

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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ROXIE WARREN,

Claimant,

vs.

COMPASS GROUP USA, INC.,

Employer,

and

NEW HAMPSHIRE INS. CO.,

Insurance Carrier,  
Defendants.

File No. 21007339.01

ARBITRATION DECISION

Head Notes: 1402.20, 1402.40, 1402.60,  
1802, 1803, 2501, 2502, 2701,  
2902, 4000.2

## STATEMENT OF THE CASE

Roxie Warren filed a petition in arbitration seeking workers' compensation benefits from defendants Compass Group USA, Inc., employer, and New Hampshire Insurance Co., insurer. The hearing occurred before the undersigned on November 17, 2021, via CourtCall video conference.

The parties filed a hearing report at the commencement of the arbitration hearing. In the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision, and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The evidentiary record consists of: Joint Exhibits 1 through 4; Claimant's Exhibits 1 through 8; and Defendants' Exhibits A through W. Claimant testified on her own behalf. Jason Robinson, Brian Hufford, and Dan Wilda also testified. Michelle Kaye was scheduled to testify at hearing; however, she contracted an illness and was unavailable at the time of hearing. The evidentiary record was held open so that the parties could depose Ms. Kaye; however, defendants ultimately elected not to pursue the deposition. As such, the evidentiary record will be considered closed as of November 17, 2021, the date of the evidentiary hearing. The case was considered fully submitted upon receipt of the parties' briefs on January 18, 2022.

## ISSUES

1. Whether Claimant sustained an injury, which arose out of and in the course of employment, on March 21, 2019;
2. Whether the alleged injury is a cause of temporary disability during a period of recovery;
3. Whether the alleged injury is a cause of permanent disability;
4. Whether Claimant is entitled to Healing Period benefits from May 30, 2019 to August 5, 2019;
5. The commencement date for permanent partial disability benefits;
6. Entitlement to Medical Benefits;
7. Entitlement to an Independent Medical Examination under Iowa Code section 85.39;
8. Entitlement to Alternate Medical Care under Iowa Code section 85.27;
9. Penalty Benefits; and
10. Costs.

## FINDINGS OF FACT

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

Roxie Warren was a 53-year-old individual living in East Moline, Illinois on the date of hearing. (Hearing Transcript, page 15) Originally from St. Louis, Missouri, Warren moved to Davenport, Iowa as a child. She attended Davenport Central High School through the tenth grade. (Hr. Tr., p. 17) Warren eventually passed her high school equivalency test in 2012 before pursuing a culinary arts degree from Scott Community College. (Exhibit M, page 22) She graduated with a culinary arts degree, a baking certification, and a hospitality management diploma in 2015. (Id.)

In September 2016, Warren accepted an offer of employment to be a cook for the defendant employer. (See Ex. C, p. 3; Hr. Tr., p. 24) As a cook, Warren was responsible for cooking food for patients, associates, and customers. (Ex. T, p. 40) She was also responsible for operating and cleaning various pieces of equipment. (Id.) There is an expectation that cooks for the defendant employer are able to occasionally lift and/or move up to 50 pounds. (Ex. T, p. 42)

Warren's relevant medical history includes prior evaluations of the left shoulder and neck area. In March of 2015, Warren was evaluated at the Genesis Emergency Department for left lower neck pain, with radiating pain into the left arm and leg. (Ex. R, p. 33; see Hr. Tr., p. 32) The medical notes provide that Warren described having to carry heavy trays with her left hand at Cracker Barrel. (Ex. R, pp. 33-34) A CT scan of

Warren's head returned normal, and she was diagnosed with a neck strain, cervical pain, and cervical radiculopathy. (See Ex. R, p. 36)

In the matter at hand, Warren asserts she sustained an injury to her neck and left shoulder when she picked up a container of fryer oil on March 21, 2019. (Hr. Tr., p. 31) According to Warren, Brian Hufford walked by shortly after the injury occurred and she told him that she felt something "pop" in her neck. (Id.) Warren asserts that Mr. Hufford told her not to worry about it and to keep working. (Ex. 5, p. 21; see id.) Mr. Hufford recalled a similar interaction where claimant told him that her shoulder was hurting, but he denied that Warren ever told him that she sustained an injury at work. (Ex. H, p. 14)

Warren first presented for medical treatment on March 27, 2019, six days after the alleged date of injury. (Joint Exhibit 1, pages 1-5) Warren testified that she described her work injury to Jacklyn Besch, ARNP; however, Nurse Practitioner Besch's medical records from the March 27, 2019, appointment and the April 25, 2019, follow-up appointment do not describe the alleged work injury, or any injury for that matter. (JE1, pp. 1-5, 7-12) Moreover, a March 27, 2019, record notes that the event surrounding the occurrence of her symptoms did not include axial loading, cervical compression, a hard fall, injury, lifting, or pulling. (JE1, p. 2) Additionally, the April 25, 2019, medical record specifically notes, "there is no injury." (JE1, p. 8)

Warren asserts that her neck pain increased while working the morning of May 6, 2019. (Hr. Tr, pp. 39-40) According to Warren, she approached Dan Wilda over the lunch hour and told him that she could not finish her shift because she was nauseous and in pain. (Hr. Tr., p. 40) Warren went home and rested the rest of the day and night. (See Hr. Tr., p. 40)

The next morning, on May 7, 2019, Warren presented to the emergency room at UnityPoint Trinity Hospital for her neck pain. (JE2, p. 13) Despite testifying that her neck pain increased while working the morning of May 6, 2019, the emergency room records only provide that Warren's neck pain "began last night" without any mention of an increase in pain while at work. (JE2, p. 13) Warren also testified that she described the work injury to the attending physician. (Hr. Tr., p. 41) Again, the emergency room records do not detail a specific injury; rather, they provide that claimant's increased neck pain was "similar to prior episodes." (JE2, pp. 13-16)

It is worth noting that the emergency room record describes the same symptoms Warren reported in March of 2015. In both records, Warren describes pain that begins in the neck and radiates down her left arm, with tingling on the left side of her body. (JE2, p. 13; Ex. R, p. 33)

Rhonda Sowards, M.D., the attending physician at UnityPoint Trinity Hospital, referred Warren to orthopedic specialist Michael Dolphin, D.O.

Dr. Dolphin first evaluated Warren on May 9, 2019. (JE3, p. 17) Warren testified that she described her work injury to Dr. Dolphin; however, Dr. Dolphin's medical record from the May 9, 2019, evaluation does not describe the alleged work injury, or that a specific injury occurred. (JE3, pp. 17-18) The medical history provides the onset of Warren's pain was "sudden without injury that began approximately 2 months ago."

(JE3, p. 17) Dr. Dolphin ordered a cervical MRI to evaluate for left-sided nerve impingement. (JE3, p. 18)

Claimant underwent an MRI of her cervical spine on May 18, 2019. (JE4, p. 42). The MRI demonstrated focal central disk extrusion, which effaced the anterior subarachnoid space at C4-C5, and a small broad-based disk extrusion most prominent at the level of the right lateral recess of the spinal canal at C5-C6. (Id.)

After reviewing the diagnostic imaging, Dr. Dolphin recommended physical therapy and epidural steroid injections. (JE3, p. 20) Claimant remained under Dr. Dolphin's care until August 5, 2019, when he released her to return to work without restrictions. (JE3, p. 40)

Defendants assert they were unaware that Warren was alleging a work-related injury until she reported the same during a disciplinary meeting that occurred on or about May 15, 2019. While defendants are not asserting a lack of timely notice defense, they are nevertheless asserting that claimant's failure to report her injury between March 21, 2019, and May 15, 2019, reflects poorly on her overall credibility.

Multiple individuals offered statements or provided testimony recounting several events that occurred between May 14, 2019, and May 15, 2019. In general, all of the statements agree on a basic set of facts and follow a similar timeline of events. In the following paragraphs, I will attempt to provide Ms. Warren's testimony alongside the corresponding testimony or statements of the various witnesses in this case.

Warren asserts Mr. Hufford called Warren into his office and presented her with a disciplinary slip for attendance issues on May 14, 2019. (See Hr. Tr., pp. 45-46; Ex. 5, p. 23) The slip was part of the defendant employer's progressive disciplinary policy. According to Mr. Hufford, Warren had accumulated enough points to fall under the progressive counseling program. (See Hr. Tr., p. 149) Warren disputed the accuracy of the slip and told Mr. Hufford that she intended to discuss the same with Jill Rich in Human Resources. (Hr. Tr., pp. 45-46)

Brian Hufford offered a witness statement and testified live at the evidentiary hearing. (Exhibit H; Hr. Tr., p. 146) The statement is dated May 29, 2019; however, it is not signed. (Ex. H, p. 14) His hearing testimony largely supports the timeline of events leading up to the May 15, 2019, meeting described by Warren. Mr. Hufford confirmed that he provided progressive counseling to Warren for her attendance issues on or about May 14, 2019. (See Hr. Tr., p. 149) Mr. Hufford testified that during their meeting, Warren told him that she had been missing work to attend medical appointments. It was apparent from Mr. Hufford's testimony that he did not understand "medical appointments" to mean "medical appointments for a work-related injury." (See Hr. Tr., pp. 150-151) Mr. Hufford then explained the company's absence policy to Warren, noting that medical appointments are not automatically excused. (Hr. Tr., p. 151) He confirmed that Warren was upset and intended to contact Ms. Rich regarding the same. (Hr. Tr., pp. 149-150)

Immediately following the May 14, 2019, meeting with Mr. Hufford, Warren testified that she called Ms. Rich to discuss her disciplinary slip. Warren testified that

during this conversation, she told Ms. Rich that the only reason she missed work on the dates in question was because she was receiving medical treatment for a work injury she sustained on March 21, 2019. (Hr. Tr., p. 46) Warren further testified that Ms. Rich asked her several follow-up questions about her alleged work injury before apologizing and setting Warren up to meet with Michelle Kaye, Mr. Hufford's boss, to discuss the situation further. (Id.)

Jill Rich offered a statement in this case but was not deposed and did not testify live at hearing. (Exhibit A) As such, I did not have the opportunity to observe Ms. Rich or her demeanor. Ms. Rich's statement is not a sworn statement. It is not dated, signed, or notarized. (See id.)

Ms. Rich's statement confirms she received a call from Warren on May 14, 2019; however, the statement does not provide that Warren reported a work injury during said call. (See Ex. A, p. 1) According to Ms. Rich, Warren was very upset about her disciplinary slip and felt that she should have received a warning before she received a disciplinary slip. In other words, Warren felt that the employer skipped a step according to the progressive disciplinary policy. Warren then told Ms. Rich that she had not been feeling well and she could not help it if she was sick and could not come to work. She then asserted that she had brought in a doctor's note for each of her absences. Ms. Rich directed Warren to the attendance policy in the employee handbook and explained to her that bringing in a doctor's note does not make the occurrence go away under the employer's policy. Warren then contemplated quitting her job in order to address her health complaints. According to Ms. Rich, Warren was concerned that she would be written up if she were to get sick again and could not present for work. Ms. Rich told Warren that if she needed time off from work to address an illness, she could request up to 12 weeks of unpaid leave under FMLA, which would not count against the attendance policy. She also told Warren that "occurrences" fall off after a rolling one-year time period. Ms. Rich concluded the call by telling Warren to think about what was best for her situation and to report back to Mr. Hufford regarding the same on May 15, 2019. (Ex. A, p. 1)

Ms. Rich's statement is largely consistent with the statement Warren wrote for the Davenport Civils Rights Commission as part of a separate complaint. (Ex. 5, p. 23) In her statement, Warren does not assert that she reported the alleged work injury to Ms. Rich during their May 14, 2019, telephone conversation. (Ex. 5, p. 23) Instead, Warren simply provides she told Ms. Rich that some of the absences listed on her disciplinary slip should have been excused because she brought in doctor's notes for the same. The statement confirms that Ms. Rich then explained that medical appointments are not excused unless they are approved ahead of time. The statement further confirms that Warren expressed a desire to submit her two weeks' notice because Mr. Hufford was very rude and did not listen to her. (Id.) According to the written statement, Ms. Rich attempted to talk Warren out of quitting and told her she would arrange for Warren to speak with Ms. Kaye. (Id.)

Warren's hearing testimony regarding her conversation with Mr. Rich is inconsistent with her written statement and the typewritten statement of Ms. Rich. (Ex. 5, p. 23; Ex. A) I acknowledge that Ms. Rich's statement is not an affidavit. That being

said, her statement is largely consistent with Warren's initial statement, which was drafted shortly after the events in question took place. I find the statement Warren wrote for the Davenport Civil Rights Commission to be more credible than Warren's hearing testimony. As such, I find Ms. Rich's statement regarding the May 14, 2019, telephone call to be more credible than Warren's testimony regarding the same. I specifically find that Warren did not report a work-related injury to Ms. Rich during the May 14, 2019, telephone call.

The next day, Warren asserts she was in the cafeteria when a young lady approached and introduced herself as Michelle Kaye. (Hr. Tr., p. 46) Ms. Kaye told Warren that she had received a phone call from Ms. Rich and wanted to talk to her about her attendance issues and the alleged work injury. (Hr. Tr., pp. 46-47, 50) Ms. Kaye then asked Warren to come back to her office. (Hr. Tr., pp. 50-51) Warren testified that when she got to Ms. Kaye's office, Mr. Hufford and Jason Robinson were in the office waiting for her. (Id.)

Warren's written statement provides a slightly different version of events when compared to her testimony at the evidentiary hearing. According to Warren's statement, Ms. Kaye approached her in the cafeteria shortly after she ended her phone conversation with Ms. Rich. (Ex. 5, p. 23) Ms. Kaye introduced herself and asked if she could meet with her about the telephone conversation she had with Ms. Rich. (Id.) Warren told Ms. Kaye that she could meet with her on May 15, 2019. (Id.) According to Warren's statement, the two met as planned to discuss the disciplinary form on May 15, 2019. (Id.) Warren's statement provides that she first met with Ms. Kaye and reported the work injury in a one-on-one setting. Ms. Kaye concluded the one-on-one meeting by saying she needed to talk to Mr. Hufford about the alleged injury. (Id.)

Mr. Hufford confirmed that Warren and Ms. Kaye met to discuss the disciplinary slip, and that Ms. Kaye left her meeting with Warren to speak to him about the alleged work injury. (Hr. Tr., p. 151) He testified,

That was the meeting just with Michelle and Roxie. Because then Michelle came out looking for me, saying Roxie hurt herself on the job. Why haven't we called this in to our Gallagher Bassett company? And that's when the meeting took place. Then we kind of pulled us all together. Because that was the first I was hearing of it.

(Hr. Tr., p. 151)

Ms. Kaye offered a handwritten statement in this case but was not deposed and did not testify live at hearing. (Exhibit G) Ms. Kaye planned on testifying at the evidentiary hearing; however, she was hospitalized in the days leading up to hearing. She later declined defense counsel's request for a deposition. Unfortunately, Ms. Kaye's statement does not address what, if any, conversations she had with Warren prior to the May 15, 2019, meeting. (See id.)

Given Mr. Hufford's recollection, I find it likely that Warren reported the work injury to Ms. Kaye during their initial one-on-one meeting. I also find it likely that Ms. Kaye, after learning of Warren's allegations, contacted Mr. Hufford and scheduled the

May 15, 2019, meeting. Indeed, Mr. Hufford described the May 15, 2019, meeting as “impromptu.” (Hr. Tr., p. 149)

Claimant, Ms. Kaye, Mr. Robinson, and Mr. Hufford all provided statements and/or testimony regarding the May 15, 2019, meeting.

According to Warren’s statement, Ms. Kaye approached her after speaking with Mr. Hufford and told her they needed to complete an incident report. The statement provides that while Warren and Ms. Kaye were discussing the incident report, Mr. Robinson and Mr. Hufford entered the room and immediately started asking questions about the work injury. (Ex. 5, p. 24)

Again, Warren’s testimony at hearing deviated from her initial statement. At hearing, Warren testified that Ms. Kaye asked her to come to her office to discuss the attendance issues and the alleged work injury. She further testified that when she got to Ms. Kaye’s office, Mr. Hufford and Mr. Robinson were already there waiting for her. (Hr. Tr., pp. 50-51)

In any event, Warren’s statement provides that Mr. Robinson asked her to explain what happened on the date of injury, whether she reported the injury to anyone at work, and whether she reported the injury as work-related when presenting for medical care. (See Ex. 5, p. 24) After telling Mr. Robinson that she reported the work injury to Mr. Hufford on the date of injury, Warren asserts that Mr. Robinson turned to Mr. Hufford and asked if the same was true. According to Warren, Mr. Hufford “stood there for a minute before answering” that he did not know if Warren reported the injury, but he did remember her being in pain at some point and not thinking much of it. (Id.) Warren asserts that after questioning her about the alleged work injury, Mr. Robinson instructed Ms. Kaye to file an incident report. Mr. Robinson and Mr. Hufford subsequently left Ms. Kaye’s office and Warren filled out an incident report with Ms. Kaye. (Id.)

Ms. Kaye, Mr. Robinson, and Mr. Hufford all provided substantially similar accounts of the May 15, 2019, meeting. (See Exs. G, H, J)

All three defense witnesses agree that the May 15, 2019, meeting was called to discuss the progressive counseling paperwork Warren received from Mr. Hufford for her attendance issues. (Hr. Tr., p. 125; Ex. G, p. 12; Ex. H, p. 14; Ex. J, p. 16) Mr. Robinson’s statement adds that the May 15, 2019, meeting was scheduled to address Warren’s concerns as “it sounded like she didn’t agree with the consoling [*sic*] that was written.” (Ex. J, p. 16)

At the beginning of the meeting, Warren relayed she did not agree with the inclusion of various dates listed on the disciplinary slip. She felt that the dates she was absent from work and seeking medical treatment should not count against her point total. (Id.; Hr. Tr., p. 122) In response, Mr. Robinson explained to Warren that under the employer’s attendance policy, an absence is simply defined as missing work. He further explained that unless an absence is preapproved by management, the absence is considered an unexcused absence. (See id.) Then, as Mr. Robinson was getting ready

to read the attendance policy directly from the employee handbook, Warren stated that her medical appointments were for an injury she sustained on the job. (Id.)

Mr. Robinson confirmed that he then asked Warren several questions about the alleged work injury. (Id.; see Ex. G, p. 12; Ex. 5, p. 24) First, he asked when the injury occurred and whether she reported it to anyone. (Id.) Warren told Mr. Robinson that the injury occurred awhile back, and that she had reported the injury to Mr. Hufford. All witnesses, including Warren, agree that Mr. Robinson then turned to Mr. Hufford and asked whether Warren's allegation was true. (Hr. Tr., pp. 52-53; Ex. J, p. 16; Ex. G, p. 12; Ex. H, p. 14; Ex. 5, p. 24) Mr. Hufford denied the allegation but relayed that he remembered a day in which Warren showed up to work, looked as though she was in pain, and told him that her shoulder was hurting. (Ex. J, p. 16; see Ex. H)

After describing the interaction to Mr. Robinson, Mr. Hufford asked Warren if the incident he described was the incident she was talking about. Warren replied "yes, I hurt it lifting the oil." (Id.) According to the defense witnesses, Warren then struggled to answer several questions posed by Mr. Robinson regarding the work injury. (See Ex. G, p. 12; Ex. H, p. 14; Ex. J, p. 16) When asked how the injury occurred, defendants assert that Warren provided two different descriptions of her injury. Warren first reported that she was injured while lifting a jug of fryer oil; however, when Mr. Robinson asked for additional information, Warren reported that the injury could have also occurred when she was lifting the reservoir under the fryer. (Ex. G, p. 12; Ex. H, p. 14; Ex. J, p. 16) According to defendants, Warren later provided that she was not sure whether she hurt herself at work or at home. (See id.)

At hearing, Warren acknowledged that she said she was "possibly" injured at work during the May 15, 2019, meeting. (Hr. Tr., p. 101) She explained that she was very emotional and eventually shut down while Mr. Robinson was asking her questions about the work injury. (Hr. Tr., p. 101) She further testified that she felt very uncomfortable throughout the meeting and walked away feeling as though she had done something wrong. (See Hr. Tr., pp. 52-53)

Following the May 15, 2019, meeting, Warren completed an incident report listing March 9, 2019, as the date of injury. (Ex. B, p. 2) According to Ms. Kaye's handwritten statement and the defendant insurer's notes, Warren approached Ms. Kaye on May 16, 2019, and changed the alleged date of injury to March 21, 2019. She then approached Ms. Kaye on May 17, 2019, and changed the date of injury to March 27, 2019. Finally, Warren reached out to Ms. Kaye on May 28, 2019, and changed the date of injury back to March 21, 2019. (Ex. G, pp. 12-13; see Ex. D, p. 4)

Admittedly, I am troubled by the witness statements submitted into evidence by defendants as they do not bear adequate indicia of reliability. All five statements are unsworn, four of the five statements are unsigned, and Ms. Rich's statement is not dated. That being said, defendants called Mr. Robinson and Mr. Hufford to testify at the time of trial. They were subject to cross-examination and the undersigned was able to observe their demeanor. Defendants intended to call Ms. Kaye to testify at the time of trial, however, she was unavailable.



Of the three defense witnesses, Mr. Robinson provided the most detailed account of the May 15, 2019, meeting. Mr. Robinson was still employed as an assistant director for the defendant employer at the time of the evidentiary hearing. (Hr. Tr., p. 120) As such, it is possible that Mr. Robinson is biased or has reason to protect the defendant employer. However, I found his testimony to be credible. His statement is largely consistent with the statements submitted by Ms. Kaye and Mr. Hufford. There are also several aspects of Mr. Robinson's statement that align with claimant's description of the May 15, 2019, meeting. I accept Mr. Robinson's testimony regarding the May 15, 2019, meeting as accurate.

Defendants challenge Warren's credibility and dispute whether she actually sustained a work-related injury on or about March 21, 2019.

Warren is asserting that she sustained an injury to her neck and left shoulder when she picked up a container of fryer oil on March 21, 2019. (Hr. Tr., p. 31) She asserts that she reported the work injury to Mr. Hufford on the date of injury. More specifically, Warren testified that Brian Hufford walked by shortly after the injury occurred and she told him that she felt something "pop" in her neck. (Id.; see Ex. 5, p. 25)

All witnesses agree that during the May 15, 2019, meeting, Warren told Mr. Robinson, Mr. Hufford, and Ms. Kaye that she had reported a work injury to Mr. Hufford on the date of injury. All witnesses similarly agree that Mr. Hufford disputed Warren's allegation at the time of the May 15, 2019, meeting. (Ex. 5, p. 24; Ex. G, p. 12; Ex. H, p. 14; Ex. J, p. 16)

Defendants assert that Warren was non-committal when asked at the May 15, 2019, meeting whether she specifically told Mr. Hufford that she hurt her shoulder at work or simply that her shoulder was hurting. According to Mr. Robinson, Warren reported that she only told Mr. Hufford that she was having pain in her neck and shoulder area. (See Ex. J, p. 16)

Mr. Hufford offered a statement and testified live at the evidentiary hearing regarding claimant's assertion that she reported a work-related injury to him on March 21, 2019. (Exhibit H; Hr. Tr., p. 146) Mr. Hufford recalled an incident in which he saw Warren in the kitchen and noticed that she was rubbing her shoulder. Mr. Hufford asserts that he asked Warren what was wrong, and she stated that she might have hurt her shoulder or pinched a nerve. (Ex. H, p. 14; Hr. Tr., p. 154) Mr. Hufford asserts that Warren never explained how the injury occurred, or alleged that the injury happened at work on the date in question. (Id.; see Hr. Tr., pp. 153-154) At the time, Mr. Hufford did not believe Warren's condition was in any way related to her work activities.

Defendants point out this is not the only instance in which Warren described or exhibited pain in her neck and/or left shoulder and reported the same could be due to a pinched nerve.

Defendants submitted a brief statement from Daniel Wilda, a former sous chef for the defendant employer. (Ex. I, p. 15; see Hr. Tr., p. 165) According to the statement, Mr. Wilda observed Warren moving her shoulders in a circular motion and complaining

of shoulder pain on Monday, February 4, 2019. (Ex. I, p. 15) Mr. Wilda reported that Warren told him that her shoulder pain was possibly stemming from a pinched nerve. (Id.) At hearing, Mr. Wilda also recalled that after he observed Warren on February 4, 2019, Warren called off work or left work early for medical appointments on three occasions. (Ex. I, p. 15; Hr. Tr., p. 166) He testified that Warren brought in doctor's notes following her medical appointments. (Hr. Tr., pp. 169-170)

Mr. Robinson described a similar instance occurring around February 2019. (Ex. J, p. 17) On the day in question, Mr. Robinson was standing in line at the grill where Warren was working. Mr. Robinson asserts that Warren was not acting like herself when the two initially interacted. Mr. Robinson later approached Warren and asked if everything was okay. Warren responded that she was experiencing a lot of pain throughout her body, and she felt that she needed to find a less physically taxing job with better hours. (Ex. J, p. 17) Mr. Robinson asserts that Warren was grabbing at her shoulder throughout the interaction. (Id.; Hr. Tr., p. 127)

Mr. Robinson and Mr. Wilda provided their statements several months after they allegedly witnessed Warren in pain. Indeed, Mr. Wilda noted that he had to look back at the schedule and his notes to determine the date he saw Warren in pain. (Hr. Tr., pp. 167-168) Defendants did not produce Mr. Wilda's notes to bolster his credibility. Mr. Wilda also asserted that he made copies of the medical notes Warren brought in. Defendants did not produce Warren's personnel file or any of the medical notes described by Mr. Wilda. The evidentiary record does not contain any medical records noting shoulder or neck pain in February 2019 to corroborate Mr. Wilda's testimony.

While I accept that the interactions described by Mr. Wilda and Mr. Robinson occurred at some point in time, I have a difficult time accepting the exact dates provided by both individuals. For these reasons, I am only accepting the above testimony of Mr. Wilda and Mr. Robinson for the limited purpose of showing that Warren had previously exhibited and/or communicated that she had pain in her left shoulder and neck region prior to the May 15, 2019, meeting.

After analyzing the evidentiary record, I find Mr. Hufford's testimony regarding Warren's reporting of the injury to be more credible than the version of events offered by Warren. While Mr. Hufford presented as a relatively poor historian, his testimony regarding his interactions with Warren on or about the alleged date of injury was consistent with his prior statement, as well as the statement and testimony of Mr. Robinson. Mr. Hufford's testimony regarding Warren's reporting on or about March 21, 2019, is accepted as accurate. While it is apparent Warren reported shoulder pain to Mr. Hufford at some point in time, it appears unlikely that she definitively reported that her pain was the result of a work injury until May 15, 2019. As such, I find that Warren did not expressly report a work injury to the defendant employer until May 15, 2019.

Such a finding is supported by the contemporaneous medical records, which are void of any reference to a work-related injury between March 21, 2019, and May 15, 2019.

Warren testified that she described her work injury to Ms. Besch on March 27, 2019; however, Mr. Besch's notes do not reference an acute injury. (JE1, pp. 1-5, 7-12)

Moreover, the April 25, 2019, medical record specifically notes, “there is no injury.” (JE1, p. 8) I find it highly unlikely Ms. Besch would fail to document a reported mechanism of injury on two separate occasions. I find claimant did not describe an injury to Ms. Besch.

Warren also testified that she described the work injury to Rhonda Sowards, M.D., the attending physician at the UnityPoint emergency room, on May 7, 2019. (Hr. Tr., p. 41) The emergency room records do not detail an acute injury or an increase in pain from work-related activities. (JE2, pp. 13-16) I find Warren did not describe the alleged March 21, 2019, work injury to Dr. Sowards.

Lastly, Warren testified that she described the alleged work injury to Dr. Dolphin at her initial evaluation on May 9, 2019. Dr. Dolphin’s medical record from the May 9, 2019, evaluation does not describe the alleged work injury, or that any specific injury occurred to cause Warren’s symptoms. (JE3, pp. 17-18)

Claimant’s counsel conducted a conference call with Dr. Dolphin on or about October 1, 2020. (See Ex. 2, p. 11) Following the conference call, claimant’s counsel produced a letter summarizing their discussion. The letter is dated November 30, 2020. (Ex. 2, p. 11) Claimant’s counsel asked Dr. Dolphin to sign off on the letter if the summary provided was consistent with their prior conversation. (Ex. 2, p. 11) The letter provides, “It is well-documented throughout her records with you, and other providers, that she believes her pain arose from her injury that occurred while lifting oil from the floor.” (Ex. 2, p. 12) The letter goes on to note that Dr. Dolphin did not believe that his nurse accurately recorded Warren’s complaints, and that he recalled Warren mentioning the oil incident at work while examining her. (Id.) Dr. Dolphin signed off on the letter on December 5, 2020. (Id.)

I do not find the November 30, 2020, letter particularly credible or convincing. First and foremost, claimant’s counsel’s letter to Dr. Dolphin suggestively asserts, “It is well-documented throughout her records with you, and other providers, that she believes her pain arose from her injury that occurred while lifting oil from the floor.” (Ex. 2, p. 12) There is no indication that Dr. Dolphin was informed that a dispute existed as to whether claimant reported a work injury to anyone prior to May 15, 2019. Likewise, there is no indication that Dr. Dolphin was informed the contemporaneous medical records, including his own, are void of any mention of a work-related injury until after May 15, 2019.

Second, Dr. Dolphin initially evaluated Warren on May 9, 2019. The conference call did not occur until October 1, 2020. In other words, Dr. Dolphin was asked about whether his nurse accurately recorded Warren’s complaints at a medical appointment that occurred over a year prior to the conference call. Moreover, the letter summarizing the October 1, 2020, conference call was not produced to Dr. Dolphin until November 30, 2020. It cannot be said that the letter was produced to Dr. Dolphin when the conference call was fresh in his mind.

Thirdly, the letter notes that Dr. Dolphin believed his nurse inaccurately recorded Warren’s complaints because he recalled Warren mentioning the oil incident while examining her. The letter does not provide, and Dr. Dolphin did not clarify, when

Warren mentioned the oil incident. Again, there is no indication Dr. Dolphin knew the significance of the fact his May 9, 2019, medical record is void of any reference to a work injury. His opinion in this regard amounts to an assumption.

Lastly, it is difficult to accept Dr. Dolphin's statement as credible when such a finding would necessarily require me to find his prior opinion was not credible, i.e., when he signed off on the accuracy of his nurse's medical notes following the May 9, 2019, appointment. (JE3, p. 18) I find Warren did not describe the alleged March 21, 2019, work injury to Dr. Dolphin or his nurse at the May 9, 2019, appointment.

Ultimately, I find Warren did not report or describe the alleged injury at any of her four medical appointments between March 21, 2019, and May 9, 2019. I could potentially accept an assertion that a single physician failed to adequately document the oral history he or she obtained from Warren; however, it becomes significantly more difficult to accept that three different medical providers, on four different occasions, failed to document Warren's allegations of a work injury, or indicate that claimant's condition stemmed from an acute injury at all. I find the discrepancies between Warren's testimony and the contemporaneous medical records damaging to her overall credibility.

Further undercutting Warren's credibility is the fact she reported several different dates of injury to Ms. Kaye between May 15, 2019, and May 28, 2019. (Ex. B, p. 2; Ex. G, pp. 12-13; see Ex. D, p. 4) Warren provided little to no explanation for changing the date of injury multiple times. At hearing, Warren explained that she could not recall the correct date of injury on May 15, 2019, because, "there was a lot going on with me that day." (Hr. Tr., pp. 76-77) I do not find Warren's explanation particularly believable. While I could potentially accept such an explanation for her reporting the wrong date of injury during the May 15, 2019, meeting, it is difficult to imagine claimant's feelings of being overwhelmed and/or intimidated on May 15, 2019, impacted her reporting on May 16, 2019, May 17, 2019, and May 28, 2019.

It is worth noting that the initial medical records offer little to no support for a March 21, 2019, work injury. Warren testified that she first presented for medical treatment for the March 21, 2019, work injury on March 27, 2019. Ms. Besch documented a history from Warren that included, "Onset: 3 days ago." (JE1, p. 2) I have a difficult time reconciling how claimant could tell her primary care provider that her pain began three days prior, on or about Sunday, March 24, 2019, if the work injury actually occurred on Thursday, March 21, 2019, approximately one week prior to the March 27, 2019, appointment. It is difficult to imagine Warren was confused as to whether her injury occurred during the work week or over the weekend.

The inconsistencies within the medical records, coupled with the inconsistencies in Warren's testimony, lead me to the conclusion that Warren is not a credible witness. Specifically, I found she did not report the alleged work injury to Mr. Hufford on the date of injury, her medical providers between March 27, 2019, and May 5, 2019, or to Ms. Rich on or about May 14, 2019.

Without credible testimony or any other supporting documentation referencing a work-related injury in March of 2019, I find there is insufficient evidence to find claimant sustained a work-related injury on or about March 21, 2019.

I recognize that the evidentiary record contains competing medical reports and opinions pertaining to causation. Mark Taylor, M.D. conducted an independent medical evaluation of Warren on January 7, 2020. (Exhibit 1, pp. 1-10) Rick Garrels, M.D. conducted a records review on defendants' behalf on October 4, 2021. (Exhibit P, pp. 27-30) Having found Warren failed to prove a work injury occurred on March 21, 2019, I find the expert medical opinions offered by Dr. Taylor and Dr. Garrels are not entitled to any weight as they are reliant upon the accuracy of the history they were provided.

All other factual disputes are moot.

### CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v.

Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

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

In this case, I found that the claimant did not prove by a preponderance of the evidence that she sustained an injury to her neck and/or left shoulder as a result of her work activities on March 21, 2019. Therefore, I conclude that claimant failed to carry her burden of proof to establish that she sustained an injury that arose out of and in the course of her employment on March 21, 2019. As a result, I conclude that claimant's original notice and petition should be dismissed without an award of benefits.

Claimant sought reimbursement for an independent medical evaluation with Dr. Taylor pursuant to Iowa Code section 85.39. 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. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants denied liability for this claim and did not obtain a corresponding medical causation and impairment rating prior to Dr. Taylor's January 2020 evaluation. Claimant has not established the prerequisites for reimbursement of Dr. Taylor's evaluation pursuant to Iowa Code section 85.39.

Claimant also asserts a claim for costs. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Given that the claimant failed to prove a compensable claim, I conclude that none of her costs should be assessed. I conclude that each party should bear its own costs.

#### ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing.

Claimant's original notice and petition is dismissed with prejudice.

All parties bear their own costs.

Signed and filed this 15<sup>th</sup> day of July, 2022.

A handwritten signature in black ink, appearing to read "Michael J. Lunn", is written over a horizontal line.

MICHAEL J. LUNN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Valerie Foote (via WCES)

Terrance Donohue (via WCES)

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.