

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAURIE A. PATRICK,

Claimant,

**VS.**

PURE FISHING, INC.,

Employer,

and

OLD REPUBLIC INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

File No. 5064700

## ARBITRATION DECISION

Head Note Nos.: 1108.50, 1402.40,  
1403.10, 1801, 2907

## STATEMENT OF THE CASE

Laurie A. Patrick, claimant, filed a petition in arbitration seeking workers' compensation benefits from Pure Fishing, Inc., employer, and Old Republic Insurance Company, insurance carrier, as defendants. Hearing was held on June 20, 2019, in Sioux City, Iowa.

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.

Claimant, Laurie Patrick, was the only witness to testify live at trial. The evidentiary record also includes Joint Exhibits 1-6, Claimant's Exhibits 1-7, and Defendants' Exhibits A-E. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on August 1, 2019, at which time the case was fully submitted to the undersigned.

## ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained any permanent disability as the result of the stipulated November 11, 2016 work injury. If so, the extent of industrial disability claimant is entitled to receive.
2. Whether claimant is entitled to temporary total disability benefits from October 2, 2017 through December 21, 2017, as the result of the stipulated November 11, 2016 work injury.
3. Whether defendants are responsible for payment of past medical expenses pursuant to Iowa Code section 85.27.
4. Whether claimant is entitled to be reimbursed for an independent medical evaluation pursuant (IME) to Iowa Code section 85.39.
5. Assessment of costs.

## FINDINGS OF FACT

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

Claimant, Laurie Patrick, was 55 years old at the time of hearing. She resides in Spencer, Iowa.

Ms. Patrick began working for the defendant-employer, Pure Fishing, Inc., in 2002. Pure Fishing, Inc. manufactures fishing bait for trout, walleye, and bass fishing. Ms. Patrick was hired as a temporary employee in the shipping department. She worked as a temporary employee, on an as-needed basis, for approximately three years. Her duties included pulling and shipping out orders. Ms. Patrick was eventually hired as a full-time employee. At the time of the injury, she was working 4 days per week, from 4:00 p.m. to 2:00 a.m. She was paid approximately \$17.70 per hour.

On November 11, 2016, around 7:00 p.m. Ms. Patrick was sitting in a chair in the break room at work. As she began to get out of the chair, the legs on the right side of the chair broke, and Ms. Patrick fell to the floor. At hearing, she testified that she tried to catch herself with her right wrist which made contact with the floor first. According to Ms. Patrick, her right hand and right side of her body hit the floor and this somehow caused her to then land on her left side. She testified that she ultimately ended up lying on her back on the floor. She stayed on the floor for a couple of minutes and was able to get up by herself. JoAnn Wintz, a co-worker, was with Ms. Patrick at the time of the fall, but she did not witness the fall. Ms. Patrick completed an accident report provided

to her by Lori Dix-Gunn, a leader in the packaging department. In the written report, Ms. Patrick was asked to describe in detail the injury and body parts affected by the accident. She responded "Right arm/wrist (as I hit it hard when trying to catch myself.) The ~~leg~~ left side of my body as it hit the floor and an abrupt stop. (Neck-shoulder – arm - hip- ~~knee~~ knee- ankle." (Testimony; Defendants' Exhibit B, page 68)

Ms. Patrick testified that she was also having pain in her back and legs; however, she did not identify this pain in the initial written report. She testified at hearing, that right after the accident and in the days following the accident she told her co-workers, Sherry Ling and Curtis Frease, about the pain she was experiencing in her low back that radiated into her legs. Ms. Ling's deposition was taken in this case. She testified that Ms. Patrick did complain about back pain and pain going down her leg or legs, but the complaining did not begin immediately after the fall. She believes Ms. Patrick first mentioned the back and leg(s) pain maybe weeks after the fall. Ms. Ling is not certain if Ms. Patrick mentioned pain in one or both legs. (Claimant's Ex. 3) Mr. Frease was also deposed as part of this case. He also did not witness the fall. He testified that in the days and weeks following the fall she complained constantly about pain. He remembers her complaining about her back. He does recall her later complaining about pain going into her legs, but initially she only complained of back pain. Mr. Frease testified that Ms. Patrick told him that her posterior hit the floor first. (Cl. Ex. 4) The testimony of Ms. Ling and Mr. Frease is rather vague and sometimes even contradicting; this is understandable given that their depositions were taken on May 21, 2019, approximately two and a half years after the chair incident. For these reasons, it is difficult for the undersigned to give much weight to the lay testimony.

It is important to note that prior to the injury in question, November 11, 2016, Ms. Patrick had other workers' compensation claims with Pure Fishing. Ms. Patrick had previously received weekly workers' compensation benefits for time off of work due to a workers' compensation claim. Additionally, she had previously received medical treatment which was paid for by the employer for a workers' compensation claim. Ms. Patrick admitted that in connection with a workers' compensation claim, she had also previously received medical mileage for a workers' compensation claim and that in order to obtain that mileage she had to keep detailed records. Ms. Patrick also admitted that she knew she had an obligation to report her injury to the employer. I find Ms. Patrick had prior experience with workers' compensation system. (Ex. C, p. 69; testimony)

Following the November 11, 2016 chair incident Ms. Patrick returned to work, full duty, on November 12, 2016. Despite having prior workers' compensation claims and despite knowing that the employer had the right to select her medical care, Ms. Patrick did not request any medical treatment from Pure Fishing, Inc. at that time. She did not request any treatment from the defendants until September of 2017. Instead, during the 10 months after the chair collapsed, Ms. Patrick sought treatment with her own chiropractor, Dr. Stanley. (Testimony)

Ms. Patrick sought treatment for the first time after the chair collapsing incident on November 18, 2016. She sought treatment at Stanley Chiropractic. Her primary complaint was low and mid back pain. Her secondary complaint was left upper back and neck. There is no mention of the chair incident. Instead, the notes state she was still a little sore in her upper back, but reported good relief since her last adjustment. This note indicates an onset date of November 1, 2016, approximately 10 days before the chair incident. (Def. Ex. A2, p. 34)

Ms. Patrick returned to Stanley Chiropractic on December 2, 2016. She reported aching low and mid back pain. She rated the low and mid back pain as 2 out of 10 and the upper back and neck pain as 3 out of 10. Again, the onset date was November 1, 2016 and there was no mention of the chair incident. (Def. Ex. A2, p. 36)

Ms. Patrick went to Avera Medical Group in Spencer on December 13, 2016. She reported that she had been experiencing epigastric pain while at work for the past two weeks. The pain made her short of breath while at work. There is no mention of the chair incident or of pain in the back or leg(s). (Def. Ex. A, pp. 53-56)

On December 23, 2016, Ms. Patrick returned to Dr. Stanley. The date of onset was again listed as November 1, 2016. Ms. Patrick reported frequent aching low and mid back pain which she rated as 3 out of 10. She also complained of neck and upper back pain. Ms. Patrick reported that her low back was good after the last visit until she scooped snow that morning. (Def. Ex. A2, p. 38)

At the May 5, 2017 chiropractor appointment with Dr. Stanley, Ms. Patrick reported an onset of increasing low back pain that began after yard work. She also reported the pain radiated to her posterior left thigh. (Def. Ex. A2, p. 44)

Ms. Patrick returned to Dr. Stanley on May 26, 2017 with radiating pain from her low back down her left thigh, the intensity of the pain had been increasing over the past two days. Her pain had improved after the last visit, but increased after her work shifts. (Def. Ex. A2, p. 46)

Ms. Patrick went to Avera Medical Group on June 5, 2017. She reported lower bilateral back pain that radiated around to her side. She had been feeling these symptoms for the past two weeks. She thought the cause was standing on cement all day long. She had seen the chiropractor, but did not receive any relief. The assessment was low back pain with left-sided sciatica. The doctor recommended use of a heating pad and range of motion exercises. Again, there is no mention of the November 11, 2016 chair incident. (Def. Ex. A3, pp. 57-60)

On July 14, 2017, Ms. Patrick returned to the chiropractor. She reported low back pain for the past two to three days. She denied any trauma, but did report long days on her feet at work. She also reported occasional pain into her left posterior thigh. (Def. Ex. A2, p. 48)

Ms. Patrick returned to the chiropractor on August 24, 2017 and reported aching, radiating pain located in her low back that radiated to posterior left-thigh. She said she hurt her low back climbing up and down at work. (Def. Ex. A2, p. 49)

On September 26, 2017, Ms. Patrick saw Dr. Stanley again. She told him that her low back was sore since she had stood at the Garth Brooks concert. Her low back pain continued to radiate to the left thigh. (Def. Ex. A2, pp. 50-51)

Ms. Patrick saw Dr. Stanley again on September 29, 2017 with a decrease in the intensity of her low back pain. She described her pain as more of an aching, radiating pain in the low back that radiated to her posterior left-thigh. The onset date was listed as September 24, 2017. (Def. Ex. A2, p. 52)

Ms. Patrick saw Dr. Stanley on numerous occasions. At the hearing, she testified that she reported the chair incident to Dr. Stanley. However, the chair incident at work is not mentioned in Dr. Stanley's notes. Dr. Stanley's records do note several other events or activities that seemed to increase her symptoms. For example, she reported increased pain: after long hours on her feet (onset date February 7, 2017), after carrying a garbage can (onset date March 6, 2017), after yard work (onset date May 3, 2017). However, the notes never mention the chair event or an onset date of November 11, 2016. (Def. Ex. A2, pp. 40-45) I do not find Ms. Patrick's testimony that she told Dr. Stanley about the chair incident to be credible. I find that it is highly unusual and unlikely that Dr. Stanley would record numerous different events that seemingly increased Ms. Patrick's symptoms, but fail to record the chair incident. The fact that his notes also do not list an onset date of November 11, 2016 also make it unlikely that Ms. Patrick told Dr. Stanley of the chair incident.

On October 3, 2017, Ms. Patrick went to Avera Medical Group in Spencer where she saw David P. Robison, D.O. She reported lower back pain that radiated down her right leg. The notes state, "I couldn't even sleep last night" "it all started last year when a chair broke at work and landed on the floor and the pain never improved and has gotten a lot worse." (Def. Ex. A4, p. 61) She reported to this doctor that when the chair broke in November of 2016 she landed "squarely on her tailbone and jarred her back." (Def. Ex. A4, p. 63) She said that she had a lot of pain at that time, but did not seek medical attention. However, she has had some back issues since that time and over the last two weeks she had more and more pain in her back radiating down both of her legs, worse on the right. The doctor noted she was very uncomfortable and could not sit or stand. The note states, "[s]he complains bitterly of pain radiating down her back in her low back down her right leg." (Def. Ex. A4, p. 63) The assessment included acute right-sided low back pain with right-sided sciatica, sciatica of right side, and spinal stenosis of lumbar region. Ms. Patrick was taken off of work for the remainder of the week. (Def. Ex. A, pp. 61-64) This is the first time that there is any reference to the chair incident in the treatment records.

On October 9, 2017, Ms. Patrick saw Ronald J. Creswell, M.D. at Avera Medical Group in Spencer. She presented with worsening back pain for the past 2 weeks. The pain started in her right buttock and goes down the back of the right leg to her mid-calf. The pain radiated down both legs, worse on the right. She denied any injury, but did have some back issues for 1 year after hitting her tailbone on the floor after sitting in a chair that broke. All movement or activity hurts except sitting. She indicated that her pain was a 10 out of 10. Her back pain is such that she has not been able to work for the past week and is not able to work now. She also reported having problems wheezing. This has been happening since she was exposed to some dust in the air at her job at Pure Fishing. The doctor's assessment was low back pain with sciatica and bronchitis with bronchospasm. Dr. Creswell prescribed an albuterol inhaler and renewed her hydrocodone. The doctor completed FMLA papers for her. She was instructed to follow-up in 2 weeks. (JE1, pp. 1-4)

On October 12, 2017, Ms. Patrick had an initial evaluation at Spencer Hospital Rehabilitation Services. She had complaints of right-sided hip and leg pain that began on October 2, 2017. She denied any back pain or symptoms with back movements. She reported that last November a chair that she was sitting on broke and she fell, landing on her hip and she had a large bruise. On October 2, 2017, she had marked increase in pain in the same area. Her pain now shoots from her hip down to her lower leg. She denied any back pain. (JE2, pp. 1-2) Ms. Patrick attended therapy on October 12, 16, and 19. (JE3, pp. 3-11)

On October 18, 2017, Ms. Patrick saw Matthew R. Humpal, M.D. Ms. Patrick reported right lower extremity pain that radiated down from her right-sided lumbar back pain which started about one year ago when she sustained a fall. The assessment was radiculopathy of the right lower extremity. The doctor felt she very likely had either spinal stenosis or some disc herniation or very likely both. He ordered an MRI which took place on October 20, 2017. (JE1, pp. 5-9; JE2, p. 12) Ms. Patrick reported to Dr. Humpal that the radiculopathy in her right lower extremity started about one year ago; however, this is contrary to the treatment records which state left-sided radiculopathy up until October of 2017.

On October 31, 2017, Ms. Patrick saw Terese A. Schelhaas, CNP for radiating pain down her right leg. She reported falling to the floor in November of 2016 when a chair broke. She had some initial pain and bruising, but tolerated the discomfort. However, on October 2, 2017, she woke up and was unable to get out of bed. She felt as if there was a hot prod poking the side of her right hip. An MRI revealed significant spinal canal stenosis at L4-L5, small amount of CSF remained surrounding the nerve roots, there was no definite neural foraminal narrowing at that level, correlated with radicular symptoms distribution. The MRI also revealed L5-S1 disc desiccation with left lateral component that approached the exiting left L5 nerve root. She was prescribed prednisone and gabapentin and was referred to the Spencer area for an L4-L5 epidural steroid injection. She was kept off of work. (JE3, pp. 1-4)

On November 14, 2017, Ms. Patrick saw Nicole R. Nelson, CNP at AMG Neurosurgery Carmody. She presented with right lower extremity pain. This time Ms. Patrick reported that her symptoms began in November 2016 when a chair broke and she fell to the ground landing on her right hip. Initially, she had quite a bit of pain, but then the pain seemed to improve. However, this October her symptoms significantly worsened. The pain radiated down the back of her leg and into her foot. She also had numbness and tingling from the knee down into her foot. Ms. Patrick reported that her symptoms were worse after an injection. Physical therapy had not provided any relief of her symptoms. She had been off work due to pain. Nicole R. Nelson, CNP noted that Ms. Patrick's symptoms were consistent with right lower extremity radiculopathy. The MRI had shown a central disc bulge at L4-5 that was causing canal stenosis. Because conservative measures had not provided any significant relief and her symptoms had become intolerable, surgery was felt to be reasonable. Margaret Carmody, M.D. planned to perform an L4 laminectomy and discectomy. (JE4, pp. 1-6)

On November 20, 2017, Ms. Patrick saw Amanda E. Young, D.O. for her pre-op examination. She reported that she has had back concerns. This time Ms. Patrick reported she was sitting on a chair that broke and she landed on her right side. Ms. Patrick was considered a low risk for the planned surgery. (JE1, pp. 10-15)

Dr. Carmody performed surgery on November 30, 2017. The procedures performed were: L4 laminectomy, L5 laminectomy, and bilateral L4-5 foraminotomies. The postoperative diagnoses were right lower extremity radiculopathy and lumbar stenosis. (JE5, pp. 1-2)

On December 5, 2017, Ms. Patrick went to Avera Medical Group in Spencer with concerns about possible infection. No signs or symptoms of infection were noted. Ms. Patrick was encouraged to increase her activity. (JE1, pp. 17-20) Two days later Ms. Patrick reported that her lower extremity symptoms had improved. (JE5, pp. 3-4)

Ms. Patrick returned to Dr. Creswell's office on December 13, 2017. She reported she was doing well and had no postop problems. Her right leg no longer falls asleep. She was scheduled to be off work through December 21, 2017, but will not be returning to work until January 2 because the entire plant was shut down over Christmas. (JE1, pp. 21-24)

On December 19, 2017, Ms. Patrick was seen at Stanley Family Chiropractic with intermittent to frequent aching pain located in her low back. She described the intensity as slight to moderate. Her symptoms were increased by standing, bending, working and are decreased by ice, heat, medication, NSAIDs. She no longer had radiating pain. The note indicates that the onset date was December 5, 2017. (JE6)

Ms. Patrick returned to Nicole R. Nelson, CNP on May 7, 2018. Her right lower extremity symptoms had significantly improved. She did have some recurrent symptoms in her right leg from time to time, but it resolved with rest. She also had

muscle spasms in her mid-back. She worked four, ten-hour days per week and there was mandatory overtime this summer. She did not think that she would be able to tolerate this with her back spasms. For her back pain and spasms, Nicole R. Nelson, CNP recommended healthy habits for overall spine health such as proper lifting techniques, core strengthening, and a healthy weight. Ms. Patrick was given a note for no restrictions. She was to follow-up as needed. (JE4, pp. 8-10)

In May of 2018, Ms. Patrick contacted Dr. Creswell and requested a note stating that she could not work more than 40 hours per week. The doctor provided the requested note and her employer subsequently requested additional information from Dr. Creswell. Ms. Patrick provided the doctor with a letter regarding her various symptoms. Dr. Creswell wrote a note stating no working more than 40 hours per week. (JE1, p. 25)

On June 12, 2018, Ms. Patrick returned to Dr. Creswell. She reported pain in her back from about L5 up to T10 and in the bilateral paralumbar area. She stated that she did a lot of heavy lifting at work. Previously, she was working well over 40 hours per week and felt that it was causing problems with her back. She was now working four, ten-hour days. She also had extensive disability paperwork with her which the doctor and nurse completed. (JE1, pp. 26-30)

The first issue that must be determined is whether Ms. Patrick sustained any permanent partial disability as the result of the November 11, 2016 injury. There is no dispute that Ms. Patrick's chair broke and that she fell to the ground. However, there are inconsistencies regarding how she landed when the chair broke. These inconsistencies affect the reliability of the history she has provided to the medical experts in this case and her credibility.

In the November 11, 2016 accident report Ms. Patrick stated that her right arm/wrist was injured when she hit hard when trying to catch herself. She wrote that the left side of her body hit the floor and came to an abrupt stop. She noted that her neck, shoulder, arm, hip, knee, and ankle were all injured. She did not state that she hit her tailbone, nor did she mention that she hurt her back. (Def. Ex. B, p. 68)

At the October 3, 2017 appointment with Dr. Robison, Ms. Patrick reported she "landed squarely on her tailbone and jarred her back." (Def. Ex. A4, p. 63) This is the first time there is any documentation that she landed on her tailbone.

Claimant served her answers to interrogatories to defendants on November 8, 2018. Her answers states, "she fell to the floor when the chair fell. Claimant injured her right arm/wrist when trying to catch herself during the fall. Claimant struck the floor with the left side of her body including her neck, shoulder, arm, hip, knee, and ankle. Claimant did not fall directly on her back, but landed on her tailbone, jarring her back." (Def. Ex. E, p. 92) The answer to interrogatory number 21 is not consistent with the accident report Ms. Patrick completed shortly after the accident. Additionally, the



October 3, 2017 note from Dr. Robison states she landed on her right side. (Def. Ex. A4, p. 63)

At the arbitration hearing, Ms. Patrick testified that her right wrist made contact with the floor first, her right side hit the floor and somehow caused to her land on the left side. She ultimately ended up lying on her back on the floor. She did not testify that she landed on her tailbone.

Ms. Patrick's credibility is also weakened by her testimony that she told providers important information that is not contained in their treatment records. For example, Ms. Patrick claims that she told her chiropractor about the chair incident, but the incident is not recorded in the notes. Additionally, Ms. Patrick testified that she would have told her chiropractor that she had pain radiating into her legs after the November 11, 2016 fall, yet the first documentation of any such symptoms is not for months and even then it was only on the left side. Additionally, although she claims to have told her providers about her radicular symptoms, she evidently did not feel it was serious enough to mention to her employer, Pure Fishing. Ms. Patrick is familiar with workers' compensation claims because she had four prior workers' compensation claims at Pure Fishing, Inc. Ms. Patrick's prior claims included an injury to her right knee which led to a total knee replacement. As part of that workers' compensation claim Pure Fishing paid for Ms. Patrick's medical bills, missed time from work, and medical mileage. Ms. Patrick admitted that she was aware that the employer had the right to select the medical provider for a work injury. Despite Ms. Patrick's prior experience with workers' compensation, she did not inform the defendants until August or September of 2017, about her back pain radiating to her leg(s) or about the treatment she had been seeking. (Def. Ex. C, p. 69; Def. Ex. D, Deposition p. 35; Testimony)

Claimant relies on the opinion of John Kuhnlein, D.O., to support her claim for permanency benefits. At the request of her attorney, Ms. Patrick saw Dr. Kuhnlein for an IME on April 4, 2019. Ms. Patrick provided the following history of the injury to Dr. Kuhnlein.

She states that on or about November 11, 2016, she was sitting on a chair in the break room, and when she started to get up out of the chair, the chair legs broke off, causing her to fall to the ground. She states that this incident occurred so quickly that she is not sure of her ultimate position on the floor. She relates that she had immediate moderate central and left-sided low back pain. She apparently used her left hand to brace the fall as she says she had left wrist pain. . . .

(Cl. Ex. 1, p. 3)

Dr. Kuhnlein diagnosed Ms. Patrick with lumbar radiculopathy with November 30, 2017, L4-L5 laminectomy and bilateral L4 foraminotomies. With regard to causation, Dr. Kuhnlein stated, if the history Ms. Patrick presents is accurate then the back

condition was either directly and causally related to this injury or was “lit up” by this incident. He noted there was a fairly significant time gap between November 11, 2016 and the original documented medical care. However, he felt if she had been reporting ongoing symptoms to co-workers, those complaints would help to fill the gap.

Dr. Kuhnlein felt she had not yet achieved maximum medical improvement (MMI), not until she was evaluated in a core pain program and learned about core strengthening. However, if she declined to participate in such a program, he would place her at MMI as of May 30, 2018. He assigned 8 percent whole person impairment. Dr. Kuhnlein gave two options for restrictions. If Ms. Patrick worked 40 hours per week, she could work without restrictions. If she worked more than 40 hours per week he would restrict her lifting to 20 pounds occasionally from floor to waist, 30 pounds occasionally from waist to shoulder, and 20 pounds occasionally over her shoulder. He also stated that she should not lift pallets alone, and should not push or pull full totes without an electrical or mechanical assist device to reduce the strain to less than 40 pounds of force. (Cl. Ex. 1)

At the time Dr. Kuhnlein issued his report, he did not have the benefit of the records from Stanley Family Chiropractic. In fact, Ms. Patrick failed to even inform Dr. Kuhnlein that she received ten months of chiropractic treatment after the chair broke. Those treatment records (dated November 1, 2016 through September 29, 2017) were not provided to Dr. Kuhnlein until after he issued his report, but just prior to his deposition on May 22, 2019. As previously noted, none of these chiropractic records mention the chair incident of November 11, 2016. Dr. Kuhnlein admitted that if one were to rely solely on the chiropractic records, it would be very unlikely that the radiculopathy for which surgery was performed would be related to the work injury. However, relying on all of the evidence available to him, he opined that the radiculopathy and resulting surgery was more likely than not related to the chair incident. (Def. Ex. A, pp. 11-18) When Dr. Kuhnlein issued his report he did not have a complete or an accurate history. Ms. Patrick advised Dr. Kuhnlein that when the chair broke she “used her left hand to brace the fall as she says she had left wrist pain.” (Cl. Ex. 1, p. 3) However, this is contrary to the evidence in this case which states she used her right wrist. Additionally, she told Dr. Kuhnlein that she had no prior low back pain at the time of the chair incident. However, the chiropractic treatment records indicate the onset date of her low and mid back pain was November 1, 2016, ten days before the chair broke. I find Dr. Kuhnlein relied on an incomplete and inaccurate history.

Furthermore, Dr. Kuhnlein does not explain or address the time gap between the chair incident and the first time she experienced right-sided radiculopathy symptoms. Dr. Kuhnlein does not address the fact that Ms. Patrick’s initial symptoms were into her left thigh, but then in October of 2017, approximately ten months after the chair incident, she began reporting symptoms of radiculopathy in her right leg.

In his deposition testimony, Dr. Kuhnlein agreed that the symptoms related to the stenosis and disc bulge were first reported in the chiropractic records and family practice records in October of 2017. (Def. Ex. A, p. 13, Dep. p. 49) Dr. Kuhnlein also

admitted that his causation opinion disregards the chiropractic and family practice records that do not record any type of history following the chair incident. (Def. Ex. A, p. 19, Dep. p. 70)

Defendants rely on the opinions of Wade K. Jensen, M.D. At the request of the defendants, he saw Ms. Patrick for an IME on April 1, 2019. Dr. Jensen reviewed the records provided to him, including family healthcare and chiropractic notes. Dr. Jensen diagnosed Ms. Patrick with stenosis at the L4-5 level, likely secondary partially related to a disk bulge, worse on the right side, that he opined likely came about in October of 2017. Dr. Jensen noted that prior to October of 2017, her symptoms were left-sided in origin and much less severe in nature. He noted that Ms. Patrick had stenosis surgery for an L4-5 central disk bulge, plus combined lateral recess stenosis for a likely new disk herniation occurring around October of 2017 which resulted in surgery in November of 2017 for L5 radiculopathy on the right side. Dr. Jensen opined that this was predominantly resolved and was not causally related to the fall onto her back and buttocks. Dr. Jensen felt Ms. Patrick was at MMI and assigned 10 percent whole person impairment, pursuant to Table 15-3 of the AMA Guides. He did not place any restrictions on her activities. Dr. Jensen felt that the 40-hour per week work restriction was not warranted based on the work-related injury from November 11, 2016. Based on the medical records, he felt most of this was myofascial in nature and had long since resolved when her increasing right buttock pain began. He did not feel the surgery was work-related. (Def. Ex. A5)

I find that the treatment records, accident report, and other documents that were generated contemporaneously with the treatment and symptoms are more reliable than the testimony of Ms. Patrick or the testimony of her co-workers.

For the reasons set forth above, I find the opinions of Dr. Jensen carry greater weight than those of Dr. Kuhnlein. I find Ms. Patrick failed to demonstrate that the surgery or any resulting impairment is related to the November 11, 2016 work injury.

I find Ms. Patrick failed to show that the surgery she underwent on November 30, 2017 was necessitated by the November 11, 2016 chair collapse. I further find that Ms. Patrick has failed to demonstrate by a preponderance of the evidence that she sustained any permanent disability as the result of the November 11, 2016 chair incident. The documentation in this case does not support her claim for permanency. Ms. Patrick has provided conflicting accounts of how she landed after the chair collapsed. The first documentation of any pain radiating down her right leg is not until almost 11 months after the chair collapse. At the appointment with Dr. Robison, where she reports radiating pain she also indicates that her back pain had been worsening for the past 2 weeks. Throughout the records, dates listed for the onset of symptoms do not correlate with the collapse of the chair. Even claimant's own IME doctor, Dr. Kuhnlein, stated that symptomatology of radiating pain from a herniated disc typically occurs fairly soon after a traumatic incident, likely within a few weeks of the

incident. I find Ms. Patrick did not sustain any permanent partial disability as the result of the work injury.

Ms. Patrick is seeking temporary total disability benefits from October 2, 2017 through December 21, 2017. She was off of work during this time to recover from her surgery. However, Ms. Patrick failed to demonstrate that the surgery was related to the work injury. I find Ms. Patrick has failed to demonstrate entitlement to temporary total disability benefits.

Claimant is also seeking payment of the past medical expenses that are attached to the hearing report. The medical expenses appear to have been incurred in connection with the radiculopathy and other symptoms for which she underwent surgery. Because claimant failed to demonstrate that those symptoms and the surgery were causally connected to the work injury it follows that defendants are not responsible for payment of these medical expenses. I find claimant failed to establish that these expenses were necessitated by the work injury of November 11, 2016.

Ms. Patrick is seeking reimbursement pursuant for the IME performed by Dr. Kuhnlein on April 4, 2019. There is no evidence in the record that defendants had obtained an impairment rating prior to this date. I find claimant failed to show that an evaluation of permanent disability had been made by a physician retained by the employer prior to the IME by Dr. Kuhnlein.

### CONCLUSIONS OF LAW

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

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v.

Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Based on the above findings of fact, I conclude claimant failed to establish that her disc injury and resulting treatment are causally connected to the November 11, 2016 chair collapse. Ms. Patrick failed to prove by a preponderance of the evidence that her disc injury or the subsequent surgery was necessitated by the work injury. Thus, I conclude claimant is not entitled to any permanent partial disability benefits.

Claimant is seeking temporary total disability benefits from October 2, 2017 to January 2, 2018. Because Ms. Patrick failed to establish that the November 2017 surgery was causally connected to the work injury, it follows that her time off of work to recover from the surgery is also not work-related. Thus, I conclude Ms. Patrick is not entitled to temporary total disability benefits from October 2, 2017 through December 21, 2017.

Claimant is also seeking payment of the past medical expenses that are attached to the hearing report. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975). Based on the above findings of fact, I conclude claimant failed to establish that these expenses were necessitated by the work injury of November 11, 2016.

Pursuant to Iowa Code section 85.39, claimant is seeking payment for the IME performed by Dr. Kuhnlein. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. I conclude claimant failed to demonstrate that an evaluation of permanent disability had been made by a physician retained by the employer prior to the IME by Dr. Kuhnlein. Thus, claimant has failed to prove entitlement to reimbursement for an IME under Iowa Code section 85.39.

Finally, claimant is seeking an assessment of costs in this matter. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. 876 IAC 4.33. Because claimant was generally not successful in her claims, I exercise my discretion and do not assess costs. Each party shall bear their own costs.

ORDER


THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 27<sup>th</sup> day of September, 2019.

  
ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jenna L. Green (via WCES)

Timothy Clausen (via WCES)