BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CAMILLE BITTERLIE, Claimant, vs. Q.P. HOLDINGS, LLC, Employer, and GREAT AMERICAN ALLIANCE INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 21010678.02 ARBITRATION DECISION Headnotes: 1803, 2501, 2907

STATEMENT OF THE CASE

Claimant, Camille Bitterlie, filed a petition in arbitration seeking workers' compensation benefits against defendants Quantum Plastics ("Quantum"), employer, and Great American Alliance Insurance Co., insurer. In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on December 5, 2022, via Zoom.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record consists of Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 5, and Defendants' Exhibits A through G. Claimant testified on her own behalf. Danielle Story testified on behalf of defendants. No other witnesses were called to testify. The evidentiary record closed at the conclusion of the evidentiary hearing. All parties filed their post-hearing briefs on January 20, 2023, at which time the case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's entitlement to permanent disability benefits;

2. Whether claimant is entitled to payment of medical expenses; and

3. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

Camille Bitterlie was a 51-year-old individual at the time of the evidentiary hearing. (See Ex. 1, pp. 1, 6) She graduated from South Tama High School in 1989. (Ex. B, p. 6) She did not attend any post-secondary educational institutions. (See Id.) Prior to working for the defendant employer, Bitterlie worked as a production worker and line leader at Lennox Industries, as a social worker at Central Oklahoma Community Action Agency, and as a clerk/cashier at Jiffy Convenience Store. (Ex. B, p. 7)

Bitterlie began working for what would become Quantum Plastics ("Quantum") as a temporary worker in late 2015. (Hr. Tr., pp. 11-12) She eventually applied for and received a full-time position with Quantum in 2016. (Hr. Tr., p. 12) Quantum manufactures plastic injection moldings for various clients. For example, the Quantum facility in Victor, Iowa manufactures refrigeration parts for Whirlpool and Amana. (Hr. Tr., pp. 63-64) In the beginning, claimant worked as a press operator. (Hr. Tr., p. 13) Claimant subsequently operated a printing machine, inspected parts for quality, and worked on the floor. (Hr. Tr., pp. 13-15)

On the date of injury, claimant was working in the "box/color" department. (Hr. Tr., p. 15) In this department, employees work on a box machine and make the packaging for various products. According to claimant, the box machine produces various cutouts and the employees put the boxes together. Employees in the box/color department also prepare the color that the utility workers will eventually load into the press machine. (See Hr. Tr., p. 66) To prepare the color, employees scoop dye pellets out of a Gaylord and fill buckets or barrels with said dye pellets, according to the order's specifications. (See Hr. Tr., pp. 31-32) Claimant asserts that the buckets can hold about 25 pounds. (Hr. Tr., p. 32)

Bitterlie sustained a stipulated injury on April 14, 2021. (Hr. Tr., p. 16) According to claimant, she was backing up in order to give a forklift operator space to pick up a cardboard bale when she tripped over an unassembled crate. (Id.) Claimant landed in a seated position on an uneven surface. (Id.) After the fall, claimant stood up and went outside to try to catch her breath. (Hr. Tr., p. 17) When her symptoms did not alleviate within 10 to 15 minutes, claimant called to her husband and asked him to take her home. (Id.)

The next morning, claimant could not get out of bed due to her low back pain. (Hr. Tr., p. 18) She contacted the defendant employer, reported that she would not be in for her shift, and requested medical treatment. (Hr. Tr., pp. 18-19)

Defendants initially directed claimant's care to Clayton Francis, M.D. at Grinnell Regional Medical Center. (JE 2, p. 1) However, when conservative care failed to improve claimant's condition, defendants referred her for an orthopedic evaluation with Trevor Schmitz, M.D. (JE 3, p. 1) The initial evaluation occurred on June 15, 2021. (Id.) Dr. Schmitz assessed claimant with a compression fracture of T12 vertebra and midline low back pain without sciatica. (JE 3, p. 3) He then ordered an MRI of the lumbar spine and thoracic region. (Id.)

The June 24, 2021 MRI of Bitterlie's lumbar spine revealed an acute compression fracture involving the T12 vertebral body. The imaging also revealed a prominent left far lateral osteophyte at L5-S1 that causes mild impingement on the left exiting L5 nerve root. (JE 1, p. 2)

Claimant's medical care largely consisted of physical therapy and medication management. She underwent 35 sessions of physical therapy between July 19, 2021 and November 4, 2021. (See JE 5, pp. 1-35) At her final session, claimant reported 80 percent improvement and rated her pain 3 out of 10 at its worst. (JE 5, p. 34) Bitterlie has not received any injections and she has not undergone any surgical procedures for her back complaints. (See Hr. Tr., pp. 48-49)

Dr. Schmitz placed claimant at maximum medical improvement (MMI) and recommended a functional capacity evaluation on November 9, 2021. (See JE 3, pp. 14, 18)

Occupational therapist John Kruzich performed a functional capacity evaluation (FCE) of Bitterlie on November 15, 2021. (JE 4, p. 1) Based on the results of the evaluation, claimant demonstrated capabilities and functional tolerances to function within the Medium physical demand level. Mr. Kruzich outlined a number of restrictions for Dr. Schmitz to consider. (Id.) According to the report, claimant is able to lift up to 15 pounds occasionally, from floor-to-waist. She is able to lift 25 pounds occasionally from 12 inches to waist and from her waist to her shoulder. She is able to lift 20 pounds occasionally from waist-to-overhead, and when performing a bilateral carry. Lastly, she is able to push and pull with 40 pounds of force, occasionally. In addition to lifting restrictions, Mr. Kruzich recommended limitations for bending, kneeling, and squatting. (Id.)

On November 24, 2021, Dr. Schmitz adopted the restrictions outlined in the FCE report and released claimant from treatment. (JE 3, p. 18) Claimant has not returned to Dr. Schmitz since November 24, 2021. (Hr. Tr., p. 49) She has not requested any additional medical treatment from defendants. (Hr. Tr., pp. 51-52)

Following her release from Dr. Schmitz, claimant began presenting to her primary care provider, Sherri Vesely, N.P., for her low back complaints. On January 10, 2022, Ms. Vesely opined that claimant's condition was under poor control and prescribed Medrol dose pack, neurontin, Zanaflex, and Lidoderm patches to address claimant's ongoing low back pain. (JE 7, pp. 3-4) Ms. Vesely continues to prescribe claimant medication for her ongoing low back pain. (See Hr. Tr., pp. 24-26, 50-51) At hearing, claimant testified she first asked Dr. Schmitz to provide her with pain medication; however, he declined her request. (Hr. Tr., p. 60)

Claimant returned to work as a full-time assembly worker in late November of 2021. According to claimant, this was the only job available to her given the restrictions from Dr. Schmitz. (Hr. Tr., pp. 27-28; Ex. 3, Depo. p. 10) In the "Assembly/Secondary" position, claimant builds icemakers with the help of her co-workers. (Hr. Tr., pp. 27-28) According to the job description in evidence, the role requires employees to have the ability to exert up to 35 pounds, "of which requires lifting that can require assistance." (Ex. 2, p. 1) The job description further provides, "The job is considered relatively active work requiring standing, twisting, turning, and the use of your hands and fingers." (Id.)

Immediately prior to the date of injury, claimant was earning $16.50 per hour in the box/color position. (See Ex. 3, Depo. p. 12) Claimant received a raise on June 12, 2022, and now makes $17.00 per hour. (Hr. Tr., pp. 47-48) There is a dispute as to the extent of overtime available to claimant in her new role. Claimant acknowledges that overtime is available to "Assembly/Secondary" employees; however, she asserts that her ability to accept overtime is dependent upon client demand and whether there are other employees in her department opting to work overtime that could help her with the physical requirements of the job. (See Hr. Tr., pp. 29-30)

Danielle Story, a Human Resources Generalist for the defendant employer, testified at the evidentiary hearing. (Hr. Tr., p. 64) According to Ms. Story, claimant has not requested any additional accommodations beyond her permanent restrictions. (Hr. Tr., p. 68) Additionally, claimant has not complained to Ms. Story about the physical aspects of her current position or requested any additional medical care. (Hr. Tr., pp. 68, 71)

Claimant continues to struggle with low back pain and feels her condition has not improved. (Hr. Tr., p. 35) Her pain increases throughout the workweek and, as a result, she becomes irritable by Thursday or Friday. (Hr. Tr., p. 35) The pain limits her ability to bend at the waist and engage in various activities of daily living. (See Hr. Tr., p. 36) It also affects her ability to engage in hobbies she enjoys. (Hr. Tr., p. 36) For example, claimant enjoys the outdoors and camping. She used to travel to various campsites and camp in tents; however, she now limits the campsites she travels to and she only sleeps in a camper. (Hr. Tr., pp. 36-37) Similarly, claimant does not fish as often as she used to. She still goes on fishing trips with her husband; however, she has a difficult time casting and reeling in. (Hr. Tr., pp. 38-39) On cross-examination, claimant acknowledged that she still goes canoeing with her husband, and she has the ability to get in and out of a canoe. (Hr. Tr., pp. 57-58)

With respect to her home life, claimant testified she does less cooking, she needs assistance when doing laundry, and her husband now handles the vacuuming. (Hr. Tr., p. 41) Claimant can no longer pull weeds or work effectively in her garden. (Hr. Tr., pp. 42-43)

Defendants introduced approximately one hour of surveillance video taken on October 17, 2022, October 19, 2022, and October 28, 2022. (Ex. G) The video depicts claimant walking, driving, sitting in her vehicle, and eating at a restaurant. (Id.) I did not observe any specific activities on the surveillance footage that would clearly violate the medical restrictions recommended by Dr. Schmitz and the November, 2021 FCE report.

Two physicians have addressed permanent impairment as it relates to claimant's stipulated work injury.

Dr. Schmitz addressed claimant's permanent impairment in a letter, dated December 17, 2021. (JE 3, p. 20) Dr. Schmitz assessed a thoracic compression fracture at T12 with approximately 45 percent height loss. Using Table 15-3, page 384 in the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Schmitz placed claimant in DRE Lumbar Category III and assigned 10 percent whole person impairment. (Id.) Notably, Dr. Schmitz assessed claimant with a thoracic spine injury, but assigned impairment based on an injury to the lumbar spine.

In response to Dr. Schmitz's impairment rating, Bitterlie sought an independent medical examination with Farid Manshadi, M.D. (Ex. 1, p. 6) The examination occurred on May 11, 2022. (Id.) Following his review of the medical records and a physical examination of claimant, Dr. Manshadi assessed claimant with a T12 compression fracture of 40 to 50 percent. He noted that claimant, "remains with pain and reduced function as well as reduced lumbar active range of motion." (Ex. 1, p. 9) Like Dr. Schmitz, Dr. Manshadi placed claimant in DRE Lumbar Category III; however, it is likely this was a typographical error. Unlike Dr. Schmitz, who utilized Table 15-3, Dr. Manshadi utilized Table 15-4, for thoracic spine injuries, and assigned 16 percent whole person impairment. (Id.) The 16 percent rating falls within the impairment range provided for DRE Thoracic Category III, not DRE Lumbar Category III.

After reviewing the expert opinions and comparing the same to Table 15-3 on page 384, and Table 15-4 on page 389 of the AMA Guides, Fifth Edition, I find the impairment rating of Dr. Manshadi to be more accurate and convincing than the impairment rating of Dr. Schmitz. Both physicians agree that claimant sustained a compression fracture in the thoracic spine. The AMA Guides allow physicians to assign between 15 and 18 percent impairment in DRE Thoracic Category III. (AMA Guides, p. 389) While Dr. Schmitz's 10 percent impairment rating falls within the range of impairment ratings available in DRE Lumbar Category III, it does not fall within the range provided in DRE Thoracic Category III. (See AMA Guides, pp. 384, 389) Although the impairment assessments are relatively similar, I ultimately find Dr. Manshadi's impairment rating for the thoracic spine to be more accurate that Dr. Schmitz's impairment rating for the lumbar spine. Therefore, I accept

Dr. Manshadi's rating and find that claimant proved she sustained 16 percent whole person impairment as a result of the April 14, 2021, work injury.

Bitterlie seeks an award of past medical expenses. She included an affidavit of medical costs and medical mileage in Exhibit 4. Claimant first requests an award of medical expenses for the treatment she received from Ms. Vesely on January 10, 2022, and February 1, 2022. (Ex. 4, pp. 3-4) Claimant did not request that Ms. Vesely's care be authorized and defendants did not authorize Ms. Vesely's care. Accordingly, I find the care with Ms. Vesely was unauthorized care.

Claimant relies on her own testimony and the opinions of Dr. Manshadi to establish the care she received from Ms. Vesely was reasonable and beneficial. Claimant testified she asked Dr. Schmitz to refill her pain medication; however, Dr. Schmitz told her that he does not prescribe pain medication. (Hr. Tr., pp. 60-61) Claimant later reported ongoing back pain to Ms. Vesely, who prescribed Zanaflex and Neurontin. (JE 7, p. 3) Dr. Manshadi opined that the treatment provided by Ms. Vesely was medically reasonable and related to claimant's April 14, 2021, work injury. (Ex. 1, p. 9)

I find claimant failed to prove the care provided by Ms. Vesely provided a more favorable medical outcome than would likely have been achieved through authorized care that could have been offered by the employer. This finding will be discussed in greater detail in the Reasoning and Conclusions of Law section.

The mileage claims asserted on Exhibit 4 from April 15, 2021, through November 23, 2021, appear appropriate, reasonable, and for necessary medical care related to the work injury.

Costs will be addressed in the Conclusions of Law section.

REASONING AND CONCLUSIONS OF LAW

The primary issue to be addressed in this decision is the extent of claimant's entitlement to permanent partial disability benefits for a stipulated injury to the thoracic spine.

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).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or for loss of earning capacity under section 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 14 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity. Iowa Code section 85.34(2)(x).

Bitterlie's injury constitutes an unscheduled injury under Iowa Code section 85.34(2)(v) as back injuries are not listed in the statutory schedule.

Pursuant to Iowa Code section 85.34(2)(v), an unscheduled injury is compensated on a functional impairment basis if the injured worker returns to work and receives the same or greater salary than what the worker earned on the date of injury. However, if the employee no longer works for the employer, permanent disability is payable based upon an industrial disability analysis. Martinez v. Pavlich, Inc., File No. 5063900 (App. July 2020). In this instance, claimant returned to work and received the same or greater earnings than what she earned on the date of injury. She was still working for Quantum at the time of hearing. Therefore, under the statute, Bitterlie's entitlement to benefits must be determined based only upon the functional impairment resulting from her injury, not her lost earning capacity. Any determination of industrial disability relating to the work injuries must be pursued using the mandatory bifurcated litigation process in section 85.34(2)(v), if the statutory requirements are met.

As mentioned, two physicians offered opinions as to claimant's permanent functional impairment. I ultimately found the opinions of Dr. Manshadi to be the most thorough and consistent with the AMA Guides, Fifth Edition, and most convincing on the issue of permanent impairment. I accepted Dr. Manshadi's impairment rating and found claimant proved she sustained 16 percent whole person impairment as a result of the April 14, 2021 injury to her back.

Pursuant to Iowa Code section 85.34(2)(v), Bitterlie shall be paid proportionally based upon the functional limitation on a 500-week basis. Having found that claimant sustained a 16 percent permanent functional impairment of the whole person, I conclude she proved entitlement to 80 weeks of permanent partial disability benefits at this time. Iowa Code section 85.34(2)(v). If claimant's employment ends subsequent to this award, she may be entitled to further permanent disability benefits pursuant to Iowa Code section 85.34(2)(v).

Bitterlie next asserts a claim for payment or reimbursement of past medical expenses. Defendants stipulate that the fees or prices charged by the providers in Exhibit 4 are fair and reasonable. Defendants also stipulate that the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants are not offering contrary evidence.

In this case, the claimant did not request additional medical care from the employer. Claimant did not seek an order of the agency authorizing alternate medical care. Instead, she selected her own medical care and abandoned the statutory scheme that permits the employer to select care. In so doing, claimant assumes a higher burden of proof to establish liability for unauthorized medical care. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

If the claimant elects to pursue unauthorized medical care, she can still recover the expenses of that unauthorized care if she proves by a preponderance of the evidence that such care was reasonable and beneficial. Id. at 206. However, there are often times multiple reasonable courses of treatment. Therefore, to recover the cost of unauthorized care, claimant must prove that the unauthorized care was beneficial in that it "provides a more favorable outcome than would likely have been achieved by the care authorized by the employer." Id.

Claimant offered testimony and the opinion of Dr. Manshadi to establish that the care she sought and obtained after her release from Dr. Schmitz would provide a more favorable outcome than would likely have been achieved by the care authorized by defendants.

Claimant did not request additional care from defendants. Therefore, the defendants did not select or authorize any additional care. While there is evidence that the medication claimant received from Ms. Vesely was more beneficial that the treatment being provided by defendants, claimant never gave defendants the opportunity to exercise their statutory right to select the care to be provided. I conclude claimant failed

to overcome her burden to establish that the care provided by Ms. Vesely provided a more favorable medical outcome than would likely have been achieved through authorized care that could have been offered by defendants. Accordingly, I conclude claimant is precluded from recovery of her medical expenses for the treatment provided by Ms. Vesely.

I found the medical mileage listed in Exhibit 4 from April 15, 2021, through November 23, 2021, was appropriate and reasonable. I conclude those medical mileage expenses are payable or reimbursable by defendants. (Iowa Code section 85.27) The medical mileage associated with Dr. Manshadi's IME is reimbursable under Iowa Code section 85.39.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. Rule 876 IAC 4.33. I conclude that claimant was successful in her claim and therefore exercise my discretion and assess costs against the defendants in this matter.

Bitterlie seeks assessment of her filing fee ($100.00) as well as the cost of service upon defendants ($14.66). Both of these costs are reasonable and appropriate pursuant to 876 IAC 4.33(3), (7). Claimant also requests the cost of her deposition transcript be assessed against defendants. This cost is reasonable and appropriate pursuant to 876 IAC 4.33(3).

I assess costs against the defendants in this matter in the amount of $100.00 for the filing fee, $14.66 for service fees, and $277.05 for the October 19, 2022 deposition transcript.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant eighty (80) weeks of permanent partial disability benefits commencing on November 9, 2021, at the stipulated weekly rate of four hundred forty-one and 10/100 dollars ($441.10).

Defendants shall pay all accrued weekly benefits in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall be entitled to credit for any weekly benefits paid to date.

Defendants shall reimburse claimant's medical mileage for all medical treatment found to be causally related to the work injury at the applicable mileage rate applicable pursuant to 876 IAC 8.1(2). If the parties cannot agree as to the amount of medical expenses owed or the amount of medical mileage owed under this award, the parties shall file a timely request for rehearing, along with a brief setting forth each parties'

calculations, for a specific and detailed entry of the amount of medical expenses and medical mileage owed.

Costs are taxed to defendants pursuant to 876 IAC 4.33, as set forth in the decision.

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

Signed and filed this 30th day of May, 2023.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Andrew M. Giller (via WCES)

Jean Zetta Dickson (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.