BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LORI GILLELAND, Claimant, vs. FRES-CO SYSTEM USA, Employer, and VALLEY FORGE INSURANCE CO., Insurance Carrier, Defendants.	File Nos. 20009942.01 ARBITRATION DECISION Head Note Nos.: 1402.40, 1802
LORI GILLELAND, Claimant, vs. FRES-CO SYSTEM USA, Employer, and HARLEYSVILLE WORCHESTER INSURANCE COMPANY, Insurance Carrier, Defendants.	File Nos. 5061242.01 REVIEW-REOPENING DECISION Head Note Nos.: 1302.1, 1802, 2403, 2700, 2905

STATEMENT OF THE CASE

Lori Gilleland, claimant, filed a review-reopening petition on February 24, 2020, for a low back injury she sustained on July 14, 2015, while working for Fres-Co System USA, employer. At that time, Fres-Co was insured by Harleysville Worchester Insurance Company (Harleysville Worchester).

On October 22, 2020, claimant filed a petition in arbitration asserting a second injury occurred at Fres-Co on February 18, 2020. On the date of the alleged second injury, Fres-Co was insured by Valley Forge Insurance Company (Valley Forge).

The petitions came before the undersigned for an evidentiary hearing on September 10, 2021, via CourtCall. The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 17. Claimant testified on her own behalf. Defendant Harleysville Worchester called Jason Landess to testify. The evidentiary record closed at the conclusion of the September 10, 2021, hearing. The case was considered fully submitted to the undersigned on October 15, 2021.

ISSUES

The parties submitted the following disputed issues for resolution:

File No. 5061242.01:

1. Whether there was an economic or physical change from the original settlement which warrants a review-reopening;
2. Whether the alleged change of condition caused temporary disability and, if so, the extent of claimant's entitlement to temporary total, or healing period, benefits;
3. Whether the alleged change of condition caused permanent disability and, if so, the extent of claimant's entitlement to additional permanent partial disability benefits;
4. Whether claimant is entitled to reimbursement of medical expenses;
5. Whether defendants are entitled to credit under Iowa Code section 85.38(2); and
6. Costs.

File No. 20009942.01:

1. Whether the injury was the cause of some temporary disability, and if so, the extent of that temporary disability;
2. Whether the claimant sustained any permanent disability, and if so, the extent of that permanent disability;
3. Whether claimant is entitled to reimbursement of medical expenses;
4. Whether claimant is entitled to alternate medical care under Iowa Code section 85.27; and
5. Costs.

FINDINGS OF FACT

At the time of the evidentiary hearing, Ms. Gilleland was a 45-year-old individual living in Elliott, Iowa. (Hearing Transcript, page 11) She graduated from high school in 1996. She did not seek any post-secondary education. (Id.)

Following graduation, claimant first obtained employment with Romech, a manufacturing plant in Red Oak, Iowa, that specialized in making car seat adjusters. Claimant worked in a general production capacity with Romech for ten years until the plant closed in approximately 2007. (Hr. Tr., p. 12) After Romech closed, claimant began working as a packer for the defendant employer. After approximately two years, claimant accepted a new position with the defendant employer as a slitter operator. (Hr. Tr., p. 13) Claimant worked as a slitter operator until she was terminated in September 2020. As a slitter operator, claimant was responsible for preparing rolls for shipment to customers. (Joint Exhibit 12, page 1) As claimant explains, there is a master roll that is slit into six or seven different segments by a machine. Claimant's job involves cutting out the bad material that is left over after the master roll progresses through the machine. (Joint Exhibit 10, Deposition Transcript pages 9-10) Claimant characterized her work as physically demanding. (Hr. Tr., p. 14)

On July 14, 2015, the date of the first injury, claimant was moving a roll from one cart to another when she sustained an injury to her low back. According to claimant, the second cart unexpectedly moved causing the roll she was holding to fall forward, straining her low back. (See JE7, p. 2) Claimant experienced a sharp pain in her lower back and left leg. (See JE7, p. 2) Ms. Gilleland reported the injury to the defendant employer; however, she did not immediately seek medical treatment through the workers' compensation system. Claimant continued to work as a slitter operator for the defendant employer while she received medical treatment.

At hearing, claimant testified she had not experienced any low back problems prior to July 14, 2015. (Hr. Tr., p. 15) However, the contemporaneous medical records do not support claimant's testimony. In late June and early July 2015, claimant presented to Claudia Balta, PA-C and Huy Trinh, M.D. with reports of, "ongoing progressive low back pain for years." (JE2, p. 3; see JE5, p. 1) Claimant reported that the pain in her low back had gotten worse over the past year. (JE2, p. 3) According to claimant, the pain radiated into her buttock and thighs. (Id.) It is noted that claimant was already taking Hydrocodone for her low back pain. (JE5, p. 1) The early medical records also note comorbidities of diabetes and peripheral neuropathy. (JE2, p. 3; JE5, p. 1)

Claimant presented to Dr. Trinh on the date of her first injury. Ultimately, Dr. Trinh diagnosed claimant with chronic disabling low back pain and severe degenerative disk disease at L5-S1. (JE2, p. 3) He referred claimant to physical therapy and recommended she cut back on the amount of hours she was working. (JE2, p. 4) When claimant's low back and intermittent radiating pain in the bilateral buttocks and posterior thigh persisted, Dr. Trinh ordered an MRI of the lumbar spine. (JE2, p. 5)

The MRI, dated September 16, 2015, revealed a mild disc bulge with annular tear at L4-L5, and a disc bulge at L5-S1 with a superimposed protrusion contacting and displacing the traversing S1 nerve roots. (JE2, pp. 6-7) Claimant's injury was treated conservatively with pain medication and physical therapy. It appears Dr. Trinh discussed the possibility of claimant undergoing a lumbar fusion; however, Dr. Trinh felt claimant was better off taking pain medications as a lumbar fusion could involve more than one level. (See JE2, p. 12)

Dr. Trinh eventually placed claimant at maximum medical improvement (MMI) for the July 14, 2015, work injury on March 8, 2016. (JE2, p. 13) He would later assign 5 percent permanent impairment and recommend permanent limitations of working no more than 10 hours per day and 5 days per week. (JE2, p. 13; JE9) The defendant employer was able to accommodate claimant's restrictions.

After being released by Dr. Trinh, the defendant employer and Harleysville Worchester scheduled claimant for an independent medical examination with Ian Crabb, M.D. (JE7) The IME took place on March 7, 2017. (JE7, p. 2) Claimant continued to report ongoing low back pain with radiating pain into the left leg. (Id.) Dr. Crabb concluded that claimant sustained an exacerbation of her pre-existing lumbar spine arthritis on July 14, 2015. (JE7, p. 3) The IME report provides that claimant was not a surgical candidate at the time. (Id.) Ultimately, Dr. Crabb assigned 5 percent whole person impairment and recommended that claimant continue to limit her work hours. (JE7, p. 4)

Shortly thereafter, claimant and Harleysville Worchester settled for the equivalent of 10 percent industrial disability. (JE17) The parties settled the case on an agreement for settlement basis. The agreement was approved by this agency on April 11, 2017. (JE17, p. 3)

In November 2017, claimant presented to Brian Couse, M.D., with complaints of persistent low back pain. Claimant reported she was still in quite a bit of pain and wondered if adding an anti-inflammatory medication could help. Dr. Couse diagnosed claimant with chronic low back pain and wrote her a prescription for Meloxicam. (JE5, p. 8) He also authorized claimant's pain contract for another six months. (Id.)

Claimant presented to Dr. Couse for routine medication check-ups on June 22, 2018, January 4, 2019, and August 23, 2019. (JE5, pp. 10-15) The records from these appointments do not note any significant changes in claimant's low back condition. (See id.) Dr. Crouse continued to fill claimant's hydrocodone prescriptions. (Id.)

In approximately September 2019, claimant sought a follow-up appointment with Dr. Trinh. (See JE10, Depo. pp. 35-36) In doing so, claimant discovered that Dr. Trinh had retired. Due to Dr. Trinh's retirement, claimant's care was transferred to Pedro Ricart-Hoffiz, M.D. (See JE1, p. 1)

Claimant first presented to Dr. Ricart-Hoffiz on September 30, 2019, with complaints of "progressively worsening low back and bilateral leg pain for the past 3

years." (JE1, p. 1) Claimant detailed the initial work injury to Dr. Ricart-Hoffiz; however, Dr. Ricart-Hoffiz mistakenly noted that the injury occurred in 2016. (Id.) She described her pain as a worsening dull ache, with sharp pain at times that radiated into her bilateral legs and posterior thighs. (Id.) Claimant noticed her pain was at its worst at the end of the day, when she traversed stairs, stood for too long, sat for too long, or when she was walking. (Id.) Following his physical examination, Dr. Ricart-Hoffiz diagnosed claimant with "Acute on chronic back pain, muscle strain" and degenerative disc disease at L5-S1. (JE1, p. 2) Based on claimant's perceived abilities, Dr. Ricart-Hoffiz agreed to reduce the amount of hours claimant could work in a given day from 10 hours to 8 hours. (Id.) The medical record ends with a note that Dr. Ricart-Hoffiz and claimant had a lengthy discussion about lifestyle modifications that claimant would need to make if she ever considered surgical intervention. (Id.)

Claimant reluctantly[1] participated in physical therapy from October 16, 2019, through November 18, 2019. (See JE2, pp. 15-24) During her initial session, claimant told her physical therapist that her back pain had progressively worsened since the July 14, 2015, work injury. (JE2, p. 15) Claimant reported that her goal for physical therapy was to "make the insurance company happy." (Id.) Claimant did not see significant improvement through physical therapy. (JE2, p. 23)

Claimant returned to Dr. Ricart-Hoffiz on December 2, 2019, with complaints of pain in her low back, buttocks, and posterior thighs. (JE1, p. 4) Claimant expressed that her pain medications were the driving force behind her ability to tolerate daily activity. (Id.) Dr. Ricart-Hoffiz held his diagnoses constant and referred claimant on for an MRI of the lumbar spine. (Id.) At her deposition, claimant testified Dr. Ricart-Hoffiz ordered the MRI because her back pain was not getting any better. (JE10, Depo. p. 37) When asked if she attributed her worsening back pain to anything in particular, claimant responded, "Well, I believe it was just my back just kept hurting worse and worse. I mean, that's it." (JE10, Depo. p. 38) She further testified that the pain she was experiencing in December 2019 was not any different from the pain she had been experiencing previously. (JE10, Depo. p. 36)

The December 5, 2019, MRI revealed mild/moderate multilevel degenerative changes, significant at L3-4, L4-5, and L5-S1 degenerative disc disease, a small/medium sized disc protrusion at L5-S1, a small/medium sized disc protrusion at L4-L5, and mild/moderate foraminal stenosis. (JE6, p. 2; see JE1, p. 5)

Dr. Ricart-Hoffiz reviewed the MRI with claimant on December 19, 2019. (JE1, p. 5) Claimant presented to the appointment with low back and bilateral buttock, right greater than left, pain. (Id.) Dr. Ricart-Hoffiz explained to claimant that her symptoms were likely related to the disc herniation at L4-L5 and L5-S1. (Id.) To address claimant's symptoms, Dr. Ricart-Hoffiz recommended a series of two epidural injections, one at L5-S1 and one at L4-L5 to determine the main pain generator. Following the

[1] See JE1, p. 2 ("She would like to hold off [on physical therapy]."); JE2, p. 15 ("Patient's stated physical therapy goal is to 'make the insurance company happy.'")

recommended injections, Dr. Ricart-Hoffiz intended to discuss operative and non-operative options with claimant. (Id.)

Then, on February 18, 2020, claimant sustained what she believed to be a new work injury to her low back. (JE12, p. 13; see JE2, p. 14) Claimant was picking material up off the floor when she felt some tightness in her low back. Claimant estimated that the pieces of material weighed between 20 and 25 pounds. (See JE4, p. 3) According to claimant, the tightness in her lower back increased over the course of the next several hours. (JE12, p. 14) Nevertheless, claimant worked the remainder of her shift. Once home, claimant called the defendant employer and reported the injury. (See JE12, p. 13)

At the time of the February 18, 2020, work injury, the defendant employer was insured by Valley Forge Insurance Company. Valley Forge admits liability for a February 18, 2020, injury, but assert the injury only amounted to a temporary exacerbation of claimant's underlying and pre-existing low back condition.

After reporting the injury to defendants, claimant presented to Rhonda Purdy, ARNP at Heartland Occupational Medicine. (JE2, p. 14) According to Ms. Purdy's medical notes, "She says this is where it hurt previously. She repeatedly said this was the exact same pain." (JE4, p. 3) At the appointment, claimant reported a pain level of 2 out of 10; however, she stated that her pain would increase to 6-8 out of 10 by the end of a workday. (Id.) Because claimant was already taking hydrocodone, meloxicam, and gabapentin, Ms. Purdy did not want to prescribe any additional medication. As such, Ms. Purdy simply referred claimant back to Dr. Ricart-Hoffiz as he was "already treating her for this same pain." (JE2, pp. 14, JE4, p. 5)

Claimant returned to Dr. Ricart-Hoffiz's office for a follow-up appointment on March 30, 2020. (JE1, p. 6) Claimant described her pain as a dull, constant ache that radiated into, but not past, her buttocks. (Id.) Dr. Ricart-Hoffiz again diagnosed claimant with acute on chronic back pain, muscle strain, lumbar disc herniation at L4-L5 and L5-S1, and degenerative disc disease at L3-S1. (Id.) Dr. Ricart-Hoffiz opined that claimant's symptoms were likely an exacerbation of her pre-existing injury. He recommended claimant briefly discontinue meloxicam and switch to taking Tylenol on a daily basis. (JE1, p. 7) Dr. Ricart-Hoffiz planned on reevaluating claimant's condition after one month, at which point he would, "recommend [the] same epidural injection as previous[.]" (Id.)

On April 23, 2020, Dr. Ricart-Hoffiz met with claimant and discussed non-operative options. (JE1, p. 8) Claimant relayed that she was interested in the epidural steroid injections that Dr. Ricart-Hoffiz had previously recommended. Again, Dr. Ricart-Hoffiz recommended two injections, with one at L4-L5 and another one at L5-S1 to determine which one improved her pain more. Dr. Ricart-Hoffiz opined that claimant's symptoms were likely related to the disc herniation at L4-L5 and L5-S1, which was causing mild to moderate neurogenic claudication type symptoms versus radiculopathy. This is the same opinion Dr. Ricart-Hoffiz expressed on December 19, 2019, approximately two months prior to the alleged February 2020 injury. (JE1, p. 5)

Pain specialist, Peter Piperis, M.D., examined claimant for the first time on June 2, 2020. (JE3, p. 1) At the time of the evaluation, claimant was back to reporting that her pain was worse on the left side. (Id.) Dr. Piperis reviewed claimant's December 2019 MRI and noted a near total loss of disc height at L5-S1, as well as displaced descending right S1nerve at L5-S1 due to a right paracentral disc protrusion. (JE3, p. 6) Given the lack of response to conservative treatment, Dr. Piperis recommended an ESI at L5-S1. (Id.) Dr. Piperis administered the ESI at L5-S1 on June 16, 2020. (JE3, p. 8)

When the ESI did not provide claimant with any relief, Dr. Ricart-Hoffiz met with claimant to discuss both operative and nonoperative options at length. (JE1, p. 9) More specifically, the two discussed a right-sided L4-L5 and L5-S1 laminotomy and discectomy. (Id.) The pair would later discuss both fusion and non-fusion procedures. (JE1, p. 13) Because claimant was hesitant to pursue surgical intervention, Dr. Ricart-Hoffiz recommended she present for another ESI with Dr. Piperis. (JE1, p. 9)

Claimant was subsequently scheduled to participate in an independent medical examination ("IME") with Peter Cimino, M.D. (JE8) The evaluation occurred on August 6, 2020. (JE8, p. 1) During the interview, claimant reported low back pain, slightly more on the right than the left. (Id.) She denied any symptoms below the knee in either leg; however, she did reference some radiating pain in her right thigh. (Id.)

Following his records review, interview, and examination, Dr. Cimino diagnosed claimant with chronic lumbar degenerative disc syndrome. He characterized the February 18, 2020, work injury as a temporary aggravation. (JE8, p. 2) He placed claimant at MMI for the February 18, 2020, aggravation and opined there is no permanent impairment specific to the February aggravation. (JE8, p. 3) Dr. Cimino opined that the chronic condition is not likely to show any substantial improvement based on his review of the medical records and radiographic findings. (JE8, p. 2) He deferred to claimant's treating physician on any additional medical treatment. (Id.)

In a September 3, 2020, report, Dr. Ricart-Hoffiz noted that claimant had received an ESI, participated in physical therapy, and had been prescribed multiple medications. (JE1, p. 11) Dr. Ricart-Hoffiz opined that claimant had reached a plateau with respect to conservative care. (Id.) Claimant eventually expressed interest in surgical intervention. (JE1, pp. 11, 13)

Claimant's counsel penned a letter to Dr. Ricart-Hoffiz, requesting updated opinions, on or about April 26, 2021. (See JE1, p. 15) After analyzing and comparing the lumbar MRIs performed on December 5, 2019, and April 7, 2021, Dr. Ricart-Hoffiz opined that the April 7, 2021, MRI revealed no significant changes. (JE1, p. 17) Based on the lack of significant changes, Dr. Ricart-Hoffiz opined that claimant likely sustained an exacerbation of her pre-existing disease on February 18, 2020. (Id.) When asked what medical care claimant needed as a result of the February 2020 date of injury, Dr. Ricart-Hoffiz noted, "Since injury sustained in February, an exacerbation of her pre-existing condition which went back to her injury at work in 2016.Ongoing conservative management has not improved. At this point, we are recommending a right L4-5 and L5-S1 laminotomy and discectomy." (Id.) Lastly, Dr. Ricart-Hoffiz provided that during

the exacerbation of her symptoms, claimant should remain on temporary restrictions. (Id.)

After reviewing claimant's updated medical records, Dr. Cimino reaffirmed his initial opinions in a July 19, 2021, letter to defendant Valley Forge. He further opined that the right L4-L5 and L5-S1 laminotomy and discectomy would be a reasonable approach to addressing the natural progression of claimant's degenerative low back condition. (JE8, p. 4)

Ms. Gilleland continues to complain of worsening low back pain, with radiating pain in her groin and leg. (Hr. Tr., p. 34) Claimant is currently unemployed. (Hr. Tr., p. 33) She has not worked or looked for alternative employment since being terminated by the defendant employer in September 2020. (Hr. Tr., p. 38) Claimant asserts she is unable to work in her current condition; however, such an assertion is not supported through medical evidence.

All parties agree that the claimant has a back injury but dispute who is responsible for her current condition. The primary question to resolve is whether the low back condition and the need for surgical intervention arises out of the original 2015 injury or out of a new 2020 injury.

The parties to File No. 5061242.01, date of injury July 14, 2015, dispute whether there has been a change in condition since the agreement for settlement approved by this agency on April 11, 2017, that might entitle claimant to additional benefits under a review-reopening. As part of defendants' argument on review-reopening, defendant Harleysville Worchester asserts claimant's current condition and the need for surgical intervention are causally related to the February 18, 2020, work injury. Claimant asserts the same argument in File No. 20009942.01.

In support of her contention that the current low back condition and need for surgery are causally related to the February 18, 2020, work injury, Ms. Gilleland relies upon the medical opinions of Dr. Ricart-Hoffiz. According to Ms. Gilleland, Dr. Ricart-Hoffiz unequivocally states that her acute on chronic back injury which occurred on February 18, 2020, resulted in the disc herniations at levels L4-5 and L5-S1[.]" (Claimant's Post-Hearing Brief, Page 7) Claimant's assertion is not supported by the evidentiary record.

Dr. Ricart-Hoffiz did not opine that the February 18, 2020, injury resulted in the disc herniation at L4-5 and L5-S1. While Dr. Ricart-Hoffiz explained to claimant that her symptoms were likely related to the disc herniation at L4-L5 and L5-S1, he provided said explanation over two months prior to the February 18, 2020, work injury. (JE1, p. 5) The diagnosis of disc herniation at L4-5 and L5-S1 stems from an MRI report dated December 5, 2019. (JE6, p. 2) Moreover, Dr. Ricart-Hoffiz later opined the April 7, 2021, MRI revealed no significant changes when compared to the December 5, 2019, MRI report. (JE1, p. 17) Such an opinion supports a finding that the February 18, 2020, work injury did not significantly worsen or materially aggravate the disc herniation present on the December 5, 2019, MRI report.

Claimant further asserts that Dr. Ricart-Hoffiz, through his final report, "seems to be saying" the February 18, 2020, work injury materially aggravated or accelerated claimant's pre-existing condition to the point that she now needs surgery. (Claimant's Post-Hearing Brief, Page 6) I do not reach the same conclusion after analyzing Dr. Ricart-Hoffiz's medical records and his final report. Despite it being a central issue to both claims, the April 26, 2021, letter to Dr. Ricart-Hoffiz did not ask him to opine on whether the February 18, 2020, work injury permanently and materially aggravated, or accelerated, claimant's pre-existing condition. While it is true that Dr. Ricart-Hoffiz opined claimant sustained an exacerbation of her pre-existing condition on February 18, 2020, Dr. Ricart-Hoffiz never opined or implied that the exacerbation was permanent in nature.

When claimant's care was initially transferred to Dr. Ricart-Hoffiz in September 2019, Dr. Ricart-Hoffiz documented that claimant had experienced progressively worsening low back and bilateral leg pain for three years. (JE1, p. 1) Dr. Ricart-Hoffiz restricted claimant to working 8 hours per day and referred her to physical therapy. (JE1, p. 2) When physical therapy proved unhelpful, Dr. Ricart-Hoffiz ordered an MRI of the lumbar spine "for further evaluation and determining if any other options for pain relief." (JE1, p. 4) Prior to the February 18, 2020, date of injury, Dr. Ricart-Hoffiz reviewed the December 5, 2019, MRI report and opined claimant's symptoms of low back and bilateral buttocks, right greater than left, pain were likely related to a disc herniation at L4-L5 and L5-S1. (JE1, p. 5) Given this assessment, Dr. Ricart-Hoffiz recommended claimant receive a series of epidural steroid injections. He further stated, "after those 2 injections we will discuss operative and nonoperative options." It is clear surgical intervention was a possibility prior to the February 18, 2020, work injury. (See JE1, p. 2; see also id.)

Importantly, Dr. Ricart-Hoffiz's treatment plan did not drastically change when claimant reported the February 18, 2020, work injury to him on March 30, 2020. Following the March 30, 2020 appointment, Dr. Ricart-Hoffiz's impressions relating to claimant's lumbar spine remained the same. (JE1, p. 6) In other words, Dr. Ricart-Hoffiz's diagnoses did not change following the February 18, 2020, work injury. While Dr. Ricart-Hoffiz recommended monitoring claimant's exacerbation for one month, he expressed a clear intention to follow his initial treatment plan. (See JE1, p. 7) Approximately one month later, Dr. Ricart-Hoffiz moved forward with the recommendations he originally made on December 19, 2019. (JE1, p. 5) On December 19, 2019, Dr. Ricart-Hoffiz provided,

> I would like her to get a series of 2 epidural injections, one at L5-S1 and the second one at L4-L5 for determination of contribution and after those 2 injections we will discuss operative and nonoperative options.

(JE1, p. 5) Claimant received an injection on June 16, 2020. (JE3, p. 8) On June 29, 2020, Dr. Ricart-Hoffiz and claimant "discussed operative and nonoperative options at length." (JE1, p. 9)

The structuring of Dr. Ricart-Hoffiz's final report also renders claimant's conclusion unlikely. Logically speaking, it would make little sense for Dr. Ricart-Hoffiz to find claimant sustained a material exacerbation of her pre-existing condition based on diagnostic imaging that revealed no objective changes when compared to an MRI obtained immediately prior to the February 18, 2020, injury. The report further provides, "During exacerbation of symptoms, the patient should remain on temporary restrictions so as to not exacerbate her symptoms." (JE1, p. 17) It would make little sense to assign temporary restrictions for the duration of the exacerbation if he had determined the exacerbation was decidedly permanent.

Given the above analysis, it would be difficult to conclude Dr. Ricart-Hoffiz "seems to be saying" the February 18, 2020, work injury permanently and materially exacerbated or aggravated claimant's pre-existing condition.

Dr. Cimino expressly opined that claimant sustained only a temporary aggravation of her pre-existing, chronic low back condition on February 18, 2020. (JE8, pp. 2, 4) Claimant asserts Dr. Cimino changed his opinion following Dr. Ricart-Hoffiz's final report. Again, I do not reach the same conclusion. In his initial IME report, Dr. Cimino opined that claimant sustained a temporary aggravation to her chronic lumbar degenerative disc syndrome on February 18, 2020. (JE8, p. 2) He further opined that claimant reached MMI for said temporary aggravation on August 6, 2020. (Id.) Dr. Cimino then discussed permanent restrictions and additional medical treatment with respect to claimant's chronic low back condition. (Id.) Dr. Cimino specifically noted that the low back degenerative condition had "been in existence for many years prior to the accident of 02/18/2020." (JE8, p. 3) He did not discuss permanent work restrictions and additional medical treatment with respect to the temporary aggravation sustained on February 18, 2020. (Id.) In his supplemental report, Dr. Cimino reviewed claimant's updated medical records and confirmed his initial opinions. (JE8, p. 4) He also expressly opined the reason for surgery is the natural progression of claimant's degenerative low back condition. (JE8, p. 4)

Dr. Cimino's opinions are logical, easy to follow, and consistent with the evidentiary record as a whole. I find his opinions convincing. As such, I accept the opinions of Dr. Cimino. I also accept the opinions of Dr. Ricart-Hoffiz to the extent they are consistent with and support the opinions of Dr. Cimino.

The expert opinions in this case do not support a finding that the February 18, 2020, work injury permanently and materially aggravated or exacerbated claimant's degenerative low back condition. No physician, including Dr. Ricart-Hoffiz, has opined that the February 18, 2020, work injury materially aggravated, accelerated, or lit up claimant's pre-existing low back condition.

Having accepted the expert medical opinions of Dr. Cimino, and after considering the evidentiary record as a whole, I find claimant failed to prove by a preponderance of the evidence that the February 18, 2020, injury materially aggravated, accelerated, or lit up her pre-existing low back condition or the need for surgical intervention.

Defendant Harleysville Worchester next asserts claimant failed to present evidence showing her current low back condition and need for surgical intervention are causally related to the original 2015 work injury. Defendant Harleysville Worchester relies on the expert medical opinions of Dr. Cimino to assert claimant's need for surgery is causally related to her underlying, pre-existing degenerative spine condition and not the July 14, 2015, work injury.

While defendant is entitled to dispute whether the condition claimant currently complains of is causally connected to the previously established work injury, it is not entitled to re-litigate the original work injury.

In the agreement for settlement, the parties stipulated claimant sustained an injury to her low back on July 14, 2015, which permanently and materially aggravated claimant's degenerative low back condition. As a result of this settlement, defendants are liable for all consequences that naturally and proximately flow from the original injury. Theoretically, defendant could have argued that claimant's pre-existing, degenerative low back condition would have progressed and required the recommended surgical interventions even if no injury had occurred on July 14, 2015; however, defendant did not introduce an expert opinion to support such an argument.

The evidentiary record contains two expert opinions on claimant's need for surgery. Both expert opinions in this case support a finding that claimant's degenerative low back condition and the need for surgery relates back to the original work injury occurring on July 14, 2015. Dr. Cimino opined that the need for surgery stems from the natural progression of claimant's degenerative low back condition. (JE8, p. 4) Dr. Ricart-Hoffiz related the need for surgery to claimant's condition reaching a plateau with respect to conservative care. (JE1, pp. 11, 17) In his final report, Dr. Ricart-Hoffiz noted that claimant's degenerative condition relates back to the July 14, 2015, work injury. (JE1, p. 17)

The evidentiary record as a whole supports Dr. Cimino's opinion that the need for surgery stems from the natural progression of claimant's degenerative low back condition.

Claimant returned to full duty work following the 2015 injury; however, she did so with a limitation on the number of hours she could work. Initially, claimant was limited to working 10-hour days up to 5 days per week. Then, in 2019, claimant's limitation changed to only working 8-hour days. Aside from the limitation on the number of hours she could work, claimant was engaged in her regular job duties, without accommodations, between July 2015 and September 2020.

At the time claimant was released from care for the July 14, 2015, work injury, she was taking two hydrocodone pills per day. According to claimant, the medication kept her functional. (JE2, p. 12) If she was not taking the medication, her pain levels could go as high as 9-10 out of 10. (Id.) She did not exhibit any radicular symptoms, except for the numbness in her feet and legs, which was attributed to her diabetic neuropathy. (Id.) Dr. Trinh believed claimant was better off taking a conservative

approach to dealing with her low back pain as opposed to pursuing a lumbar fusion surgery. (Id.)

Claimant consistently presented for medical treatment related to her persistent low back pain between April 11, 2017, and the February 28, 2020, work injury. (See JE5) The medical records from this period of time do not describe any abrupt changes in claimant's low back condition. (See JE5, pp. 10-15; JE1, p. 1; JE2, p. 15)

In September 2019, claimant presented to Dr. Ricart-Hoffiz with complaints of low back and bilateral leg pain that, according to claimant, had been progressively worsening for the past three years. (JE1, p. 1) Claimant similarly told her physical therapist that her back pain had progressively worsened since the 2015 work injury. (JE2, p. 15) There is no indication that anything prompted claimant's request for a follow-up appointment with orthopedics. Claimant confirmed the same at her deposition. (JE10, Depo. p. 36) Ms. Gilleland testified that she was not having any additional problems at the time. She stated, "My back just was not getting any better" and "I believe it was just my back just kept hurting worse and worse. I mean, that's it." (JE10, Depo. pp. 37-38)

Between the September 30, 2019 appointment, and Dr. Ricart-Hoffiz's recommendation for surgery, claimant sustained an accepted work injury on February 18, 2020. However, there is little evidence the February 18, 2020, work injury materially aggravated claimant's low back condition to the point where she now requires surgery. Dr. Ricart-Hoffiz's diagnoses did not change following the February 18, 2020, work injury. He did not alter his December 2019 treatment plan or immediately recommend surgery following the February 18, 2020, work injury. Dr. Ricart-Hoffiz opined the April 7, 2021, MRI revealed no significant changes when compared to the December 5, 2019, injury MRI. No physician, including Dr. Ricart-Hoffiz, has opined that the February 18, 2020, work injury materially aggravated, accelerated, or lit up claimant's pre-existing low back condition.

The evidentiary record as a whole supports Dr. Cimino's opinion that claimant's need for surgery stems from the natural progression of the degenerative spine condition. Dr. Ricart-Hoffiz has opined that claimant's degenerative condition relates back to the initial work injury. Defendant Harleysville Worchester offers no evidence of an intervening injury or a change in circumstance to show claimant's degenerative low back condition is no longer causally related to the July 14, 2015, work injury.

At the time of the April 2017 Agreement for Settlement, it was determined that claimant was not a surgical candidate. The agreement for settlement contemplated future medical treatment. While the same was not recommended at the time, Dr. Trinh discussed the possibility of surgical intervention with claimant. Today, Dr. Ricart-Hoffiz has recommended a right L4-5 and L5-S1 laminotomy and discectomy, and Dr. Cimino believes such a recommendation is reasonable. Claimant is now a surgical candidate. As such, I find that claimant has carried her burden of proof to show a change in condition has occurred since the time of the 2017 agreement for settlement. I further find that claimant's current low back condition remains causally related to the initial work

injury. There has been no intervening injury and Dr. Cimino has expressly opined that the need for surgery is due to the natural progression of claimant's degenerative low back condition.

Ms. Gilleland next seeks an order for alternate medical care and specifically requests an order requiring defendants to authorize Dr. Ricart-Hoffiz as claimant's authorized treating physician. Claimant's request for alternate medical care is granted. Claimant is entitled to further medical benefits on review-reopening in the form of surgery as recommended by Dr. Ricart-Hoffiz. Defendant Harleysville Worcester will be ordered to authorize treatment with Dr. Ricart-Hoffiz as a treating physician and pay for causally related future medical care.

Ms. Gilleland is also seeking payment of the medical expenses contained in Joint Exhibit 15. No physician has opined that the medical treatment claimant received on September 3, 2020, December 3, 2020, or April 7, 2021, is causally related to the February 18, 2020, work injury. From my review of the record, it appears claimant received medical treatment consistent with her degenerative low back conditions on these dates. As such, I find claimant is entitled to reimbursement of the medical expenses contained in Joint Exhibit 15 as is relates to File No. 5061242.01 only.

The next issue to be addressed is claimant's entitlement to temporary disability benefits. More specifically, Ms. Gilleland is seeking a running award of healing period benefits commencing September 10, 2020.

Having accepted Dr. Cimino's opinion that claimant reached MMI for the February 18, 2020, temporary exacerbation on August 6, 2020, and acknowledging that claimant's temporary restrictions were assigned prior to the February 18, 2020, work injury, I find claimant is not entitled to a running award of healing period benefits as it relates to File No. 20009942.01.

Ms. Gilleland did not miss work as a result of her injuries. That being said, Dr. Ricart-Hoffiz reduced the number of hours she could work from 10 to 8 hours in September 2019. Claimant continued to work as a slitter operator under the 8-hour temporary restriction until she was terminated on September 9, 2020. (See Hr. Tr., p. 52) Claimant was terminated for violating a last chance agreement for poor work performance and lack of teamwork. (Hr. Tr., pp. 58-59) There is no evidence that the temporary restriction had been lifted prior to the September 10, 2021, hearing.

According to Ms. Gilleland, the medical records of Dr. Ricart-Hoffiz make it clear that she is unable to return to the kind of work she performed for the defendant employer until after she undergoes surgical intervention. The evidentiary record does not support Ms. Gilleland's assertion. No physician, including Dr. Ricart-Hoffiz, has opined that claimant is incapable of gainful employment at this time. (See Hr. Tr., pp. 37-38) While Dr. Ricart-Hoffiz was asked, "In her condition, as [sic] she unable to perform the kind of factory work that she was doing at the time of this injury in February 2020?" He did not answer the question posed by Ms. Gilleland's attorney. Instead, Dr. Ricart-Hoffiz simply stated that claimant should remain on temporary restrictions to

ensure she does not exacerbate her symptoms. (JE1, p. 17) Ms. Gilleland's only temporary restriction at the time was a limitation on the number of hours she could work each day. (Hr. Tr., p. 38) Claimant demonstrated the ability to work 40-hour weeks as a slitter operator up until the date of her termination. I find a 2-hour reduction is not significant enough of a restriction to preclude a finding that claimant is capable of performing substantially similar work. I find claimant was capable of performing substantially similar work on the date of termination and beyond. Therefore, I find claimant failed to prove entitlement to a running award of temporary benefits.

Claimant will undoubtedly be unable to work for a period of time following the surgery. However, the extent of that healing period cannot be determined at this time as the surgery has not yet occurred.

Defendant Valley Forge asserted the affirmative defense of lack of timely notice under Iowa Code section 85.23 on the Hearing Report; however, defendant Valley Forge did not address the same in its post-hearing brief. Nevertheless, I find claimant timely notified the defendant employer of her February 18, 2020, injury on February 20, 2020. (JE12, p. 13)

Costs will be addressed in the Conclusions of Law section.

CONCLUSIONS OF LAW

The parties agree that the claimant has a back injury but dispute who is responsible for claimant's current condition. Therefore, the primary issue to resolve is whether claimant's current condition arises out of the original July 14, 2015 injury or the February 18, 2020, work injury.

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959).

The Iowa Supreme Court has held that a party does not need to prove that the change in the condition was not contemplated at the time of the original decision(s). Kohlhaas v. Hog Slat Inc., 777 N.W.2d 387 (Iowa 2009). However, the party bringing the review-reopening proceeding has the burden of showing that the employee's condition has changed since the original award or settlement was made and that the change in condition relates back to the original injury. The change may be either economic or physical. Blacksmith v. All-American Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability is not sufficient to justify a different determination on a petition for review-reopening.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable

rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

In the agreement for settlement, the parties stipulated claimant sustained an injury to her low back on July 14, 2015, which permanently and materially aggravated claimant's degenerative low back condition. As a result, defendants are liable for all consequences that naturally and proximately flow from the original injury. Oldham v. Scofield & Welch, 222 Iowa 764, 767, 266 N.W. 480, 481 (1936) Where an employee suffers a compensable injury and thereafter returns to work and, as a result thereof, his first injury is aggravated and accelerated so that he is greater disabled than before, the entire disability may be compensated for. (Id.)

In September 2019, claimant presented to Dr. Ricart-Hoffiz with complaints of low back and bilateral leg pain that, according to claimant, had been progressively worsening for the past three years. (JE1, p. 1) Claimant similarly told her physical therapist that her back pain had progressively worsened since the 2015 work injury. (JE2, p. 15) There is no indication that anything prompted claimant's request for a follow-up appointment with orthopedics. Claimant confirmed the same at her deposition. (JE10, Depo. p. 36) She stated, "My back just was not getting any better" and "I believe it was just my back just kept hurting worse and worse. I mean, that's it." (JE10, Depo. pp. 37-38)

Between the September 30, 2019 appointment, and Dr. Ricart-Hoffiz's recommendation for surgery, claimant sustained an accepted work injury on February 18, 2020. There is little evidence the February 18, 2020, work injury materially aggravated claimant's low back condition to the point where she now requires surgery. Dr. Ricart-Hoffiz's diagnoses did not change following the February 18, 2020, work injury. He did not alter his December 2019 treatment plan or immediately recommend surgery following the February 18, 2020, work injury. Dr. Ricart-Hoffiz opined the April 7, 2021, MRI revealed no significant changes when compared to the December 5, 2019, injury MRI. No physician, including Dr. Ricart-Hoffiz, has opined that the February 18,

2020, work injury materially aggravated, accelerated, or lit up claimant's pre-existing low back condition.

On May 17, 2021, Dr. Ricart-Hoffiz authored an opinion indicating that because the April 2021 MRI showed no significant changes compared to the December 2020 MRI claimant likely suffered an exacerbation of her pre-existing disease on February 18, 2020. Later in his report, Dr. Ricart-Hoffiz noted that the pre-existing condition that was exacerbated by the February 18, 2020, accident, stemmed from the initial work injury. Dr. Cimino opined the recommended surgery is related to the natural progression of claimant's degenerative low back condition. The employer, without evidence of a change in circumstance, is liable for all consequences that naturally and proximately flow from the July 14, 2015, work injury.

The expert opinions in this case do not support a finding that the February 18, 2020, work injury permanently and materially aggravated or exacerbated claimant's degenerative low back condition. The evidentiary record also does not support a finding that claimant's need for surgery is causally related to the February 18, 2020, work injury. Instead, the record contains convincing evidence that the February 18, 2020 work injury resulted in a temporarily exacerbation of claimant's degenerative low back condition, and the need for surgery is related to the natural progression of claimant's degenerative low back condition. There was not sufficient evidence to show that claimant's current condition and need for surgery is a consequence of the February 18, 2020, work injury.

Claimant and defendant Valley Forge have produced evidence that claimant's current condition relates back to the July 14, 2015, work injury. I find such evidence to be convincing; particularly when considering defendant Harleysville Worchester did not submit rebuttal evidence to show claimant's degenerative low back condition is no longer causally related to the July 14, 2015, work injury. As such, I found claimant met her burden of proving her current condition is proximately caused by the original work injury.

Claimant's physical condition has changed. Claimant is experiencing significant pain, her pain medication was increased in 2017, and the permanent limitation on the number of hours she can work changed in September 2019. When the parties settled this case, diagnostic imaging revealed degenerative changes, a mild disc bulge with annular tear at L4-L5, and a disc bulge with protrusion eccentric to the right. In December 2019, diagnostic imaging revealed multilevel degenerative changes, a disc herniation at L4-L5, and a right paracentral disc herniation at L5-S1. When the parties settled this case, claimant was not a surgical candidate. Today, claimant's treating physician has recommended a right L4-L5 and L5-S1 laminotomy and discectomy. Defendants' expert has opined that such a recommendation is reasonable. He further related the need for surgery to the natural progression of claimant's degenerative low back condition; a condition Dr. Ricart-Hoffiz has expressly opined relates back to the original work injury. Claimant has met her burden of proving a change of condition related to the July 14, 2015, work injury.

Claimant has clearly shown surgical intervention is needed at this time. It is concluded that claimant has carried her burden of proving a change of condition has occurred since the prior settlement, and she is entitled to further medical treatment/benefits on review-reopening in the form of surgical intervention as recommended by Dr. Ricart-Hoffiz. The defendant employer and defendant Harleysville Worchester shall pay for surgery and all related expenses.

The next issue is claimant's alleged entitlement to temporary disability benefits.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

The claimant argues she is entitled to a running award of healing period benefits since she has not had surgery and she is not yet at maximum medical improvement. She further asserts that she is not medically capable of returning to substantially similar employment at this time. As discussed in the Findings of Fact section, I found claimant is medically capable of returning to substantially similar employment. This is evidenced by the fact claimant did not miss any work due to her injuries, and the only restrictions currently in place limit claimant to working 40 hour weeks. I found that claimant's current restrictions are not drastically different from the restrictions that were put in place following the original July 14, 2015, work injury, and would not preclude her ability to seek and obtain substantially similar work.

Claimant has failed to carry her burden of proving entitlement to a running award of healing period benefits.

Ms. Gilleland seeks an award of the past medical expenses contained in Joint Exhibit 15.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Claimant has provided documentation of her medical expenses in Joint Exhibit 15. The expenses stem from appointments after claimant reached MMI for the February 18, 2020, work injury. As such, I find these expenses are causally related to

the July 14, 2015, work injury. I further find these expenses to be reasonable and necessary. The care received was reasonably suited to treat claimant's work injury. Harleysville Worchester is responsible to reimburse, pay, or otherwise hold claimant harmless for the causally related medical expenses contained in Joint Exhibit 15.

The final issue to be decided is costs. Claimant is seeking reimbursement for her filing fee, deposition transcript, and two reports from Miller Orthopedic Specialists. (JE16)

Pursuant to rule 876 IAC 4.33, the deputy commissioner has the right to assess costs such as (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The cost of the filing fee is appropriate and assessed in File No. 5061242.01 pursuant to 876 IAC 4.33(7).

The cost of the deposition transcript is appropriate and assessed pursuant to 876 IAC 4.33(1).

Agency rule 4.33(6) permits the assessment of the reasonable costs of "obtaining no more than two doctors' or practitioners' reports." Joint Exhibit 16 provides the costs associated with two reports from Miller Orthopedic; however, the evidentiary record only contains one report from Dr. Ricart-Hoffiz of Miller Orthopedic. (JE1, p. 17) Joint Exhibit 16 does not provide which of the two fees are associated with Dr. Ricart-Hoffiz's report. Using the discretion afforded to me by Iowa Code section 86.40, I cannot assess these costs to defendants without additional information.

ORDER

THEREFORE IT IS ORDERED:

File No. 5061242.01:

Defendants shall authorize further evaluation and treatment with Pedro Ricart-Hoffiz, M.D., as claimant's authorized treating physician.

Defendants shall provide ongoing medical care, including the recommended laminotomy and discectomy, for claimant's low back injury which arose out of and in the course of her employment.

Defendants shall pay directly to the medical provider, reimburse claimant for any out-of-pocket expenses, and hold claimant harmless, for all causally related medical expenses contained in Joint Exhibit 15.

Costs are taxed to defendants.

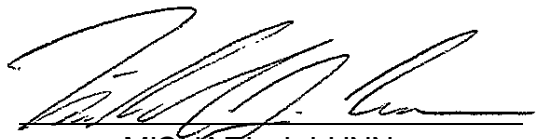
Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

File No. 20009942.01:

Claimant takes nothing.

Each party shall pay their own costs.

Signed and filed this 30th day of March, 2022.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Jacob Peters (via WCES)

Caitlin Kilburg (via WCES)

Anne Clark (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.