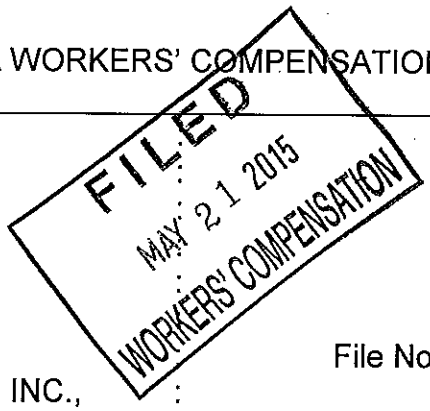
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



LINDA L. DAVIS,

Claimant,

vs.

COVENTRY HEALTH CARE, INC.,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT.,

Insurance Carrier,
Defendants.

File Nos. 5047070, 5047071

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Linda Davis, claimant, has filed a petition in arbitration and seeks workers' compensation from Coventry Health Care, Inc., employer, and Travelers Indemnity Company of Connecticut, insurance carrier, defendants.

This matter came on for hearing before Deputy Workers' Compensation Commissioner, Jon E. Heitland, on January 6, 2015 in Des Moines, Iowa. The record in the case consists of claimant's exhibits 1 through 20; defense exhibits A through G; as well as the testimony of the claimant.

ISSUES

The parties presented the following issues for determination in File No. 5047070:

1. Whether the alleged injury is a cause of temporary disability.
2. Whether the alleged injury is a cause of permanent disability.
3. Whether the claimant is entitled to temporary total disability or healing period benefits during a period of recovery.
4. The extent of the claimant's entitlement to permanent partial disability benefits.

5. Whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27.

6. Whether claimant is entitled to reimbursement for the costs of this action.

The parties presented the following issues for determination in File No. 5047071:

1. Whether the claimant has suffered a mental injury.

2. Whether the alleged injury is a cause of temporary disability.

3. Whether the alleged injury is a cause of permanent disability.

4. Whether the claimant is entitled to temporary total disability or healing period benefits during a period of recovery.

5. The extent of the claimant's entitlement to permanent partial disability benefits.

6. Whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27.

7. Whether claimant is entitled to reimbursement for the costs of this action.

FINDINGS OF FACT

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

Claimant testified she lives in Marshalltown, Iowa. She has been married since 1998. She has a dependent son aged 14 living with her. Her husband is employed at Lennox Industries, and she is covered under his health insurance. She is 51 years old.

She attended high school in Van Horn, Iowa, and graduated in 1981. She later obtained a one-year certificate in accounting, then attended school as an LPN and worked in that capacity for five years. She also obtained a certificate as an Emergency Medical Technician, and worked as an EMT. She then went back to school to become a registered nurse. She became an RN in 1995. She has certificates in other areas such as hospice, rehabilitation, etc.

Claimant injured her back on January 27, 2012. This injury is the basis of File No. 5047070. She had worked for defendant employer about four years. This injury is stipulated by defendants.

Her job is as a field case manager. She works out of her home, and receives referrals from her employer to work for people who have been injured on their jobs. She then contacts the worker or their attorney, and works with them on upcoming

appointments, contacting employers, conducting a job analysis, etc. She mostly works in the state of Iowa, and travels throughout the state. She would usually work at least 40 hours per week, but could work as little as 20 hours one week and up to 60 hours other weeks. She usually would have to drive to an appointment, and have two or two and a half hours of driving time with each appointment. There is also paperwork involved. Her billable hours varied from 6 hours a day to, on one occasion, 18 hours. Her salary is based on 40 hours per week.

The parties stipulated at the hearing the date of injury is January 27, 2012, and not January 30, 2012. On January 27, 2012, claimant stopped to get gas at a convenience store on her way to an appointment. It was icy and windy, and when she pushed the store door to go out, another customer pulled the door out of her hand, and her foot went out from under her and she fell onto her buttocks, mostly on her left buttock and hip. She was wet from the back of her hair down her entire body.

Claimant was unable to proceed to her appointment. She called her supervisor and told her what had happened and that she was in horrific pain. Claimant declined an offer to go to the emergency room. She was told to go home and rest. Claimant felt like someone had kicked her with hard boots. The pain was on both sides of her back, but worse on the left. Even her right heel hurt as she stepped on it. She was able to drive home.

That night she took some Tylenol. She got her husband out of bed to rub Ben Gay on her for pain relief. She returned to work the next day. She was still sore after a week, but the pain was lessening. The pain increased when she sat at a computer or drove a car. Claimant sought medical care in April, 2012, when she was still having back pain. She saw R.C. Terrill, M.D. at that time.

A year before, on January 30, 2011, she had fallen and had a back injury. In that incident she also slipped on ice and fell. She received an injection for her SI joint. The injection helped a great deal. She was able to go on a cruise. She had no back pain from the 2011 fall. She had also had a fall and back injury ten years earlier.

For this injury, she wanted to see an orthopedic specialist but could not get an appointment as soon as she wanted. She decided to see someone in pain management. She had an MRI, and was seen by Kenneth Pollack, M.D. She saw him in June, 2012. He gave her bilateral SI joint injections, which helped her SI joint pain 85 to 90 percent, but did nothing for her back pain. She called him in October for a return visit, but authorization was not granted by the insurance company until the next year. She received three injections from Dr. Pollack, in June, July or August, and October, 2013. She later had a facet joint injection. She also attended three or four physical therapy appointments. It did not help. The injections did help her SI joint pain, but nothing has helped her back pain.

Since she was 16 years old, she has had episodes of fainting. Around age 25, she saw a vascular surgeon, who sent her to Douglas Massop, M.D., in Des Moines,

who thought she might have fibromyalgia. After the birth of her son in 2000, she experienced a blood clot in her left leg. She was sent to Iowa City and was told she had a congenital condition that gave her small veins in some parts of her body. She underwent a series of vein grafts. She underwent five vascular surgeries for her condition.

On October 1, 2013, claimant was scheduled for some injections. She experienced severe external bleeding from an injection. Leaving the appointment, she experienced a pounding pain in her left foot. When she stopped at a convenience store, she found she was unable to stand, and had excruciating pain in her left thigh. She had to call her husband for assistance. She had purple blotches on her leg. She had pain of eight on a scale of ten.

She called Dr. Pollack, who had administered the injection. His nurse told her some pain was normal. Claimant then called the insurance adjuster, and was told if she went to the doctor, the insurer would not pay for it. When her husband talked to the adjuster, he was told he could take her to an urgent care clinic in Des Moines. Claimant was unable to leave the couch, even to go to the rest room. The next day her husband and son took her to their family doctor, and he immediately referred her to a specialist in Des Moines.

On October 2, 2013, claimant arrived at Iowa Methodist Hospital. Her family doctor had found claimant to have no pulse in her leg. She was in the hospital seven or eight days. While there she was injected with acid to dissolve a clot, and she was told that she had multiple clots. She still had bad pulses, so a balloon procedure was performed on one of her prior grafts. She had three surgeries there altogether.

Claimant feels going off Plavix caused her need to be hospitalized. She did not have any of these problems while on Plavix. Following this hospitalization, she was off work three or four weeks, then returned but was not allowed to drive.

Nicholas Southard, D.O. told her she had developed a clot that had shut her circulation down. She has never officially been off work for her fall in January, 2012. She was not hospitalized for her back injury.

In File No. 5047071, date of injury October 19, 2012, claimant asserts a psychological injury. On July 21, 2011, claimant's son passed away. She missed some work due to that. On the day he died, she fractured her hand, and was off work six to seven weeks for that fracture. When she returned to work, she was supposed to be given new files to work on, but that did not occur. She then had "negative hours" on her pay records. She feels her regional manager changed her attitude toward her, not returning her phone calls, etc. In February or March, 2013, claimant received a phone message from her supervisor wherein she swore at claimant and told her to stop calling her. Her manager swore at her during their monthly conversations. She seemed to expect claimant to supervise her co-workers for her so she did not have to drive to Iowa. She used the "F" word to her at least three times.

The other case managers did not experience similar problems. The regional manager was terminated in June or July, 2012. The new manager told claimant part of her job was to eliminate much of the Iowa staff. Although the new manager promised reforms, they were not fulfilled. Claimant began having headaches. She felt she was not getting any help from her manager. The only other full-time nurse other than claimant quit. Claimant at that point had 27 files she was responsible for.

The clients were spread out all over the state of Iowa. Claimant felt like she was going to have a mental breakdown. On the night of the 18th, claimant had 10 or 12 reports of her own to do. She had been on the road all that day. Anna Ongtencko, her supervisor, emailed her and reminded her to get her reports done. Claimant emailed back she was exhausted, had a headache, etc., and would not get the reports done. Anna told her to get them done anyway. Claimant then saw an email from Anna stating claimant had refused to get her reports done and was being unprofessional.

She saw a doctor who told her she had a panic attack. Claimant did not want to admit she was having one. Her testimony on this was emotional. She had never had an anxiety attack before. She had only had depression before when her son died. She had only undergone therapy before when her sister was struggling with cancer, and when her son passed away. He died by suicide, and claimant was blaming herself at times.

After the October 19, 2012 email claimant was off work for seven weeks. When she returned, she told her doctor she had to go back because she was not getting any money and she would lose her house. He did not want her to go back, but he let her return to work under a restriction not to work more than eight hours per day. He also prescribed daily medication, which she is still on. She was not on medication before October 19, 2012.

The situation at work has gotten better in some ways. There is a new manager who claimant feels is much better. Claimant began working for Coventry, but she now works for Etna. Etna bought Coventry's workers' compensation division effective January 1, 2014. Nine months after her October incident, she received some short-term disability benefits.

Her only income is from her employment. She is not on disability or receiving any workers' compensation benefits. She is in the same job position. She has not had to modify her job after her back injury other than taking more breaks during driving. She cannot drive more than an hour and twenty minutes before stopping. She has to use a heating device in her car, and uses an ergonomic device for her back pain. She has to stand up and walk around every 15 minutes when working on a computer.

Exhibit 17 is a copy of her employment history. It shows her jobs as an LPN and as an RN. She did patient care, turning patients, helping with showers, getting patients to therapy, etc. Claimant currently has a work restriction not to lift over ten pounds. She does not feel she could do the bending, twisting, lifting, walking, etc., involved in

her past nursing jobs. Her position as assistant director of nursing still involved hands-on duties with patients.

Claimant was advised to undergo an MRI, which is going to be scheduled. She continues to undergo treatment for her back. She is currently on medications for her back injury. The insurer declined to authorize one of the prescriptions. For her mental injury, she is on Xanax.

Today she has not had any major panic attacks for some time. The last one was seven or eight months ago, and was not as severe as the first one. Her heart still starts racing when she receives a call or email from her supervisor. For her back, her injury has affected much of her life. She can no longer do any gardening. Her husband has to do the laundry, due to her back pain, which she describes as a constant two or three on a scale of ten. If she has a lot of appointments, it can be a nine.

Prior to her fall in January, 2012, she was able to do all of her job duties. After her fall, she has been able to continue at her job but has had to modify her duties. The records show she was earning about $1,304.00 per week before her fall, although claimant disagrees. She stated her take home pay was never less than $1250.00 before her fall. She does not feel she could find a job now that pays the same as she is earning due to her injuries.

Her medical bills for her back injury have been paid. Her medical bills for her vascular treatment have not been paid, nor has her treatment for her mental condition.

On cross examination, claimant agreed she began working as a nurse case manager in 2008. Before that, she worked as a nurse administrator, where she also hired and fired employees as well as doing hands-on nursing work. She functioned more or less as a county health nurse when working for the Meskwaki Settlement.

She agreed her duties today are the same as when she was injured, and since she began in 2008. She drives shorter distances, however. In her deposition, she stated her duties are mostly the same, but the reports are longer, and there is more attorney involvement in cases. Her salary at that time was $71,200.00 per year. She has received pay increases since her injury. She receives benefits. She is required to drive several hundred miles a week to perform her duties. She works 40 hours per week, and she likes her job. She is not looking for other work and does not intend to. She did receive something in writing in November, 2014, indicating her job might be at risk.

She is restricted to not lifting over 20 pounds, and not working over eight hours per day. In her deposition, she stated she had declined work restrictions. She has not asked for or received any accommodation from her employer other than when she first fell. Her new manager does not require her to drive outside of Iowa. Other nurses are asked to drive outside of state about once per month. No doctor has told her she cannot drive outside the state of Iowa.

When she fell at the convenience store, she felt her pain was so bad she did not think she could drive home. After that incident, her back pain continued to worsen. She missed some time from work, but used her personal time for those absences. Her first documented medical treatment was in April, 2012, after the January incident. However, she had seen her personal doctor, Dr. Terrill, on March 28, 2012. (Exhibit B, page 16) She saw him again a few days later, but his records do not show a reference to the January fall. He did note prior falls and prior SI joint injections.

Claimant disagreed with the statement of the physical therapist that her physical therapy was cancelled after she missed five appointments. Dr. Pollack's records indicate no one in his office told her to go off Plavix prior to injection.

After her son killed himself, she talked to her family doctor but was never told she had depression. Exhibit B, page 15, shows Dr. Terrill noted significant problems with depression. He encouraged her to seek professional help. Exhibit B, page 17, shows claimant still reported difficulty dealing with the loss of her son. Again Dr. Terrill encouraged her to seek counseling. Claimant had started counseling with Barb Sloan, but discontinued it. She did not find it helpful, as Ms. Sloan had been one of her nursing instructors, and she mostly talked about nursing. Claimant also had one visit with a program for grieving parents, but felt uncomfortable. She mostly handled the difficult situation on her own.

Claimant received an email on October 17th that upset her. That night she had her panic attack. She has never provided it to the employer. It was on her computer but she had trouble retrieving it. Claimant agreed she has not provided other emails she was requested to provide.

She feels the last three supervisors she has had have not given her the level of support she should have received. In her job she has deadlines and reporting requirements. She agreed other nurse case managers with Coventry, and with other companies, have those same deadlines. She does feel she was treated differently than her fellow nurse case managers. She is the most experienced nurse case manager working for Coventry. She agreed working a lot of hours was normal for her job.

She is also on the medication, Effexor, for her menstrual cycle, and has been on it since 2007. She was experiencing hot flashes in the fall of 2012. She agreed she has problems around the holidays over the loss of her son. She currently has 28 files to work on. It was 23 at the time of her deposition, which she felt was average with her peers.

When she saw Dr. Terrill, it was for her UTI, and that is why her back pain was not discussed or noted. Claimant explained her emails at work were backed up on a drive, but she has been unable to retrieve them.

Claimant stated she was able to control the stress of meeting billable hours requirements for four years before experiencing her panic attack. Claimant had been

getting negative hours for four months in 2014. She then began receiving many files to work on, and that changed. In November, 2014, she was told by her manager to go online and review the disciplinary policy, which warned her that if she continued to have negative hours it could lead to her termination. When claimant was on vacation during the week of Christmas, she received another email from Brett, her manager, saying her probationary period was to be continued to March 1, 2015. She emailed him and asked for an explanation, as she had been told if she did not have negative hours for a certain number of months, she would be okay. He emailed back he was too busy to explain at that time.

On re-cross examination, she agreed she did not print out the emails in question. (Ex. G, p. 104) She also agreed neither Dr. Carroll nor Dr. Pollack has put any restrictions on her. She refused some restrictions offered to her to keep her job. Dr. Pollack returned her to work without restrictions on June 20, 2012. George Lederhaas, M.D., gave her a verbal restriction of not driving more than an hour from her home, and not doing more than two hours computer work at a time. She asked him not to put those in writing. For restrictions related to her mental condition, Dr. Terrell recommended she not work eight hours per day.

Claimant asked for an accommodation from her manager, Brett, not to be assigned to go out of state. He agreed. However, she still feels her job is in jeopardy due to her work injuries and Brett's email about negative hours. She has no formal restrictions on her driving.

CONCLUSIONS OF LAW

The first issue in File No. 5047070 is whether the alleged injury is a cause of temporary or permanent disability.

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).

This analysis must be divided into two parts. Claimant asserts disability from her initial fall on January 27, 2012. She also maintains she later suffered a vascular injury while being treated for the fall injury, which has caused further disability.

For her low back injury, claimant's back was injured when she slipped and fell while exiting a convenience store. A work injury is admitted by defendants. Causal connection between claimant's current condition and her work injury was marked as a disputed issue by the parties on the hearing report. However, it is unclear from the hearing report if causal connection is in dispute as regards to the fall and back injury, the later alleged vascular injury, or both. A reading of each party's post-hearing brief shows no argument that her low back condition is not causally related to her fall on January 27, 2012, although defendants do note a prior history of back falls. Rather, both parties address the issue of causal connection between her alleged vascular injury and her work injury, not her back condition. Defendants in their post-hearing brief mention claimant reported two prior back injuries to Dr. Terrill, and the fact the MRI showed degenerative disc disease. But defendants offer no argument that her current low back condition was not at least substantially caused by her fall injury. Rather, they use these facts to argue for a low or no award of industrial disability.

Even if defendants are disputing a causal connection between claimant's fall and her current low back condition, the medical records support a finding and conclusion her current low back condition is causally related to her fall on January 27, 2012. Her back condition was not overtly symptomatic prior to this injury, and it was clearly this injury which caused the need for medical treatment. Claimant's credible testimony establishes a temporal relationship between her stipulated work injury and her current back problems. It is therefore concluded claimant's current low back condition is causally related to her work injury.

But, as stated, the causal connection of her alleged vascular injury to her work injury is hotly disputed. Claimant is basically asserting a sequela injury.

While treating for her fall injury to her back with Dr. Pollack, claimant was given bilateral SI injections with fluoroscopy. (Ex. 4, pp. 10-12) After receiving bilateral injections with Dr. Pollack on October 1, 2013, about three hours later claimant began to feel a flare-up of her pain, most significantly into her left leg down to her foot. She experienced a tingling in one of the toes of her left foot, which turned into a pounding pain in her left foot, which then spread throughout her left leg. Her leg developed purple blotches. She reported this to both Dr. Pollack and to the insurance adjuster.

In light of the close proximity in time to the injection, Dr. Pollack ordered a Doppler scan of her left leg. It was determined claimant had a blood clot following the

injection. She was admitted to the hospital, where she was found to have a completely occluded left limb of a previously placed aortobifemoral bypass graft. She was given thrombolysis over two days, and she did regain pulse in the leg, but it was still occluded. When she developed a large spontaneous left thigh hematoma that was not related to her underlying graft, she underwent surgery in the form of a thrombectomy of her occluded graft segment. (Ex. 8, p. 101)

Another bilateral injection was administered on April 14, 2014. (Ex. 4, pp. 21-22) In June, 2014, she underwent facet blocks at L4-L5 from Dr. Pollack. (Ex. 4, pp. 24-5)

Dr. Pollack left his practice, and when claimant experienced pain she rated as nine on a scale of zero to ten, she was seen by Dr. Lederhaas. He recommended a further MRI. (Ex. 4, pp. 31-33) That MRI has not been performed.

Claimant discontinued taking her Plavix and aspirin seven days before the bilateral injection on October 1, 2013. (Ex. 8, p. 87)

Dr. Terrill stated "the only relationship" between Dr. Pollack's administering the injections and claimant's vascular problems "is that she had to be off her Plavix and aspirin and perhaps that is why she has gotten into trouble." (Ex. 6, p. 54)

Dr. Pollack also felt claimant going off Plavix and aspirin contributed to the vascular injury, saying "Had it not been for discontinuation of these anti-platelet agents, it is unlikely that the arterial thrombosis with need for subsequent medical care would have occurred." (Ex. C, p. 36) He speculated claimant took herself off these medications due to her nursing training, thinking "that it would be safer to undergo the procedure if Plavix and aspirin were discontinued." (Id.)

Dr. Stern also felt claimant discontinuing her Plavix and aspirin was the reason for the acute occlusion of her left leg and the need for treatment. (Ex. 7, pp. 85-86)

Dr. Southard did not feel there was a causal connection between the discontinuation of the medications and the vascular injury. (Ex. A, p. 9)

Dr. Sassman noted claimant was instructed to discontinue her Plavix and aspirin prior to the injection. Claimant had a prior history of vascular disease and treatment. She was on Plavix and aspirin for years without any problems. Dr. Sassman states "Although the fall itself did not cause the thrombosis nor did the SI joint injection itself cause the thrombosis, the fact that she was taken off of her Plavix and aspirin for the injection resulted in the thrombi developing. Therefore, the treatment was a substantial aggravating factor of her underlying condition; therefore, the thrombi and the subsequent surgeries are sequelae of the initial injury. Although Ms. Davis is at risk for the development of thrombi, it was not until she was taken of [sic] the anticoagulant medication to undergo treatment for the work injury that she developed the thrombi at this particular time." (Ex. 14, p. 156)

Claimant testified a nurse told her to go off her Plavix and aspirin in preparation for the injection. Claimant also states while in the doctor's office for a client's medical appointment, she saw this on a paper.

Following the development of the clot, claimant was sent for a Doppler scan, and then was admitted to the hospital for seven days. The referral for the scan was from Dr. Terrill, and the hospital admission was upon his orders. Dr. Terrill was an authorized treating physician.

Claimant had an earlier injection from Dr. Pollack on June 20, 2012. She did not go off her Plavix and aspirin for that procedure. Dr. Pollack has stated he does not advise patients to discontinue the use of anti-coagulants for the injection procedure claimant underwent, although he does for other procedures such as neuraxial injections, which include spinal, epidural and nerve root blocks. (Ex. C, p. 36) This suggests his nursing staff does recommend discontinuation of anti-coagulants for some procedures he performs, but not for sacroiliac joint injection like claimant had. Claimant has credibly testified she was told by a nurse to do so.

It is concluded claimant was told she should discontinue her anti-coagulant medications prior to the October 1, 2012, bilateral injections. She did so, and this resulted in the thrombosis and necessitated the later medical treatment for that vascular accident. Most of the doctors in this case agree claimant discontinuing her anti-coagulant medications caused her vascular injury. It is therefore concluded claimant has suffered a sequela injury in that she suffered a stipulated work injury, and during the treatment for that injury, she suffered a further injury in the form of a blood clot causing a vascular injury. It is further concluded any disability from that vascular injury and any medical costs of treatment for that vascular injury are causally related to the work injury and are the responsibility of defendants.

In another sense, it does not matter whether claimant was told to discontinue her anti-coagulant medication, or whether she did on her own based on her own medical knowledge as a registered nurse. It is axiomatic in workers' compensation law a worker's contributory negligence is not a defense to a workers' compensation claim, as workers' compensation is a "no fault" system. The fact remains she suffered the vascular accident as a sequela of her stipulated work injury.

The next issue is whether the claimant is entitled to temporary total disability or healing period benefits during a period of recovery.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli,

312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant seeks temporary benefits for the time she was off work following the vascular accident on October 1, 2013. Claimant was hospitalized for her vascular injury from October 2, 2013, through October 9, 2013. She continued off work. She received no workers' compensation benefits for this period of time.

As claimant's absence from work was due to the compensable sequela from her work injury, defendants will pay claimant healing period benefits from October 1, 2013, to November 5, 2013.

The next issue is the extent of the claimant's entitlement to permanent partial disability benefits.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant's treating physicians did not assign any permanent work restrictions for her back injury. Robin Sassman, M.D., conducted an independent medical examination of claimant. She assigned permanent work restrictions of limited lifting, pushing, pulling and carrying up to ten pounds rarely from floor to waist, ten pounds occasionally from waist to shoulder, and ten pounds rarely over shoulder height. She is also limited to occasional sitting, standing and walking, but she has a need to change positions frequently. She is to avoid working with vibratory tools, power tools, walking on uneven surfaces or climbing ladders or stairs. (Ex. 14, p. 157) Dr. Sassman assigned a rating of permanent partial impairment of ten percent of the body as a whole for the lumbar spine condition, and four percent of the body as a whole for the vascular condition. The combined value is 14 percent of the body as a whole. (Id.)

Claimant also states Dr. Pollack wanted to give her written restrictions, but she asked they not be imposed because she feared losing her job. Little weight can be given to restrictions that do not appear in the record.

She has had to modify her work duties due to her injuries. She now only drives to appointments within the state of Iowa. She continues to have back pain in her lower back, especially after sitting or driving for long periods of time. Claimant cannot return to many of her past jobs as a nurse because of the physical requirements; even when she was a nurse manager she was a "hands on" manager.

Claimant is 52 years old. She has a high school diploma, a one-year certificate in accounting, and a Registered Nurse degree. Her work experience includes working as a school nurse, a director of nursing at a nursing home, and other managerial nursing positions. (Ex. G, pp. 9-16) She began working for defendant employer as a field case manager in 2008. She works out of her home managing case files concerning injured workers for insurance companies. Her job requires her to drive quite a bit. She currently earns $71,000.00 per year.

Defendants argue claimant has little or no industrial disability because she continues to work at her same job, working many hours per week. She handles as many or more files as when she was injured. She has not asked for any accommodations from the employer. She is able to perform her work duties as a nurse case manager.

On the other hand, claimant is not able to return to her former nursing jobs. If she loses her current job in the future, she will have to compete against workers who are not impaired and who do not have work restrictions. The accommodations she currently enjoys from the employer may well not be available from future employers. But her lifting restrictions, although severe, are more applicable to her past nursing jobs than her current job, which is primarily driving and paperwork. She does have trouble driving long distances now, and that is a large part of her job. Her nursing degree still gives her access to many jobs in her field even though her restrictions preclude her from many others. Her age would also work against her if she were to be thrust into the job market.

Based on these and all other appropriate factors of industrial disability, it is concluded claimant has, as a result of her back injury and later vascular accident injury, an industrial disability of 35 percent.

The next issue is whether the claimant is entitled to payment of medical expenses pursuant to Iowa Code section 85.27.

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).

Claimant's medical bills are set forth in Exhibit 9 and 11. As both claimant's back injury and her vascular injury are found to be work related, defendants will be responsible for claimant's medical treatment related to those conditions.

Claimant also seeks reimbursement for the costs of an independent medical examination. This was not addressed by either party in their post-hearing briefs. Defendants object to a "rush" fee of $600.00 added onto the normal cost of the IME. Presumably the "rush" fee was due to a late request by claimant for the IME. Defendants will be responsible for the costs of the IME but not the extra fee.

The next issue is whether claimant is entitled to reimbursement for the costs of this action.

Again, as a work injury has been found, defendants will pay the costs of this action, and will reimburse claimant for the costs set forth in Iowa Administrative Code 876-4.33.

The parties presented the following issue for determination in File No. 5047071:

> Whether claimant has carried her burden of proof to establish a "mental-mental" psychological work injury in this file, based on the stress of her job.

Non-traumatically caused mental injuries are compensable under Iowa Code section 85.3(1). Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995).

Under Dunlavey, mental injuries caused by work-related stress are compensable if, after demonstrating medical causation, the employee shows that the mental injury was caused by work place stress of greater magnitude than the day to day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer. Id. at 857.

Both medical and legal causation must be resolved in claimant's favor before an injury arising out of and in the course of the employment can be established. To establish medical causation, the employee must show that the stresses and tensions arising from the work environment are a proximate cause of the employee's mental difficulties. If the medical causation issue is resolved in favor of the employee, legal causation is examined. Legal causation involves a determination of whether the work stresses and tensions the employee experienced, when viewed objectively and not as the employee perceived them, were of greater magnitude than the day to day mental

stresses workers employed in the same or similar jobs experience routinely regardless of their employer.

The employee has the burden to establish the requisite legal causation. Evidence of stresses experienced by workers with similar jobs employed by a different employer is relevant; evidence of the stresses of other workers employed by the same employer in the same or similar jobs will usually be most persuasive and determinative on the issue. Id. at 858.

Claimant testified she suffered work place anxiety. She described October 18, 2012, as a date on which she received a copy of an email from her supervisor which upset her. The email was from her supervisor to higher management stating claimant was refusing to get her reports done and was being unprofessional. This caused claimant to have pain in her head, and to fall down.

She went to see Dr. Terrill, who noted claimant was reporting great stress, and felt like she was about to have a nervous breakdown due to her work. Claimant told him two nurses had quit and she was expected to take over their duties as well as her own. She was having headaches, and she felt disrespected. She had to work all day and then at night as well. She was not depressed but felt she was under even more stress than when her son died. (Ex. 10, p. 126)

When she saw Dr. Terrill again, he noted she reported feeling like a failure, not being able to keep up with her work, and was anxious and stressed. Again, she did not report depression, but she did report panic attacks. She felt she could not handle the double or triple workload. (Ex. 10, p. 127)

Claimant testified October 18, 2012, was the first time she had a panic attack. She stated this was different than the depression she had when her son died. She attributed this to the way her employer treated her, which included expecting her to train other nurse case managers while still performing her own job duties; supervisors being available to other nurse case managers but not to her; being sworn at by her supervisor; and getting the work of other nurse case managers assigned to her when others quit.

Claimant was off work for seven weeks. She did not receive any workers' compensation benefits for this time but did receive some short-term disability benefits.

Defendants point out claimant had a history of anxiety and depression prior to the alleged October 19, 2012 date of injury. She previously suffered the loss of her son through suicide, in 2011. Claimant understandably suffered depression at that time, and Dr. Terrill recommended she seek professional counseling, but claimant declined. Dr. Terrill again noted psychological problems in April 2012.

Claimant testified she felt she was treated differently by her supervisor after the death of her son. Files had been taken from her, and as a result she had negative hours and further tension with her supervisor.

Claimant asserts she was distressed by negative emails from her supervisor, but she has not produced those for the record, even though she stated in her deposition she had printed them out. Also in her deposition, she acknowledged she did not know if her co-workers were treated differently than she was, and when she asked them if they had been mistreated, they denied that they had. (Ex. G, p. 86)

Claimant in her hearing testimony agreed she was not disciplined in any way by the employer. She also agreed working long hours were common in her line of work, and that deadlines and reporting requirements were also a normal part of the job.

The first question is whether claimant has carried her burden of proof to show that her work has caused her mental condition, the so-called "medical causation test". Claimant sought medical attention for a psychological condition immediately after the October 18, 2012, email. She reported to Dr. Terrill work place stress with which she was unable to cope. She recited an increased work load which she found difficult to handle. She felt her employer was treating her more adversely than other employees. Dr. Terrill noted "Virtually all of this is work related." (Ex. 10, p. 126)

There is no contrary evidence in the record. It is concluded claimant has met her burden of proof to show that her psychological condition, whether temporary or permanent, was causally related to her work.

Claimant must also meet the "legal causation" test. As noted above, legal causation involves a determination of whether the work stresses and tensions the employee experienced, when viewed objectively and not as the employee perceived them, were of greater magnitude than the day to day mental stresses workers employed in the same or similar jobs experience routinely regardless of their employer.

Clearly claimant subjectively perceived her work conditions as overly stressful. But her burden of proof is to show objectively those work conditions were of greater magnitude than that experienced by workers in similar jobs experience. Unfortunately for her, the stresses she described appear to be commonplace and ordinary in her line of work. The record shows her co-workers who did the same job did not feel they were mistreated. Claimant herself agreed deadlines and reporting requirements were part of her job. Although claimant may have had her workload increased somewhat when co-workers quit, this does not rise to the level of stresses and tensions of greater magnitude than the day to day mental stresses similar workers experienced. It is concluded claimant's job stresses were not unusual for her profession. Claimant has failed to carry her burden of proof to meet the "legal causation" test.

It is concluded claimant has not shown a psychological work injury arising out of and in the course of employment in this file. All further disputed issues are moot.

ORDER

THEREFORE IT IS ORDERED:

In File No. 5047070:

Defendants shall pay unto the claimant healing period benefits from October 1, 2013 to November 5, 2013, at the rate of eight-hundred forty-one and 18/100 dollars ($841.18) per week.

Defendants shall pay unto the claimant one-hundred seventy-five (175) weeks of permanent partial disability benefits at the rate of eight-hundred forty-one and 18/100 dollars ($841.18) per week from November 8, 2013.

Defendants shall pay accrued weekly benefits in a lump sum.

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

Defendants shall be given credit for benefits previously paid.

Defendants shall pay the claimant's prior medical expenses submitted by claimant at the hearing.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury.

Defendants shall pay the costs of an independent medical examination as set forth in the decision above.

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.

In File No. 5047071:

Claimant shall take nothing.

Signed and filed this 21st day of May, 2015.

Jon E. Heitland

JON E. HEITLAND
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.