

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECKA HONEYCUTT,

Claimant,

vs.

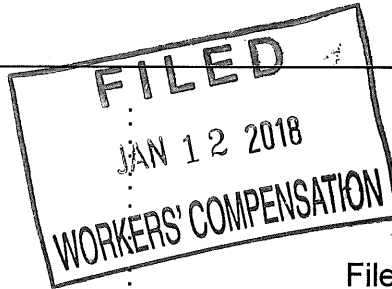
GENESIS DEVELOPMENT – QUALITY
OF LIFE, INC.,

Employer,

and

UNITED HEARTLAND,

Insurance Carrier,
Defendants.



File No. 5056073

ARBITRATION
DECISION

Head Note No.: 2402

REBECKA HONEYCUTT,

Claimant,

vs.

GENESIS DEVELOPMENT – QUALITY
OF LIFE, INC.,

Employer,

and

UNITED HEARTLAND,

Insurance Carrier,
Defendants.

File No. 5033074

REVIEW-REOPENING
DECISION

Head Note Nos.: 1302.1, 1402.40

STATEMENT OF THE CASE

Claimant, Rebecka Honeycutt, filed a petition in review-reopening and a petition in arbitration seeking workers' compensation benefits from Genesis Development – Quality of Life, Inc., employer, and United Heartland, insurance carrier, both as defendants, as a result of stipulated injuries sustained on April 13, 2009 and August 24, 2012. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on March 29, 2017, in Des Moines, Iowa. The record in this case consists of claimant's exhibits 1 through 17, defendants' exhibits A through J,

and the testimony of the claimant and Cathy Miller. The parties submitted post-hearing briefs, the matter being fully submitted on April 28, 2017.

ISSUES

In File No. 5033074 (Date of Injury: April 13, 2009):

The parties submitted the following issues for determination:

1. Whether there has been a change in condition since the agreement for settlement approved by this agency on May 15, 2013, that might entitle claimant to additional permanent partial disability benefits under a review-reopening;
2. The extent of claimant's industrial disability;
3. Whether defendants are responsible for claimed medical expenses;
4. Whether claimant is entitled to reimbursement of an independent medical evaluation; and
5. Specific taxation of costs.

The parties filed a hearing report at the commencement of the review-reopening hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this review-reopening 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.

In File No. 5056073 (Date of Injury: August 24, 2012):

The parties submitted the following issues for determination:

1. Whether claimant's claim is barred as an untimely claim under Iowa Code section 85.26;
2. Whether defendants are responsible for claimed medical expenses;
3. Whether claimant is entitled to reimbursement of an independent medical evaluation; and
4. Specific taxation of costs.

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.

FINDINGS OF FACT

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

Claimant's testimony was generally consistent as compared to the evidentiary record, deposition testimony, and recorded statement. While defendants raised concern regarding claimant's credibility, the majority of the examples provided regarding claimant's purported inconsistencies occurred prior to the agreement for settlement entered into by the parties in May 2013. Although the cited examples may have led to argument regarding claimant's credibility and reports at that time, the parties subsequently entered into a settlement whereby defendants admitted claimant sustained a work-related injury on April 13, 2009. Any attempts to attack claimant's credibility based on statements made prior to the settlement are therefore, entitled to decreased probative value. Further, at the time of evidentiary hearing, claimant's demeanor was excellent and did not provide the undersigned with any reason to question claimant's veracity. Claimant is found credible.

Claimant was 35 years of age at the time of hearing. She graduated high school in 2000. (Claimant's testimony; Exhibit 11, page 95) Her work history consists of cashier, waitress, sales associate, home health care, and her work for defendant-employer. She commenced work at defendant-employer in January 2008. (Claimant's testimony; Ex. 11, pp. 96-97) Defendant-employer provides assistance to mentally handicapped clients, including with activities and tasks of everyday living. (Claimant's testimony)

When claimant began at defendant-employer, she worked as a job coach. She then transitioned into the discovery department, a form of daytime rehabilitation ("day-hab") program. In this role, staff members assisted clients with life functions and kept clients active and learning. A staff member was required to be on his/her feet throughout the day, take clients on walks, push wheelchairs, assist clients into and out of bed, and engage in activities and trips. (Claimant's testimony; Ex. 6, Depo. Tr. pp. 9-12)

On April 1, 2009, claimant testified she slipped while exiting the bathtub in her home. She indicated she injured her leg and sought medical treatment at a clinic in Ames, Iowa. Claimant testified her leg symptoms resolved after a few days and she did not require any further treatment. Claimant did not provide the name of the clinic or any related medical records to defendants. (Claimant's testimony)

On April 13, 2009, claimant testified she attempted to break up a negative interaction between two clients. As one client was restrained, he held claimant by the collar and pulled her forward into a bent over position; claimant caught herself with her hand and did not fall to the ground. When pulled into the bent position, claimant testified she felt a pop and pain in her low back. She described experiencing pain in the

middle part of her low back, as well as shooting pains down the left leg with position changes. (Claimant's testimony)

The following day, claimant informed her supervisor, Kay, that she was experiencing pain in her back, left leg, and neck. Claimant testified Kay sent her for chiropractic evaluation. (Claimant's testimony)

On April 14, 2009, claimant presented for care at Ver Helst Chiropractic. She reported complaints of low back and left lower extremity pain following a fall from her shower. Symptoms were noted as having an onset of April 1, 2009, following that fall. There is no mention of the details of claimant's stipulated April 13, 2009 work injury. (Ex. C, pp. 1-2) Claimant underwent chiropractic examination and treatment. (Ex. C, p. 3) The chiropractor also completed an injury claim form, noting an April 1, 2009 injury when claimant slipped and fell out of her shower. (Ex. C, pp. 5-6)

In her discussions with the chiropractor, claimant testified she did not relate her ongoing symptoms to the April 1, 2009 injury at home. Rather, claimant testified she simply informed him of the event and declined to describe the work injury until she had cleared any potential HIPPA privacy concerns through her supervisor, Kay. (Claimant's testimony)

Claimant's current direct supervisor, Cathy Miller, testified at evidentiary hearing. Ms. Miller serves as director of services for the eastern region of defendant-employer. Ms. Miller testified nothing in defendant-employer's training materials would indicate claimant was unable to report the details of her work injury to a medical provider. She indicated employees are trained on confidentiality and advised to be cautious of relaying information which would lead to a client being identified. (Ms. Miller's testimony)

Ms. Miller's testimony was direct and delivered in a professional manner. Her demeanor was excellent and gave the undersigned no reason to doubt her veracity. Ms. Miller is found credible.

Claimant testified defendants referred her for medical treatment with Dr. Mahoney and ultimately, with anesthesiologist/pain management physician, Matt Biggerstaff, D.O. She testified Dr. Biggerstaff performed epidural injections of her low back. While the injections initially provided relief, claimant testified the benefit of the injections began to lessen in duration. Ultimately, per Dr. Biggerstaff's recommendations, claimant had a spinal cord stimulator implanted by Cassim Igram, M.D. in 2010. Claimant testified the spinal cord stimulator resolved her left leg complaints, but the back pain persisted. (Claimant's testimony)

On January 6, 2012, claimant underwent a functional capacity evaluation (FCE) with Mark Blankespoor, PT. Mr. Blankespoor opined the results of the testing were valid and showed decreased strength and range of motion of claimant's back. Mr. Blankespoor opined claimant demonstrated the ability to function in the light physical demand category, with lifting of up to 30 pounds rarely and 20 pounds occasionally.

Additionally, Mr. Blankespoor reviewed provided job descriptions and opined he did not believe claimant was capable of performing the full range of her work duties, specifically the medium level demands of lifting, carrying, cleaning, moving furniture and attending to behavioral issues of clients. (Ex. B, pp. 1-2, 4)

At some point following the April 13, 2009 work injury and prior to claimant's August 24, 2012 work injury, claimant became assistant supervisor of the discovery department. (Ex. 6, Depo. Tr. pp. 9-12)

Claimant testified that on August 24, 2012, a client became upset over television use and kicked claimant in the leg, causing her to fall to the ground. (Claimant's testimony) An injury report was completed, which noted claimant was kicked by a client and fell to the floor on her right side. Notes reference a sharp pain at claimant's right back and hip area. (Ex. 15, pp. 109-110) Claimant testified a supervisor directed her to present to the emergency room for evaluation, but she did not receive any notable treatment. (Claimant's testimony)

On September 11, 2012, claimant presented to Iowa Ortho for evaluation with Dr. Biggerstaff. Dr. Biggerstaff noted claimant was being seen for right low back pain, as approximately two weeks prior, claimant had been kicked by a client and fell to the ground. Since that time, claimant reported increasing right side and buttock pain, more severe than prior pain levels. Dr. Biggerstaff noted he had also recently seen claimant for left low back and buttock pain, with claimant having a history of injections and a spinal cord stimulator implanted. Following examination, Dr. Biggerstaff assessed most likely sacroiliitis and recommended anti-inflammatories and a right sacroiliac (SI) joint injection. (Ex. 1, p. 1) He also imposed light duty work restrictions. (Ex. 1, p. 2)

On September 13, 2012, Dr. Biggerstaff authored a letter to defendants' former attorney in response to inquiries. Thereby, Dr. Biggerstaff opined he did not relate claimant's facetogenic complaints to the April 13, 2009 work injury. He noted claimant's recent injury may reduce claimant's functioning level to light duty work temporarily, but opined medium duty work was appropriate with respect to the April 13, 2009 work injury. (Ex. 1, p. 4)

On October 5, 2012, Dr. Biggerstaff performed the recommended right SI joint injection. (Ex. 1, p. 6) Claimant returned to Dr. Biggerstaff in follow up on November 13, 2012. She reported experiencing quite a bit of relief with the right SI joint injection. Claimant indicated she did not desire a repeat injection and was able to work full time. Dr. Biggerstaff noted claimant may require another injection in the future and advised claimant to contact him should her symptoms worsen. Dr. Biggerstaff released claimant to full duty work. (Ex. 1, pp. 7-8)

At the referral of claimant's counsel, on January 23, 2013, claimant presented for independent medical evaluation (IME) with board certified occupational medicine physician, Robin Sassman, M.D. (Ex. 5, p. 80) Dr. Sassman authored a report containing her findings and opinions dated February 25, 2013. Dr. Sassman performed

a records review and physical examination. (Ex. 2, pp. 51-57) Thereafter, she assessed low back pain with radicular symptoms post spinal cord stimulator placement, relative to the April 13, 2009 injury; and right sacroiliac joint pain status post right SI injection on October 5, 2012 with full resolution of symptoms, relative to the September 1, 2012¹ injury. (Ex. 2, pp. 50, 57)

Dr. Sassman opined the low back symptoms, abnormalities and treatment were related to the April 13, 2009 date of injury. She opined claimant's ongoing back pain and radicular symptoms were not related to the slip in claimant's shower prior to the April 13, 2009 fall. Dr. Sassman attributed claimant's right SI joint pain to the September 1, 2012² kick injury, with those symptoms resolving completely following the SI joint injection. (Ex. 2, pp. 57-58)

Dr. Sassman recommended further medical evaluation, but issued provisional permanent impairment ratings. She opined claimant sustained no ratable impairment for the right SI joint injury. With respect to claimant's low back, Dr. Sassman opined claimant fell within DRE Lumbar Category III, warranting a permanent impairment rating of 13 percent whole person due to radicular signs on examination. Dr. Sassman also recommended permanent restrictions of: lifting, pushing, pulling, and carrying of up to 30 pounds rarely floor-to-waist, 50 pounds rarely waist-to-shoulder, and 30 pounds rarely above shoulder level; occasional sitting, standing, and walking, with the ability to change positions frequently; and no use of vibratory or power tools. (Ex. 2, p. 59)

On February 25, 2013, claimant returned to Iowa Ortho for evaluation by Dr. Igram. Dr. Igram assessed chronic back pain and noted he had not seen claimant for approximately two years, following his placement of claimant's spinal cord stimulator. Dr. Igram noted claimant reported approximately 60 percent improvement in symptoms following the October 2012 injection performed by Dr. Biggerstaff. As Dr. Biggerstaff was not currently seeing patients, Dr. Igram indicated claimant should be seen by one of Dr. Biggerstaff's former partners at Pain Specialists of Iowa. (Ex. E, pp. 1-2)

Pursuant to Dr. Igram's referral, on March 13, 2013, claimant was evaluated by Dana Simon, M.D. of Pain Specialists of Iowa. Claimant reported experiencing pain from her low back down her left leg to the foot. Dr. Simon noted claimant's spinal cord stimulator failed to provide relief of this pain. He also noted claimant's symptoms began after a repeat incident wherein a client kicked claimant. (Ex. F, p. 1) Dr. Simon performed an examination and assessed lumbar/lumbosacral disc degeneration, myofascial pain, and sciatica. Dr. Simon expressed some question as to whether the spinal cord stimulator was working well; accordingly, he recommended CT scans of the lumbar and thoracic spines, as well as EMG/NCV studies of claimant's left lower extremity. Additionally, Dr. Simon prescribed Nabumetone and a course of aqua therapy. Dr. Simon noted Dr. Biggerstaff had described claimant's workers'

¹ Presumably this date is in reference to the claimed August 24, 2012 date of injury.

² Presumably this date is in reference to the claimed August 24, 2012 date of injury.

compensation case as complicated and claimant represented the workers' compensation insurer was uncooperative. (Ex. F, pp. 2-3)

On March 25, 2013, claimant underwent CT scans of her thoracic and lumbar spine, per the orders of Dr. Simon. (Ex. D, pp. 2-3)

Following review of updated medical records, Dr. Sassman authored a supplemental IME report dated April 22, 2013. Thereby, she indicated the opinions contained in her original IME report remained unchanged. (Ex. 3, p. 63)

Claimant testified the spinal cord stimulator provided significant assistance in managing her symptoms during her continued employment at defendant-employer. Claimant indicated, however, that her job at defendant-employer changed following her April 13, 2009 injury. Specifically, claimant testified she would not perform physical tasks which she believed were outside of her abilities. By way of example, claimant testified she attempted to avoid handling more aggressive clients or pushing heavier clients in wheelchairs. Claimant testified her supervisor, Kay, was accommodating in this respect. (Claimant's testimony)

The parties entered into an agreement for settlement of claimant's April 13, 2009 injury, approved by this agency on May 15, 2013. By the agreement for settlement, the parties stipulated claimant suffered an injury to her low back, involving symptoms of the lumbar spine into the left leg. The parties further stipulated claimant was entitled to temporary and permanent disability benefits as a result of the April 13, 2009 work injury. Specifically, the parties agreed claimant sustained permanent disability of 25 percent loss of earning capacity, entitling claimant to 125 weeks of permanent partial disability benefits commencing on December 27, 2010. (Ex. 7, p. 83) The parties agreed consideration had been made of claimant's physical limitations, "suggested to exist" by the FCE of January 6, 2012 and work restrictions proposed by Dr. Sassman in her IME report. Specific restrictions were listed in the agreement for settlement: limiting lifting, pushing, pulling, and carrying to 30 pounds rarely floor-to-waist, 50 pounds rarely waist-to-shoulder, and 30 pounds rarely above shoulder height; and occasional sitting, standing, and walking, with the need to change positions frequently. The parties stipulated claimant had not requested implementation of any work restrictions by defendant-employer out of concern doing so could jeopardize her employment. By the agreement, claimant remained entitled to medical care for her low back injury, including treatment into the future. (Ex. 7, p. 84)

Claimant testified at the time of the agreement for settlement, she believed the only work injury she had sustained occurred on April 13, 2009. She testified she did not believe the August 24, 2012 incident reflected a true injury. Claimant acknowledged at the time of the settlement, she was able to continue working at defendant-employer with accommodations. She expressed agreement with the restrictions set forth by Dr. Sassman. (Claimant's testimony)

On June 25, 2013, claimant returned to Dr. Biggerstaff for evaluation. Claimant complained of right low back pain, which Dr. Biggerstaff noted was related to the kick and fall injury. He noted claimant had experienced complete resolution of these symptoms for quite some time. He recommended proceeding with a repeat SI joint injection. (Ex. 1, p. 10)

11) Dr. Biggerstaff performed a bilateral SI joint injection on July 1, 2013. (Ex. 1, p. 11)

Claimant returned to Dr. Biggerstaff on July 15, 2013 and reported resolution of the majority of her pain following the bilateral SI joint injection. He advised claimant to return as needed. (Ex. 1, p. 12)

Dr. Biggerstaff performed a series of repeat bilateral SI joint injections on September 9, 2013, November 4, 2013, and January 13, 2014. (Ex. 1, pp. 13-15)

On February 10, 2014, claimant returned to Dr. Biggerstaff with complaints of low back pain, right greater than left. Claimant denied much relief with the most recent bilateral SI joint injections. Dr. Biggerstaff assessed sacroilitis and facetogenic pain. He issued prescriptions for Nabumetone and amitriptyline. (Ex. 1, p. 16)

Claimant returned to Dr. Biggerstaff in follow up on March 3, 2014. Claimant reported receiving relief with the prescription medications and denied suffering with sufficient pain to warrant an injection. Dr. Biggerstaff assessed sacroilitis and lumbar degenerative disc disease. He recommended continued conservative care. (Ex. 1, p. 17)

Dr. Biggerstaff performed a repeat series of bilateral SI joint injections on May 2, 2014, July 25, 2014, November 7, 2014, and February 20, 2015. (Ex. 1, pp. 18-22)

As claimant testified she did not consider the August 24, 2012 incident to reflect an injury, she attributes the bilateral SI joint injections to the 2009 injury. Claimant testified following the 2009 injury, she continued to suffer with the same symptoms of her low back and those symptoms worsened as she went without treatment. (Claimant's testimony)

On January 26, 2015, defendant-insurance carrier authored a letter to claimant, advising her that no further medical benefits would be paid with respect to the August 24, 2012 injury, as the applicable two-year statute of limitations had expired. (Ex. 8, p. 87) Claimant testified she received the January 26, 2015 letter, but did not understand its contents, as she believed her treatment to date had all been related to the 2009 work injury. Accordingly, she forwarded the letter to her attorney for review. (Claimant's testimony)

On June 1, 2015, claimant returned to Dr. Biggerstaff in follow up. At that time, claimant complained of low back pain and left lower extremity pain and swelling. Dr. Biggerstaff assessed sacroiliitis and lumbar radiculopathy. He recommended use of a

compression stocking, prescribed Gabapentin, and advised continued monitoring, as claimant's spinal cord stimulator may require reprogramming. (Ex. 1, p. 23)

Dr. Biggerstaff performed a repeat bilateral SI joint injection on July 3, 2015. (Ex. 1, p. 24)

In response to inquiry from defendant-insurance carrier, on September 1, 2015, Dr. Biggerstaff opined claimant's pain was attributable to the original injury of April 13, 2009 and further, that any pain from the August 24, 2012 injury resolved. (Ex. 1, p. 28)

Shortly thereafter, Dr. Biggerstaff issued handwritten responses to inquiries from claimant's counsel. Thereby, he identified claimant's diagnoses as sacroiliitis and chronic pain of the low back and hip. He related these diagnoses to the April 13, 2009 work injury and again opined the August 24, 2012 injury resolved. Dr. Biggerstaff opined he had been treating claimant for the April 13, 2009 injury since he resumed practicing at Broadlawns Medical Center and that treatment included bilateral SI joint injections and Nabumetone. (Ex. 1, p. 30)

On October 15, 2015, claimant returned to Dr. Biggerstaff in follow up of bilateral sacroiliitis. Claimant requested evaluation for potential repeat injection therapy. Dr. Biggerstaff indicated he reviewed claimant's medical records and issued the following opinions: the left-sided cyclic joint pain was due to the 2009 injury and the right-sided pain was most likely consistent with the 2012 injury. Claimant indicated she attributed symptoms on both sides to the 2009 injury. Dr. Biggerstaff recommended repeat bilateral SI joint injections and prescribed Nabumetone. (Ex. 1, p. 33)

Dr. Biggerstaff authored an undated letter with a fax line confirmation date of November 19, 2015. By that letter, Dr. Biggerstaff issued opinions regarding the cause of claimant's complaints. Dr. Biggerstaff opined claimant's low back and left lower extremity pain, including of the left SI joint, were caused by the April 13, 2009 injury; he opined these conditions had become chronic and required intermittent medical care. Dr. Biggerstaff opined claimant's right low back pain, consistent with right sacroiliitis, was due to the September 1, 2012³ date of injury. (Ex. 1, p. 35) He noted that claimant attributed both the left and right-sided symptoms to the work injury of April 2009. However, Dr. Biggerstaff opined he was unable to substantiate relating the right-sided condition to the 2009 injury and further, that he believed the right-sided symptoms were related to the 2012 injury. (Ex. 1, p. 36)

Claimant filed a petition for alternate medical care, seeking additional medical care with Dr. Biggerstaff. A hearing was held and the undersigned issued a decision on claimant's request on November 25, 2015. At the time of hearing, defendants admitted the occurrence of a work-related injury on April 13, 2009 and liability for medical care causally related thereto. However, defendants disputed liability for treatment of SI or

³ Presumably this date is in reference to the claimed August 24, 2012 date of injury.

facet joint complaints. Defendants ultimately agreed to authorize a return evaluation with Dr. Biggerstaff to determine which treatments were recommended for the particular conditions. The undersigned therefore granted claimant's alternate care petition to the extent of this return evaluation with Dr. Biggerstaff. (Ex. 9, pp. 88-91)

On December 11, 2015, Dr. Biggerstaff issued recommendations for repeat bilateral SI joint injections. He attributed the right-sided condition to the 2012 injury and the left-sided condition to the 2009 injury. (Ex. 1, p. 39)

Dr. Biggerstaff authored correspondence to defendants' former counsel dated January 19, 2016. Thereby, Dr. Biggerstaff opined claimant's low back and left lower extremity pain, including the left SI joint, were caused by the April 13, 2009 injury. He opined claimant would require intermittent treatment for these chronic conditions. Dr. Biggerstaff also opined claimant's right low back pain, consistent with right sacroiliitis, was attributable to the September 1, 2012⁴ injury. Dr. Biggerstaff commented that claimant believed the bilateral symptoms were both related to the 2009 injury. Dr. Biggerstaff indicated he could not substantiate relating the right-sided symptoms to the 2009 injury and expressed belief the right-sided condition was due to the 2012 injury. (Ex. 1, pp. 41-42)

The evidentiary record contains an undated medical note authored by Joe Hawk, M.D. and directed to defendants' former counsel. Therein, Dr. Hawk noted he possessed limited records for review, but he understood that claimant did not complain of SI joint pain after the April 13, 2009 injury and that Dr. Biggerstaff opined the right low back pain was consistent with right sacroiliitis, which was due to a September 1, 2012 injury. Dr. Hawk indicated he was unable to state claimant's left-sided sacroiliitis was related to the April 13, 2009 work injury if the 2009 radiology results did not support that determination. He expressed willingness to review the entirety of claimant's medical file. (Ex. D, p. 1)

On January 22, 2016, claimant filed an arbitration petition seeking workers' compensation benefits as a result of the August 24, 2012 injury. (Agency File No. 5056073) Claimant also filed a petition in review-reopening of the agreement for settlement entered into regarding the April 13, 2009 injury. (Agency File No. 5033074)

That same date, January 22, 2016, claimant filed another petition for alternate medical care in File No. 5033074 (Date of Injury: April 13, 2009), requesting authorization of left SI joint injections per Dr. Biggerstaff. The matter proceeded to hearing, at which time defendants denied causal connection between the April 13, 2009 injury and claimant's SI joint complaints. Accordingly, the undersigned dismissed claimant's alternate care petition without prejudice on February 5, 2016. (Ex. 10, pp. 92-93)

⁴ Presumably this date is in reference to the claimed August 24, 2012 date of injury.

On February 5, 2016, defendant-insurance carrier advised Dr. Biggerstaff that no additional evaluation or treatment was authorized in connection with either the April 13, 2009 injury or the August 24, 2012 injury. (Ex. 1, p. 44)

Claimant returned to Dr. Biggerstaff in follow up on February 23, 2016. Claimant reported increased use of pain medication due to lack of injection therapy. Dr. Biggerstaff recommended bilateral SI joint injections and reprogramming of the spinal cord stimulator. (Ex. 1, pp. 45, 47) Claimant testified she underwent reprogramming of her spinal cord stimulator, with some relief of symptoms and increased functionality. (Claimant's testimony)

On July 24, 2016, claimant received a five percent raise in her salary to \$28,775.57. (Ex. H, pp. 2-3)

On September 30, 2016, claimant accepted a position as SCL team leader for defendant-employer. The job description for the position noted responsibility for management of the SCL program, including daily operations, staffing, and providing services to individuals. Physical demands include standing, walking, sitting, bending, twisting, and occasional lifting and carrying of up to 20 pounds. (Ex. H, pp. 6-7) Claimant's hourly salary is noted as \$13.83. (Ex. H, pp. 4-5)

Claimant underwent an annual physical required by defendant-employer on October 6, 2016. She was cleared to work, but a notation was made indicating one should consult the prior work restrictions relative to the spinal cord stimulator. (Ex. H, p. 1)

On January 31, 2017, claimant returned to Dr. Sassman for an updated IME; Dr. Sassman's corresponding report is dated February 16, 2017. Dr. Sassman performed a records review and physical examination. (Ex. 4, pp. 65-73) Thereafter, she assessed low back pain with radicular symptoms post spinal cord stimulator, relative to the April 13, 2009 date of injury; and right SI joint pain status post right SI joint injection on October 5, 2012 with full resolution of symptoms, relative to the August 24, 2012 date of injury. (Ex. 4, p. 73)

Dr. Sassman offered opinions with respect to the causal relationship between claimant's symptoms and the work injuries of April 13, 2009 and August 24, 2012. Dr. Sassman opined the August 24, 2012 injury affected only claimant's right SI joint and noted claimant received a right SI joint injection on October 5, 2012 which resolved her symptoms. She opined the subsequent bilateral SI joint injections were done in conjunction with the implanted spinal cord stimulator in order to provide pain relief and improve function relative to the April 13, 2009 injury. (Ex. 4, p. 74)

Dr. Sassman recommended claimant receive additional medical care. She specifically recommended proceeding with bilateral SI joint injections and opined such injections were causally related to the 2009 injury and not to the 2012 injury. She also recommended surgical evaluation given the severity of claimant's symptoms and MRI

findings. With respect to the extent of claimant's permanent impairment, Dr. Sassman opined claimant fell within the DRE Lumbar Category III, warranting a rating of 13 percent whole person, as previously opined. Due to claimant's worsened symptoms, Dr. Sassman opined she sustained an additional 3 percent whole person impairment for pain. She opined claimant sustained a combined impairment of 16 percent whole person. (Ex. 4, p. 74) Dr. Sassman also opined the increased severity of claimant's symptoms warranted imposition of stricter restrictions. (Ex. 4, p. 73) Specifically, Dr. Sassman recommended restrictions of: lifting, pushing, pulling, and carrying of 10 pounds rarely floor-to-waist, 20 pounds occasionally at waist level, and 10 pounds occasionally above shoulder level; no vibratory or power tools; and occasional standing and walking, with the need to change positions occasionally. (Ex. 4, p. 74)

Claimant testified she believes these more severe restrictions are accurate given her increased symptoms. (Claimant's testimony)

On the date of hearing, claimant testified she had not seen Dr. Biggerstaff for some time. She indicated that his nurse typically handled claimant's prescriptions for Percocet and nabumetone. Claimant testified she and the nurse discussed claimant receiving injections under her personal health insurance. Claimant testified the nurse suggested claimant wait for the outcome of her workers' compensation hearing, as she would otherwise only be eligible to receive an injection on one side of her body. (Claimant's testimony)

Claimant testified she was more functional prior to defendants' denial of liability for injection therapy. Claimant indicated she was careful with her activities, but was not in pain at all times. Claimant testified she did not require significant pain medication and was able to sleep without waking in pain. She currently utilizes three Percocet per day to manage her pain symptoms. She indicated the lack of injections makes everything more difficult, including prolonged sitting or driving. These increased symptoms impact her personal activities, as she must exercise caution in sitting during her daughter's sporting events. Due to her increased pain levels, claimant's sleep is also affected. (Claimant's testimony)

Claimant remains employed at defendant-employer. Following the agreement for settlement, she transferred from the discovery department into the SCL "community support" department. She began as a community support specialist and earned a promotion into the position of SCL team leader in approximately June 2014. She continued to hold the position of team leader on the date of hearing. (Claimant's testimony; Ex. 6, Depo. Tr. pp. 23-24) Claimant described her current duties as less physically strenuous, without requirements for prolonged walking or pushing of wheelchairs and only limited periods of client interaction. Claimant testified her duties involve more desk work and she is able to move about as needed. She is responsible for supervision of six other employees. (Claimant's testimony)

Claimant's performance evaluations since the agreement for settlement have all been positive. Claimant's wages have increased to \$13.83 per hour, for total earnings

of approximately \$1,106.40 biweekly. Claimant recently earned a 5 percent pay increase, the maximum paid by defendant-employer. (Claimant's testimony; Ex. I, pp. 1-2) Claimant admits she is capable of performing the duties of her current position and further, that she has become better trained and more experienced since the agreement for settlement. However, claimant testified she would be unable to perform the physical demands of her prior position at defendant-employer due to increased symptoms. Despite her ongoing complaints, claimant testified she intends to continue working at defendant-employer, as she loves her job and the people with whom she works. (Claimant's testimony)

Ms. Miller testified she and claimant have offices located approximately 20 feet from one another in the Boone, Iowa office. As a result, the two see each other and converse throughout work days. Ms. Miller testified she believed she and claimant possessed a good working relationship, wherein claimant would be able to raise any issues that impacted her ability to work. Ms. Miller testified she was not aware of any restrictions which impacted claimant's ability to do her job as an SCL team leader and testified claimant had not complained of an inability to do any duties or requested accommodation. She acknowledged claimant's previous position in the discovery department was more physically taxing than her current position. Ms. Miller testified she had not observed any pain behaviors or limitation in claimant's activities; she admitted she was unaware of claimant's use of pain medication. Ms. Miller testified claimant is a good employee and not one to complain. (Ms. Miller's testimony)

CONCLUSIONS OF LAW

In File No. 5033074 (Date of Injury: April 13, 2009):

The first issue for determination is whether there has been a change in condition since the agreement for settlement approved by this agency on May 15, 2013, that might entitle claimant to additional permanent partial disability benefits under a review-reopening.

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

In a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon. Iowa Code section 86.14(2).

The Iowa Supreme Court has held that a party does not need to prove that the change in the condition was not contemplated at the time of the original decision(s). Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009). However, the party bringing the review-reopening proceeding has the burden of showing that the employee's condition has changed since the original award or settlement was made and that the change in condition relates back to the original injury. The change may be either

economic or physical. Blacksmith v. All-American Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability is not sufficient to justify a different determination on a petition for review-reopening.

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).

Claimant has not demonstrated a change in economic condition since the agreement for settlement which might entitle claimant to an award of additional permanent disability benefits on review-reopening. Claimant remains employed at defendant-employer and earns more than at the time of the agreement for settlement, now serving in a supervisory role.

In order to determine if claimant has sustained a physical change in condition, it is necessary to first determine which of her claimed conditions are causally related to the work injury of April 13, 2009. As an initial matter, it is noted that by the agreement for settlement, the parties stipulated claimant sustained an injury to her low back on April 13, 2009, involving symptoms of the lumbar spine into the left leg. Two physicians, Dr. Biggerstaff and Dr. Sassman each causally related claimant's ongoing low back and left-sided symptomatology to the work injury of April 13, 2009. Only Dr. Hawks offered a contrary opinion with respect to the left sacroiliac complaints, opining the condition was not work-related. However, I award no probative weight to the opinion of Dr. Hawks, as his opinion was based upon an admittedly limited and unspecified records review. I therefore adopt the opinions of Dr. Biggerstaff, as buttressed by those of Dr. Sassman, with respect to causation of claimant's low back and left leg complaints.

Claimant also relates ongoing right-sided complaints to the April 13, 2009 work injury. On this issue, Dr. Biggerstaff specifically rejected claimant's argument, indicating he was unable to substantiate such a causal relationship between the right sacroiliac complaints and the work injury of April 13, 2009. Dr. Biggerstaff specifically related the right-sided symptoms to the August 24, 2012 work injury, as opposed to the April 13, 2009 work injury. Dr. Biggerstaff served as claimant's treating physician over the course of both work injuries; he crafted and performed claimant's treatment plan. Accordingly, he had the opportunity to examine claimant on multiple occasions over a period of approximately six years, including before and after the August 24, 2012 work injury.

Dr. Sassman offered a contrary opinion and expressed belief claimant's right-sided symptoms were causally related to the April 13, 2009 injury. Dr. Sassman opined the symptoms attributable to the August 24, 2012 injury resolved with the October 2012 injection and any ongoing bilateral symptoms were due to the April 13, 2009 work injury. Dr. Sassman opined claimant's treatment plan of bilateral injections was done in connection with placement of the spinal cord stimulator for the April 13, 2009 work injury. With due respect to Dr. Sassman, I believe Dr. Biggerstaff's opinions more accurately reflect his own thought pattern in creating a treatment plan.

I award greater weight to the opinions of Dr. Biggerstaff, a treating physician who possessed the opportunity to examine claimant on multiple occasions over the course of treatment of the low back and bilateral hip/leg complaints. By virtue of this relationship, Dr. Biggerstaff is most familiar with claimant's complaints following the April 13, 2009 work injury, but prior to the August 24, 2012 work injury. It is he who is in the best position to distinguish which symptoms were attributable to specific work injuries.

It is determined claimant has failed to prove a causal connection between her right-sided SI complaints and the work injury of April 13, 2009. It is determined claimant has proven a causal connection between her ongoing low back and left lower extremity symptoms and the work injury of April 13, 2009. Such findings are consistent with the parties' own stipulations in the subsequent agreement for settlement of May 15, 2013, which established an injury to claimant's low back and involving symptoms of the lumbar spine into the left leg.

Having determined claimant's low back and left lower extremity symptoms remain causally related to the April 13, 2009 work injury, it must be determined if these conditions have given rise to a physical change in condition following the agreement for settlement of May 15, 2013. Claimant has credibly complained of increased symptomatology and decreased functionality following defendants' denial of injection therapy. Claimant's argument is a logical one: denial of previously successful injection therapy has resulted in increased symptomatology and decreased function. However, the evidence presented regarding claimant's increased symptomatology and disability lack specificity with respect to the conditions causing these issues. Claimant has proven her low back and left-sided conditions are causally related to the work injury of April 13, 2009; she failed to meet her burden with respect to the right-sided condition.

Dr. Sassman opined claimant's functional impairment had increased and she required stricter restrictions than had previously been recommended; however, Dr. Sassman's opinion fails to identify which conditions gave rise to the increased impairment and decreased functionality. Dr. Sassman's opinion views claimant's three impacted body parts, the low back and bilateral hips/lower extremities, as essentially one larger condition. As claimant failed to prove that each of these conditions is causally related to the April 13, 2009 work injury, Dr. Sassman's opinion is of little probative assistance in determining whether there has been a physical change in condition due to claimant's low back and left lower extremity conditions.

It is therefore determined claimant has failed to prove a change in condition since the agreement for settlement of May 15, 2013 which might entitle claimant to additional permanent disability benefits. Having determined claimant failed to carry her burden of establishing a change in condition since the agreement for settlement of May 15, 2013, consideration of the extent of claimant's industrial disability is moot.

The next issue for determination is whether defendants are responsible for claimed medical expenses.

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).

Pursuant to the agreement for settlement approved May 15, 2013, the parties stipulated claimant sustained an injury to her low back, involving symptoms of her lumbar spine into the left leg. Also pursuant to the agreement for settlement, claimant remained entitled to ongoing medical care for this admitted low back condition. Claimant has continued to receive treatment for these complaints and accordingly, defendants are properly held responsible for past services rendered in treatment of these work-related conditions. Similarly and relatedly, defendants remain responsible for ongoing medical care of claimant's causally related low back and left hip/lower extremity conditions.

The next issue for determination is whether claimant is entitled to reimbursement of an independent medical evaluation. By post-hearing brief, claimant clarified she did not seek reimbursement of Dr. Sassman's IME under section 85.39, but rather, as a cost under rule 4.33. Accordingly, no determination as to the applicability of section 85.39 is necessary.

The final issue for determination is a specific taxation of costs.

Iowa Code section 86.40 states:

Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

Costs. Costs 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, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010). The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Claimant seeks taxation of the costs of \$100.00 filing fee, \$13.48 service fee, and \$362.50 transcription expense for claimant's deposition. (Ex. 17, pp. 124-128) These are allowable costs and are taxed to defendants. Claimant also seeks taxation of a portion of Dr. Sassman's IME fee as a practitioner's report. Claimant is not permitted to receive reimbursement for the full cost of Dr. Sassman's IME as a practitioner's report under rule 4.33. Rather, the Iowa Supreme Court has ruled only the portion of the IME

expense incurred in preparation of the written report can be taxed. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). Dr. Sassman's bill itemization denotes charges of \$1,762.50 for report preparation. (Ex. 17, p. 130) Accordingly, defendants are taxed with \$1,762.50 of Dr. Sassman's IME fee.

Defendants are taxed with costs in the amount of \$2,238.48 (\$100.00 + \$13.48 + \$362.50 + \$1,762.50 = \$2,238.48).

In File No. 5056073 (Date of Injury: August 24, 2012):

The first issue for determination is whether claimant's claim is barred as an untimely claim under Iowa Code section 85.26.

The Iowa Workers' Compensation Act imposes time limits on injured employees both as to when they must notify their employers of injuries and as to when injury claims must be filed.

Iowa Code section 85.26(1) requires an employee to bring an original proceeding for benefits within two years from the date of the occurrence of the injury if the employer has paid the employee no weekly indemnity benefits for the claimed injury. If the employer has paid the employee weekly benefits on account of the claimed injury, however, the employee must bring an original proceeding within three years from the date of last payment of weekly compensation benefits.

That the employee failed to bring a proceeding within the required time period is an affirmative defense which the employer must plead and prove by a preponderance of the evidence. See Dart v. Sheller-Globe Corp., 11 Iowa Industrial Comm'r Rep. 99 (App. 1982).

Claimant suffered a work-related injury on August 24, 2012. No indemnity benefits were paid relative to this claim. Claimant did not file an original notice and petition in arbitration, seeking workers' compensation benefits, until January 22, 2016; a date nearly 3 ½ years after the work-related injury. These facts are not in dispute.

As claimant did not file her petition for benefits until well beyond the two-year statute of limitations allowed in section 85.26, it is determined claimant's claim is barred as untimely. As claimant's petition is untimely, consideration of defendants' responsibility for claimed medical expenses or claimant's entitlement to reimbursement of an independent medical evaluation is unnecessary, as moot.

The final issue for determination is a specific taxation of costs. As claimant failed to prevail on any aspect of her claim, costs are taxed to claimant.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5033074 (Date of Injury: April 13, 2009):

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Claimant shall take nothing by way of indemnity benefits from these proceedings.

Defendants are responsible for causally related medical expenses previously incurred, as set forth in the decision.

Defendants remain responsible for causally related medical care, as set forth in the decision.

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

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

In File No. 5056073 (Date of Injury: August 24, 2012):

Claimant shall take nothing from these proceedings.

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

Signed and filed this 12th day of January, 2018.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Martin Ozga
Attorney at Law
1441 – 29th St., Ste. 111
West Des Moines, IA 50266
mozga@nbolawfirm.com

Chris J. Scheldrup
Jason P. Wiltfang
Michael J. Lunn
Attorneys at Law
PO Box 36
Cedar Rapids, IA 52406-0036
cscheldrup@scheldruplaw.com
jwiltfang@scheldruplaw.com
mlunn@scheldruplaw.com

EJF/sam

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