BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MINDY SCHINDEL, Claimant, vs. CASEY'S MARKETING COMPANY, Employer, and EMCASCO INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED MAR 02 2017 WORKERS COMPENSATION	File No. 5053577 ARBITRATION DECISION Head Note Nos.: 1402, 1801, 1803

Claimant Mindy Schindel filed a petition in arbitration on August 31, 2015, alleging she sustained an injury to her low back while working for the defendant, Casey's Marketing Company ("Casey's"), on June 5, 2014. Casey's and its insurer, the defendant, EMCASCO Insurance Company ("EMC"), filed an answer on September 2, 2015, admitting Schindel sustained a work injury.

An arbitration hearing was held on September 14, 2016, in Davenport, Iowa. Attorney Jerry Soper represented Schindel. Schindel appeared and testified. Attorney Alison Stewart represented Casey's and EMC. Tonya Lerch appeared and testified on behalf of Casey's and EMC. Exhibits 1 through 21, and A through L were admitted into the record. The record was left open through January 13, 2017, for the receipt of rebuttal exhibits from the defendants and briefs from the parties. Exhibits N through O were admitted into the record. At that time the record was closed.

Before the hearing the parties prepared a hearing report listing the stipulations and issues to be decided. Casey's and EMC waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed at the time of the alleged injury.

2. Schindel sustained an injury on June 5, 2014, which arose out of and in the course of her employment with Casey's.

3. The alleged injury is a cause of a temporary disability during a period of recovery.

4. If the injury is found to be the cause of permanent disability, the disability is an industrial disability.

5. If the injury is found to be the cause of permanent disability, the commencement date for permanent partial disability benefits, if any are awarded, is January 30, 2015.

6. At the time of the alleged injury Schindel's gross earnings were $300.74 per week, she was single and entitled to three exemptions, and the parties believe her weekly rate is $216.01.

7. Costs have been paid by Schindel.

ISSUES

1. What is the nature of Schindel's disability?

2. Did the alleged injury cause a permanent disability?

3. If the alleged injury caused a permanent disability, what is the extent of Schindel's disability?

4. Is Schindel entitled to temporary benefits from October 27, 2014 through January 30, 2015?

5. Is Schindel entitled to reimbursement for medical expenses and alternate care?

6. Is Schindel entitled to recover the costs of an independent medical evaluation?

7. Should costs be assessed against either party?

FINDINGS OF FACT

Schindel lives in Davenport, Iowa with her boyfriend and son. (Transcript, page 21) Schindel has two other adult children. (Tr., p. 21) Schindel graduated from high school in 1990. (Exhibit C, p. 17; Tr., p. 21) Schindel attended a sanitation course after graduating from high school. (Ex. C, p. 17; Tr., p. 22) At the time of the hearing Schindel was 44. (Tr., pp. 21, 64)

Schindel has worked as a cook/kitchen manager for many years. (Tr., p. 22) Schindel worked for Arnie's Happy Spot from 1987 through 2013, and then for Sonic briefly before she was hired by Casey's. (Exs. G, p. 35; I, p. 52; 14, p. 151; Tr., p. 24) While working for Arnie's Happy Spot Schindel worked part-time as a cashier and as assistant manager for Dollar Video from 2000 through 2006. (Ex. I, p. 52; Tr., p. 65) As an assistant manager, Schindel supervised the employees, performed nightly reports, and inputted movies into the computer system. (Tr., p. 65)

Casey's hired Schindel to work as a cook in August 2013. (Exs. G, p. 35; 14, p. 151; Tr., p. 25) Schindel continued to work for Casey's through March 9, 2015. (Ex. A)

On June 5, 2014, Schindel went to the back freezer and removed three or four boxes of meat weighing approximately twenty to twenty-five pounds each. (Tr., pp. 27-28) She loaded the boxes onto a cart and wheeled the cart to the front of the store to put into a smaller freezer with shelving. (Tr., p. 27) Casey's rotates older and newer products. (Tr., p. 28) Schindel removed boxes of older meat and placed the boxes on the freezer floor, stepped down, and placed the new boxes of meat on the lower shelves, and placed the older product on the upper shelves. (Tr., p. 27) Schindel testified, "when I stepped down out of the freezer, my back completely locked up." (Tr., pp. 27, 30) Schindel reported she felt pain immediately in her low back. (Tr., p. 30) Schindel finished the rest of her shift that evening, approximately three to four hours. (Tr., p. 30) Schindel testified she reported her injury to her manager after the date of the injury. (Tr., p. 31)

Prior to her work injury Schindel had received treatment for hypothyroidism, anxiety, depression, right shoulder pain, neck and left shoulder pain, and osteoarthritis. (Ex. 14, pp. 154-55) Before she worked for Casey's Schindel applied for disability benefits through the Social Security Administration because of her anxiety disorder, bipolar disorder, and depression. (Tr., p. 62) The Social Security Administration denied Schindel's application. (Tr., p. 62) Schindel testified she had not sustained a back injury before she worked at Casey's. (Tr., p. 25)

On June 7, 2014, Schindel sought medical care. (Tr., p. 30) Schindel was examined by Marc Hoskins, PA-C, and reported her muscles "grab" and that her pain was worse with bending. (Ex. 1, p. 1) Schindel received an x-ray of her lumbar spine. (Ex. 1, p. 5) The reviewing radiologist listed an impression of "6 lumbar type vertebral bodies with normal alignment. No fracture or compression deformity. Mild vertebral hypertrophic changes predominantly at L4-L5 without disk space narrowing. There is mild lower lumbar facet arthrosis." (Ex. 1, p. 5)

Casey's and EMC referred Schindel to Genesis Occupational Health for medical treatment. (Ex. 2) On June 9, 2014, Schindel was examined by Cheryl Benson, PA-C. (Ex. 2, p. 6) Benson assessed Schindel with a lumbar sprain/strain with spasm, prescribed prednisone and Norco, and instructed her to ice and stretch her back. (Ex. 2, p. 6) Benson restricted Schindel from working for two days. (Ex. 2, p. 6)

Schindel returned to Benson on June 11, 2014, complaining of back pain. (Ex. 2, p. 8) During her examination Benson noted Schindel appeared uncomfortable, with guarded movement and tenderness. (Ex. 2, p. 2) Benson assessed Schindel with a right lumbar strain with spasm, started a prednisone taper, and prescribed cyclopenzaprine and Lortab. (Ex. 2, p. 8) Benson restricted Schindel from working. (Ex. 2, pp. 8-9)

On June 16, 2014, Schindel attended an appointment with Benson. (Ex. 2, p. 10) Benson noted Schindel had been fitted with a TENS unit, which had been beneficial, and physical therapy. (Ex. 2, p. 10) Benson documented the physical therapy aggravated Schindel's symptoms. (Ex. 2, p. 10) Benson assessed Schindel with a lumbar strain, ordered her to remain off work for three days, and ordered her to transition to modified duty on June 19, 2014. (Ex. 2, pp. 10-11)

During a follow-up visit on June 23, 2014, Benson noted Schindel appeared to be in less acute pain, and assessed Schindel with lumbar strain with radicular symptoms. (Ex. 2, p. 12) Benson ordered continued physical therapy, requested magnetic resonance imaging, and prescribed ibuprofen, cyclobenzaprine, and tramadol. (Ex. 2, p. 12) Benson imposed restrictions of rare bending and twisting of the back, a lifting restriction of ten pounds occasionally, a lifting restriction of ten pounds two handed below the shoulder occasionally, and to alternate between sitting, standing, and walking as tolerated. (Ex. 2, p. 13)

On July 7, 2014, Schindel returned to Benson complaining of increased low back pain after she attempted to return to work. (Ex. 2, p. 15) Benson restricted Schindel from working until further evaluation. (Ex. 2, p. 16)

Schindel received magnetic resonance imaging of her lumbar spine on July 10, 2014. (Ex. 2, p. 27) The reviewing radiologist listed an impression of mild broad-based disk bulges at L3-L4 and L5-S1 without significant central canal stenosis or foraminal narrowing, left paracentral disk protrusion T11-T12 with mild central stenosis, and degenerative disk-space narrowing at L3-L4 and L5-S1 with decreased disk signal. (Ex. 2, p. 28)

Schindel attended an appointment with Benson on July 18, 2014. (Ex. 2, p. 18) Benson discussed the imaging with Schindel and assessed Schindel with persistent low back pain with radiculitis, discontinued physical therapy, requested epidural steroid injections, prescribed gabapentin, ibuprofen, cyclobenzaprine, and tramadol, and ordered Schindel to remain off work. (Ex. 2, pp. 18-19) During a follow-up visit on September 12, 2014, Benson ordered physical therapy and noted Schindel would remain off work, with a goal of transitioning back to work in three to four weeks. (Ex. 2, pp. 25-26)

Fritz Swearingen, D.O., an anesthesiologist with Genesis Pain Management Center, examined Schindel on July 23, 2014. (Ex. 6, p. 75) Dr. Swearingen listed an impression of degenerative disk disease of the lumbar spine with focal disk protrusion at L3-L4 and L5-S1, and administered a lumbar epidural steroid injection. (Ex. 6, pp. 74-75)

On August 1, 2014, Schindel underwent an electromyography with Joseph Brooks, D.O., to assess Schindel's complaints of back pain with right lower extremity pain into her buttock and down her leg into the calf and foot. (Ex. 7, pp. 76-77) Dr. Brooks opined the results of the testing were normal. (Ex. 7, pp. 76-77)

During an appointment on September 15, 2014, Schindel's physical therapist noted that she might be able to benefit from breast reduction surgery. (Ex. 5, p. 70) Schindel scheduled an appointment with John Searles, M.D., a plastic surgeon, to inquire about breast reduction surgery. (Ex. 17) Dr. Searles submitted a request for prior authorization to Iowa Medicaid Enterprise noting the reason for the request was "hypertrophy of breast, back, neck and shoulder pain, shoulder, grooving rash." (Ex. 17, p. 182) Schindel testified Dr. Searles told her he believed her large breasts were contributing to or causing her back pain. (Tr., p. 49) Schindel acknowledged she had considered breast reduction surgery before her work injury at Casey's. (Tr., p. 72)

Todd Ridenour, M.D., a neurosurgeon with Genesis Neurosurgical Associates, examined Schindel on September 3, 2014. (Ex. 8, p. 78) Schindel complained of low back pain and right leg pain following her work injury. (Ex. 8, p. 78) Dr. Ridenour diagnosed Schindel with "[d]egenerative lumbar disc," degenerative lumbar spondylosis with "dark disc space changes L3-L4 and L5-S1, no clear cut surgical lesion." (Ex. 8, p. 80) Dr. Ridenour opined surgery would not offer Schindel help with her chronic low back pain and he recommended conservative management with weight loss, core stabilization, and strengthening. (Ex. 8, p. 80)

Rick Garrels, M.D., an occupational medicine physician with Genesis Occupational Health, examined Schindel on October 2, 2014, and assessed her with a lumbar strain and muscle spasms. (Ex. 4, pp. 29-30) Dr. Garrels noted Schindel "has a large chest for her height and I feel that that is probably playing into this as a factor for the chronicity of the symptoms a lot and she does say that she has a plastic surgeon addressing the issue at this point." (Ex. 4, p. 29) Dr. Garrels ordered Schindel to continue using her TENS unit, discontinued her therapy, prescribed morphine sulfate, and restricted Schindel from working. (Ex. 4, pp. 29-30)

Schindel returned to Dr. Garrels on October 16, 2014, complaining of back pain when standing for thirty minutes. (Ex. 4, p. 32) Dr. Garrels assessed Schindel with low back pain and imposed restrictions of lifting up to ten pounds occasionally, pushing/pulling up to twenty pounds occasionally, occasional bending and twisting, and to take a break from standing ten minutes every hour. (Ex. 4, p. 33) Dr. Garrels restricted Schindel from working for one week prior to starting light duty work. (Ex. 4, p. 33)

Schindel returned to work on October 27, 2014. (Ex. 4, p. 34) During her appointment the next day with Dr. Garrels, Schindel reported "it went 'all right.'" (Ex. 4, p. 34) Schindel reported she had constant bilateral pain in her lumbar region she rated as a six or seven out of ten, which was relieved with ice. (Ex. 4, p. 34) Dr. Garrels continued Schindel's restrictions, and prescribed cyclobenzaprine, ibuprofen, and tramadol. (Ex. 4, pp. 34-35) Dr. Garrels noted he recommended Schindel limit each garbage bag to stay within her restrictions if she is going to take garbage to the dumpster. (Ex. 4, p. 35) Schindel attended additional appointments with Dr. Garrels and he continued her restrictions. (Ex. 4, pp. 36-38B)

During Schindel's January 30, 2015 appointment Dr. Garrels noted that Schindel had relayed things were going well and she was able to perform her full job. (Exs. 2, p. 26A; 4, p. 38C) Dr. Garrels assessed Schindel with low back pain and noted, "I think a lot of her symptoms from a chronic standpoint are tied to her upper body weight distribution which hopefully she will address over time." (Exs. 2, p. 26A; 4, p. 38C) Dr. Garrels placed Schindel at maximum medical improvement and released her to full duty without restrictions, recommending "that for trash, that she needs to break it down into smaller amounts if she feels as though she cannot handle it or get somebody to help her if it is real heavy." (Exs. 2, pp. 26A-26B; 4, pp. 38C-40) Dr. Garrels prescribed tramadol, baclofen, amitriptyline, and ibuprofen. (Exs. 4, p. 26A; 4, p. 38C)

The Scott County Family YMCA ("YMCA") hired Schindel in January 2015, as a cook. (Exs. G; 14, p. 152) Schindel testified she worked full-time at Casey's from October 27, 2014, until she accepted her employment at the YMCA, and she voluntarily reduced her hours at Casey's to two days. (Tr., p. 52) Schindel reported she reduced her hours because she was on her feet too much, which was straining her back. (Tr., p. 52) Schindel testified that she complained to Lerch, her manager, that Casey's was not accommodating her restrictions and Lerch told her she would speak with the other employees. (Tr., pp. 52-53)

Lerch testified after Schindel returned to work Casey's accommodated her work restrictions by providing Schindel with a chair for sitting, and having the cashier pick up the dough bucket and place it into the cooler, take out the garbage if it was too full for Schindel, and pull products from the freezer. (Tr., pp. 80, 86-87) Schindel testified the cashiers were too busy to help her and she ended up having to move the dough herself. (Tr., pp. 89-90) Schindel testified after she spoke with Lerch the cashiers helped her sometimes and sometimes they did not. (Tr., p. 90) Lerch reported that after Schindel was released to full duty Schindel did not have any issues completing her job duties. (Tr., pp. 80-81)

Schindel testified after she started at the YMCA she worked approximately fourteen to sixteen hours per week for Casey's, and approximately twenty hours per week for the YMCA. (Tr., p. 68) Schindel testified her hours at Casey's were reduced further in February 2015 without reason. (Tr., p. 54) Lerch reported Schindel's hours were reduced further after Casey's received complaints about her customer service. (Tr., p. 87) Lerch testified she spoke with Schindel and told her she was reducing her hours because of her attitude. (Tr., p. 88) Schindel stated she received a write-up in March 2015 after a coworker complained about her and she refused to sign the discipline form and quit. (Tr., p. 55) Lerch reported Schindel was terminated. (Tr., p. 87) Schindel's last day of employment with Casey's was on March 9, 2015. (Ex. A)

At the YMCA Schindel had to wheel boxes of food and coolers of food for delivery. (Tr., p. 53) Schindel testified that at one daycare she had to carry a cooler, milk, and boxes down the steps. (Tr., p. 53) After working for the YMCA for about six months Schindel transferred to a child care position. (Ex. 14, p. 152) Schindel testified she transferred to a job in the daycare because the lifting and going up and down stairs became too much for her back. (Tr., p. 56) Schindel reported she did not work full-time

because it was too much on her back and she could not stand on her feet that long of a time. (Tr., p. 57) Schindel testified she did not have any difficulty working in the daycare because she was able to take breaks and sit down. (Tr., p. 58)

Schindel attended an appointment with Timothy Miller, M.D., a pain specialist on August 11, 2015, complaining of low back pain. (Ex. 9, p. 84) Dr. Miller documented Schindel denied having weakness, numbness, or any leg pain. (Ex. 9, p. 84) Dr. Miller noted Schindel's "MRI showed Annular tear at L5-S1 and otherwise normal. This may or may not have occurred at the time of the accident. This would have caused a temporary irritation. Patient was comfortable in the office sitting, standing and ambulation [*sic*]." (Ex. 9, p. 85) Dr. Miller diagnosed Schindel with a lumbar strain which would have resolved one to two months after the injury, and opined she was at maximum medical improvement and did not need any additional treatment. (Ex 9, p. 85)

The YMCA fired Schindel on April 19, 2016, for using her cellular telephone and recording video of the children in violation of company policy. (Ex. G, pp. 37, 39)

Robert Milas, M.D., a neurosurgeon, performed an independent medical examination of Schindel on May 3, 2016. (Ex. 11) Dr. Milas reviewed Schindel's medical records and examined her. (Ex. 11) After reviewing Schindel's magnetic resonance imaging, Dr. Milas noted Schindel had a "well defined central herniated disc at the T11-T12 level" and that her back pain is secondary to the herniated disc at that level. (Ex. 11, p. 102) Using Chapter 15, page 392, section 15.6 of the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Milas opined Schindel "would fit most properly under a DRE Thoracic Category III, which has an 18% permanent partial impairment of the whole person as defined in Table 15-4, Page 389." (Ex. 11, p. 102) Dr. Milas noted he knew of no further conservative measures that could improve Schindel's status and recommended Schindel be evaluated at a tertiary medical center. (Ex. 11, p. 102) Dr. Milas imposed a permanent ten pound lifting restriction with no bending or stooping, and opined the June 5, 2014 incident was the direct cause of the herniation at T11-T-12. (Ex. 11, p. 102)

On August 2, 2016, Dr. Garrels sent a letter to the defendants' counsel answering questions about the care he provided to Schindel, as follows:

> Q1: Can you confirm the treatment you provided Ms. Schindel was limited to the lower back, with radicular pain? Did you provide treatment for any other injuries or areas of the body?
>
> ANS – Our treatment of Ms. Schindel was limited only to her lower back with radicular pattern symptoms. No other areas of the body were treated.
>
> Q2: I have enclosed a copy of the invalid FCE, which was ordered by Dr. Miller in August of 2015, who was providing Ms. Schindel with pain

> management at the time. Can you review this report and advise whether it impacts your opinion with regard to the need for restrictions?
>
> ANS – This FCE does not impact my opinion with regard to the need for restrictions.
>
> Q3: Do you believe Ms. Schindel sustained a permanent injury as a result of her June 5, 2014 injury? If so, based on the 5th Edition AMA Guidelines, what impairment rating would you assign?
>
> ANS – No permanent injury was sustained. Using the AMA Guides, 5th Edition, a 0% impairment is assessed using [*sic*]
>
> Q4: Do you believe Ms. Schindel requires ongoing medical care related to the work incident of June 5, 2014 (e.g. medication refills)>
>
> ANS – No further medical care is indicated.

(Ex. 4, p. 41)

On August 3, 2016, Benson responded to a form letter from the defendants' counsel without providing comments. (Ex. 4, pp. 42-43) Benson agreed the care she provided to Schindel was limited to her lower back and accompanying radicular pain, the pain Schindel described to her during the course of treatment was consistent with lower lumbar issues, and while magnetic resonance imaging revealed issues at T11-T12, Schindel was asymptomatic and she believed it was an incidental finding. (Ex. 4, pp. 42-43)

Schindel's attorney posed additional questions to Dr. Milas, and he responded on September 8, 2016, as follows:

> Specifically, the questions centered around a disc defect at the T11-T12 level. In my report of May 3, 2016, I stated that I personally reviewed an MRI scan of the lumbar spine, dated July 10, 2014, and felt that there was a well-defined central herniated disc at the T11-T12 level. I reaffirm my statement and feel whether one calls that defect a herniated disc or a disc protrusion, the end result is the same. Specifically, that herniation/protrusion will exert force on the thecal sac and nerve roots that lie within the thecal sac and hence give pain in the thoracolumbar region.
>
> There may or may not be a specific radicular pattern to the pain. Also, the fact that the disc is defective allows a great deal of inflammatory substances such as cytokines, etc. to irritate the dural sac nerves at that level and also is a source of significant pain to the patient. Hence, I do feel that T11-T12 disc is a cause of pain to the patient and is responsible for a great deal of the symptoms of the patient.

(Ex. 11, p. 104)

Casey's and EMC retained Abdul Foad, M.D., an orthopedic surgeon, to perform an independent medical examination of Schindel in July 2016. (Exs. 12; 24) Dr. Foad reviewed Schindel's medical records and examined her. (Ex. 12, pp. 110-11) Dr. Foad opined,

> My diagnosis is chronic low back pain consistent with diffuse degenerative disc disease and spondylosis with mild facet arthropathy that is an incidental finding and the alleged work injury of 6/5/14 is not a substantial contributing factor to her development of low back pain or her current condition. In my opinion, her work place exposure did not aggravate, accelerate or precipitate (i.e. permanently aggravate) her pre-existing chronic low back spondylosis beyond normal progression. I agree with Dr. Garrels, Dr. Ridenour and Dr. Miller in that there is no discreet neurosurgical target in her case. She does not have thoracic radiculopathy. She simply has chronic low back pain that will continue to progress through natural progression with her weight as a significant contributing factor. Her EMG/NCV study was normal. Her physical exam today was essentially normal. Her MRI findings were not significant. She has failed to respond to multiple, usually reliable treatments of common diagnoses, which suggests in my opinion a nonorganic response to injury. She had an invalid FCE.

(Ex. 12, pp. 113-14) Dr. Foad opined Schindel has not sustained a permanent impairment to her lumbar and thoracic spine and noted,

> Even if one were to use the Criteria for Rating Impairment Due to Lumbar Spine Injury (Table 15-3) for the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, the claimant would still have a zero (0) percent impairment of the whole person as she has "no significant clinical findings, no observed muscle guarding or spasm, no documented neurological impairment (as it relates to her alleged work injury on 6/5/14), no documented alteration in structural integrity, no other indication of impairment related to injury; no fractures."
>
> With regards to her thoracic spine, the rating would also be zero (0) percent as this is not considered a substantial contributing factor to her condition of ill-being.
>
> I would not use the Guides for calculating range of motion in this particular case due to less poor effort and pain behaviors. Also, I would not use pain to rate impairment as this is subjective and I would define her pain as idiopathic.
>
> Based on the claimant's invalid FCE it is undeterminable to provide a safe objective maximum lifting capabilities and/or other functional restrictions. Again, she should not be precluded from any gainful employment.

(Ex. 12, p. 117)

Leroy Yates, M.D., a plastic surgeon, conducted an independent medical examination of Schindel for Casey's and EMC on December 5, 2016. (Ex. N) Dr. Yates reviewed Schindel's medical records and examined her. (Ex. N) Dr. Yates diagnosed Schindel with hyperlordosis of the lower spine, moderate kyphoscoliosis, morbid obesity, trapezius and thoracic paraspinal muscle spasms, costochondritis, and probable acute inflammatory right axillary lymphadenopathy. (Ex. N, p. 162) Dr. Yates opined Schindel's congenital hyperlordosis and kyphoscoliosis predisposed her to low back pain and she is morbidly obese. (Ex. N, pp. 169-70) Dr. Yates noted Schindel has very large breasts, and associated physical changes to her shoulders from her large breasts predating her employment with Casey's. (Ex. N, p. 169) Dr. Yates opined, "[a] reduction mastopexy may allow Ms. Schindel to lose 3-4 lbs. which will not alter the morbid obesity diagnosis or relieve her low back pain." (Ex. N, p. 169) Dr. Yates concluded Casey's should not be responsible for providing a reduction mastopexy, bariatric surgery, or weight management. (Ex. N, p. 170)

During the hearing Schindel testified her back hurts every day. (Tr., p. 49) Schindel reported she used to clean her house in a couple of hours and now "I can do, like, laundry one day, vacuuming another day, dusting is another day. It takes me a lot longer to do the things that I used to be able to do normally." (Tr., p. 49) Schindel noted she cannot bend and stoop without pain, and that she does not try to lift over ten pounds. (Tr., p. 50)

Schindel reported her back pain is mostly in her lower back, and she sometimes has back pain in her middle back. (Tr., p. 62) Schindel noted she experiences numbness in her left leg, and sometimes in her right leg after performing strenuous tasks including dusting, vacuuming, sweeping, and mopping. (Tr., p. 63)

CONCLUSIONS OF LAW

I. Nature and Extent of the Injury

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler

Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

> [I]t is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of the employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979). The parties stipulated Schindel sustained an injury on June 5, 2014, which arose out of and in the course of her employment with Casey's.

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, "[i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The deputy commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

Schindel avers she sustained permanent impairments to her thoracic and lumbar spine as a result of her work injury. She also requests breast reduction surgery and alternate care. Casey's and EMC deny Schindel sustained a work injury to her thoracic

spine, deny she sustained a permanent impairment to her lumbar spine as a result of her work injury, and contend they are not responsible for the alternate care and breast reduction surgery Schindel seeks.

When Schindel sought medical care on June 7, 2014, she complained of lower back pain. (Ex. 1, pp. 1-5) Schindel received treatment from Benson and Dr. Garrels, occupational medicine specialists, for her lumbar spine complaints. (Ex. 2) Schindel was also examined by Dr. Ridenour, a neurosurgeon, she received a lumbar epidural steroid injection from Dr. Swearingen, an anesthesiologist, and Dr. Brooks performed an electromyography, which was normal. (Exs. 6, pp. 74-75; 7, pp. 76-77; 8, pp. 78-80) On January 30, 2015, Dr. Garrels released Schindel to full duty without restrictions, noting "I think a lot of her symptoms from a chronic standpoint are tied to her upper body weight distribution which hopefully she will address over time." (Exs. 2, p. 26A; 4, p. 38C)

Drs. Garrels and Foad found Schindel did not sustain permanent impairment to her lumbar spine as a result of the June 5, 2014 work injury. (Exs. 4, p. 41; 12, pp. 114-16) No expert witness has opined Schindel has sustained a permanent impairment to her lumbar spine. Schindel has not met her burden of proof that she sustained a permanent impairment to her lumbar spine.

Schindel also contends she sustained a permanent impairment to her thoracic spine and she needs breast reduction surgery to alleviate her symptoms. Dr. Milas, a neurosurgeon retained by Schindel to perform an independent medical examination, opined Schindel's June 5, 2014 work injury was a direct cause of the T11-T12 herniation, and he assigned Schindel an impairment rating of eighteen percent, using Table 15-4 of the AMA Guides. (Ex. 11, p. 102) No other physician has opined the T11-T12 herniation is related to Schindel's work injury. I do not find Dr. Milas's opinion persuasive. Dr. Milas examined Schindel on one occasion for purposes of performing an independent medical examination only. Dr. Milas's report does not contain any finding of a neurological impairment in Schindel's lower extremities or other electrodiagnostic testing supporting his conclusion, required by Table 15-4, at page 389 of the AMA Guides.

Dr. Foad, an orthopedic surgeon, examined Schindel for purposes of an independent medical examination, opined Schindel's examination was normal, she does not have thoracic radiculopathy, and she had a normal electromyography study. (Ex. 12) Dr. Foad did not relate the T11-T12 herniation to Schindel's work injury. (Ex. 12) Dr. Milas does not discuss, explain, or distinguish the normal electromyography study in his opinion.

Schindel's medical records immediately following the June 5, 2014 work injury do not reference any discomfort or other problem with her thoracic spine. (Exs. 1; 2) The July 10, 2014 magnetic resonance imaging results are the first record discussing Schindel's thoracic spine. The imaging revealed mild broad-based disk bulges at L3-L4 and L5-S1 without significant central canal stenosis or foraminal narrowing, left

paracentral disk protrusion T11-T12 with mild central stenosis, and degenerative disk-space narrowing at L3-L4 and L5-S1 with decreased disk signal. (Ex. 2, p. 28)

Benson and Dr. Garrels, the treating occupational medicine providers who treated Schindel over the course of several months reported they treated Schindel's lumbar spine with accompanying radicular pain. (Ex. 2, pp. 41-3) Benson relayed the pain Schindel described to her was consistent with lower lumbar issues and while the imaging had revealed issues at T11-T12, Schindel was asymptomatic and she believed it was an incidental finding. (Ex. 2, pp. 42-43) Schindel has not met her burden of proof that she sustained a permanent injury to her thoracic spine as a result of the work injury.

Schindel avers Casey's and EMC should be responsible for paying for breast reduction surgery. Casey's and EMC contend Schindel's condition is not work-related. Dr. Searles diagnosed Schindel with hypertrophy of the breast with back, neck and shoulder pain, a rash, and shoulder grooving. (Ex. 17, p. 182) Dr. Searles has not offered an opinion that Schindel's work at Casey's has caused the above diagnoses. Schindel testified she had considered breast reduction surgery before her work injury at Casey's. (Tr., p. 72)

Dr. Yates, a plastic surgeon, conducted an independent medical examination of Schindel for Casey's and EMC, and found Schindel's large breasts and physical changes to her shoulders predated her employment with Casey's. (Ex. N, p. 169) Dr. Yates concluded any need Schindel has for a reduction mastopexy, bariatric surgery, or weight management is not related to her work injury or employment with Casey's. (Ex. N., p. 170) Casey's and EMC are not responsible for payment of a reduction mastopexy or for any ongoing care given Schindel has not sustained a permanent impairment.

II. Temporary Benefits

Schindel seeks temporary benefits from October 27, 2014, through January 30, 2015. Casey's and EMC aver Schindel is not entitled to additional temporary benefits in this case. Schindel did not address temporary benefits in her post-hearing brief.

Casey's and EMC paid Schindel temporary total disability benefits from June 8, 2014 through June 18, 2014, and July 8, 2014 through October 26, 2014, in the amount of $3,686.72. (Ex. D) Starting on October 27, 2014, Dr. Garrels released Schindel to return to work with restrictions. (Ex. 4, pp. 33-38b) On January 30, 2015, Dr. Garrels released Schindel to return to full duty without restrictions. (Ex. 4, pp. 38c-39)

Schindel testified she worked full-time for Casey's from October 27, 2014 through January 2015, when she voluntarily reduced her hours to two days. (Tr., p. 52) Schindel reported she reduced her hours because it was too much being on her feet and it was straining her back. (Tr., p. 52) Schindel testified that she complained to her manager, Lerch, that her restrictions were not being met and Lerch told her she would speak with the other employees. (Tr., pp. 52-53) Schindel noted that when she reduced her hours at Casey's she also had a part-time job as an assistant cook at the

YMCA. (Tr., p. 53) Schindel reported she worked approximately fourteen to sixteen hours at Casey's per week, and approximately twenty hours per week for the YMCA. (Tr., p. 68)

Lerch testified from October 27, 2014 through January 30, 2015, Casey's accommodated Schindel's restrictions and her hours were not reduced by Casey's. (Tr., p. 81) Lerch's testimony is supported through Schindel's wage records produced by Casey's. (Ex. B) Schindel did not produce any of her wage records from the YMCA. Schindel has not met her burden of proving she is entitled to additional temporary disability benefits.

III. Independent Medical Examination

Schindel seeks to recover the $695.00 charged by Dr. Milas for her independent medical examination. Casey's and EMC aver Schindel is not entitled to recover the cost of Dr. Milas's examination because no impairment rating had been issued prior to his examination, and he has not submitted an itemized bill for the examination and the report.

After receiving an injury, the employee, if requested by the employer is required to submit to examination at a reasonable time and place, as often as reasonably requested to a physician, without cost to the employee. Iowa Code § 85.39. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes the evaluation is too low, the employee "shall, upon application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choosing." Id.

Dr. Milas performed an independent medical examination of Schindel on May 3, 2016. Dr. Garrels and Benson had not provided an impairment rating prior to May 3, 2016, and there is no documentation a rating had been requested prior to May 3, 2016. In August 2015, Dr. Miller opined that Schindel's imaging would have caused a temporary irritation, which would have resolved in a month or two. Dr. Miller's opinion predates Dr. Milas's exam.

Schindel has not submitted a bill for the report. She submitted a bill for the examination only. Schindel is entitled to recover the cost of Dr. Milas's independent medical examination. Id.; Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846-47 (Iowa 2015) ("We conclude section 85.39 is the sole method for reimbursement of an examination by a physician of the employee's choosing and that the expense of the examination is not included in the cost of a report").

ORDER

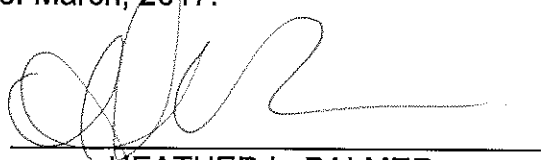
IT IS THEREFORE ORDERED, that:

Claimant shall take nothing in this case.

The defendants shall reimburse the claimant six hundred ninety-five and 00/100 dollars ($695.00) for the cost of Dr. Milas's independent medical examination.

Each party shall pay their own costs.

Signed and filed this 2nd day of March, 2017.



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HLP/srs

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.