

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JESSICA HEYER,

Claimant,

vs.

IOWA STATE UNIVERSITY,

Employer,

STATE OF IOWA,

Insurance Carrier,
Defendants.

FILED
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WORKERS' COMPENSATION

File No. 5058992

ARBITRATION

DECISION

Headnotes: 1108, 1108.50, 1700, 1803,
1803.1, 2500, 2700

STATEMENT OF THE CASE

Claimant, Jessica Heyer, filed a petition in arbitration seeking workers' compensation benefits against Iowa State University, defendant, and State of Iowa, insurer, both as defendants for an accepted work injury dated January 14, 2016. This case was heard on December 4, 2018, and considered fully submitted on January 4, 2019, upon the simultaneous filing of post-hearing briefs.

The record consists of JEs 1-12, claimant's exhibits 1-7, and defendants' exhibits A-I along with the testimony of claimant and Ruth Carlton-Appleton.

STIPULATIONS

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.

The parties stipulate that the claimant sustained an injury to her right lower extremity and right upper extremity on January 4, 2016, which arose out of and in the course of her employment. They further agree she sustained a temporary disability during a period of recovery.

She was paid temporary total disability benefits from January 15, 2016, through April 13, 2017, at the benefit rate of \$437.24. The parties agree that at the time of the

accepted injury, her gross earnings were \$646.08 per week, that she was married, and entitled to three exemptions.

While the defendants dispute their responsibility for outstanding medical bills, they agree that the fees and prices charged by the providers are fair and reasonable, that the providers would testify as to the reasonableness of their fees and/or treatment set forth in the expenses. Further, they agree that the listed expenses are causally connected to the injury that is in dispute.

ISSUES

1. Whether claimant sustained a right hip injury arising out of and in the course of her employment;
2. Whether medical expenses associated with treatment to the right hip injury are compensable;
3. Whether claimant is entitled to alternate care;
4. Whether claimant is entitled to a running healing period award;
5. Whether claimant is at maximum medical improvement (MMI) and, if so;
6. Whether the injury is a scheduled member or an industrial disability; and
7. The extent of claimant's disability;
8. Whether defendants are entitled to a credit and the nature of the credit for payments made to the claimant from April 14, 2017, through June 3, 2018.

FINDINGS OF FACT

Jessica Ann Heyer, claimant, was a 42-year-old person at the time of the hearing. At all times material hereto, she is married with one minor child. She graduated from high school and took a partial semester at a community college.

Her past work positions include waitress, dental assistant, an assistant manager at a paint store, kitchen and cafeteria work at a school, receptionist and ordering clerk, and cashier, customer service, bakery attendant and eye care center helper at a grocery super store.

She began working for defendant employer in June of 2011 part-time as a vet med. She transferred to the dairy department in July 2015.

On January 27, 2016, at noon, she would have fulfilled her probationary requirements. On January 26, 2016, she received a letter indicating she had failed to

complete the probationary period as an Animal Caretaker II and was terminated. (Ex. E:49)

She was given several reasons for her terminations including improperly communicating with students, failing to properly fill out her time cards, leaving work without approval or failing to attend to her shifts.

Her direct examination testimony on this issue was not transparent. For instance, in addressing the email sent to the students, she testified on direct examination that she was given permission by her supervisor to communicate in that manner. Later, it was revealed that the email sent to the students was a request for them to cover shifts that she did not want to work. To entice the students to trade/cover her shifts claimant offered time-and-a-half pay, which was not available to students, according to HR Specialist Ruth Carlton-Appleton. Thus, it was not the emailing of the students that was the sole issue, but the offer of time-and-a-half to cover the shift that was the violation combined with the method of communication.

Claimant's position was considered an essential one. Shifts are specifically set up to ensure that there is 24/7 coverage 365 days a year. Breaks cannot be skipped and employees cannot leave early. Claimant did not abide by those rules and her behavior was discussed during her review on December 21, 2015. (Ex. E:51)

According to a timeline constructed by the defendants, claimant's performance first became a concern around September 2015. That was the first time that the supervisor, Katie K, contacted HR.

In reviewing the timeline in Exhibit E, page 50, claimant maintained that the violations of November 26th and November 27th were not actual violations. (Ex. E:50) She was told by Katie K to text during the early morning hours. However, it is clear from the document that again it was not the form of communication that was a problem, but that the claimant was not coming to work. Further, during the December 21, 2015, review, it was made clear that a request for time off could not be texted due to the fact that shift coverage was being compromised. (Ex. E:52)

Claimant also testified that she did attend her shift on December 1 and had no time card issues on December 2. Further, this was not rebutted by testimony. She left work on December 14 with approval from the farm.

Based on the contemporaneous probation period review document, the testimony of Ms. Carleton-Appleton, and the inconsistent and incomplete statements of the claimant, it is found that the claimant's testimony regarding her past work conduct is not credible.

Claimant's presentation was troubling at other times. During direct examination, she volunteered that she could have prepared a work history if she had been asked ahead of time. She was served interrogatories but did not answer the one pertaining to

past work history. Claimant maintains she was unaware of these written questions. Finally, she reported injuries to her physicians that were not documented in the records. For these reasons, claimant's testimony is afforded low weight.

She was initially offered a new position by defendant employer in March 2016 as a vet lab assistant. She accepted the position, met with her supervisor, and set a start date. In between the meeting and the start date, she had an appointment with Warren Poag, M.D., a wrist specialist. She believed that she might have restrictions following that appointment. She underwent surgery on her right wrist on March 31, 2016.

She asked to push her start date to the end of June. The defendant employer agreed and a new start date was set for July 5, 2016. On June 14, 2016, Thomas Greenwald, M.D., her ankle specialist, placed her off work until July 12. No new start date was set, and after the surgery claimant was taken off work indefinitely.

Ms. Carleton-Appleton testified that because the defendant employer is not equipped to accommodate an indefinite leave, claimant's offer was withdrawn and she was placed back on the recall list. No other lab assistant II positions came up during claimant's time on the recall list.

She is currently not employed. She has reapplied to Iowa State on multiple occasions and at positions with the City of Boone, Boone County, Polk County, Iowa Cattleman's Association and the Iowa Beef Council, but has had no success. She did not explain what positions she was applying for.

She does volunteer work and is a leader for two different 4-H groups: a regular one and a shooting club. She shoots guns with the girls on a range. She assists in grant writing for another organization and is a treasurer for a local soccer club wherein she solicits ads and sponsors for the organization.

She has experience in answering phones, negotiating with the public, use of computers and Excel spreadsheets.

Her past medical history includes treatment with Sprecher Chiropractic since 2006, including dates before and after the accepted injury date. Per the records, she received treatment for neck, shoulder, right leg, lumbar, right cervical, ankle and pain in other body parts. (JE 1) At times, the pain originated from twisting an ankle or moving landscaping items along with other minor incidents. id. She received treatment for right hip pain in 2009. (JE 1:2)

On October 29, 2015, claimant was seen at Sprecher Chiropractic after she slipped on concrete and fell onto her left hip and left elbow. (JE 1:6)

On December 17, 2015, claimant reported being sick and developing upper back and neck pain and right-sided pain due to scooping out stalls at work. (JE 1:6)

X-rays of her spine were taken in May of 2013 which showed a mild lateral curvature. (JE 1:4) In 2018, another x-ray was taken of her spine which showed no changes from 2013.

On or about January 14, 2016, claimant was executing her daily tasks which included moving four hundred dairy cows and cleaning the barn. As the last cow was moving from one of the pens, it became spooked. It ran at the claimant. She attempted to climb the fence to evade the cow and struck her wrist against the fence instead of her hand. She was unable to avoid contact and the cow pressed against her. Her right foot twisted and her rib cage was struck. As she was pushing the cow away, she was kicked in the knee.

Claimant finished her shift and went home around noon, approximately a half hour after the injury occurred. She showered, napped for a couple of hours and then picked her daughter up from school. Around that time, she noticed vaginal bleeding and shortness of breath. She contacted her supervisor, Katie. Per Katie's instructions, claimant returned to the farm to fill out paperwork and then went to the emergency room at Mary Greeley.

A quick and, according to claimant, allegedly incomplete exam was conducted. (JE 2:10) Claimant maintained she reported right hip pain to Gina Erickson, M.D. There was no record of hip pain in the emergency room records. (JE 2) Dr. Erickson documented the following:

She tried to climb up onto the fence, but the animal's body weight pushed against her abdomen while the animal was moving fast forward past her. She has some chronic right wrist pain, but feels that it has worsened from climbing the fence trying to get out of the way. She also pinned her right ankle against the lower fence post and had some left-sided abdominal discomfort where the animal came into contact with her. She went home from her shift and was able to take a nap and sleep comfortably. When she woke up, she felt a "gush of clear fluid" and begin bleeding with a similar flow to a menstrual cycle.

(JE 2:10)

A transvaginal ultrasound demonstrated bilateral cysts but no torsion, no free fluids, and no uterine tears. (JE 2:11) Claimant exhibited minimal tenderness on examination. Since her pain was not so great that she could not go home and sleep afterwards, Dr. Erickson suspected claimant had suffered a contusion but no pelvic fracture, as claimant had no bony tenderness. (JE 2:11) Dr. Erickson was not certain why the claimant would develop vaginal bleeding but noted that the claimant did report a loss of several pounds since starting her job and that the job was very stressful. Dr. Erickson indicated that that alone could be the cause for irregular menses. (JE 2:12) At the time, claimant had worked for defendant employer for over six months.

While the claimant did complain of right ankle pain there was no swelling or bruising or limited range of motion and no x-ray was ordered. She was given a wrist splint for her wrist pain and told to follow up with her OB/GYN. (JE 2:12) Claimant testified that the bleeding stopped but that a follow-up with her OB/GYN resulted in a diagnosis of a uterine tear. There are no medical records documenting this and claimant maintained that this diagnosis was actually made via the telephone with no examination.

Claimant returned to Sprecher Chiropractic on January 22, 2016. She complained of rib pain on the right along with right knee pain and right wrist pain. She reported that the doctor informed her that her wrist was sprained as a result of being slammed into a fence by a cow. (JE 1:6)

She testified that she suffered 22 dislocated ribs. She reported to Lacreasia Wheat-Hitchings, M.D., in September 2016, that she had suffered dislocation of 24 ribs. (JE 8:37) Per the records of Dr. Wheat-Hitchings and claimant's testimony, the chiropractor at Sprecher diagnosed this around one to two weeks after the accident. However, the Sprecher Chiropractic notes do not have a record of 22-24 dislocated ribs. (See e.g. JE 1:7)

She returned for follow-up treatment at the McFarland Clinic. X-rays were taken of her ribs, right knee and wrist. The x-rays showed no evidence of any rib displacement or fractures. (JE 3:13, JE 8:37) Claimant testified that she discussed the rib issue with Charles Mooney, M.D., but there was no record of this.

The dislocated rib claim and the uterine tear diagnosed over the telephone with her OB/GYN are examples of instances in which claimant created an injury that has no support in the medical records. She is not a reliable historian because of this and combined with other testimonial issues previously discussed, her testimony is afforded low weight.

She returned to the McFarland Clinic on February 17, 2016 where she was seen by Dr. Mooney for right wrist pain and right knee pain. (JE 4) In the progress notes, it states that her back and hip pain had resolved. (JE 4:14) She complained of pain in the midline of the right wrist, directly over the mid-portion of the wrist and more pain on the medial aspect of the right knee as well as diffuse swelling. (JE 4:14)

On examination, she had normal passive range of motion but tenderness with palpation and range of motion in both her wrist and knee. (JE 4:14) Dr. Mooney diagnosed claimant with right wrist pain and ongoing right knee pain with some evidence of medial compartment internal derangement. She was ordered to continue physical therapy for both the right knee and right wrist. An MRI of the right knee was ordered. He also referred her for hand surgery consultation. (JE 4:14)

An MRI of the knee dated February 26, 2016, showed some cartilage damage. (JE 5:18) Dr. Mooney recommended that she be evaluated by an orthopedic surgeon

but released her to full-duty work as it related to her right knee. (JE 4:15) Claimant was then sent to Dr. Greenwald who recommended surgery.

On March 24, 2016, claimant underwent right knee arthroscopy with partial meniscectomy and debridement of chondromalacia of the patella. (JE 6:19) During the surgery, a large fissure in the patella was found. The medial compartment showed a small inner meniscal flap tear right at the mid-portion. These issues were addressed during the surgery. (JE 6:19)

In follow-up on March 29, 2016, claimant indicated that she was happy with her recovery. Her pain was well-controlled. She was able to ambulate without difficulty. (JE 6:21) She was ordered to continue normal daily activities as tolerated and return to a modified exercise program. (JE 6:20)

Shortly after, claimant underwent surgery to her right wrist with Dr. Poag to treat the triangular fibrocartilage complex tear. (JE 7:30) After a series of physical therapy visits, it was noted on January 24, 2017, that her pain had decreased although it did still hurt when she lifted 30 to 40 pounds. (JE 7:33) Based on this medical visit, claimant was released to regular duty on January 24, 2017 with no restrictions. (JE 7:34) Dr. Poag assessed a zero percent impairment. (JE 7:35)

Claimant returned to Dr. Poag on May 22, 2018 for pain in her wrist. An MRI was conducted which showed nothing that could be fixed surgically. (JE 7:36)

In June 2016, claimant had increasing pain in her right ankle. She attributes this pain to her work injury; however, records from Sprecher Chiropractic reveal claimant was active during this period of time. On May 19 2016, she sought treatment for pain caused by painting a door. (JE 1:8) On May 26, 2016, she did a lot of walking. (JE 1:9) On June 3, 2016, she hiked for 45 minutes. (JE 1:9) On June 9, 2016, she hiked for an unspecified period of time. (JE 1:9)

Nonetheless, claimant returned to Dr. Greenwald who performed arthroscopic debridement and modified Brostrom reconstruction on claimant's right ankle. (JE 6:22) Around September 6, 2016, claimant reported right hip pain to Dr. Greenwald. He ordered an MRI and referred her to Bryan Warne, M.D. (Ex. H:63) She was released to return to regular duty on November 1, 2016. (JE 6:20)

In a letter written by Dr. Greenwald, he indicated that she had reached MMI as of October 31, 2016 for her right ankle and right knee and that no additional treatment was necessary. (JE 6:35) He assessed a 20 percent impairment for her lower extremity for the knee but zero percent for the ankle. (JE 6:25) He did not assign any permanent restrictions as a result of the right ankle and right knee.

On September 27, 2016, claimant was seen by Dr. Wheat-Hitchings for evaluation of rib pain. (JE 8:37) Claimant reported to Dr. Wheat-Hitchings that the rib

pain manifested at the time of the initial work injury on January 14, 2016. (JE 8:37) Claimant reported the instance of suffering a dislocation of 24 of her ribs. id.

On examination, claimant demonstrated some slight tenderness in the rib cage but no dislocation or injury. (JE 8:30) Dr. Wheat-Hitchings wrote:

This is a 40-year-old female, Iowa state University employee returning for reevaluation of rib injury. The patient is adamant that chiropractic is her only means of relief. When offered medication, she declined it immediately and left the room to get her case manager. It is clear that she is angered about how things transpired with regard to her insurance claim. Given that I was unable to identify true objective findings, it does not seem appropriate to continue chiropractic care at this time. There seems to be a large of [sic] psychological overlay in this case. Addressing the patient's underlying depression may improve her clinical response to management.

I did, however, recommend using an anti-inflammatory, and I also suggested that when she is off the mobility device that she will likely experience fewer symptoms as currently her posture is compromised due to the device height and leaning forward to brace herself with both arms. Ultimately, with the involvement of her case manager, she agreed to try an anti-inflammatory.

(JE 8:38)

There was a notation that claimant planned on having right hip surgery soon. This pre-dated her first visit with Dr. Warne, which took place on October 13, 2016. (JE 10:41) In fact, an MRI of the right hip was conducted on October 11, 2016, which showed no signs of tears or fractures. Her alignment was anatomic. (JE 9:40)

On October 13, 2016, claimant was seen by Dr. Warne for the right hip pain. (JE 10:41) On examination, there were no objective signs of a hip injury, but her motion was somewhat limited by her ankle and knee. (JE 10:41) The plan was to do a radiology-guided diagnostic injection and to work on her core in physical therapy. (JE 10:41)

Diagnostic injection was conducted and the claimant reported no relief from the injection. Based on those results, Dr. Warne indicated she was not a hip scope candidate. There was nothing further that he could offer her at this point and referred her back to Dr. Greenwald. (JE 10:43) Claimant believed that the hip pain was against compensatory-type pain with altered gait of the knee and ankle. (JE 10:43) This would be inconsistent with her testimony that the hip pain manifested on the date of the injury. (See also JE 11:49; JE 12:57)

On November 10, 2016, claimant was seen by Christopher A. Feil, DC. (JE 11:49) Claimant reported to Dr. Feil that at the time of the accident, she felt a sharp, deep and intolerable pain at the right knee and ankle and supplemental complaints of

pelvic and right hip. (JE 11:49) The claimant did report that since the date of the accident the overall conditioning complaints had improved. Her primary complaint with Dr. Feil was a chronic right hip complaint, which she described as burning, deep with stabbing and tightness. The pain had stayed the same since the onset and the pain scale was presently rated 8/10 on a 10 scale. Nothing relieved her pain, and almost any movement, including resting, aggravated her pain. (JE 11:49) She also complained of stiffness and tightness and deep pain in the right knee and dull and aching pain in the right ankle. (JE 11:49)

Dr. Feil's examination findings are as follows:

Ortho-Acetabular Compression Test performed right. The patient reported pain in the acetabulum. This is indicative of potential labral pathology and/or hip impingement.

Ortho-Patrick-Fabere Test performed right. The patient reported pain in the hip and groin.

Ortho-Modified Thomas Test was performed. The test demonstrated the following tissues were shortened on the effected: hip flexor, quadriceps and IT band.

Ortho-Talar tilt test performed. Patient indicated increased pain in the foot that was severe on the right indicating a ligamentous lesion.

Ortho-Lateral stability test performed and reduction inversion was noted on the right suggestion an anterior talofibular injury or calcaneofibular injury.

Ortho-Kemp's Test was performed bilaterally. Patient indicated moderate to severe segmental level pain at right pelvis, sacrum and L5 without radiation.

Ortho-Double Leg Raiser Test performed. Patient indicated moderate pain on the right sacro-iliac joint at 30 degrees.

Ortho-Yeoman's test performed bilaterally. Patient indicated increased pain in the S.I. joint that was moderate on the right.

(JE 11:50-51)

Dr. Feil's assessment was that claimant was in good health and expected to make fair progress in recovery with some residuals. (JE 11:52) His diagnosis was pain in the right hip, segmented in somatic dysfunction of the pelvic region, effusion in the right ankle, pain in the right ankle and joints of the right foot. (JE 11:52)

Based upon the claimant's report and reviewed history, Dr. Feil believed the right hip pain may have been exacerbated by the lack of range of motion in the right ankle and instability in the knee and ankle affecting her gait and normal lower extremity biomechanics. (JE 11:52) Claimant underwent approximately 20 sessions of care with Dr. Feil, and Dr. Warne's notes indicate claimant's hip pain did improve with therapy. (JE 10:45)

On December 28, 2016 Dr. Greenwald had a meeting with the claimant and her case manager going over counseling, education, coordinating of care, diagnosis, prognosis, and treatment plan. (JE 6:26) Claimant had some concern regarding the ankle being stiff, but on examination Dr. Greenwald felt that she had excellent result from the reconstruction with minor loss of motion. She exhibited about 12° of dorsiflexion on the left side and 7° of dorsiflexion on the right side. He encouraged her to address this in physical therapy. (JE 6:26)

Dr. Greenwald saw claimant again on February 9, 2017. (JE 6:27) Claimant admitted she was improving. There was no swelling in the right knee and she had increased motion in the right ankle. There was minimal swelling and minimal tenderness around the wound and Dr. Greenwald ordered her to return within six weeks. During this visit there was some mention that claimant was working closely with Dr. Warne with regard to her hip. (JE 6:27)

On April 4, 2017, Dr. Greenwald had another status conference with the claimant regarding her ankle. She complained about stiffness in her ankle on examination. She showed inversion of 235° as opposed to 50° on the left and dorsiflexion to 10° on the right, where she had 15° on the left. (JE 6:28) Dr. Greenwald released claimant to return to him only on an as-needed basis and that she would be "cut loose" for normal activities with regard to her right knee and right ankle. (JE 6:28)

Dr. Greenwald did note that she continued to have problems with her right hip and that she should work with her chiropractor in regards to this. Dr. Greenwald did not refer claimant to Sprecher Chiropractic. Instead, Dr. Warne referred claimant to Dr. Feil. (JE 11:49)

On March 21, 2017 Dr. Greenwald filled out a letter indicating the claimant sustained a 7 percent lower extremity impairment on the right ankle but assessed no work restrictions. (JE 6:29) He set her maximum medical improvement date as April 4, 2017. (JE 6:29)

On February 28, 2017, claimant returned to Dr. Warne for follow-up. She described a burning type of pain which would be consistent with a nerve injury. He suggested that she treat with Dr. Feil to treat her pain if that made her feel better. Dr. Warne also advised claimant she could consider a neurology referral or second opinion with another hip arthroscopy. In his opinion, he did not think that he could make her better and therefore did not offer her surgical treatment. (JE 10:45)

Claimant was seen on May 21, 2018 by Dr. Warne. (JE 10:40) Dr. Warne's notes indicate that claimant did receive a second opinion from Dr. Aviles who did not believe that this was a work-related injury. She was not interested in returning to him for further evaluation of joint pain. Dr. Warne was not confident that a hip surgery would be helpful, particularly given that the majority of her pain was coming from the SI joint and radicular nerve-type symptoms. (JE 10:40) He recommended another diagnostic ultrasound-guided injection and also that she might seek differing medical opinions from hip surgeons in Des Moines and Iowa City. (JE 10:40)

On October 25, 2018, claimant sought out care at the University of Iowa for her right hip pain. (JE 12) She was seen by Michael C. Willey, M.D. (JE 12:56) Dr. Willey recorded the history as follows

Jessica Heyer is a 42 y.o. female who suffered a crush injury to her right leg 2 years ago resulting in multiple injuries. She had knee and ankle surgery as a result. She has had difficulties with right hip pain since the accident. She describes right groin pain as well as posterior pain with low back symptoms. Pain is worse with standing and walking.

(JE 12.57)

Dr. Willey suspected that she might have a labral tear. (JE 12:50) Claimant testified that she was relieved after her appointment with Dr. Willey, as she believed his findings confirmed her belief that she had suffered a traumatic injury to her right hip—although the genesis of that hip pain varied from being directly caused by physical contact with the cow to being a sequelae injury as a result of an altered gait. Yet, Dr. Willey went on to note that the findings may be incidental, as she did not have pain relief with local anesthetic intra-articulate injection. (JE 12:58) In other words, the diagnostic testing did not confirm the tear. Dr. Willey did order a repeat injection. id.

Claimant testified at hearing that the injections she received provided no relief. She further testified that Dr. Willey has verbally recommended surgeries, but there is no medical record of that. The undersigned relies on the written evidence given claimant's unreliable historical accounts.

Claimant was seen by Dr. Rondinelli for an independent medical examination. (Ex. 1) He reviewed the medical records and examined the claimant. He concluded that claimant suffered permanent residual impairment to her right hip, right pelvis, right leg and/or right arm but that she was not at MMI and therefore it would be premature to rate her impairment. (Ex. 1:4) He initially wrote that the etiology of claimant's right hip pain was unclear. (Ex. 1:6)

He noted that claimant did have a history of prior chiropractic manipulations primarily for neck pain which occurred 3 to 4 times a year, but she appeared healthy and was working for Iowa State University approximately 4+ years prior to her injury. Further, she had no previous documented trauma with similar symptoms. Because of

this, he attributed the right hip, right pelvis, right leg, and right arm impairment to the work injury. (Ex. 1:6-7)

He did agree that there was a strong psychological basis for her persisting symptoms and delayed recovery in view of relatively benign residual findings during her physical examination. (Ex. 1:7) The functional range of motion of her shoulders, elbows, wrists, and hands appeared grossly normal, as did the functional range of motion of her hips, knees and ankles. (Ex. 1:4)

After Dr. Rondinelli's report, claimant was sent to Bruce Gutnik, M.D., for a psychological evaluation. (Ex. I) Dr. Gutnik diagnosed claimant with somatic symptom disorder with predominate pain versus malingering and adjustment disorder with depressed mood. (Ex. I:78) Dr. Gutnik opined that claimant's complaints were driven by secondary gain and that none of her psychological issues would prevent her from working. (Ex. I:76)

In May 2017, claimant was sent for an independent medical evaluation (IME) with Steven Aviles, M.D., an orthopedic specialist. (Ex H) Dr. Aviles' examination revealed no evidence of a labral tear or decreased joint space. (Ex. H:64) He found significant inconsistencies in her symptom presentation. (Ex H:65) She complained of pain in her right lower abdomen but not over her right anterior hip bone. *id.* She reported burning sensation with movement in her hip. Dr. Aviles, like Dr. Warme, indicated that burning pain is a nerve-related problem. He did not recommend any further treatment for claimant's right hip pain.

She asserts that her right hip is tilted forward and down, which causes her knee to twist when she walks. Further, as a result of this gait dysfunction, she has a sore spot near the ball of her foot. She believes she has a lot of "bone on bone" crunching as well as swelling and fluid that sits on her knee.

Surgery tightened her ankle and reduced her flexibility. She stated that the "Tallus gets stuck a lot."

In her right hip, she complains of constant burning in the "tissue," particularly with increased activity or exercise. She hears popping noises and experiences corresponding pain going around the right side of her leg into the buttocks and "into the SI area." She testified that she feels her "SI joint is stuck out of place."

She currently attends physical therapy twice a week and takes Advil approximately one a week. She admits she is under no formal restrictions, even from the physicians that she has retained personally.

CONCLUSIONS OF LAW

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 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); Dunlavy 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).

The primary dispute is whether claimant's right hip pain is attributable to the work injury of January 14, 2016. Claimant relies on the opinion of Dr. Rondinelli and the fact that she is currently receiving treatment from Dr. Willey at the University of Iowa Hospitals and Clinics. Dr. Willey provides no causation opinions, and the fact that he has recommended a second diagnostic injection does not provide the expert evidentiary support that claimant needs to prevail. Dr. Willey's last treatment records are mixed. He suspects she might have a tear, but diagnostic injections indicate that she does not. Her symptoms are more akin to a neurological issue rather than a labral tear. Dr. Willey's treatment and testing results are, at best, inconclusive and do not rise to the probable standard necessary to carry claimant's burden.

Dr. Rondinelli did provide a causation opinion, but his opinion is not a careful one and relies heavily on claimant's historical account. Claimant's testimony and account of the genesis of her right hip pain varies, which is why a careful, detailed summary of her medical history is necessary in order to arrive at a conclusion. Dr. Rondinelli did not make note of her inconsistent histories nor did he note her inconsistent reports of pain and medical issues. Because of this, his opinion cannot be given much weight. Further, Dr. Rondinelli himself indicates that claimant's overlying issue in this case may be a psychological one.

Claimant underwent a psychological evaluation at the defendants' request, which showed that while she suffered some depression, her psychological issues were driven by monetary gain. This finding is consistent with claimant's multiple claims of injury such as a uterine tear diagnosed by her OB/GYN over the phone, the claim of 22-24

displaced ribs diagnosed by Sprecher Chiropractic, or her claim that she was to have hip surgery before she even met with the hip specialist.

Claimant did not carry her burden of proof as it relates to the causal relationship between her alleged hip pain and the accepted work injury of January 14, 2016. As a result, no further healing period benefits are awarded, as the healing period benefits claimant seeks are associated with the right hip injury.

Therefore, claimant's permanent disability is based on her accepted work injuries to her right ankle, right knee, and right wrist.

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)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Dr. Rondinelli provided no impairment ratings. Dr. Greenwald assessed a 20 percent lower extremity rating for claimant's right knee and 7 percent lower extremity rating for claimant's right ankle. There are no permanent restrictions imposed by any medical provider, including Dr. Rondinelli. The combined assessment of 27 percent for the lower right extremity is generous and adopted herein.

Defendants have paid benefits from January 15, 2016, through April 13, 2017, at the benefit rate of \$437.24. They have paid additional indemnity benefits from April 14, 2017, through June 3, 2018. Defendants seek a credit for benefits paid.

Claimant suffered three injuries arising out of the work incident of January 14, 2016. In Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016), the Iowa Supreme Court held that Iowa Code section 85.34 provides the standard for determining when healing period benefits terminate. Iowa Code § 85.34(1).

Section 85.34 provides that the healing period lasts

until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Iowa Code § 85.34(1) (emphasis added). There can be more than one healing period for a single injury. Waldinger Corp. v. Mettler, 817 N.W.2d 1, 8 (Iowa 2012) However, even when there are multiple healing periods, the healing period lasts only until one of the events in Iowa Code § 85.34(1) occurs.

Claimant did not return to work, but she was deemed medically able to return to employment upon the release from Dr. Greenwald from her right ankle injury in April 13, 2017. Prior to that date, claimant continued to be kept off of work for the right wrist and the right knee.

Therefore, commencement date of PPD benefits would be April 14, 2017. Defendants are entitled to a credit against the award of functional disability for payments made after April 14, 2017.

The final issue is whether claimant is entitled to reimbursement of medical bills contained in Exhibits 4 and 5, as well as alternate medical care. These medical bills are for unauthorized medical visits to Dr. Warne, Dr. Poag, Sprecher Chiropractic and the McFarland Clinic.

Under certain circumstances an injured worker is allowed to be reimbursed for medical care that is not authorized under certain circumstances. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010). First is when compensability is denied, and then later established. In this case, the right hip injury was contested, but compensability has been denied. Therefore, any bills associated with treatment of the right hip are not reimbursable.

Second is when the employee disagrees with the care provided by the employer if the care proffered by the employer is not reasonable. In this case, claimant did not consult with the defendant employer prior to her visits to Sprecher Chiropractic or when she made the appointments with Dr. Poag and Dr. Warne, thus claimant did not carry her proof to show that the employer had an opportunity to provide care.

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

There is no such evidence that defendants were given the opportunity to provide care.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical

care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

None of the elements of an alternate care claim were carried by claimant.

The Supreme Court in Bell Bros. Heating v. Gwinn also contemplated a circumstance wherein an employee could be reimbursed for unauthorized care upon a showing "by a preponderance of the evidence that such care was reasonable and beneficial." id. at 206. The Court went on to state, "In this context, unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." id.

In this case, claimant made no showing that the unauthorized medical care was more beneficial than care authorized by the employer. First, the employer never had an opportunity to authorize care. Second, neither Dr. Warne nor Dr. Poag provided any additional care. Instead, they both stated that there was nothing they could provide for the claimant in the form of treatment.

Claimant's visits to Sprecher Chiropractic Clinic were during a time she was authorized to see a different chiropractor, Dr. Feil, who did improve her condition per the medical records of Dr. Warne.

Thus, claimant failed to carry her burden to show she is entitled to reimbursement of unauthorized medical care.

ORDER

THEREFORE, it is ordered:

That claimant shall take nothing as it relates to her alleged right hip injury.

That defendants are to pay unto claimant sixty-seven point five (67.5) weeks of permanent partial disability benefits at the rate of four hundred thirty-seven and 24/100 dollars (\$437.24) per week from April 14, 2017, for injuries to her right ankle, right knee, and right wrist.

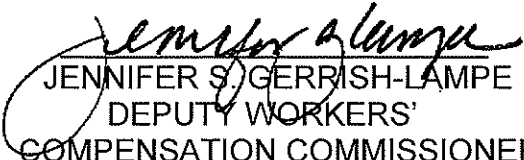
That defendants are entitled to a credit against the above award of permanent partial disability benefits for all benefits paid after April 14, 2017.

That claimant is not entitled to reimbursement of medical expenses in Exhibits 4 and 5.

That claimant is not entitled to alternate medical care.

That each party shall pay their own costs.

Signed and filed this 8th day of February, 2019.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Christopher D. Spaulding
Attorney at Law
2423 Ingersoll Ave.
Des Moines, IA 50312-5233
chris.spaulding@sbsattorneys.com

Amanda R. Rutherford
Assistant Attorney General
Dept. Justice
Hoover State Office Bldg.
Des Moines, IA 50319
amanda.rutherford@ag.iowa.gov

JGL/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.