

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SHERRY ANFINSON,

Claimant,

vs.

HARMONY HOUSE HEALTH CARE
CENTER – ABCM CORPORATION,Employer,
Self-Insured,
Defendant.

File No. 21700309.01

ARBITRATION DECISION

Head Note Nos.: 1100, 1801, 1803.1,
2500, 2502, 2907**STATEMENT OF THE CASE**

Claimant, Sherry Anfinson, has filed a petition for arbitration seeking workers' compensation benefits against self-insured employer, Harmony House Health Care Center – ABCM Corporation, employer, as defendant.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of Coronavirus/COVID-19 Impact on Hearings, the hearing was held via Zoom on March 24, 2022, and considered fully submitted upon the simultaneous filing of briefs on April 14, 2022.

The record consists of Joint Exhibits 1-6, Claimant's Exhibits 1-7, Defendant's Exhibits A-K, and the testimony of the claimant.

ISSUES

1. Whether claimant is entitled to temporary disability benefits from January 16, 2020, through January 30, 2020;
2. The extent of claimant's permanent disability;
3. Applicability of 85.34(2)(v);
4. Entitlement to medical expenses;
5. Entitlement to reimbursement of an 85.39 examination;
6. Defendant's entitlement to reimbursement of paid medical expenses against any award of medical benefits;

7. Entitlement to alternate care;

8. Costs.

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 agree claimant sustained a work-related injury arising out of and in the course of employment on or about September 30, 2019.

Claimant was off work from January 16, 2020, through January 30, 2020. The parties agree claimant sustained a permanent disability to the upper left extremity and that the commencement date for benefits, if any are awarded, is July 16, 2020.

The parties further agree that at all relevant times hereto, claimant was married and entitled to two exemptions and that the claimant's average weekly wages were \$827.19. Based on the foregoing, the weekly benefit rate is \$548.22.

FINDINGS OF FACT

Claimant was a 61-year-old person at the time of hearing. She is right-handed and at the time of her injury was working as a licensed practical nurse. Currently, claimant is retired and has been since November 24, 2021; however, she continues to work every other weekend and will pick up a day or two during the week. She had worked a weekday the week of the hearing.

She began working for defendant employer sometime in March 2018. She was originally a temporary employee, placed through an agency called Helping Hands. She then transitioned into a full-time employee. Claimant's workplace, Harmony House, is a nursing home with different units. Claimant was assigned to different units based on her schedule. As an LPN, she would work the day shift from 6 a.m. to 2 p.m.

On or about September 30, 2019, claimant was changing the dressing of a patient. She was assigned the 2 p.m. to 10 p.m. shift. About midway through her shift, she was in room B3 which was located in the skilled nursing unit. She was assigned to treatment duties. At this particular time, she was to clean the wound, apply cream and fresh gauze and tape. The bed of the patient claimant was attending to was parallel along the window. On the floor beside the bed was a mat that was about an inch thick and designed to protect the patient in case he would fall out of his bed. Claimant rolled the treatment cart next to the mat. Because she needed to keep an eye on the patient, she would turn the trunk of her torso as little as possible when she needed something from the treatment cart. As claimant was in the process of reaching behind her for the

supplies, she felt a pop in her shoulder. It began to ache. She immediately felt severe pain and reported this to her supervisor.¹

Prior to the injury, claimant had no previous trauma, nor did she experience any symptoms of pain or weakness in the left shoulder. She did tear her right rotator cuff while using her bow during a hunting outing. In the medical records, however, no reason was provided for the rotator cuff tear to the right shoulder.

On October 1, 2019, claimant was seen at People's Community Health Clinic by Sarah Kane, ARNP, with complaints of left shoulder pain. (JE 1:3) "Here today for c/o pain in left shoulder and arm. She reports she reached for something on her treatment cart at work, felt instant pain and heard a pop. Occurred at work. Has not notified employer of injury. Has been [sic] taking ibuprofen, icing shoulder for sx. Is concerned she may have torn the rotator cuff on the left side. Has hx of tear on the right." (JE 1:3) She was advised to contact her employer as it was a work-related injury and referred to occupational health, given a Toradol injection and discharged. (JE 1:5-6)

On the same date, she consulted with David Kinkle, D.O. at Covenant Clinic Occupational Medicine & Wellness. (JE 2:13) She explained that at about 7:30 pm on September 30, 2019, she "was doing dressing changes and...went to put gauze or bandages back on the treatment cart and...heard a pop in [the] left shoulder." Id. She went on to state, "I told another LPN Nikko, I kept working and reported it today after I went to my doctor and she said she couldn't help me as I did it at work." Id.

She described the pain as aching, sharp, and shooting and located in the left shoulder. Id. Dr. Kinkle diagnosed claimant with left shoulder strain, imposed restrictions, and referred her to physical therapy. (JE 2:14)

On October 2, 2019, claimant was offered, and accepted, light duty work due to the work restrictions of Dr. Kinkle. (CE 7:13) Claimant began physical therapy at Millennium Therapy on October 3, 2019. (JE 3:27)

On October 8, 2019, she returned to Dr. Kinkle with continued complaints of pain. (JE 2:20-23) Due to this, Dr. Kinkle sent claimant for an MRI. (JE 2:18) The MRI was conducted on October 16, 2019, which showed a complex tear of the labrum with involvement of the biceps/labral anchor, moderate supraspinatus insertional tendinosis, and focal full thickness tear of the anterior fibers, mild acromioclavicular degeneration, fluid within the subacromial, subdeltoid bursa. (JE 4:31-32) After reviewing the MRI results, Dr. Kinkle sent claimant on to orthopedics. On October 23, 2019, claimant consulted with Dr. Knudson, an orthopedic surgeon, who recommended surgical repair. (JE 5:42)

¹ In office note of 10/1/2019 it states "has not notified employer of injury" however there is no dispute over notice.

Following this, claimant was informed by the defendant that she would need to undergo an evaluation by Dr. Fields. This evaluation took place on October 30, 2019. (DE C:3) At the meeting both the case manager and claimant's husband were present. Claimant testified that Dr. Fields opened the visit by expressing his opinion that he did not believe the shoulder injury was work-related. The visit did not last long, and no examination was performed per the claimant. The brief medical opinion does not indicate any examination took place. (DE C) Instead, Dr. Field wrote:

In my medical opinion, there is no mechanism of injury which involves merely [*sic*] reaching backwards which would result in the extent or nature of the injuries seen on the MRI. I would consider Ms. Anfinson's reaching backwards to not involve any materially significant force or trauma. In my medical opinion, the findings on MRI are chronic and non-work related in nature.

(DE C:3)

On November 5, 2019, defendant formally denied coverage. (DE B)

The surgery recommended by Dr. Knudson was eventually completed on January 16, 2020, where claimant underwent left shoulder arthroscopy with labrum debridement, open acromioplasty, subacromial decompression, distal clavicle resection, biceps tenodesis, rotator cuff repair. (JE 4:36)

Claimant was off work for two weeks and then entered a lengthy course of physical therapy that lasted until April 17, 2020. (JE 5:48, 6:53) At her discharge from physical therapy, claimant reported that her shoulder was feeling "pretty good" and it was noted that claimant was slowly making progress with range of motion and strength. (JE 6:53) She had an ongoing therapy diagnosis of left shoulder weakness, left shoulder pain, left shoulder impaired range of motion, and impaired functional mobility. Id. On June 26, 2020, therapy noted claimant desired to resume treatment.

She has not had any care for her shoulder since the end of PT in April 2020.

During the November 15, 2021, examination with Stanley J. Mathew, M.D., claimant had significant atrophy of the left shoulder girdle including left bicep, tricep, deltoid, supraspinatus, and infraspinatus muscle compared to the right. (CE 1:3) Passive range of motion of the right upper extremity was full with pain at the end ranges, terminal flexion and abduction. Id. There was mild tenderness throughout the right shoulder rotator cuff.

Passive range of motion of the left upper extremity was reduced in all planes with significant pain upon motion. Id. There was moderate tenderness through the left shoulder rotator cuff. Id. There was also tenderness throughout the cervical paraspinals, greater on the left than the right. Id.

Dr. Mathew diagnosed claimant with:

Chronic left shoulder pain status post left shoulder rotator cuff tear
Status post left shoulder arthroscopic surgery with labral debridement
Status post subacromial decompression
Distal clavicle resection
Biceps tenodesis, rotator cuff repair
Left upper extremity weakness
Right shoulder rotator cuff tendonitis

(CE 1:4)

It was his conclusion based on the review of the medical records, his examination and the claimant's history that claimant's left shoulder injury, the surgery, the post-surgical pain and reduced range of motion and weakness along with the right shoulder rotator cuff tendonitis was a direct result of the employment and the work injury that occurred on September 30, 2019. (CE 1:4)

He advised restrictions of no repetitive use of her left upper extremity and no pushing, pulling, overhead activities or lifting greater than 30 pounds. Id. He noted that she would have good and bad days and that she needed to be mindful of her right shoulder due to developing rotator cuff tendonitis on the right side due to overuse.

In regard to future treatment, he recommended continued pain management, physical therapy, medication management, injection therapies and topical rubs and creams as necessary. Her right shoulder may need surgical intervention at a later date.

He assessed a 17 percent upper extremity impairment rating for the left shoulder rotator cuff tear. (CE 1:4)

Dr. Mathew also addressed Dr. Fields' opinion and said that while he respected Dr. Fields, he disagreed with the opinions and felt that Dr. Fields approached the situation from an Occupational Medicine standpoint. (CE 1:5)

Dr. Mathew also went on to state:

Question 7: Regarding other relevant issues Ms. Anfinson has developed a chronic pain syndrome which is not well described by the AMA guide's including pain and weakness of her left upper extremity. She also is beginning to develop right shoulder rotator cuff tendinitis and chronic pain which she has not received treatment for. This has affected her moods and due to her chronic pain syndrome has developed a natural chronic pain related depression.

(CE 1:5)

On February 10, 2022, Charles D. Mooney, M.D., issued an opinion report after a records review of claimant's treatment and an examination. (DE D) At this visit, claimant reported ongoing pain in the left shoulder with a pain rating of 2 to 3 at rest and up to 5 with activity. (DE D:12) She described the pain as aching and radiating toward the elbow at times. Id. Night pain can force her to roll off the shoulder. Id. With activity, pain increased. Id. She was taking ibuprofen three times a day. Id.

During the examination, she had moderate tenderness directly over the left-sided acromioclavicular joint and reduced range of motion in flexion and abduction. (DE D:14) She demonstrated 5/5 rotator strength in the internal/external rotation, flexion and abduction on the right compared to 4/5 in flexion, abduction, internal and external rotation on the left. Id. She also demonstrated increased symptoms with cross arm testing along with positive O'Brien's test on the left. (DE D:15)

He made the following assessments:

1. Medical record evidence of left shoulder imaging findings consistent with long-standing impingement and moderate degeneration now status post left shoulder rotator cuff repair with biceps tenodesis and labral debridement.
2. I agree with the opinion of Dr. Fields that the mechanism of claimed injury is not consistent with the imaging findings, and that the incident described on 09/30/2019 is neither directly causal to the imaging findings, nor would this motion objectively advance or permanently aggravate the pre-existing condition.
3. It is my opinion that the work described and the other incident of 09/30/2019 are not a contributing factor to Ms, [sic] Anfinson's left shoulder condition as there is no significant loading or out of neutral positioning based on the described work activities and the incident of 09/30/2019. Ms. Anfinson's shoulder condition is most consistent with chronic impingement, (a structural and anatomic condition) as was previously diagnosed in her right shoulder in 2014. This opinion is supported by the AMA Guide [sic] to the Evaluation of Disease and Injury Causation, 2nd Edition.

(DE D:15)

He agreed claimant should do no lifting overhead with her left arm but imposed no other restrictions such as lifting, pushing, or pulling. (DE 2:15) He placed her at MMI as of July 16, 2020, and while he did not attribute the shoulder injury to her work, Dr. Mooney would assess a 15 percent upper extremity rating for loss of motion and due to the distal clavicle excision. (DE 2:16)

Claimant has incurred \$94,033.20 in medical bills with \$13,736.05 paid by health insurance and \$40.00 paid by the claimant. There is \$7,649.26 outstanding after adjustments. (CE 4:10) Defendant's calculations are different. They assert claimant incurred \$25,423.93 in charges with \$1,076.40 in workers' compensation payments, \$12,345.86 in contractual write offs, and \$5,520.32 balance owed with the remainder being write offs, other adjustments, and other insurance. (DE K:49)

Defendant paid \$4,102.70 in the form of physical therapy bills and physician's visits. (DE I:42)

Claimant incurred costs of \$103.00 in service and filing fees, \$95.70 for postoperative physical therapy records, \$47.25 in deposition expenses and \$2,107.80 in IME expenses. (CE 5)

Defendant asserts claimant's average gross weekly wages were \$827.19. (DE G:24)

Currently claimant still suffers from significant pain and discomfort in the left shoulder along with weakness.

When claimant returned to work, she continued to perform her LPN duties; however, she often asks for assistance from colleagues and does no lifting nor does she push the med cart. She will ask for assistance from coworkers, if necessary. She favors her right shoulder and as a result has begun to suffer some pain due to overuse.

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. 6.904(3).

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" refer 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 Elec. 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.

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

Prior to September 30, 2019, claimant had no known trauma to her left shoulder. She did not exhibit any pain or weakness in her left shoulder prior to September 30, 2019. On September 30, 2019, while reaching behind her to place items on a treatment cart, she heard a pop in her left shoulder and felt an ache. She finished her shift and reported the pain to her co-worker. When her shoulder continued to bother her the following morning, she took herself to her primary care provider who informed her that the injury was work related. Claimant then reported this injury to her work and was sent to see the company doctor, Dr. Kinkle. From there it was eventually discovered she had torn her left rotator cuff and went on to obtain surgical care.

Prior to her surgery, claimant was sent to be evaluated by Dr. Fields, an occupational health doctor, who opined that the mechanism of twisting and reaching behind oneself could not result in the tears seen on the MRI. Instead, he opined those problems were the result of chronic conditions. This opinion was re-affirmed by Dr. Mooney, another occupational health doctor.

On the other hand, Dr. Mathew, a physical medicine and rehabilitation doctor, opined that the claimant's left shoulder injury was a direct result of her employment, and that Dr. Fields was viewing the case from an occupational medicine standpoint whereas Dr. Mathew viewed it from a physical medicine and rehabilitation physician as well as a disability analyst and pain specialist who had treated thousands of patients with shoulder injuries. (See CE 1:5)

Claimant's orthopaedic surgeon, Dr. Knudson, offered no direct causation opinion although he had been treating claimant as a referral from Dr. Kinkle who was the company doctor. In addition, it was believed by the nurse practitioner claimant saw on October 1, 2019, that claimant's shoulder problems stemmed from work.

Based on the foregoing, it is found claimant sustained a work injury to her left shoulder arising out of and in the course of her employment on or about September 30, 2019. This finding is based on claimant's lack of pre-September 30, 2019, problems with her left shoulder. She had no work restrictions and no pain. She had no medical treatment—not even chiropractic treatment for left-sided pain or discomforts. She heard a pop in her shoulder when reaching behind her. When she went to her primary care clinic, the condition was immediately diagnosed as work related and claimant was sent back to her employer to get care through work.

Dr. Kinkle, the company selected doctor, referred claimant to Dr. Knudson, an orthopaedic specialist. Dr. Knudson then recommended surgical repair. None of these doctors in the chain of care suggested claimant's condition was not work related.

Based on this finding, claimant is entitled to temporary disability benefits from January 16, 2020, through January 30, 2020, as claimant was off work and recovering from surgery to her left shoulder. The surgery was necessitated by the work injury.

Claimant is also entitled to reimbursement of medical expenses. Under Iowa's worker's compensation scheme, the employer has the right to select the authorized medical provider. Iowa Code section 85.27. The injured worker is never required to submit to the authorized medical care. Moreover, the system provides a mechanism in which the claimant can seek an order redirecting the authorized medical care to a different provider if the employer fails to provide reasonable medical care. Iowa Code section 85.27(4). In this case, defendant denied liability on November 5, 2019. Claimant then sought out her own care after defendant abandoned the right to direct care. Although it is not clear in the hearing report whether defendant raises the authorization defense, the facts of this case are sufficient to meet the standard for unauthorized care articulated in Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010). In Bell Bros., the Supreme Court requires that the 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.

Given that no care was provided by the employer and claimant's chosen care provided injections, surgery and physical therapy which improved claimant's condition, claimant has met the burden of proof set forth in Bell Bros.

Currently, defendant is not offering care and claimant has not sought out additional care. However, should claimant need additional care in the future for the left shoulder issues that arose out of and in the course of claimant's employment, claimant should be allowed to return to Dr. Knudson to whom claimant was initially referred by an authorized treating physician. Claimant should also be allowed to return to Dr. Kinkle, an authorized treating physician, or her own primary health care provider who made the initial assessment and provided an injection to the left shoulder. To the extent that is the care claimant seeks, it is granted.

Defendant seeks a credit for previously paid medical expenses. To the extent that the claimant's medical bills were paid for by an employer-sponsored program, defendant would be entitled to a credit for that amount. Claimant is entitled to reimbursement and/or payment of medical bills that are outstanding or were paid for out of pocket.

Claimant also seeks reimbursement of the independent medical evaluation charges from Dr. Mathew. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. On November 5, 2019, Dr. Fields issued an opinion that claimant's shoulder injury was not causally connected to her work.

The Iowa Court of Appeals has held that a doctor finding a lack of causation can be "tantamount to a zero percent impairment rating." Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021). Therefore, the defendant shall reimburse the claimant for the IME performed by Dr. Mathew.

The next issue is the extent of claimant's disability. Our workers' compensation statute provides compensation for permanent partial disability (PPD) for injuries to specific parts of the body pursuant to an established schedule. See Iowa Code § 85.34(2) (1995); Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 269 (Iowa 1995). This schedule sets the compensation at a percentage of a workers' average weekly earnings over a certain number of weeks based on the location of the injury. Id.

The Iowa Legislature enacted significant amendments to the Iowa workers' compensation laws, which took effect July 1, 2017. Of particular relevance to this case, the Iowa Legislature modified section 85.34 in 2017 by adding the shoulder to the list of scheduled members. The new subsection states, in its entirety: "For the loss of a shoulder, weekly compensation during four hundred weeks." Iowa Code § 85.34(2)(n).

The Iowa Supreme Court in Chavez v. MS Tech. LLC, No. 21-0777, 2022 WL 981813 (Iowa Apr. 1, 2022), and Deng v. Farmland Foods, Inc., No. 21-0760, 2022 WL 981829 (Iowa Apr. 1, 2022) affirmed that the shoulder was construed in a functional sense to include the glenohumeral joint as well as all of the muscles, tendons, and ligaments that were essential for the shoulder to function. Dr. Knudson performed a left shoulder arthroscopy with labrum debridement, open acromioplasty, subacromial decompression, distal clavicle resection, biceps tenodesis, rotator cuff repair. Based on the foregoing, claimant has sustained a right shoulder injury subject to recovery under Iowa Code § 85.34(2)(n).

Dr. Mathew assessed a 17 percent upper extremity impairment rating for the left shoulder rotator cuff tear while Dr. Mooney would assess a 15 percent upper extremity rating for loss of motion and due to the distal clavicle excision. Based on Dr. Mathew's reliable causation opinion, the 17 percent impairment rating is adopted herein.

Because it was previously found that claimant's work-related injury was to be measured as a functional impairment, there is no need to determine whether Iowa Code section 85.34(2)(v) applies.

Claimant seeks the award of costs as outlined in Claimant's Exhibit 5. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

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

practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Claimant incurred costs of \$103.00 in service and filing fees, \$95.70 for postoperative physical therapy records, and \$47.25 in deposition expenses. Those are awarded. The request for the IME expenses is inappropriate as it was awarded under an 85.39 request.

ORDER

THEREFORE, it is ordered:

That defendant is to pay unto claimant 42.5 weeks of permanent partial disability benefits at the rate of five hundred forty-eight and 22/100 dollars (\$548.22) per week from July 16, 2020.

That defendant is to pay unto claimant temporary benefits at the rate of five hundred forty-eight and 22/100 dollars (\$548.22) per week from January 16, 2020, through January 30, 2020.

That defendant shall pay accrued weekly benefits in a lump sum.

That defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

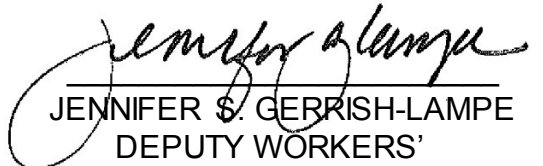
That defendant shall pay for medical expenses in Exhibit 4 as described in the Conclusions of Law.

That defendant is to be given credit for benefits previously paid, including medical benefits as described in the Conclusions of Law.

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

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33 as outlined above as well as the transcript of this case.

Signed and filed this 21st day of June, 2022.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Chad Swanson (via WCES)

Chris Scheldrup (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.