BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JODI LYNNE BOWERS, Claimant, vs. VCA ANTECH, INC. D/B/A AVONDALE DOG CLINIC & SPA, Employer, and SENTINEL INSURANCE COMPANY, LTD., Insurance Carrier, Defendants.	File No. 5064980 A R B I T R A T I O N D E C I S I O N Head Notes: 1402.30, 1801.1, 1802, 1803, 2501, 2502

STATEMENT OF THE CASE

Claimant, Jodi Lynne Bowers, filed a petition in arbitration seeking workers' compensation benefits from VCA Antech, Inc., d/b/a Avondale Dog Clinic & Spa (Avondale), employer and Sentinel Insurance Company, Ltd., insurer, both as defendants. This matter was heard in Des Moines, Iowa on August 16, 2019 with a final submission date of September 14, 2019.

The record in this case consists of Joint Exhibits 1-16, Claimant's Exhibits 1-12, Defendants' Exhibits A through G, and the testimony of claimant.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether claimant sustained an injury to her cervical spine that arose out of and in the course of employment on May 31, 2017.

2. Whether claimant's injury was a cause of temporary disability.

3. Whether claimant's injury was a cause of permanent disability; and if so

4. The extent of claimant's entitlement to permanent partial disability benefits.

5. Whether there is a causal connection between the injury and the claimed medical expenses.

6. Whether claimant is due reimbursement for the independent medical evaluation (IME) performed by Sunil Bansal, M.D.

The parties did stipulate in the hearing report claimant sustained an injury that arose out of and in the course of employment. It is clear from the arguments raised at hearing and the post-hearing briefs that the parties agree claimant sustained a work-related injury on May 31, 2017, but they disagree that the May 31, 2017 injury caused an injury to claimant's cervical spine.

FINDINGS OF FACT

Claimant was 52 years old at the time of hearing. Claimant graduated from high school. She has a two-year degree from a community college in clerical administration.

Claimant has done clerical work for the Iowa Department of Transportation. She worked at Hy-Vee. Claimant worked part-time as a lunch program coordinator for the Des Moines Public Schools.

Claimant began at Avondale in 1997. Avondale is a pet day care and veterinarian business. Claimant managed the dog day care, the dog spa, the cat hospital, and the grooming portion of the business.

Claimant indicated her work as a manager at Avondale included, but was not limited to clerical work, walking dogs, cleaning kennels, and doing remodeling and carpentry work. Claimant testified she also supervised between 15-20 employees. Claimant says she oversaw scheduling of employees. She said she also did bookkeeping and billing for Avondale.

Claimant's prior medical history is relevant. In 2009 claimant was treated for right elbow tendinitis. (Joint Exhibit 1, page 1)

In 2009 claimant underwent a cubital tunnel surgery on the right. (Exhibit D, p. 17; Transcript pp. 23, 60-61)

In 2014 claimant treated for neck pain. (Jt. Ex. 1, p. 7)

In April of 2016 claimant was evaluated for possible recurrent carpal tunnel syndrome on the right. Claimant was given an injection and a splint to wear at night. (Jt. Ex. 3, pp. 1-6; Tr. pp. 26, 68)

There is no evidence in the record any of claimant's prior injuries resulted in any permanent restrictions or permanent impairment.

Claimant testified she was walking a large leashed dog at Avondale on or about May 31, 2017. While claimant was walking the dog through a door, the dog took off. Claimant testified she held onto the leash and fell forward, as the leash was wrapped around her hand. (Tr. pp. 29, 69) Claimant testified she had pain in her knees, arms, shoulder and neck. (Tr. p. 30) Claimant testified she worked through the rest of the day of her shift after the accident.

On May 31, 2017 claimant was evaluated by Brooke Stewart, PA-C for right elbow pain. Claimant felt a pop in her right elbow after being pulled by a dog at work. Claimant was assessed as having strain of other extensor muscle, fascia and tendon at forearm and a pulled elbow. She was referred to an orthopedic surgeon and her arm was put in a sling. (Jt. Ex. 1, pp. 18-20)

Claimant was evaluated by Brian Haupt, PA-C, with DMOS on June 7, 2017 with burning pain in the forearm and tingling in the fingers on her right hand. Claimant was assessed as having carpal tunnel syndrome on the right and an extensor tendon strain on her right. EMG testing was recommended. (Jt. Ex. 3, pp. 10-12)

On June 21, 2017 claimant underwent EMG/NCV testing for the right upper extremity. Testing showed no abnormality of the right upper extremity. (Jt. Ex. 4; Jt. Ex. 3, p. 15)

Claimant was evaluated by Adam Bjornson, PA-C on August 4, 2017 for continued right elbow pain. Claimant was referred to physical medicine to discuss possible nonsurgical treatment options. (Jt. Ex. 1, pp. 25-27)

Claimant was seen again at DMOS by Jeffrey Rodgers, M.D. on August 14, 2017 for constant headaches. The pain radiated from claimant's neck to her forearm. X-rays of the cervical spine showed significant degenerative changes. (Jt. Ex. 3, p. 16)

Claimant was seen by Lynn Nelson, M.D. on September 26, 2017 for pain in the neck and shoulder and the arm. Claimant was assessed as having right-sided neck pain and right upper extremity pain, possible cervical radiculopathy. A cervical MRI was recommended. (Jt. Ex. 3, p. 25)

On October 3, 2017 claimant underwent a cervical MRI. It showed a stenosis at level C4-C6 and a prominent disc osteophyte complex at the C6-C7 levels. (Jt. Ex. 5)

After review of the MRI, Dr. Nelson recommended an epidural steroid injection (ESI). (Ex. 1, p. 1)

In an October 10, 2017 report, William Boulden, M.D., gave his opinions of claimant's condition following an IME. Claimant had neck and right arm pain. Claimant was assessed as having right arm pain etiology unknown with preexisting degenerative cervical problems. Dr. Boulden opined claimant's pathology, shown on the cervical MRI, was preexisting. Dr. Boulden opined further care and treatment was not related to the work injury, but was related to preexisting problems claimant had in her neck. Dr. Boulden opined any surgery to claimant's neck would be due to preexisting problems. (Ex. E, pp. 37-42)

On November 29, 2017 claimant underwent a C7-T1 ESI. (Jt. Ex. 7, pp. 1-9)

Claimant returned to Dr. Nelson on February 1, 2018. Claimant had no relief from the ESI. Dr. Nelson opined claimant's work injury of May 31, 2017 materially aggravated her underlying cervical stenosis with subsequent cervical radiculopathy. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 1, pp. 2-3)

On February 28, 2018 claimant underwent surgery consisting of a C4-C6 cervical discectomy with a C4-C6 anterior cervical fusion. Surgery was performed by Dr. Nelson. (Jt. Ex. 9)

Claimant returned in follow up with Dr. Nelson on April 24, 2018. Claimant had improvement in her symptoms. Claimant was planning on returning to work. (Jt. Ex. 3, p. 30)

Claimant testified she returned to work at Avondale on or about April 25, 2018. She said on or about that day, she met with a supervisor who told claimant she was not performing her job adequately. Claimant resigned her position on or about April 25, 2018. (Tr. pp. 39-40)

Claimant said she began working for Panera on or about September 4, 2018. Claimant works approximately 20-25 hours per week. Claimant does paperwork and payroll for Panera.

In early November of 2018 claimant began to have chiropractic treatment for her neck, back and shoulders. Claimant had the chiropractic treatment from November 6, 2018 through December 19, 2018. (Jt. Ex. 12)

Claimant saw Dr. Nelson on April 2, 2019. Claimant had posterior neck pain and intrascapular pain. Claimant was working part time at Panera for 25-30 hours per week. Dr. Nelson did not believe injections or further surgery were necessary. He recommended claimant undergo physical therapy. (Jt. Ex. 3, p. 40)

In an April 24, 2019 letter, Dr. Nelson indicated claimant had preexisting cervical degenerative changes prior to the May 31, 2017 injury. He opined her injury of May 31,

2017 was a material aggravation of her underlying cervical degenerative changes and foraminal stenosis. He found claimant at maximum medical improvement (MMI) as of July 24, 2018. Dr. Nelson found claimant had a 15 percent permanent impairment to the body as a whole using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Dr. Nelson indicated that due to claimant's injury her work was restricted to six hours per day between August 29, 2017 and February 27, 2018. He also noted she was off work from her cervical injury from February 28, 2018 through April 24, 2018. Dr. Nelson did not give claimant permanent restrictions. He did not believe claimant needed any additional medical care other than over-the-counter medication. (Ex. 2, p. 6)

In a June 24, 2019 letter, Dr. Boulden indicated he reviewed additional medical records sent to him by defendants' counsel. Regarding causation, Dr. Boulden opined:

> It would be my opinion that she had pre-existing changes based on the MRI findings, and I see nothing that is acute. Dr. Nelson has stated that he feels she has had a material aggravation. His definition and my definition must be different since I do not believe there was a material aggravation. My definition is straight forward in the fact that material aggravation means something has changed objectively. That is not present on the MRI.

(Ex. E, p. 43)

Dr. Boulden agreed with Dr. Nelson's permanent impairment rating of 15 percent to the body as a whole. He did not believe claimant's need for surgery was related to the May 31, 2017 work injury. (Ex. E, pp. 43-44)

In a July 9, 2019 report, Dr. Bansal gave his opinions of claimant's condition following an IME. He opined claimant had a preexisting degenerative condition of the cervical spine. He opined claimant's injury of May 31, 2017 substantially aggravated claimant's preexisting cervical condition. He opined treatment for claimant's cervical condition was reasonably and medically necessary to treat her condition. He agreed claimant's MMI date was July 24, 2018. He found claimant had a 25 percent permanent impairment to the body as a whole based on Table 15-5 of the Guides. Dr. Bansal limited claimant to lifting 20 pounds only occasionally and 10 pounds frequently. (Ex. 3)

On July 9, 2019 claimant had a cervical MRI. It showed improvement in the C4-6 levels of the spinal canal and worsening of the degenerative disc bulge at the T1-2 levels. (Jt. Ex. 13)

Claimant returned to Dr. Nelson on July 9, 2019 with continued complaints of neck and trapezius pain. Claimant's neurological exam was unremarkable. He indicated claimant could potentially benefit from medial branch blocks. (Jt. Ex. 3, pp. 42-43)

In a July 16, 2019 letter Dr. Boulden did not believe claimant required further medical treatment and did not believe claimant had any permanent restrictions. (Ex. E, p. 45)

Claimant returned to Central States Pain Clinic on July 24, 2019. She had cervical pain radiating to the right upper extremity. Claimant was prescribed medication. (Jt. Ex. 7, pp. 10-14)

On August 2, 2019 claimant underwent a T1-T2 ESI at the Central States Pain Clinic performed by Andrzej Szczepanek, M.D. (Jt. Ex. 7, pp. 16-18)

Claimant testified that given her physical limitations, she does not believe she could return to work to most of her prior employers.

Claimant testified she has difficulty standing and sitting for extended periods of time. She takes both prescription and over-the-counter medications for pain.

Claimant says her arm is numb and tingling. She says she has loss of strength in her right arm. Claimant testified given her pain limitations she does not believe she could work a full-time job. Claimant testified her surgery initially helped her symptoms. She said since approximately September or October of 2018 her symptoms have worsened.

Claimant earned approximately $788.00 a week at the time of the injury. While working at Panera, claimant earned between $280.00-$355.00 per week. (Ex. 10; Tr. pp. 41-42)

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant's cervical condition was caused or materially aggravated by the May 31, 2017 work injury.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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

performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

As noted above, claimant contends her cervical injury was materially aggravated by her May 31, 2017 work injury. Defendants argue claimant's May 31, 2017 work injury only caused an injury to her right upper extremity.

Three experts have opined regarding the causal connection between the May 31, 2017 injury and claimant's neck condition. Dr. Nelson is an orthopedic surgeon. He treated claimant for almost two years. He performed claimant's fusion surgery on her neck. Dr. Nelson opined claimant had preexisting degenerative changes and stenosis in the cervical spine prior to the date of injury, but that her condition was materially aggravated by her May 31, 2017 injury. (Ex. 2, p. 6)

Dr. Bansal evaluated claimant on one occasion for an IME. Dr. Bansal also opined claimant's May 31, 2017 injury materially aggravated her preexisting condition.

Dr. Boulden evaluated claimant once for an IME. Dr. Boulden opined claimant did not have a material aggravation of a preexisting condition. This opinion is based in large part on his review of claimant's MRI. Dr. Boulden noted:

> Dr. Nelson has stated that he feels she has a material aggravation. His definition and my definition must be different since I do not believe there was a material aggravation. My definition is straight forward in the fact that material aggravation means something has changed objectively. That is not present on the MRI.

(Ex. E, p. 43)

Dr. Boulden's opinion regarding causation seems to be that since there is nothing, allegedly, objective on the MRI to show that the May 31, 2017 injury aggravated claimant's condition, the May 31, 2017 fall did not materially aggravate claimant's condition. Dr. Boulden's opinion is problematic. The record is clear that after her fall, claimant later developed neck pain, radiculopathy and muscle spasms. In short, the record reflects claimant had a worsening of her health, as manifested in neck pain and radiculopathy, not present before the accident. Given these concerns, it is found Dr. Boulden's opinion regarding causation is found not convincing.

The opinions of treating doctors are not to be given greater weight, as a matter of law, solely because they are treating physicians. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1984). However, as an issue of fact, Dr. Nelson has far more familiarity with claimant's medical history and medical presentation than does any other expert in this case. I recognize the record indicates claimant fell on May 31, 2017 but did not indicate she had complaints of neck pain until a few months later. Dr. Nelson was aware of claimant's medical history. Given this record, and for the reasons detailed above, it is found the opinions of Dr. Nelson and Dr. Bansal are more convincing on causation than the opinions of Dr. Boulden.

Dr. Bansal and Dr. Nelson opined claimant's May 31, 2017 injury materially aggravated her preexisting cervical condition. The opinions of Dr. Boulden regarding causation are found not convincing. Based on this, claimant has carried her burden of proof the May 31, 2017 work injury materially aggravated her preexisting cervical condition.

The next issue to be determined is whether claimant's injury is the cause of a temporary disability.

An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. An employee is temporarily, partially disabled when the employee is not capable medically of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability. Temporary partial benefits are not payable upon termination of

temporary disability, healing period, or permanent partial disability simply because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury. Section 85.33(2).

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

Dr. Nelson opined claimant was only able to work six hours a day between August 29, 2017 and February 27, 2018. He also opined claimant was off work completely due to her injury from February 28, 2018 through April 24, 2018. (Ex. 2, p. 6) Based on this record, claimant is due temporary partial disability benefits from August 29, 2017 through February 27, 2018, and healing period benefits from February 28, 2018 through April 24, 2018.

The next issue to be determined is if claimant's injury resulted in a permanent disability.

Claimant sustained an injury on May 31, 2017. At the time of hearing, over two years after the date of injury, claimant still had ongoing limitations in strength, range of motion and pain to her neck and upper extremity due to this injury. Both Dr. Bansal and Dr. Nelson have opined claimant has a permanent impairment. Given this record, claimant has carried her burden of proof the May 31, 2017 injury resulted in a permanent disability.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be

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

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

Claimant was 52 years old at the time of hearing. Claimant graduated from high school. Claimant has a two-year degree in clerical administration. Claimant has done clerical work for the Iowa Department of Transportation. She worked at Hy-Vee. She worked part time as a lunch program coordinator for the Des Moines Public Schools. Claimant began at Avondale in 1997.

Both Dr. Nelson and Dr. Boulden opined claimant has a 15 percent permanent impairment to the body as a whole due to her neck injury. (Ex. 2, p. 6; Ex. E, p. 44) Dr. Bansal found claimant had a 25 percent permanent impairment to her neck. (Ex. 3) Dr. Bansal's opinion regarding the extent of claimant's permanent impairment is more detailed than the ratings given by Drs. Nelson and Boulden. I am able to follow Dr. Bansal's methodology of rating using Table 15-5 of the Guides and Example 15-5. Given this record, it is found claimant has a 25 percent permanent impairment to the body as a whole from her cervical injury.

Dr. Nelson returned claimant to work with no restrictions. Dr. Bansal gave claimant permanent restrictions. At the time of hearing claimant was working at Panera. There was no evidence in the record Dr. Bansal's restrictions are being applied at the Panera job. Claimant credibly testified she has ongoing weakness and pain in her neck. She credibly testified she has loss of strength in her upper extremity due to her injury. The record reflects claimant does have limitations due to her surgery. However, given the nature of the record in this case, it is unclear precisely what restrictions are used at Panera.

Claimant's unrebutted testimony is she cannot return to work to any of her prior jobs given her neck condition. Claimant's unrebutted testimony is she cannot return to full-time work given her condition.

Claimant earned $788.00 per week at the time of injury. At Panera claimant earns between $280.00-$355.00 per week. (Ex. 10; Tr. pp. 41-42)

Given the entirety of this record, it is found claimant has a 50 percent loss of earning capacity or industrial disability due to the work injury at Avondale.

The next issue to be determined is whether there is a causal connection between claimant's injury and the claimed medical expenses.

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

Claimant has carried her burden of proof her cervical condition was materially aggravated by her May 31, 2017 work injury. Based on this, defendants are liable for all medical expenses related to the treatment of claimant's neck injury and her right upper extremity condition related to the May 31, 2017 injury.

The final issue to be determined is if claimant is due reimbursement for Dr. Bansal's IME.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847

Dr. Nelson was initially the authorized treating physician. It is unclear from the record if he was still the authorized treating physician when he issued his rating on claimant on April 24, 2019. (Ex. 2, p. 6) Dr. Boulden, a physician retained by defendants, issued his impairment rating on claimant on June 24, 2019. (Ex. E, pp. 43-44) Dr. Bansal, the employee-retained physician, issued his rating on claimant in a report dated July 9, 2019. Given the uncertainty regarding Dr. Nelson's status, and the chronology of Dr. Boulden and Bansal's report, it is found claimant is due reimbursement for Dr. Bansal's IME under Iowa Code section 85.39.

ORDER

Therefore, it is ordered:

That defendants shall pay claimant temporary partial disability benefits from August 29, 2017 through February 27, 2018.

That defendants shall pay claimant healing period benefits from February 28, 2017 through April 24, 2018 at the rate of five hundred thirteen and 43/100 dollars ($513.43) per week.

That defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at the rate of five hundred thirteen and 43/100 dollars ($513.43) per week commencing on April 24, 2018.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

That defendants shall pay claimant medical expenses as detailed above.

That defendants shall reimburse claimant for expenses related to Dr. Bansal's IME.

That defendants shall pay costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 13th day of January, 2020.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Justin Burroughs (via WCES)
L. Tyler Laflin (via WCES)
Fredd Haas (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be 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.