BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BARBARA PAINTER, Claimant, vs. ARCHER DANIELS MIDLAND CO., INC., Self-Insured Employer, Defendants.	File No. 5050097 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1108.50, 1402.40, 1804

STATEMENT OF THE CASE

Barbara Painter, claimant, filed a petition in arbitration seeking workers' compensation benefits from ADM, self-insured employer. Workers' Compensation Commissioner Erin Pals presided at the hearing which was held on June 16, 2015, in Des Moines, Iowa.

Claimant was the only witness testifying live at trial. The evidentiary record also includes claimant's exhibits 1-11 and defendant's exhibits A, C-F, and J-DD. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties request the opportunity for post-hearing briefs which were submitted on July 10, 2015.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury that arose out of and in the course of her employment on October 13, 2010.
2. What, if any, permanent disability claimant has sustained as a result of the October 13, 2010, injury.
3. Whether the injury was the cause of any temporary disability. Specifically, whether claimant is entitled to temporary total disability benefits from March 4, 2011, to April 1, 2012.

4. Whether claimant is entitled to payment of medical expenses.
5. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Barbara Painter, filed a petition in arbitration seeking workers' compensation benefits for an injury to her low back that occurred on October 13, 2010. She alleges she is permanently and totally disabled as a result of the work injury. Defendants dispute that Ms. Painter sustained an injury on October 13, 2010. Defendants further dispute whether the injury caused any temporary disability or any permanent disability. Defendants also dispute whether Ms. Painter is entitled to any medical benefits for the alleged injury.

It should be noted that Ms. Painter saw several medical providers on numerous occasions. Although I have reviewed all the evidence in this matter, I will not attempt to summarize all the treatment records in this decision.

I find Ms. Painter sustained an injury to her low back on October 13, 2010, arising out of and in the course of her employment with ADM and, as a result of that injury, is permanently and totally disabled.

Ms. Painter was hired by ADM in March of 1996. She has worked different jobs at ADM but she has always worked in the Utility Department. On the date of the injury in question she was tightening tubes that are approximately 7 inches long which fed into a machine. She was tightening the tubes with a 15/16" socket wrench; this task required bending and twisting. She tightened approximately 20 to 30 tubes. Ms. Painter's back began to bother her with pain shooting down into her legs. Ms. Painter had prescription pain medication with her from a prior injury so she took some pain medicine at that time. She reported the pain to her foreman.

A review of the evidence reveals Ms. Painter had low back and neck problems prior to the alleged work injury. She attributed her prior back and neck problems to motor vehicle accidents (MVA) that she had been involved in. The record indicates that she has been in approximately six to eight MVAs involving injuries to her neck and back dating from 1993 to May 23, 2010. As a result of these MVAs, Ms. Painter filed at least three lawsuits. In connection with one of those lawsuits her deposition was taken on February 17, 2010; three months after her last MVA and eight months prior to the alleged work injury. Defendants point out that during that deposition she testified that she was taking pain pills and she had memory problems. She indicated she was taking anything she could get her hands on for pain. During that same deposition, Ms. Painter testified how the pain had affected her marriage, activities of daily living, and hobbies. She also testified that because of the last MVA she could no longer work overtime. In mid-October 2009, Ms. Painter filed for and received 12 weeks of FMLA due to her

MVA. She further testified that after her last MVA she had to rely on the help of a coworker to swing the sledgehammer at work. Defendants also point out that in this deposition claimant testified that the MVA caused her to have pain in her "back going in my left hip and down my leg now, which I didn't have that before." (Exhibit C, page 10)

On October 13, 2010, the date of the alleged work injury, Ms. Painter was seen in the emergency room at St. Luke's Hospital. The notes indicate she was seen for an aggravation of chronic low back pain with symptoms that shoot down into the back of the left leg and into her foot producing a numb feeling. She noted the injury occurred at work and that her current pain was an 8/10. Ms. Painter told the medical provider about her history of chronic back pain due to motor vehicle accidents. (Ex. 7B, pp.21-25)

ADM referred Ms. Painter to St. Luke's Work Well Clinic. Ann McKinstry, M.D., saw Ms. Painter on October 14, 2010, for evaluation of low back pain. She reported that she had chronic back pain due to multiple car accidents. She told the doctor that prior to the injury at work yesterday her pain was averaging 4/10 back and neck pain. She advised the doctor that she had been taking tramadol and methocarbanol at work and was under no restrictions. She reported she was at work yesterday tightening nozzles, got up to take tramadol and began experiencing increased pain in her left low back that was radiating into her left buttock and posterior left leg and numbness in leg. Ms. Painter reported to Dr. McKinstry that she had not had radicular pain in the past so this was concerning to her. She rated her pain as 6/10. She stated that the work injury did not aggravate her neck pain. Dr. McKinstry felt she had an acute exacerbation superimposed upon chronic low back pain. The doctor placed restrictions on Ms. Painter's activities, prescribed medication, and referred her to physical therapy. (Ex. 7D, pp. 36-38)

Ms. Painter returned to see Dr. McKinstry on October 22, 2010. Her pain level had improved to 5/10. She was still experiencing pain down her left leg; she said it felt like her leg was in a vise. (Ex. 7D, p. 39) Ms. Painter continued to see Dr. McKinstry who ordered an MRI. The MRI was carried out on November 10, 2010. (Ex. 7A, pp. 19-20) The MRI showed some changes compared to a previous February 6, 2010, MRI. The changes included a new mild asymmetric disc bulge to the left at L2-L3 with partial effacement of the inferior left neural foramen fat without stenosis and mild degenerative edematous end plate changes posteriorly at the left superior posterior aspect of the L5 vertebral body. (Ex. 7D, p. 40) Ms. Painter was referred to pain doctors for injections. Subsequently Ms. Painter was referred to neurosurgeon, Mary Louise Hlavin, M.D.

On March 3, 2011, ADM terminated Ms. Painter because they could no longer accommodate her restrictions. (Testimony)

Dr. Hlavin saw Ms. Painter on March 9, 2011. The doctor noted that she had seen Ms. Painter 13 months ago for neck and back pain. Ms. Painter advised Dr. Hlavin of the work injury and that she had started feeling pain down her left hip and left thigh with numbness even before she left work the day of the injury. Dr. Hlavin felt the

hip and leg pain was in the L2 or L3 distribution. She ordered additional conservative treatment. In April of 2011, Dr. Hlavin indicated that she did not believe that surgery would help Ms. Painter. She recommended a chronic pain management program. She restricted Ms. Painter to 15 pounds lifting, 1 hour consecutive standing, 1 hour consecutive sitting, avoid lifting, twisting, bending, pulling, stooping, pushing, or climbing. (Ex. 7F, pp. 50-51)

Ms. Painter moved from the Cedar Rapids area back to Dubuque. After she moved back to Dubuque she began seeing Timothy J. Miller, M.D., for pain management; she also saw her primary care physician, Zhengjin Cao, M.D.

At hearing Ms. Painter testified that she still experiences burning/stabbing pain in her mid-back, down her buttocks, and hips; she describes this as more intense than before the work injury. She has pain in her mid-back through her curvature. She also experiences numbness in her left leg from the groin area, to the top of the thigh, and knee area. Her right leg feels like there are bee stings on the top of her thigh. Ms. Painter testified that her pain before her work injury was half as much as it is now. Prior to her work injury she would miss work from time to time but she was always able to return to work and did not have any permanent restrictions. Since her injury, she takes 15 pills every morning, has permanent restrictions, and has not been able to return to full duty. Since the injury, Ms. Painter feels she can hardly do anything. Although she had prior back problems she always got better until the work injury. (Testimony)

Defendants point out that Ms. Painter has made inconsistent statements in this case. For instance, she has stated that she never had left leg problems prior to the work injury. Also, Ms. Painter's testimony in her MVA deposition and her deposition for this present case are not entirely consistent. It does appear that Ms. Painter is a poor historian. These inconsistencies are troubling to the undersigned. However, Stanley Matthew, M.D. testified that the medication she is on could affect her memory.

Furthermore, she has testified that the symptoms she experienced in her left leg after the work injury are different than what she previously experienced; before the injury her symptoms just went down her leg a little and after the injury the symptoms went all the way down her leg. She knew from prior conversations that this was a sign that her back problem was serious and she needed to seek treatment. Her testimony that her lower extremity symptoms were different is supported by her action of going to the emergency room the same day as the work injury. While twisting and bending at work she experienced new symptoms and sought treatment accordingly. She has consistently reported that something happened at work on October 13, 2010. There is no indication in the record that any medical provider believes that she is exaggerating. In fact, several providers have stated that she does not show any signs of malingering or faking.

Since the injury, Ms. Painter applied for and was awarded social security disability benefits. She testified that if she had not been injured at work she believes she would still be working. Prior to ADM she had never been terminated from a job.

There are conflicting expert opinions regarding whether Ms. Painter's back symptoms are related to her work injury. Ms. Painter relies on the opinions of Dr. Matthew, Dr. Hlavin, and Dr. McKinstry.

Dr. Matthew treated Ms. Painter and then also saw her for an 85.39 examination on August 13, 2013. In a February 19, 2013, letter Dr. Matthew stated that Ms. Painter suffered a "significant aggravation" of her pre-existing condition due to the October 13, 2010, injury. He further stated that she had not returned to baseline and the aggravation was permanent. (Ex. 1, p. 2) In his IME report he assigned 13 percent body as a whole impairment. He restricted Ms. Painter to no lifting over 15 pounds, no prolonged sitting, no repetitive lifting and no squatting. He also recommended chronic pain management including medications, injections, and PT. (Ex. 1, p. 5) Dr. Matthew testified that a twisting injury can aggravate radicular symptoms. (Ex. CC, p. 27) He further testified that the MRI changes could account for the aggravation of her pain and radicular symptoms, noting most of the degeneration is on her left side. (Ex. CC, p. 32) It is his opinion she reached MMI as of April 2012. He further stated that the treatment she received for her low back was necessary because of the October 13, 2010, injury. (Ex. 1, pp. 6-7) Defense counsel took Dr. Matthew's deposition on June 2, 2014. (Ex. CC) He still believed that Ms. Painter had a material aggravation as a result of the October work injury. (Ex. CC, p. 33) He also testified that he had no reason to believe that Ms. Painter was exaggerating or malingering. (Ex. CC, p. 25) Additionally, he testified that the medications that Ms. Painter was taking can cause fatigue, sedation, dizziness, and memory deficits. (Ex. CC, p. 32)

Dr. McKinstry is the doctor that treated Ms. Painter from October 14, 2010, to March 18, 2011. Dr. McKinstry opined that while she was treating Ms. Painter she did not return to her pre-October 13, 2010, baseline level of pain. Dr. McKinstry further stated that the work injury significantly aggravated Ms. Painter's pre-existing low back condition and that the aggravation did not subside during her care. Due to the injury, she restricted Ms. Painter's activities and never removed those restrictions. Dr. McKinstry stated Ms. Painter did not demonstrate any signs or symptoms of malingering. (Ex. 5, p. 12) In February 2015, Dr. McKinstry indicated that her opinions were based on Ms. Painter's subjective reports of her symptomatology and she assumed those statements were true. (Ex. N, p. 23) Subsequently, in June of 2015, Dr. McKinstry specifically acknowledged that Ms. Painter may have had some radicular symptoms in her left hip and leg prior to October of 2010. She further stated that these pre-existing symptoms did not change her opinion that Ms. Painter had materially aggravated her underlying condition as a result of the work injury. (Ex. 5, p. 12B)

Dr. Hlavin indicated that Ms. Painter never returned to pre-October 13, 2010, baseline level of pain. Dr. Hlavin believes that the October 13, 2010, work injury materially aggravated Ms. Painter's pre-existing low back condition. She further stated that Ms. Painter did not demonstrate any signs or symptoms of malingering. (Ex. 3, p. 10)

Defendants rely on the opinions of Loren Mouw, M.D. and David Boarini, M.D.

In March of 2015, Dr. Mouw conducted a records review but never actually examined or spoke with Ms. Painter. Dr. Mouw stated that Ms. Painter's symptoms were the same following the work injury as they were following the September 2007 MVA. Dr. Mouw felt she sustained a temporary aggravation of a preexisting condition as a result of the work injury. (Ex. BB) Unfortunately, Dr. Mouw did not have the advantage of personally interviewing or examining Ms. Painter. Therefore, his opinions carry little weight.

Dr. Boarini examined Ms. Painter and opined that she had sustained a "minor exacerbation" as a result of her work injury. However, this opinion is contrary to the opinions of Dr. Hlavin, Dr. McKinstry, and Dr. Matthew. Dr. Boarini also stated that Ms. Painter could return to work. However, this is not consistent with the record. Ms. Painter has been unable to return to regular duty work. Furthermore, ADM was unable to find a job to accommodate Ms. Painter's restrictions. Dr. Boarini's opinion also does not fit with the post-work injury MRI findings. The post-injury MRI demonstrated new findings at L2-L3 and L5 levels. (Ex. 7A, p. 20) Therefore, I do not find the opinions of Dr. Boarini to be persuasive.

A review of the record as a whole demonstrates that Ms. Painter has had low back and neck problems for years. The record also reveals that she had left lower extremity symptoms prior to the October 13, 2010, work injury. The record also shows that Ms. Painter's symptoms increased on October 13, 2010, while she was performing her job at ADM. They increased to the point that she went to the emergency room to have her symptoms evaluated. Despite all of her prior problems and lawsuits, Ms. Painter was always able to return to her full time position at ADM. Prior to the work injury she was working seven consecutive days a week, eight hours a day. Prior to the work injury she was never assigned permanent restrictions. She was able to work unrestricted, full duty at ADM until the October 13, 2010, work injury. I find the opinions of Dr. McKinstry, Dr. Hlavin, and Dr. Matthew to be more persuasive. Their opinions are consistent with the record as a whole. I find that Ms. Painter has shown by a preponderance of the evidence that her current back and left lower extremity symptoms are the result of the October 13, 2010, work injury.

We now turn to the issue of the extent of Ms. Painter's permanent disability. Ms. Painter has shown that she sustained 13 percent permanent functional impairment to her body as a whole due to the work injury. I further find that the record shows she has permanent restrictions as a result of the work injury. I specifically find that as a result of the work injury her permanent restrictions are no standing or sitting longer than one hour at a time, no lifting more than 15 pounds, no repetitive lifting, twisting, bending, pulling, stooping, pushing, or climbing.

At the time of hearing, Ms. Painter was 64 years of age and lived in Dubuque, Iowa, with her husband, Donald. She obtained her GED in 1969 and subsequently obtained her certificate as a nurse's aide and a welding certificate. She has an

Associates of Applied Science for food store management from Kirkwood Community College. She also took some classes for nursing but did not obtain a degree.

Ms. Painter testified that she has always worked. She began working as a CNA in a nursing home at the age of 16. She has also worked various jobs which are listed in her resume. (Ex. J, p. 3) Her prior work experience includes laborer, welder, box gluer, bacon scaler, bagger in a grocery store, and vacuum sales representative. She also worked at St. Luke's Hospital in Cedar Rapids where she took care of patients, dietary and housekeeping at St. Luke's Hospital. She also worked for Goodwill helping to train and work with handicapped employees. Ms. Painter credibly testified that she does not believe she would be physically capable of performing these jobs any longer due to her work injury.

Ms. Painter was hired by ADM in 1996. She held various positions there and eventually worked in the mill utility department. Her job description sets forth the physical requirements of the job, including lifting up to 50 pounds on her own and 75 pounds with help, occasional climbing, bending, stooping, crouching, kneeling, and crawling, and frequent balancing, bending, twisting. (Ex. 9) At the time of the work injury she was paid $22.50 per hour. According to Ms. Painter her household income went from $70,000 to $20,000 per year after the injury. (Testimony) ADM terminated Ms. Painter because they could not find a position for her within her restrictions.

Claimant asserts she is permanently and totally disabled as a result of this work injury. Defendants deny she is permanently and totally disabled. Defendants assert Ms. Painter has not applied for any jobs since the work injury. Defendants further assert she has no motivation to return to work. At the time of hearing she was 64 years of age and unable to return to any of her prior jobs. Her restrictions were such that ADM could not find a position for her within her physical capabilities. Her limited education coupled with her age makes retraining for other work unrealistic such that the injury and her resulting disability wholly preclude her from performing the work that is otherwise within her experience and training. I find that she has established that she is permanently and totally disabled even without consideration of the odd-lot doctrine. Because claimant is permanently and totally disabled and not permanently and partially disabled, her permanent total disability runs from the date of injury and the question of healing period benefits entitled is not reached.

We now turn to the issue of medical benefits. Ms. Painter is seeking payment for past medical expenses as set forth in exhibit 11. Ms. Painter testified that the treatment she received from the providers listed in exhibit 11 was beneficial. Dr. Matthew reviewed all of claimant's treatment records which include the records that correspond to the bills in exhibit 11. Dr. Matthew has opined that the treatment was reasonable and necessary as a result of the October 13, 2010, work injury. I find claimant has shown that the treatment was reasonable, necessary, and related to the work injury of October 13, 2010. Therefore, defendants are responsible for the medical expenses contained in claimant's exhibit 11.

Finally, claimant is seeking an assessment of costs. Specifically, claimant is seeking reimbursement in the amount of $250 for expert witness fees, of which $125 is for a consult with Dr. Hlavin. Claimant's counsel obtained a report as a result of that conference. Therefore, this cost can be, and is, assessed pursuant to rule 876 IAC 4.33(6).

The remaining $125 claimant is seeking as expert witness fees is for a chart review by Dr. Mathew. The evidence simply states "Dr. Stanley Mathew chart review, $125.00." There is no statement or bill in the record. Dr. Mathew treated Ms. Painter and performed an IME in this matter. Unfortunately, there is not enough information in the record to discern if this was performed in connection with the 85.39 exam or performed for another purpose. In a recent case the Iowa Supreme court has indicated that only the costs associated with the preparation of the written IME report can be assessed as costs of the hearing. See Des Moines Area Regional Transit Authority v. Young, No.14-0231 (Iowa June 5, 2015). Claimant has not shown that this cost was associated with the preparation of the written IME report and therefore will not be assessed as a cost. Claimant has not shown the date or the purpose of the chart review. I exercise my discretion and do not award this as a cost.

Claimant is also seeking reimbursement in the amount of $393 for procuring testimony and records. It appears that this is a request to be reimbursed for the cost of obtaining medical records. This is not a cost permitted by 876 IAC 4.33. Thus, defendants are not responsible for these costs.

Next, Ms. Painter is seeking reimbursement for her filing fee in the amount of $100. This is a permitted cost under rule 4.33(7). Defendants shall reimburse the filing fee in the amount of $100.

Therefore, defendants shall reimburse claimant's costs totaling $225.00.

CONCLUSIONS OF LAW

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

Although Ms. Painter had prior low back and left lower extremity symptoms, she has shown that she sustained an injury at work on October 13, 2010, which materially and permanently aggravated her condition. It is concluded that claimant has established that she sustained an injury that arose out of and in the course of her employment with ADM. It is further concluded that she has established a causal relationship between her injury and her claimed disability.

Because 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."

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

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.

Based on the above findings I conclude claimant is permanently and totally disabled as a result of the October 13, 2010, work injury. My conclusion is without consideration of the odd-lot doctrine. Because Ms. Painter is permanently and totally disabled and not permanently partially disabled, her permanent total disability benefits run from the date of her injury. Therefore, the issue of healing period benefits is moot.

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). I concluded that the expenses contained in claimant's exhibit 11 were reasonable, necessary, and causally connected to the work injury. Therefore, defendants are responsible for the expenses set forth in exhibit 11.

Finally, we turn to the issue of costs. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. I exercised my discretion as set forth above and conclude that defendants shall reimburse claimant's costs in the amount of $225.00.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant permanent total disability benefits from her date of injury and throughout the time that she remains permanently and totally disabled and pay those benefits at the stipulated rate of six hundred fifteen and 81/100 dollars ($615.81).

Defendants shall pay accrued amounts, if any, in a lump sum.

Defendants shall pay interest pursuant to Iowa Code section 85.30 on any benefits paid after they became due.

Defendants shall be entitled to the credit stipulated to by the parties on the hearing report against any benefits owed as a result of this decision.

Defendants shall pay medical benefits and expenses as set forth in this decision.

Defendants shall pay costs as set forth in this 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 8th day of September, 2015.

ERIN Q. PALS
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

Copies to:

Emily Anderson
Attorney at Law
425 Second Street SE, Suite 1140
Cedar Rapids, IA 52401
eanderson@fightingforfairness.com

Mark A. Woollums
Jordan A. Kaplan
Attorneys at Law
1900 E. 54th Street
Davenport, IA 52807-2708
maw@bettylawfirm.com
jak@bettylawfirm.com

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.