal pulses are intact. No significant lower extremity edema.

(Ex. A, p. 3) Dr. Chen opined Perez-Avina "does not have complex regional pain syndrome and that a pain pump would NOT be effective treatment for her condition."

(Ex. A, p. 4) Dr. Chen noted he was uncertain why Perez-Avina has developed chronic pain, but he "could not attribute this to either of her work incidents." (Ex. A, p. 4)

Dr. Chen found Perez-Avina reached maximum medical improvement as of November 30, 2015, and that he was "unable to substantiate a medical etiology for her chronic pain to have occurred as a result of any injury." (Ex. A, p. 4) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"),

Dr. Chen opined Perez-Avina has no ratable permanent impairment rating and has no need for future medical treatment. (Ex. A, p. 5)

During her appointment with Dr. Frier on December 4, 2015, Perez-Avina reported her pain was worsening and she was unable to bear weight. (JE 1, p. 31) Dr. Frier diagnosed Perez-Avina with depression and complex regional pain syndrome, and prescribed Cymbalta, amlodipine besylate, and propranolol. (JE 1, p. 33)

On January 11, 2016, Perez-Avina attended an appointment with Maruti Kari, M.D., an anesthesiologist specializing in pain management. (JE 9, p. 128) Dr. Kari noted Perez-Avina has been using a wheelchair for two weeks, she had significant tremors with extension of her elbows, she refused to abduct her shoulders secondary to pain, and she had "[s]evere allodynia all over the back, left upper extremity, right upper extremity, left lower extremity, and lower back." (JE 9, p. 131) Dr. Kari documented no skin color changes, hair color changes, nail changes, and "[n]o significant changes in temperature, left compared to right." (JE 9, p. 131)

Dr. Kari assessed Perez-Avina with complex regional pain syndrome type 1 of the bilateral upper extremities and left lower extremity versus generalized neuropathic pain syndrome. (JE 9, p. 132) Dr. Kari noted Perez-Avina "has a[n] atypical presentation of neuropathic pain syndrome that resembles CRPS type 1 with many of the symptoms but some of the classic signs such as skin color changes, temperature differences, hair and nail changes are absent." (JE 9, p. 132) Dr. Kari noted the severe tremor in both upper extremities "may have a psychomotor component to it." (JE 9, p. 132) Dr. Kari ordered lumbar spine magnetic resonance imaging, electromyography, and recommended approval for an intrathecal pump trial. (JE 9, pp. 132-33)

Perez-Avina received lumbar spine magnetic resonance imaging on February 16, 2016. (JE 6, p. 115; JE 9, p. 136) The reviewing radiologist listed an impression of central L4-5 disc protrusion with mild narrowing of the spinal cord. (JE 6, p. 115; JE 9, p. 136)

On March 2, 2016, counsel for Perez-Avina sent a letter to Dr. Kari, attaching medical records and requesting his opinions. Counsel asked whether Perez-Avina's diagnosis is "Complex regional pain syndrome type 1 of the bilateral upper extremities and left lower extremity vs generalized neuropathic pain syndrome." (Ex. 1, p. 1) Dr. Kari responded, "[y]es I agree with that statement. She does not meet all the criteria for CRPS Type I, but CRPS also has a spectrum of presentation & not all symptoms & signs exist at all times." (Ex. 1, p. 1) Dr. Kari opined he believed her condition is related to her work injuries. (Ex. 1, p. 1)

During a follow-up appointment on March 16, 2016, following magnetic resonance imaging, Dr. Frier assessed Perez-Avina with neck pain, back pain, lumbago with sciatica on the left side, complex regional pain syndrome, and a herniated lumbar disc. (JE 1, p. 43)

On May 2, 2016, Perez-Avina attended an appointment with Dr. Frier. (JE 1, p. 44) Dr. Frier noted that during her examination, Perez-Avina had very limited range of motion in her right shoulder and elbow with pain, and she was unable to fully extend her left knee. (JE 1, p. 4) Dr. Frier assessed Perez-Avina with complex regional pain syndrome, cervicgia, dorsalgia, and major depressive disorder, and continued her prescriptions. (JE 1, p. 45)

Perez-Avina was admitted to the hospital for placement of an intrathecal pump trial on May 11, 2016, for five days. (JE 9, pp. 137-60) Dr. Kari again noted Perez-Avina had no skin color changes, hair color changes, nail changes, and "[n]o significant changes in temperature, left compared to right." (JE 9, p. 145) Dr. Kari indicated he believed Perez-Avina had developed complex regional pain syndrome type 1 of the bilateral upper extremities after two work injuries, and opined her lower extremity weakness does not meet the diagnostic criteria of complex regional pain syndrome. (JE 9, p. 146) Dr. Kari noted during the trial Perez-Avina experienced significant pain relief and improved ability to walk using a walker, less tremors in her upper extremity, and less allodynia in response to the dilaudid and clonidine, and recommended permanent placement of the pump. (JE 9, pp. 154-55)

On July 1, 2016, Dr. Kari placed a permanent intrathecal pump in Perez-Avina. (JE 9, pp. 165-66) During a recheck on July 8, 2016, Dr. Kari noted Perez-Avina's family reported she was using a wheelchair, she was unable to walk, and she was unable to feed herself. (JE 9, p. 168) Perez-Avina reported since the procedure she was experiencing less pain. (JE 9, p. 173) Dr. Kari again noted Perez-Avina had no skin color changes, hair color changes, nail changes, and "[n]o significant changes in temperature, left compared to right," and he diagnosed Perez-Avina with complex regional pain syndrome type 1 of both upper extremities. (JE 9, pp. 170-71)

During an appointment with Dr. Frier on July 27, 2016, Perez-Avina complained of left ankle and foot swelling. (JE 1, p. 46) Dr. Frier assessed Perez-Avina with left leg swelling, left leg pain, complex regional pain syndrome I of other specified site, and major depressive disorder, and he prescribed Furosemide for the swelling. (JE 1, p. 46) Dr. Frier later prescribed a walker. (JE 1, p. 51)

Sunil Bansal, M.D., an occupational medicine physician, performed an independent medical examination for Perez-Avina in September 2016. (Exs. 6; 7) Dr. Bansal reviewed Perez-Avina's medical records and examined her. (Ex. 7) During his examination, Dr. Bansal noted:

RIGHT UPPER EXTREMITY:

There is tenderness over the mid and distal forearm, into the wrist. Swelling is noted over the mid forearm and dorsal hand. There is a reddish-pink discoloration over the forearm. Hypersensitivity and allodynia are noted over the dorsum of the hand. The right hand is cool to touch.

Markedly diminished range of motion of the thumb and second digit, and a loss of range of motion of third digit. Very diaphoretic.

* * * *

LEFT UPPER EXTREMITY:

There is tenderness over the distal forearm into the wrist. Swelling is noted over the dorsal hand. There is a purplish discoloration over the distal forearm. Hypersensitivity and allodynia are noted over the dorsum of the hand. The hand is cool to touch. Markedly diminished range of motion of the thumb and second digit. Smooth and moist ventral hand.

* * * *

LEFT LOWER EXTREMITY:

Tenderness over the distal lower leg and foot. Dorsal foot swelling is noted. There is +2 crepitus. Purplish dorsal foot discoloration is noted. Cooler to touch than the right foot. Profuse diaphoresis is noted of the dorsal and ventral foot, absent on the right. Very limited inversion and eversion, with 3/5 strength.

RIGHT LOWER EXTREMITY:

Tenderness over the distal lower leg. No color changes are noted. No temperature changes are noted. No diaphoresis is noted. Full motion and strength.

(Ex. 7, pp. 38-39)

Dr. Bansal opined Perez-Avina's February and April 2014 work injuries caused her to develop complex regional pain syndrome. (Ex. 7, pp. 40-41, 43) In reaching his conclusions, Dr. Bansal applied the "Budapest Criteria" used in the Sixth Edition of the AMA Guides, as follows:

1. Continuing pain, which is disproportionate to any inciting event.

yes

2. Must report at least one symptom in *three of the four* following categories:

- *Sensory*: reports of hyperesthesia and/or allodynia.

yes

- *Vasomotor*: reports of temperature asymmetry and/or skin color changes and/or skin color asymmetry.

yes

- *Sudomotor/edema*: reports of edema and/or sweating changes and/or sweating asymmetry.

yes

- *Motor/trophic*: reports of decreased range of motion and/or motor dysfunction (weakness, tremor, dystonia) and/or trophic changes (hair, nail, skin).

yes

3. Must display at least one sign at time of evaluation in *two or more* of the following categories:

- *Sensory*: evidence of hyperalgesia (to pinprick) and/or allodynia (to light touch and/or deep somatic pressure and/or joint movement).

yes

- *Vasomotor*: evidence of temperature asymmetry and/or skin color changes and/or skin color asymmetry.

yes

- *Pseudomotor/edema*: evidence of edema and/or sweating changes and/or sweating asymmetry.

yes

- *Motor/trophic*: evidence of decreased range of motion and/or motor dysfunction (weakness, tremor, dystonia) and/or trophic changes (hair, nail, skin).

yes

4. There is no other diagnosis that better explains the signs and symptoms

Correct.

(Ex. 7, pp. 41-42)

Dr. Bansal opined Perez-Avina “has progressed to an especially severe form of CRPS characterized by her tremors, excessive sweating, and marked loss of range of motion. Consistent with this, it appears that she has a component of CRPS that is spreading from one extremity to another, or at least predisposing her to doing so when an additional trauma occurs.” (Ex. 7, p. 41) Dr. Bansal placed Perez-Avina at maximum medical improvement on August 4, 2016. (Ex. 7, p. 44)

Using the Fifth Edition of the AMA Guides, Dr. Bansal opined:

RIGHT UPPER EXTREMITY:

She fulfills the criteria set forth in Section 13.8 of the [AMA Guides], (Criteria for Rating Impairments Related to Chronic Pain). Based on Table 13-22, she qualifies as having a Class IV impairment. These impairments are based on the whole person. She is assigned a **40% impairment of the body as a whole**, as she cannot use the extremity for self care or daily activities. This is a stand-alone impairment for the right upper extremity.

LEFT UPPER EXTREMITY:

She fulfills the criteria set forth in Section 13.8 of the [AMA Guides], (Criteria for Rating Impairments Related to Chronic Pain). Based on Table 13-22, she qualifies as having a Class IV impairment. These impairments are based on the whole person. She is assigned a **30% impairment of the body as a whole**, as she cannot use the extremity for self care or daily activities. This is a stand-alone impairment for the left upper extremity.

LOWER EXTREMITIES:

The rating methodology for neurologic-based conditions of the lower extremities is Table 13-15. She meets the criteria for a Class IV impairment as she cannot stand without help, mechanical support, and/or an assistive device. She uses a wheelchair. Therefore, she is assigned a **40% whole person impairment**

(Ex. 7, pp. 44-45)

Pursuant to a request from Perez-Avina’s counsel, Dr. Frier provided an opinion letter on November 15, 2016, as follows:

I am Griselda’s treating physician and have taken care of her since several months after her initial injury. I have been requested by her legal counsel to address a number of issues. Through the course of my treatment I have seen Griselda become depressed due to her current medical condition. I feel she does currently meet the diagnosis of major

depressive disorder and at the same time, I have seen her become more anxious through the course of our treatments. It is my opinion that her work-related injuries are the major contributing cause to her development of these conditions. I have seen improvement in her depression and anxiety with initiation of appropriate treatment and due to the fact that her pain is becoming better managed and we've actually seen slight improvements in her mobility. . . .

(Ex. 13, p. 56)

On December 1, 2016, counsel for Brenneman Pork and Farm Bureau sent a letter to Dr. Kari, asking for his opinion concerning Perez-Avina. Dr. Kari agreed with the following statements:

(1) While you believe it is possible that the weakness and pain Griselda Perez-Avina reports in her lower extremities is related to CRPS, this condition is an atypical presentation of CRPS and it is also possible the reported weakness and pain is related to some other cause. You cannot state with a reasonable degree of medical certainty that the condition of her lower extremities is caused by CRPS.

(2) While you believe it is possible that Griselda Perez-Avina's tremor-like symptoms when she moves her upper extremities is related to CRPS, this condition is an atypical presentation of CRPS and it is also possible the tremor-like symptoms when Ms. Perez-Avina moves her upper extremities is related to some other cause. You cannot state with a reasonable degree of medical certainty that the tremor-like symptoms with movement of Ms. Perez-Avina's upper extremities is caused by CRPS.

(Ex. 3, pp. 7-8)

Counsel for Brenneman Pork and Farm Bureau sent Dr. Chen additional medical records for review and requested an opinion letter. (Ex. B, pp. 6-8) Dr. Chen opined Perez-Avina's current pain symptoms are not a result of her February and April 2014 work injuries, and noted "Perez-Avina does **NOT** currently have and has never had objective findings consistent with a diagnosis of complex regional pain syndrome since the [February and April 2014] work incidents," she "has **never** developed objective findings consistent with a diagnosis of complex regional pain syndrome," based on his review of subsequent medical records, his opinions from November 2015 have not changed, and "[while] Ms. Perez-Avina has noted some improvement in her subjective pain complaints in the interim, this improvement **does not** confirm that her diagnosis is consistent with complex regional pain syndrome." (Ex. B, p. 9) (Emphasis in original)

Counsel for Perez-Avina sent a form letter to Dr. Frier on July 11, 2017, asking whether he agreed or disagreed with the following statement: "[w]ithin a reasonable degree of medical certainty, do you agree that it is [sic] reasonable and necessary that

Griselda's home/residence be handicap accessible due to Griselda's work-related disabilities (i.e., because of the injuries that resulted from her work injuries on 2/26/14 and 4/16/14)?" (Ex. 14, p. 57) Dr. Frier checked "yes," that he agreed with the statement. (Ex. 14, p. 57)

Counsel for Perez-Avina sent additional medical records to Dr. Kari on October 1, 2017, and asked for his medical opinions regarding Perez-Avina. (Ex. 4, p. 9) Dr. Kari has continued to provide pain management to Perez-Avina since she received the intrathecal pump. (JE 9, pp. 175) Dr. Kari responded on November 14, 2017, agreeing with counsel's statements that "within a reasonable degree of medical probability – that Griselda's diagnosis continues to be CRPS," that the February and April 2014 work injuries "are a cause of Griselda's CRPS and current condition of ill-being," and the treatment he has provided is reasonable and necessary to treat her work-related injuries. (Ex. 4, pp. 10-11) Dr. Kari wrote he believed Perez-Avina reached maximum medical improvement on November 14, 2017, and she will continue to need physical therapy, intrathecal medical refills, diagnostic and drug screen testing, wheelchairs, accommodations for wheelchairs at home, oral medications, surgical revision, replacement of the intrathecal pump and/or catheter, as deemed necessary in the future. (Ex. 4, pp. 11-12)

Perez-Avina attended psychotherapy with Maria Buendia Lobato, LMHC, twenty-two times between December 20, 2016, and November 1, 2017. (JE 10, pp. 221-42) Perez-Avina testified that before her work injuries at Brenneman Pork she had not received any mental health treatment from a psychiatrist, psychologist, or counselor. (Ex. 30, pp. 24-25) Perez-Avina reported before her work injuries "I was physically and mentally perfect." (Ex. 30, p. 24)

At the time of the hearing Perez-Avina was using a wheelchair. (Tr., p. 73) Perez-Avina and Sahagun rent their home. (Tr., p. 58) Sahagun placed a single board ramp to their home. (Tr., pp. 58-59) Perez-Avina reported Brenneman Pork and Farm Bureau authorized a walker, but not a wheelchair, and she borrowed the wheelchair she was using from her church. (Tr., p. 73) Perez-Avina requests Brenneman Pork and Farm Bureau pay for her adult diapers, a bath chair, and a ramp to her home, in addition to her medication and physician appointments. (Tr., p. 100)

Perez-Avina testified she could not imagine her life without the pain pump, noting "I think that my life would end because who's going to live with that pain? I think nobody would be able to bear it. The pump helps me a tremendous amount. The pain is more tolerable. I still feel pain but it's more tolerable now." (Tr., p. 77) Perez-Avina reported that before she received the pain pump, "I didn't have a life. I only left the house to go to doctors' appointments or physical therapy. I was in bed. I couldn't stand to have my kids touch me or give me a kiss or to have clothes on. I didn't have a life." (Tr., pp. 77-78)

Sahagun testified that before his wife received the pain pump she was in bed and she could not tolerate anyone touching her. (Tr., pp. 56-57; 59-60) Sahagun reported

that since she received the pain pump, Perez-Avina can tolerate wearing clothing, and their children can come near her and touch her. (Tr., pp. 57, 60) Perez-Avina is able to take small steps, but she is not walking. (Tr., p. 60) Sahagun takes his wife to all of her medical appointments because he is the only one at home who can carry her. (Tr., pp. 54-55) Sahagun and their children also administer the pain pump Perez-Avina uses. (Tr., p. 56)

Turner testified Perez-Avina has received physical therapy at his place of business for three years and he has provided physical therapy to Perez-Avina twice per week for the past eighteen months. (Tr., p. 15) Turner reported that since her work injury she has attended 360 physical therapy sessions at his place of business. (Tr., p. 23) In the past three years she has cancelled physical therapy on three occasions. (Tr., pp. 23-24)

CONCLUSIONS OF LAW

I. Nature of the Injury

The parties have stipulated Perez-Avina sustained injuries on February 26, 2014, and April 16, 2014, while working for Brenneman Pork. Perez-Avina asserts she sustained a permanent, industrial disability to her bilateral upper extremities and right leg caused by the February and April 2014 work injuries, and sequelae complex regional pain syndrome, depression, and anxiety. Brenneman Pork and Farm Bureau aver Perez-Avina sustained a temporary, but not a permanent disability, and contend if she has sustained a permanent disability, the February 2014 injury caused a scheduled member disability to the right hand, and the April 2014 injury caused an industrial disability. Brenneman Pork and Farm Bureau deny Perez-Avina has sustained sequelae complex regional pain syndrome, depression, and anxiety.

It is undisputed Perez-Avina sustained injuries to her bilateral upper extremities while working for Brenneman Pork in February and April 2014. An injury to one part of the body can later cause an injury to another. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16-17 (Iowa 1993) (holding a psychological condition can be caused or aggravated by a scheduled injury). 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 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. Bilateral Upper Extremities, Left Lower Extremity, and Pain Sequela

Perez-Avina contends she sustained complex regional pain syndrome as a result of her work injuries. Brenneman Pork and Farm Bureau aver Perez-Avina has not met her burden of proof that she sustained complex regional pain syndrome as a result of the February and April 2014 work injuries.

Dr. Frier, a treating family medicine practitioner, Dr. Bansal, an occupational medicine physician retained to conduct an independent medical examination for Perez-Avina, and Dr. Kari, a treating anesthesiologist, have opined Perez-Avina developed sequela complex regional pain syndrome as a result of her February and April 2014 work injuries. Dr. Kari could not opine within a reasonable degree of medical certainty that the condition in her left lower extremity is caused by complex regional pain syndrome, or that her tremor-like symptoms in her bilateral upper extremities are caused by complex regional pain syndrome. (Ex. 3, pp. 7-8)

Dr. Dery, a treating physiatrist, opined Perez-Avina's symptoms are most consistent with complex regional pain syndrome type 1, but noted her pain is atypical and complicated and she does not meet the criteria for complex regional pain syndrome. (Ex. 17, p. 62) Dr. Dooley, a treating anesthesiologist specializing in pain management assessed Perez-Avina with chronic pain due to trauma, and noted there were no objective findings from any previous physicians supporting a diagnosis of complex regional pain syndrome other than pain out of proportion to what would be expected. (JE 8, p. 127) Dr. Chen, a physiatrist retained to conduct an independent medical examination for Brenneman Pork and Farm Bureau, opined Perez-Avina does not have complex regional pain syndrome, noted he was unable to substantiate a medical etiology for her chronic pain, and assigned a zero percent permanent impairment rating. (Ex. 5, pp. 4-5) I find the opinion of Dr. Dery, a treating physiatrist, most persuasive.

Dr. Bansal's report from September 2016 notes he observed:

RIGHT UPPER EXTREMITY:

There is tenderness over the mid and distal forearm, into the wrist. Swelling is noted over the mid forearm and dorsal hand. There is a reddish-pink discoloration over the forearm. Hypersensitivity and allodynia are noted over the dorsum of the hand. The right hand is cool to touch.

Markedly diminished range of motion of the thumb and second digit, and a loss of range of motion of third digit. Very diaphoretic.

* * * *

LEFT UPPER EXTREMITY:

There is tenderness over the distal forearm into the wrist. Swelling is noted over the dorsal hand. There is a purplish discoloration over the distal forearm. Hypersensitivity and allodynia are noted over the dorsum of the hand. The hand is cool to touch. Markedly diminished range of motion of the thumb and second digit. Smooth and moist ventral hand.

* * * *

LEFT LOWER EXTREMITY:

Tenderness over the distal lower leg and foot. Dorsal foot swelling is noted. There is +2 crepitus. Purplish dorsal foot discoloration is noted. Cooler to touch than the right foot. Profuse diaphoresis is noted of the dorsal and ventral foot, absent on the right. Very limited inversion and eversion, with 3/5 strength.

RIGHT LOWER EXTREMITY:

Tenderness over the distal lower leg. No color changes are noted. No temperature changes are noted. No diaphoresis is noted. Full motion and strength.

(Ex. 7, pp. 38-39) Dr. Bansal's "objective findings" are inconsistent with the findings of Perez-Avina's treating providers. I do not find his opinion credible. He also used the "Budapest Criteria," which he states is consistent with the Sixth Edition of the AMA Guides. The Division of Workers' Compensation has adopted the Fifth Edition of the AMA Guides. 876 IAC 2.4. The Division of Workers' Compensation has not adopted the "Budapest Criteria" or the Sixth Edition of the Guides for evaluating alleged complex regional pain syndrome.

Table 16-16 at page 496 of the AMA Guides provides objective criteria for determining whether an individual meets a diagnosis of complex regional pain syndrome, as follows:

Local clinical signs

Vasomotor changes:

- Skin color: mottled or cyanotic

- Skin temperature: cool
- Edema

Sudomotor changes:

- Skin dry or overly moist

Trophic changes:

- Skin texture: smooth, nonelastic
- Soft tissue atrophy: especially in fingertips
- Joint stiffness and decreased passive motion
- Nail changes: blemished, curved, talonlike
- Hair growth changes: fall out, longer, finer

Radiographic signs

- Radiographs: trophic bone changes, osteoporosis
- Bone scan: findings consistent with CRPS

Interpretation

≥ 8 Probable CRPS

< 8 No CRPS

The AMA Guides provide “[a]t least eight of these findings must be present concurrently for a diagnosis of CRPS. Signs are objective evidence of disease perceptible to the examiner, as opposed to symptoms, which are subjective sensations of the individual.” AMA Guides, page 496. Dr. Chen opined Perez-Avina does not meet the criteria for a diagnosis of complex regional pain syndrome using objective criteria, but recognized she has chronic pain, which he opined is unrelated to her February and April 2014 work injuries.

Perez-Avina received treatment from Dr. Jabbari, an occupational medicine physician, Dr. Frier, a family medical physician, Dr. Robinson, a neurologist, Dr. Dery, a physiatrist, Dr. Dooley, an anesthesiologist, and Dr. Kari, an anesthesiologist. She was also examined by Drs. Chen and Milani. Perez-Avina’s treating and examining physicians have documented Perez-Avina has allodynia, loss of movement in her bilateral upper extremities, and at times that her hands are cool to touch. None of her

treating or examining physicians documented observing diaphoresis in her bilateral upper extremities or left lower extremity, other than Dr. Bansal.

Dr. Bansal reported seeing skin discolor in Perez-Avina's bilateral upper extremities and left lower extremity. None of her treating or examining physicians documented observing a reddish-pink discoloration or purple discoloration in her bilateral upper extremities or left lower extremity, other than Dr. Bansal. On February 11, 2015, Dr. Frier documented Perez-Avina's left hand had a "color change," but did not describe the color. (JE 1, p. 25) He did not document any color change during her subsequent appointment on August 6, 2015, or during any future appointments. (JE 1, p. 27) During her appointment with Dr. Dery on March 11, 2015, Perez-Avina reported she was experiencing color changes and swelling in her arm and hand. (JE 6, p. 112) Dr. Dery documented he observed "a little bit of swelling in the hand and fingers on the left," but he did not document any abnormal temperature sensation or color changes. (JE 6, p. 113)

Dr. Frier assessed Perez-Avina with left leg swelling and foot pain on July 27, 2016. (JE 1, p. 46) During a subsequent appointment he documented Perez-Avina was complaining of bilateral edema in her lower extremities, noting she had "2+ pitting edema lower extremities, stiffness and tenderness." (JE 1, p. 48) There is no documentation in Dr. Frier's records that he observed any swelling in Perez-Avina's bilateral upper extremities. (JE 1) Dr. Kari has never opined Perez-Avina meets the criteria for a diagnosis of complex regional pain syndrome with respect to her left lower extremity. (JE 9, p. 146; Ex. 3, pp. 7-8)

Even assuming Dr. Bansal's "findings" are accurate, Dr. Bansal has not documented objective evidence of eight of the criteria listed in Table 16-6, as required by the AMA Guides. I also reject the opinions of Dr. Frier, a treating family medical practitioner, and Dr. Kari, the treating anesthesiologist. Neither physician provided documentation of objective findings of eight of the criteria listed in Table 16-6 of the AMA Guides.

Throughout Perez-Avina's treatment, Dr. Kari vacillated between diagnoses of complex regional pain syndrome type 1 and generalized neuropathic pain syndrome. (JE 9, pp. 132; Ex. 1, p. 1) He also documented he observed no skin color changes, hair changes, nail changes or temperature differences during multiple appointments. (JE 9, pp. 131-32, 170-71) Perez-Avina has not established she developed complex regional pain syndrome as a result of her February and April 2014 work injuries.

Perez-Avina's medical history is long and complicated. She has been treated or examined by multiple providers and specialists. Perez-Avina's treating physicians have documented she has had chronic pain since her work injuries, for more than four years. There is no evidence in the record she had chronic pain before the February and April 2014 work injuries. Dr. Kari vacillated between a diagnosis of complex regional pain syndrome and neuropathic pain syndrome over the course of several months, noting Perez-Avina did not meet objective criteria for complex regional pain syndrome. Even

Dr. Chen recognizes she has chronic pain, opining he could not relate her chronic pain to her work injuries.

Dr. Dery, a treating physiatrist, opined Perez-Avina's injuries and pain stem from her February and April 2014 work injuries. (Ex. 17, p. 62) Dr. Chen examined Perez-Avina on one occasion, for purposes of completing an independent medical examination for Brenneman Pork and Farm Bureau. Dr. Dooley personally examined Perez-Avina on one occasion. Dr. Dery treated Perez-Avina over the course of several months. I find his opinion most persuasive. Perez-Avina has established she developed chronic pain in her bilateral upper extremities as a result of the work injuries, extending into the body as a whole. Perez-Avina has not met her burden of proof that she developed chronic pain in her left lower extremity as a result of her work injuries.

B. Mental Sequelae

Dr. Frier is the only physician who has provided an opinion concerning whether Perez-Avina has sustained depression and anxiety as a result of her February and April 2014 work injuries. Dr. Frier issued an opinion letter on November 15, 2016, opining Perez-Avina's work injuries "are the major contributing cause to her development" of anxiety and depression. (Ex. 13, p. 56) Dr. Frier's opinion is un rebutted. Perez-Avina has established she developed sequelae depression and anxiety as a result of the February and April 2014 work injuries.

II. Extent of Disability

"Industrial disability is determined by an evaluation of the employee's earning capacity." Pease, 807 N.W.2d at 852. 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 for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

Perez-Avina asserts she is permanently and totally disabled under the statute and under the common law odd lot doctrine. Brenneman Pork and Farm Bureau reject her contention.

In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtain, 674 N.W.2d 123, 126 (Iowa 2004) (discussing both theories of permanent total disability

under Idaho law and concluding the deputy's ruling was not based on both theories, rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish the claimant is totally and permanently disabled if the claimant's medical impairment together with nonmedical factors totals 100 percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100 percent disability, but is so injured that the claimant is "unable to perform services other than 'those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.'" Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

"Total disability does not mean a state of absolute helplessness." Walmart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003) (quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability "occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacity would otherwise permit the employee to perform." IBP, Inc., 604 N.W.2d at 633.

In determining the nature and extent of Perez-Avina's disability, I considered the credibility of the three testifying witnesses. 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). I find the testimony of Perez-Avina, her husband, and her physical therapist, Turner, credible and supportive that she is permanently and totally disabled.

Perez-Avina and her husband have an obvious interest in the outcome of this case. Turner also has an interest in the outcome of this case because he has received remuneration from Brenneman Pork and Farm Bureau for services rendered to Perez-Avina. The record supports Perez-Avina has shown motivation to improve her functioning by attending over 360 physical therapy sessions since her work injuries. Perez-Avina produced a video at hearing, which shows her limitations during physical therapy, Exhibit 31. The video shows Perez-Avina struggling to grip a round dowel with her right hand.

Perez-Avina, Sahagun, and Turner engaged in appropriate eye contact, their rate of speech was appropriate, and I did not observe them engage in any furtive movements. During her testimony Perez-Avina appeared fatigued and her grimaces and gestures were consistent with a person experiencing physical discomfort and pain. Based on my observations I found all three witnesses credible.

Perez-Avina has experience working as an inspector for a wooden blind manufacturer, taking telephone orders in Spanish, working as a produce packer, and working in farrowing. (Exs. 27, p, 126; 30, pp. 11-14; Tr., p. 68) Brenneman Pork terminated Perez-Avina's employment on June 2, 2014, after receiving her work restrictions from Dr. Robinson, finding it could not reasonably accommodate her. (Ex.

26, p. 123) Since her second work injury, Perez-Avina has been unable to return to any work. Her records document she is unable to feed herself, and she and her husband testified about her difficulties engaging in self-care.

At the time of the hearing Perez-Avina was thirty-four. (Tr., p. 66) She dropped out of school in Mexico after middle school, but later earned a general education diploma after moving to the United States. (Exs. 27, p. 127; 30, pp. 9-10; Tr, p. 67) Perez-Avina's primary language is Spanish, and she describes her English ability as "very limited." (Tr., p. 68) Given her limited education, work experience, and difficulty using her bilateral arms for basic self-care, I find her prospects for retraining limited. Perez-Avina suffers from chronic pain that limits her ability to work.

Based on the factors for evaluating industrial disability, I conclude Perez-Avina has met her burden of proof that she is sustained a 100 percent loss of her earning capacity as a result of her work injuries. She is entitled to permanent total disability benefits under Iowa Code section 85.34(3) for the duration of her disability, commencing on the date of the second work injury, April 16, 2014, at the stipulated rate of \$374.19. Brenneman Pork and Farm Bureau are entitled to a credit for benefits paid to date.

III. Medical Bills and Alternate Medical Care

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. *Id.* "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." *Id.* § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. *Id.* If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." *Id.* The statute requires the employer to furnish reasonable medical care. *Id.* § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability").

The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). The Iowa Supreme Court has held an employer may be responsible for unauthorized care "upon proof by a preponderance of the evidence that such care was reasonable and beneficial," meaning "it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Gwinn, 779 N.W.2d at 206.

As analyzed above, Perez-Avina has established she sustained chronic pain, depression, and anxiety as a result of her work injuries. Brenneman Pork and Farm Bureau denied she sustained sequelae mental health conditions, but paid for her pain pump, physical therapy, and other treatment for her work injuries and pain. Brenneman Pork and Farm Bureau have not completely abandoned Perez-Avina's care, and may continue to direct her care for her work-related injuries in the future.

Perez-Avina has not established she sustained chronic pain in her left lower extremity as a result of the work injury. There was no evidence presented at hearing her work-related chronic pain necessitates the use of a wheelchair, ramp, or other assistive mobility devices, or adult diapers, and her request for alternate medical care related to her lower extremities is denied.

Perez-Avina seeks to recover medical bills set forth in Exhibit 28 totaling \$10,279.59. The majority of the bills do not provide a description of the treatment received, and cover multiple dates of treatment. Perez-Avina is entitled to recover the \$3,300.00 paid to Luminus Minds for counseling for her mental health conditions. As discussed above, Perez-Avina has not met her burden of proof that she developed complex regional pain syndrome as a result of the February and April 2014 work injuries. Perez-Avina is not entitled to recover the remaining medical bills set forth in Exhibit 28.

IV. Costs

Perez-Avina seeks to recover the \$100.00 filing fees for both petitions, the \$26.26 service costs, the \$103.60 cost of her deposition transcript, the \$750.00 cost of Dr. Kari's March 2, 2016 medical report, and the \$500.00 cost of Dr. Dery's September 2, 2015 medical report.

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 IAC 4.33(6), provides:

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

The administrative rule expressly allows for the recovery of the filing fees, service fee, the reports from Drs. Dery and Kari and for the copy of the deposition transcript. 876 IAC 4.33(6). Using my discretion, I find Brenneman Pork and Farm Bureau should be assessed \$1,579.86 in costs.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay the claimant permanent total disability benefits from April 16, 2014, at the rate of three hundred seventy-four and 19/100 dollars (\$374.19) per week, and into the future during the period of the claimant's continued disability.

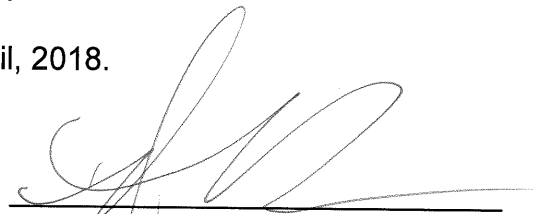
Defendants shall receive a credit for all weekly benefits paid to date.

Defendants shall pay the claimant three thousand three hundred and 00/100 dollars (\$3,300.00) for out-of-pocket medical expenses.

Defendants are assessed two hundred and 00/100 dollars (\$200.00) for the filing fees, twenty-six and 26/100 dollars (\$26.26) for service costs, one hundred three and 60/100 dollars (\$103.60) for the claimant's deposition transcript, seven hundred fifty and 00/100 dollars (\$750.00) for Dr. Kari's report, and five hundred and 00/100 dollars (\$500.00) for Dr. Dery's report.

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 10th day of April, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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 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.