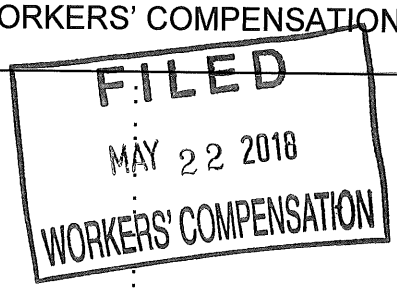
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



LIDIA RODAS, Claimant, vs. CENTRUM VALLEY FARMS, LLP, Employer, and GREAT AMERICAN ALLIANCE INSURANCE CO., Insurance Carrier, Defendants.	File No. 5058475 ARBITRATION DECISION Head Notes: 1108.50, 1402.40, 1801, 1803, 2501

STATEMENT OF THE CASE

Lidia Rodas, claimant, filed a petition in arbitration seeking workers' compensation benefits from Centrum Valley Farms, LLP, employer and Great American Alliance Insurance Company, insurance carrier, as defendants. Hearing was held on March 29, 2018 in Des Moines, Iowa.

Lidia Rodas, Jose Rodas, and Hortencia Saldivar all testified live at trial. Lidia Rodas and Jose Rodas testified with the use of interpreter, Karen Deters. The evidentiary record also includes joint exhibits JE1-JE6, claimant's exhibits 1-4 and 7-12, and defendants' exhibits A-F.

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 submitted post-hearing briefs on April 27, 2018.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained permanent disability as a result of the stipulated May 17, 2016 work injury? If so, the extent of permanent disability.

2. Whether claimant sustained any temporary disability as a result of the stipulated May 17, 2016 work injury?

3. Whether claimant is entitled to payment of past medical expenses?

4. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Lidia Rodas, is a very pleasant Spanish-speaking 66-year-old woman from Honduras. She was employed at Centrum Valley Farms, LLP (hereinafter "Centrum" or "defendant employer") on May 17, 2016. On the date of the stipulated injury Ms. Rodas was cleaning machines, when she stepped on a wet spot on the floor, slipped, and fell. As she slipped her feet went out from under her, and she fell backwards, more toward the right side of her back. She struck her back side, from her head down to her back and legs, against the concrete floor. She testified that she lost consciousness. Ms. Rodas was not able to get off the floor on her own. Two supervisors, Patricia Martinez and Alicia Negron, lifted Ms. Rodas off the floor and placed her in a chair. Ms. Rodas was not able to talk. She described herself as dumb or dazed. She was not sure what was going on. She felt pain in her entire back side of her body, including the back of her head, her neck, shoulder, back, buttocks, and her legs. She was not able to finish her work day. Ms. Rodas was taken home. (Testimony)

There is no dispute that Ms. Rodas fell at work. However, defendants do dispute what injuries Ms. Rodas sustained and the extent of disability, if any, she sustained as a result of the fall. Additionally, defendants dispute her contention that she hit her head on the cement floor.

Claimant's attorney took the deposition of Patricia Martinez on March 23, 2018. (Claimant's Exhibit 12) Ms. Martinez was working near Ms. Rodas at the time of the accident. She did not see Ms. Rodas fall. Ms. Martinez heard Ms. Rodas scream, and by the time she ran to Ms. Rodas she was already on the cement floor, unconscious. The floor where Ms. Rodas slipped was wet. Ms. Martinez does not know if Ms. Rodas hit her head or not. (Cl. Ex. 12, pages 155-157) When she got to Ms. Rodas she was not able to speak and her "mind was gone." Ms. Rodas did not complete her work shift; she went home ill. (Cl. Ex. 12)

Ms. Hortencia Saldivar testified live at the hearing. Ms. Saldivar is the HR manager and workers' compensation coordinator for Centrum. She coordinates the care for workers' compensation and injured workers' return to work dates. She is fluent

in both Spanish and English. Ms. Saldivar was present at the deposition of Ms. Martinez. She does not dispute any of her deposition testimony. Ms. Saldivar phoned Ms. Rodas at home; she believes it was the evening of the 18th of May. According to Ms. Saldivar, Ms. Rodas told her she hurt her left knee and left hip. Ms. Saldivar also testified that approximately one month after the stroke Ms. Rodas stopped by the Centrum office. Ms. Saldivar testified that Ms. Rodas never told her she hit her head at the time of the fall, nor did Ms. Rodas ever say she was claiming her stroke was work-related. However, Ms. Rodas testified that she did not receive a phone call form Ms. Saldivar the day after the fall. In fact, she was not accepting any phone calls the day after the fall. (Testimony)

It is noted that there is an accident report in evidence which was completed by the employer. (CL. Ex. 11, p. 149) The report appears to be in Spanish. The report is not helpful to the undersigned because there is no English translation in evidence. Furthermore, it is undisputed that the report was not completed by the claimant. I find the other evidence in the record demonstrates the report was completed by a supervisor, Mr. Gonzales, outside of the presence of Ms. Rodas. Claimant credibly testified that the signature line does not contain her signature. Ms. Rodas testified that her signature is contained on an HR Change Action Form. (Ex. 11, p. 151)

The initial treatment records do not make mention of Ms. Rodas hitting her head. However, claimant argues that this is due to the significant language barrier because she does not speak English, and there was not always a translator available during the medical appointments. The testimony of Ms. Rodas and Ms. Martinez supports claimant's contention that she hit her head at the time of her fall. I find that Ms. Rodas did hit her head on the cement floor at the time of the accident.

The first time Ms. Rodas sought treatment after the fall was on May 19, 2016. Her companion, Carmelo, took her from her home to the family practice clinic in Clarion, Iowa. Carmelo only understands a little English. Ms. Rodas testified that he tried to do the talking for her, but she is not certain how much the doctor's office understood. Ms. Rodas saw Michele M. Koerner, ARNP. There is no reference to an interpreter in the notes. Ms. Rodas was noted to be well appearing, well nourished, and in distress. There is reference to a work injury on May 17, 2016; there is no detail about the mechanism of the injury. The clinical note does state there was no head injury. Ms. Rodas was noted to be alert and oriented. The location of the pain was lumbar, left greater than right. Severity of the pain was 10/10. X-rays were taken of her low back, tailbone, and hips. The impression was lower back pain and pain in the left hip. (JE1, pp. 25-29) Ms. Rodas was instructed to remain off of work from May 23 through May 31. She was to return for a follow-up appointment on May 31, 2016. (JE1, p. 31)

At the arbitration hearing Ms. Rodas testified that she had pain in the back of her head, her neck, back, and legs from the time of her fall until she was seen in the emergency room on May 29, 2016.

On May 29, 2016 Ms. Rodas was seen at the emergency room for right-sided weakness, probably acute ischemic stroke. The notes state that there was a language barrier, but an interpreter was used. (JE1, p. 35) She reported no headache and no visual changes. She had slurred speech for the past several hours and the right side of her body felt numb. Her diabetes mellitus type 2 was noted. She had no leg pain. She was admitted to the hospital in Clarion. A head CT was performed and was negative for bleeding. By the morning of May 30, 2016, her speech was worse and her right arm seemed weaker. (JE1, pp. 32-41)

On May 30, 2016, Ms. Rodas was transferred to Mercy Hospital in Des Moines from Clarion due to worsening stroke symptoms. The history obtained in Des Moines mentions that she "fell at work 8 days ago and has some muscle stiffness but no other injuries." No headache. (JE3, p. 6) The note states, "recent mechanical fall: no ongoing pain." (JE3, p. 109) The notes state an interpreter was used for the history and physical. (JE3, pp. 106-109)

On May 30, 2016, David Friedgood, D.O., neurologist, also saw Ms. Rodas. He noted it was difficult to obtain much historical information from her because the family was acting as the interpreters, as no other interpreters were available at that time. Ms. Rodas indicated that she did not have a headache. Dr. Friedgood could not complete mental status testing because he did not have an interpreter. He recommended an MRI of the brain. His impression included probable left cerebral infarction which started the day before and history of diabetes mellitus. (JE3, pp. 110-112)

Ms. Rodas was admitted to Mercy Hospital in Des Moines. She underwent extensive testing and rehabilitation services while she was there. She spent approximately one month in the hospital. On June 4, 2016, a CT of her head was performed. The impression was evolving left pontine infarct. No acute intracranial hemorrhage. She was discharged from Mercy on June 6, 2016. The final diagnoses included acute left-sided anterior upper pontine infarct, uncontrolled type II diabetes mellitus, hypertension – controlled, history of recent mechanical fall, and obesity. (Testimony; JE3)

After Ms. Rodas was discharged from the hospital she saw her personal physician in Fort Dodge for follow-up. On July 1, 2016, Ms. Rodas was seen in Fort Dodge for follow-up of her stroke. The note states interpreter services were used. Fort Dodge did not have the notes from the Des Moines hospital. Ms. Rodas reported that she had a fall at work and then a few days later she began having weakness and numbness on the right side of her body. She had left leg pain since her fall at work. There is no mention of any other pain since her fall. (Testimony; JE2, pp. 62-64)

Ms. Rodas was seen again in Fort Dodge on July 29, 2016. Interpreter services were used. She reported right shoulder pain with movement. She also complained of chronic back pain with radiation to her legs. The assessment included mixed hyperlipidemia due to type 2 diabetes mellitus. (JE2, pp.65-72)

On August 15, 2016, Ms. Rodas went to the emergency department at Iowa Specialty Hospitals and Clinics in Clarion. She saw Jason Stecker, D.O. An interpreter was used. She presented with right arm pain for the past two to three days. No specific injury. Dr. Stecker noted that she had already been prescribed pain medications including Flexeril and Ibuprofen. She came to the emergency department to request strong pain medications. The doctor notes that Ms. Rodas reported chronic weakness, but on exam was moving the right arm freely in all directions. (JE1, pp. 42-44)

On August 18, 2016 Ms. Rodas was seen again in Fort Dodge for severe right arm pain. Interpreter services were used. She reported that she had a stroke in May and had complained of shoulder pain in the past but was now developing a severe "exploding" sensation in her right arm. Her pain was interfering with her ability to sleep. She also developed chest pressure with her anxiety about this and felt like she could die. She felt she was getting worse. She also acknowledged that her blood sugars were completely out of control. The assessment included possible complex regional pain syndrome of the right arm. (JE2, pp. 73-78)

Ms. Rodas went to Mercy Physical Medicine and Rehabilitation on September 1, 2016. She was seen for follow up for a stroke affecting her right side and her speech. An interpreter was used. She was walking with a cane. She denied requiring assistance with eating, grooming, or toileting. She did require assistance for bathing. She reported that she felt her mood was down and depressed. She also reported ongoing headaches. The note states that in spite of multiple attempts to try to have Ms. Rodas quantify and qualify her pain she continued to state her entire arm hurt; this made it difficult for the medical provider to determine the cause of her pain. She was given a right glenohumeral joint injection. She reported that the injection provided her significant improvement of her pain. (JE5)

She was seen in Fort Dodge on September 8, 2016. Interpreter services were used. She continued to have right arm pain but her injection helped. (JE2, pp. 79-82)

On October 13, 2016, Ms. Rodas returned to her primary care physician in Fort Dodge for a follow-up visit regarding her diabetes. It was also noted that she had shoulder pain since her stroke and is not sure what neurology found. Her dosage of Gabapentin was increased. (JE2, pp. 83-88) Ms. Rodas continued to receive treatment in Fort Dodge.

Ms. Rodas returned to Fort Dodge on January 4, 2017. She presented without the use of a cane. She reported continued right arm pain that radiated up her arm and to the top of her head on the right side. At this point, she no longer had insurance and could not afford physical therapy or specialists. (Testimony; JE2, pp. 95-99)

Claimant contends that her stroke is related to the May 17, 2016 workplace fall. Defendants dispute this contention. There are several experts who have rendered opinions in this case regarding whether there is a causal connection between the workplace fall and the claimant's stroke.

At the request of her attorney, Ms. Rodas was evaluated by occupational medicine physician, Sunil Bansal, M.D. In addition to examining the claimant Dr. Bansal also reviewed medical records dating back to May 29, 2016. He noted that his interview of Ms. Rodas was conducted with the assistance of a professional interpreter. He noted that Ms. Rodas did not remember much about the work accident because she has had difficulty with both her short-term and long-term memory since the fall. She reported that she believed she lost consciousness at the time of her fall. The day after the fall her pain increased significantly, and she called her supervisor to inform them that she could not come in. Dr. Bansal reported that Ms. Rodas was evaluated in the emergency room where she complained of left knee pain. She was sent home with medications and told to follow up in three days. However, by the time she followed up with her doctor half of her body was paralyzed. Dr. Bansal's diagnoses included left cerebral infarction, stroke. He opined that this developed as a result of her fall on May 17, 2016 when she struck her head. She developed evolving signs and symptoms of a left-sided stroke over the next months. He noted her May and June CT scans of her head and felt they were consistent with medical literature on stokes after a head injury. His diagnoses also included an examination and symptomatology characteristic of rotator cuff pathology. He felt the mechanism of falling with direct impact to the right shoulder, coupled with a clinical presentation of immediate right shoulder pain was consistent with acute rotator cuff pathology. He recommended an MRI. Unfortunately, Dr. Bansal did not have the benefit of reviewing the initial treatment records dated May 19, 2016. Instead, Dr. Bansal had to rely on the memory of Ms. Rodas which he notes was impaired.

On December 15, 2017, claimant's counsel had a conference with the treating neurologist, Dr. Friedgood. On December 30, 2017, Dr. Friedgood answered written questions posed to him by claimant's counsel. Dr. Friedgood checked that he agreed with the following question:

> In addition to the fact that Ms. Rodas' 6/4/16 CT of her head shows an evolving Left Pontine infarct (stroke), looking retrospectively at her 5/29/16 head CT performed at Iowa Specialty Hospital in Clarion (from 6 days before), that earlier (5/29/16) head CT also shows that her cerebral infarction had indeed already begun, likely approximately 24 hour [sic] before her presenting to the hospital in Clarion on 5/29/16, is that correct?

(JE6, p. 152)

Another one of the questions the doctor was asked to agree or disagree with was:

> Assuming that Ms. Rodas hit her head during her 5/17/16 workplace fall and had immediate and persistent neck pain running up into her head coming forward to her presenting to Iowa Specialty Hospital in Clarion on 5/29/16, and against the backdrop of pre-existing diabetes and hypertension, it is my understanding that you believe that her 5/17/16 workplace fall definitely could have contributed to her development of her

> left Pontine infarct (stoke) [sic], affecting the right side of her body, which began to manifest itself on or about 5/29/17, when Ms. Rodas presented to Iowa Specialty Hospital in Clarion, and leading to her transfer to Mercy Medical Center in Des Moines the following day (5/30/16), when you were consulted, and treated Ms. Rodas, is that correct?

(JE6, p. 153)

The doctor checked that he agreed with the statement but then also hand-wrote, "[i]t is definitely a possibility, but not greater than 51% certain." (JE6, p. 153)

At the request of the defendants, Michael Jacoby, M.D. performed an independent medical examination (IME) in January of 2018 regarding Lidia Rodas Archaga. Dr. Jacoby is the director of the Ruan Neurology Clinical Research Center in Des Moines. Following his examination and review of records which dated back to 2012, he issued a report. Dr. Jacoby felt that the onset of the stroke was at the time of her symptoms on May 29, 2016. He disagreed with Dr. Friedgood's findings that the May 29, 2016 CT scan of the head showed that claimant's cerebral infarction had already began. Dr. Jacoby felt that the onset of the stroke was at the time of her symptoms on May 29, 2016. Dr. Jacoby stated:

> The pontine stroke was a lacunar-type stroke. It measures approximately 1.0 cm x 1.3 cm within the definition of lacune. These particular strokes are due to small, perpendicular penetrating pontine vessels. These types of strokes such as Ms. Archaga experienced, are classically and characteristically attributed to mechanisms such as diabetes, hypertension, and advancing age. This is not a stroke due to a typical traumatic mechanism. Furthermore, the imaging characteristics of the more definitive MRI scan on May 31, 2016 are consistent with a stroke onset that occurred on May 29, 2016 and not related to an event that occurred over a week earlier.

(Ex. A, p. 7)

Dr. Jacoby opined that the claimant had significant preexisting conditions which were significant contributing factors which caused her cerebral infarction stroke. These included the comorbidities of diabetes, hypertension, and her age. The doctor was also asked if "there was sufficient medical evidence to support the conclusion that claimant's slip and fall at work on May 17, 2016 was a significant contributing factor causing claimant's cerebral infarction stroke?" He responded, "No." (Ex. A, p. 7)

In the present case, there are three causation opinions with regard to Ms. Rodas' stroke.

First, there is the treating neurologist, Dr. Friedgood. Dr. Friedgood was willing to state that it was merely possible, but not probable, that the May 17, 2016 workplace fall could have contributed to the development of her stroke.

Second, there is the opinion of a neurologist hired by the defendants, Dr. Jacoby. Dr. Jacoby stated that claimant had a lacunar-type stroke. He felt there was not significant medical evidence to support the conclusion that claimant's slip and fall at work on May 17, 2016 was a significant contributing factor causing claimant's cerebral infarction stroke. He explained that this type of stroke is attributed to mechanisms such as diabetes, hypertension, and advancing age, not due to a traumatic mechanism that occurred over a week earlier.

Finally, there is the opinion of an occupational medicine physician, Dr. Bansal, who was hired by the claimant. He is the only physician to causally connect the stroke to the workplace fall. In doing so, he relies on what appears to be an article in a 2011 medical journal. Dr. Bansal then sites language from the article that includes terms like "might" or "may." (Cl. Ex. 1, pp. 12, 15B) Additionally, Dr. Bansal's report is flawed in that it does not contain a complete or completely accurate history. Dr. Bansal also seems to be under the mistaken impression that Dr. Jacoby did not examine the claimant. (Cl. Ex. 1, p. 15C)

With regard to causation in a stroke case, I do not find Dr. Bansal's opinions to be more persuasive than those of two trained neurologists. I find that the two neurologists in this case are more aptly qualified to render opinions regarding issues surrounding a stroke. For example, a review of Dr. Jacoby's curriculum vitae reveals that his knowledge regarding strokes is extensive. (Ex. B). Dr. Bansal's credentials do not demonstrate such expertise. (Cl. Ex. 1, pp. 16-17) It is the claimant who has the burden to show by a preponderance of the evidence that the May 17, 2016 fall was a substantial factor in causing the subsequent stroke. I find that Ms. Rodas has failed to carry her burden.

Because Ms. Rodas failed to carry her burden of proof to show that her stroke is causally connected to the work injury all other issues related to the stroke are rendered moot.

We must now consider whether Ms. Rodas sustained any permanent disability as a result of the May 17, 2016 fall.

Ms. Rodas alleges permanent disability to her right shoulder as a result of the fall. She relies on the opinion of Dr. Bansal. In his report Dr. Bansal states, "[t]his mechanism of falling with direct impact to the right shoulder, coupled with a clinical presentation of immediate right shoulder pain, is consistent with acute rotator cuff pathology." (Ex. 1, p. 13) He then assigns 5 percent whole person impairment for the right shoulder. Unfortunately, Dr. Bansal's opinion is flawed because it is based on an incomplete and inaccurate history because he did not have the benefits of any notes prior to May 29, 2016. Dr. Bansal did not review the initial treatment notes but is

somehow under the impression that she was treated for left knee pain and was told to follow up in three days. He then states that before she could follow up with her doctor half of her body was paralyzed. A review of the actual treatment records demonstrates that this history is not correct. The treatment notes from May 29, 2016 state that Ms. Rodas was seen for chief complaint of left hip pain. Lower back pain was also noted. There is no mention of her left knee or of right shoulder pain. (Cl. Ex. 1) Ms. Rodas was seen on May 23, 2016 and told to follow up on May 31, 2016. I do not find Dr. Bansal's causation opinion on the right shoulder to be persuasive.

Dr. Jacoby also rendered a causation opinion regarding the right shoulder. He does not believe there is sufficient evidence to relate the shoulder to the fall. He opined that her ongoing and current symptoms in her right arm and shoulder were related to the stroke.

I find that claimant has failed to carry her burden of proof to show that she sustained any permanent disability to her right shoulder as a result of the work injury.

We now turn to claimant's back claim. Dr. Jacoby diagnosed Ms. Rodas with myofascial back pain. He noted her medical history with her back. Ultimately, he stated, "Considering back pain prior to May 2016 and lack of any focus on back pain after May 2016, it is not likely that the fall resulted in any substantial aggravation of back pain. Furthermore, on examination, she had only mild tenderness without any appearance of back pain impairment." (A, p. 9) Dr. Bansal stated that there was insufficient medical information to determine a diagnosis or work-relatedness. There is simply a lack of medical evidence to support claimant's contention that she sustained any permanent disability as a result of the work injury. (Cl. Ex. 1, p. 12)

I find there is a lack of reliable expert medical opinion to support claimant's contention that she sustained any permanent disability as a result of the May 17, 2016 workplace fall. Claimant has failed to prove by a preponderance of the evidence that she sustained any permanent disability as a result of the work injury.

Claimant is seeking temporary total disability benefits from May 18, 2016 through October 13, 2016. The injury occurred on May 17, 2016. The evidence demonstrates that she was unable to complete her shift, was taken home and was off work. She initially sought treatment on May 19, 2016. The assessment at that time was lower back pain and pain in the left hip. The doctor confirmed that Ms. Rodas was unable to work. She was taken off work until her scheduled return visit on May 31, 2016. (JE1, p. 31) The preponderance of the evidence demonstrates that Ms. Rodas was restricted from working due to her work injury from May 23 through May 31. I find that claimant has carried her burden of proof to show entitlement to temporary total disability benefits from May 18, 2016 through May 31, 2016. Claimant suffered her stroke prior to the May 31, 2016 appointment. I found that claimant failed to prove that the stroke is causally connected to the work injury. Therefore, I find claimant failed to show entitlement to any temporary total disability benefits after May 31, 2016.

Claimant is also seeking payment of past medical bills as set forth in claimant's Exhibit 8. I find that defendants are responsible for any medical bills incurred in relation to the May 19, 2016 appointment at Iowa Specialty Hospital. I further find claimant has failed to show that any of the other bills were necessitated by the work injury. Therefore, defendants are not responsible for the remaining bills.

Claimant is also seeking an assessment of costs as set forth in claimant's Exhibit 9. Because claimant was generally not successful in her claim I find that an assessment of costs is not appropriate. Each party shall bear their own costs.

CONCLUSIONS OF LAW

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

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).

Based on the above findings of fact, I conclude that claimant has failed to show by a preponderance of the evidence that her stroke was related to the work injury of May 17, 2016. There is simply a lack of persuasive medical expert opinions to support her claim. I further conclude that claimant failed to carry her burden of proof to show by a preponderance of the evidence that she sustained any permanent disability as a result of the work injury.

Claimant is also seeking temporary disability benefits. When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1). If an injury does not produce permanent disability, then compensation does not begin until the fourth day of disability after the injury. Iowa Code section 85.32.

Based on the above findings of fact, I conclude that Ms. Rodas was unable to work due to the work injury from May 18, 2016 through May 31, 2016. Defendants shall pay claimant temporary total disability benefits. Claimant is not entitled to benefits during the three-day waiting period.

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).

Based on the above findings of fact, I conclude that claimant has carried her burden of proof to show that defendants are responsible for the medical bills that were incurred in connection with the May 19, 2016 medical appointment. Claimant has failed to prove that any treatment beyond that date was related to the work injury.

Costs are to be assessed at the discretion of the deputy hearing the case. 876 IAC 4.33. Because claimant was generally not successful in this matter I exercise my discretion and conclude that an assessment of costs against the defendants is not appropriate. Each party shall bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of four hundred sixteen and 66/100 dollars ($416.66).

Defendants shall pay temporary total disability benefits as set forth above.

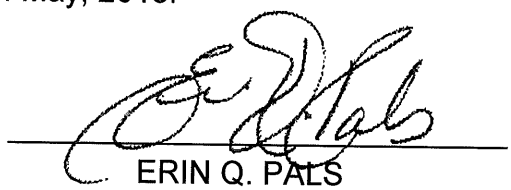
Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two (2) percent. See Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

Defendants are responsible for medical bills as set forth above.

Each party shall bear their own costs.

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 22nd day of May, 2018.



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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.