

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMELIA LUSCOMBE,

Claimant,

vs.

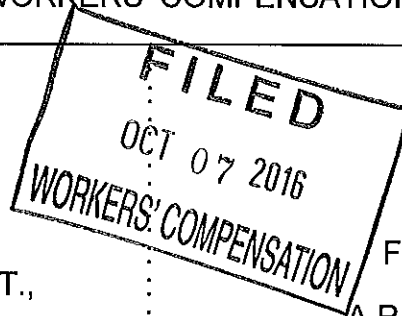
IDA COUNTY SHERIFF'S DEPT.,

Employer,

and

IOWA MUNICIPALITIES WORKERS',
COMPENSATION ASSOC.,

Insurance Carrier,
Defendants.



File No. 5047861

ARBITRATION
DECISION

Head Note No.: 1402.40; 1108; 1803

STATEMENT OF THE CASE

Amelia Luscombe filed a petition for arbitration seeking workers' compensation benefits from Ida County Sheriff's Department and the Iowa Municipalities Workers' Compensation Association (IMWCA).

The matter came on for hearing on September 29, 2015, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of claimant's exhibits 1 through 27; defense exhibits A through Q and S; as well the sworn testimony of claimant, Amelia Luscombe, her husband, Lonnie Luscombe, and Ida County Sheriff, Wade Harriman. The parties briefed this case and the matter was fully submitted on October 26, 2015.

ISSUES

1. Whether the claimant's work injury is causally connected to any permanent disability, and if so, the nature and extent of such disability.
2. Whether the claimant is entitled to additional healing period benefits.
3. Whether the claimant is entitled to additional permanency benefits, and the commencement date for such benefits.
4. Whether the claimant is entitled to medical expenses under Iowa Code section 85.27, including mileage and alternate medical care.

5. Whether the defendants are entitled to a credit under section 85.38(2) for medical expenses paid.

STIPULATIONS

The parties have stipulated that claimant suffered an injury to her right hand on October 23, 2012. As set forth in the issues above, defendants deny that this injury resulted in any diagnosis to the body as a whole. The parties stipulate that claimant was off work during a period of recovery for this injury from January 11, 2013, through February 19, 2013, and it is further stipulated that defendants paid temporary total disability (TTD) benefits during this period of time. The elements which comprise the claimant's rate are stipulated. Claimant was married with five exemptions and gross earnings of \$556.24 per week. Affirmative defenses were waived. These stipulations were agreed to in the hearing report and order and are accepted and deemed to be enforceable by the parties at this time.

FINDINGS OF FACT

Amelia Luscombe is a pleasant 44 year old woman who resides in Battle Creek, Iowa. She is married to Lonnie Luscombe. Together they have three children who were minor dependents at the time of the alleged injury.

Amelia graduated high school in Correctionville, Iowa. She received an art certificate. She has taken various classes at Gateway through Western Iowa Tech (WIT) and has earned a certificate as a certified nurses' aide (CNA). She is bright and industrious.

Her employment history includes work at Casey's General Store, a nursing home, Pizza Hut, Schaller Telemarketing, Gateway and Wallace Soft Water. She also stayed home with children for some time raising her family. In June 2006, Amelia began employment with the Ida County Sheriff. She was hired as 9-1-1 operator/jailer. As an operator, she runs 9-1-1 dispatch. As jailer, she helps runs the jail. It is a small crew which runs the jail. Her normal shift was 6:00 p.m. to 6:00 a.m.

Amelia's past medical history is mostly unremarkable as it relates to this claim. She has suffered a low back injury, from which she seemed to recover. (Defendants' Exhibit A, page 26) She had a right shoulder surgery. Again, she seemed to fully recover. (Def. Ex. D, p. 27) In 2012, she had carpal tunnel surgery and again, seemed to recover well.

On October 23, 2012, Amelia was performing her normal job duties, which included cleaning the jail cells. While mopping underneath a bunk bed, she hit her right hand above her little finger and ring finger onto the metal table attached to the wall. She reported the incident immediately. The incident was recorded on video. (Tr., p. 99) The employer prepared an injury report which indicated the injury occurred on October 23, 2012, at 2:10 a.m. (Cl. Ex. 2, p. 3) Claimant took this form to Horn Memorial

Hospital and the following was documented. "Traumatic injury to the posterior R hand. Patient had bruise, pain and swelling to the dorsal aspect of R hand." (Cl. Ex. 2, p. 2) A hand contusion was diagnosed following x-rays and Amelia was advised to ice her hand, rest and take non-steroidal anti-inflammatories for pain.

Amelia did what she was directed to do, but she continued to have pain in her hand. She was eventually directed to see Michael Luft, D.O. Dr. Luft first evaluated Amelia on November 14, 2012. He diagnosed tendonitis of wrist, set up physical therapy and recommended she continue icing the wrist. (Cl. Ex. 4, pp. 1-2) She was generally compliant with therapy. (Cl. Ex. 5) She was instructed to return if the pain did not resolve. She returned on December 14, 2012. At that time, it was noted the pain was "now radiating down her right arm and into hand, a lot of pain in the upper back and neck." (Cl. Ex. 4, p. 3) He diagnosed "wrist pain, tendonitis of wrist, neuropathy, and neck pain." (Cl. Ex. 4, p. 4) Dr. Luft ordered an EMG and continued her medications. He took her off work at this point. (Cl. Ex. 4, p. 5) A few days later, he ordered additional tests, including x-rays and an MRI of the cervical spine. (Cl. Ex. 4, p. 7)

The insurance carrier in this case appropriately investigated the claimant's issues with her upper back, cervical spine issues by communicating directly with Dr. Luft. He opined Amelia did not have any upper back, neck or shoulder problems which were causally related to her work injury. (Cl. Ex. 4, p. 9)

On January 4, 2013, Dr. Luft documented claimant's painful right hand. Amelia "states she can't use the hand anymore." (Cl. Ex. 4, p. 10) He referred her to a hand specialist at this time and allowed her to return to work with significant medical restrictions. (Cl. Ex. 4, pp. 11-12)

Amelia did return to work although she testified she was not provided any light-duty. (Tr., pp. 82-83)

Amelia was evaluated by Caliste Hsu, M.D., on January 24, 2013, at Miller Orthopedic Specialists. (Cl. Ex. 6) Dr. Hsu documented the following.

Onset: 3 Months Ago. Severity level is moderate-severe. It occurs constantly and is fluctuating. Location: right hand. The pain is burning. Context: There was an injury. Trauma occurred at work, 3 Months 1 Day ago on 10/23/2012. There are no relieving factors. Associated symptoms include bruising, nocturnal awakening, numbness, swelling and weakness. Hand Dominance: right."

(Cl. Ex. 6, p. 1) He prescribed some pain medication (Lidoderm patch) which was ineffective. Amelia returned on January 31, 2013, and Dr. Hsu diagnosed chronic pain syndrome. (Cl. Ex. 6, p. 6) He placed her on a host of medications to treat chronic pain, including gabapentin, prednisone and lortab, and recommended a "stellage [sic] ganglion block." (Cl. Ex. 6, pp. 6-7)

Amelia was referred to the Siouxland Pain Clinic at Dakota Dunes for the ganglion block. She visited Todd Johnson, M.D., on February 15, 2013. Dr. Johnson prescribed medications, including Gabapentin and Percocet, performed a right stellate ganglion block with sedation and ordered physical therapy with desensitization. (Cl. Ex. 9, p. 2)

The physical therapy records, dated February 20, 2013, documented the following.

Appearance: Today there is mild edema noted. There is some mottling, there is some moisture present or hypohidrosis on the right hand that is not present on the left. I don't notice any temperature change. There is a slight sheen to the right hand, however there is no significant swelling or loss of range of motion.

(Cl. Ex. 5, p. 5)

Amelia returned to Dr. Johnson on March 8, 2013. At this visit, he documented that she was not observed to have the clinical symptoms associated with the diagnosis of possible RSD [reflex sympathetic dystrophy]. (Cl. Ex. 9, p. 5) He changed his diagnosis to osteoarthritis of the wrist joint and attempted some pain injections. (Cl. Ex. 9, p. 6) As of March 8, 2013, Dr. Johnson placed her back on her normal work activities. (Cl. Ex. 9, p. 9)

On March 8, 2013, Dr. Johnson used the working diagnosis of osteoarthritis and reflex sympathetic dystrophy and he attempted a repeat stellate ganglion block. (Cl. Ex. 9, p. 12) She continued on physical therapy. In April, he used three diagnoses: chronic pain syndrome, osteoarthritis, and reflex sympathetic dystrophy. (Cl. Ex. 9, p. 15) Then he referred her to the University of Iowa for evaluation. (Cl. Ex. 9, p. 16)

Esther Benedetti, M.D., evaluated claimant on May 15, 2013, and took a full, detailed history. Dr. Benedetti documented the following.

[Amelia] presents with an eight month history of right hand pain that had initially been diagnosed as RDS [sic] or CRPS. Clinically, her physical exam and history are not consistent with a diagnosis of CRPS and likely her hand pain is from another entity. Further investigation will be required to delineate the source of her pain.

(Cl. Ex. 10, p. 3) A number of new treatments were recommended for the claimant including therapies to assist with chronic pain management, including cognitive behavior therapies, coping strategies, relaxation therapies and biofeedback. Her medications were adjusted. The treatment recommended by Dr. Benedetti was not authorized.

Amelia returned to Dr. Johnson on May 24, 2013. He ordered more physical therapy, increased some of her medications and released her to full duty. (Cl. Ex. 9, pp. 17-20) According to Dr. Johnson, the diagnosis of reflex sympathetic dystrophy was

"ruled out." She had additional therapy in May 2013, which documented continued swelling in her hand from the wrist to the fingertips. (Cl. Ex. 5, p. 15)

Dr. Johnson wrote to nurse case manager, Cheryl Larson, in July 2013. He advised he had no other treatment to offer (other than the recommendations from the University of Iowa) and that he did not see clinical signs of CRPS. (Cl. Ex. 9, p. 21)

In early August 2012, the insurance carrier for the employer officially denied the claim in writing. (Cl. Ex. 22, p. 1)

Ms. Luscombe has been placed at MMI, full duty with no restrictions per Dr. Hsu and Dr. Johnson on her workers' compensation claim. Therefore since there is no further medical needed under her workers' compensation claim, her claim can be closed and her current condition is not related to her injury on 10/23/12.

(Cl. Ex. 22, p. 1)

Dr. Hsu wrote to the nurse case manager, Cheryl Larson, in August 2013. Dr. Hsu opined that claimant suffered a 90 percent functional loss of her right upper extremity as a result of peripheral nerve disorder. (Cl. Ex. 6, p. 9) Following a conference with the nurse case manager, Dr. Hsu reversed his opinion and found she had no impairment. (Cl. Ex. 6, p. 10)

After the claim was denied, there was a gap in medical treatment. Ms. Luscombe has continued to work. She testified she has adjusted how she works but she freely acknowledged that she is doing her job without any formal medical restrictions on her. She testified she has a constant radiating, severe burning, stabbing pain. (Tr., p. 40)

Claimant began following up with Dr. Luft again in 2014. In July 2014, he reasserted the diagnosis of RSD and adjusted her medications. (Cl. Ex. 4, pp. 25-26) In October 2014, he diagnosed her with depression. (Cl. Ex. 4, pp. 27-30) Dr. Luft referred her to Wendy Waldman-Zadeh, M.D., a neurosurgeon at Broadlawns. Dr. Waldman-Zadeh diagnosed reflex sympathetic dystrophy. (Cl. Ex. 14, p. 3) She started therapy again, adjusted medications and recommended further diagnostic tests. "To me, this clearly fits a clinical scenario of RSD. The prognosis is better with early intervention." (Cl. Ex. 14, p. 3)

After this visit, she returned to Dr. Luft who in turn referred her for pain management treatment with John Cook, M.D., a pain management physician at MidWest Pain Clinics. He first began treating her in February 2015, with a diagnosis of right upper extremity complex regional pain syndrome and narcotic dependency. (Cl. Ex. 15, pp. 47-53) He provided pain treatments including stellate ganglion injections, physical therapy and medications. At the time of hearing, Ms. Luscombe continued her pain management treatment with Dr. Cook.

Dr. Sassman prepared an expert medical report following evaluation. (Cl. Ex. 12) The report is dated January 16, 2014. Dr. Sassman performed a thorough evaluation, took a detailed history and reviewed appropriate medical records. (Cl. Ex. 12, pp. 2-8) She diagnosed right hand trauma with development of CRPS and right upper extremity myofascial pain. (Cl. Ex. 12, p. 8)

It is my opinion that the incident that occurred on or about October 23, 2012, is directly and causally related to the development of her current symptoms of CRPS in the right hand. In my opinion, the myofascial pain has developed as a result of guarding due to the CRPS in the right hand.

(Cl. Ex. 12, p. 9) She provided a functional impairment rating of 31 percent of the right upper extremity which converts to a 19 percent whole person rating. (Cl. Ex. 12, p. 11) She recommended common sense restrictions, particularly to limit her grasping and pinching.

The defendants sought and obtained an evaluation from Dean Wampler, M.D. (Def. Ex. L) He recorded an accurate history of her treatment and performed an evaluation. He noted that she does not have four of the criteria to diagnose CRPS. "For these reasons, I agree with Drs. Hsu, Johnson and Benedetti that Ms. Luscombe has a subjective pain syndrome that cannot be defined medically and should not warrant any additional treatment, investigation or restriction." (Def. Ex. L, p. 6)

Ms. Luscombe has continued to work for Ida County. The employment relationship has been rather stressed, however, her job evaluations since the injury have been very good overall. (Def. Ex. 23, p. 5) The defendants suggest that various disciplinary actions involving claimant, including one on the date of the injury, call her credibility into question.

Ms. Luscombe attempts to use her right arm and hand when possible, as the medical providers have suggested. She is limited by pain and weakness and she has modified her activities accordingly. (Tr., pp. 56-62) She is unable to fish, hunt, or paint and she is unable to perform many home chores. (Tr., pp. 57-61)

CONCLUSIONS OF LAW

The first question is whether the admitted October 23, 2012, work injury is a cause of permanent disability, and if so, the nature and extent of such disability. By a preponderance of evidence, I find that the work injury is a proximate cause of disability in the claimant's left hand and arm.

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).

The claimant contends she has complex regional pain syndrome (CRPS) which is also known as reflex sympathetic dystrophy (RSD) stemming from her injury and that these conditions cause her disability to extend into her peripheral nervous system and body as a whole. The defendants contend that, following a period of treatment, the treating physicians ruled out the diagnosis of CRPS and released her with no impairment and no restrictions. Defendants have taken the position that claimant's ongoing symptoms of disability are related to something other than her October 2012 work injury.

Based upon the record before me, I find that Ms. Luscombe has a serious loss of function in her left hand and arm. I am convinced that there is something seriously wrong with her left hand, wrist and arm which stems directly from her work injury. To find otherwise, as requested by defendants, would require that I find that the claimant either falsified this claim or she has an entirely unrelated left arm condition. The evidence does not support either finding. While I am convinced the claimant has a serious loss of use of her left arm, I am less convinced of the precise diagnosis. The precise diagnosis is crucial in this case because a diagnosis of CRPS/RSD usually leads to a finding of an injury to the body as a whole.

In Collins v. Department of Human Services, 529 N.W.2d 627 (Iowa Ct. App. 1995), the Iowa Court of Appeals held that an injury to the sympathetic nervous system is an injury to the body as a whole. The claimant "suffered an injury to a scheduled member, her hands, and also to a part of the body not included in the schedule, her nervous system. Reflex sympathetic dystrophy is a dysfunction of the sympathetic nervous system." Id. at 629.

The expert opinions as to the diagnosis in this case are highly conflicted with credible physicians. Nevertheless, weighing all of the evidence in the case, I find by a preponderance of the evidence that claimant suffers from the diagnosis of RSD as a

result of her October 23, 2012, work injury.

This finding is based upon the expert medical opinion of Robin Sassman, M.D., combined with medical opinions and records of Dr. Luft, Dr. Cook, and Dr. Waldman-Zadeh, as well as the lay evidence, including credible testimony from the claimant. I also give significant weight to the physical therapy records which consistently documented symptoms consistent with the diagnosis of RSD/CRPS. (Cl. Ex. 5, pp. 1, 5, 15)

The defendants provided a formidable defense. The diagnosis of CRPS is a complicated diagnosis and the defendants have solid treating experts, including most notably, Dr. Benedetti, who does not believe it is the correct diagnosis. The problem is that the evidence is quite convincing to me that there is something wrong with Ms. Luscombe's right hand and arm. The defendants have not provided me with an alternative of what the problem is. It seems that as soon as the physicians decided that the correct diagnosis was not RSD/CRPS, there was no further attempt to diagnose the correct condition. The defendants simply denied the claim and moved on. It is unclear, for example, what Dr. Benedetti deemed the problem to be. Dr. Wampler stated that claimant "has a subjective pain syndrome that cannot be defined medically and should not warrant any additional treatment, investigation or restriction." (Def. Ex. L, p. 6) When read in conjunction with the remainder of his report, he seems to be suggesting that the pain is either in her head, not real, or somehow entirely unrelated to her work injury. I do not find that the greater weight of evidence supports such a conclusion.

It is, of course, the claimant's burden to not only prove that the work injury has caused a medical condition and impairment, but also what that diagnosis is. There is no burden upon the defendants. The diagnosis of chronic pain was originally used by Dr. Hsu in January 2013. Dr. Johnson then used the diagnosis of RSD in February 2013. Dr. Hsu and Dr. Johnson both felt comfortable using the working diagnosis of RSD or CRPS initially. It was not until after the nurse case manager became involved and it was evident the precise diagnosis was crucial, that the diagnosis was really questioned. For example, Dr. Hsu provided a huge impairment rating on the basis of RSD, which he withdrew a few weeks later after meeting with the nurse case manager. (Cl. Ex. 6, pp. 8-10) Dr. Johnson continued to use RSD as a working diagnosis in his treatment. (Cl. Ex. 9, p. 17) While Dr. Benedetti specifically ruled out the diagnosis of CRPS/RSD, she stated that further "investigation will be required to delineate the source of her pain." (Cl. Ex. 10, p. 3) Moreover, the treatment recommended by Dr. Benedetti was never authorized. The lack of a plausible alternative diagnosis, to some degree, hurts the defense.

In 2014, Dr. Waldman-Zadeh, Dr. Cook, and Dr. Luft all felt confident treating the claimant using the diagnosis of RSD or CRPS. These were all treating physicians who were merely attempting to help the claimant improve her medical condition. Their opinions support the diagnosis of Dr. Sassman. For all of these reasons, I find that the most likely correct diagnosis is complex regional pain syndrome. This diagnosis was substantially caused, aggravated or lit up by her work injury.

The next issue is the nature and extent of claimant's disability. Claimant alleges entitlement to healing period as set forth in Claimant's Exhibit 27, and permanent partial disability benefits. Defendants paid some temporary disability benefits but deny the claimant's entitlement to any additional benefits.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

Claimant was paid healing period from January 11, 2013, through February 18, 2013, while she was off work. I have reviewed Claimant's Exhibit 27 thoroughly along with claimant's testimony. She claims various days off due to pain or for medical appointments. Time off for medical treatment for the injury should be paid under Iowa Code section 85.27(7), without the required use of any paid time off. The various days claimant took off due to pain to the best of her recollection do not qualify as an independent healing period which qualifies her for benefits under Iowa Code section 85.34(1). I find, by a preponderance of evidence, that claimant is not entitled to any additional benefits. Allen v. Prairie Meadows Race Track, File No. 5044185 (App. April 3, 2015)

With regard to permanency benefits, since I found the appropriate diagnosis involves the claimant's peripheral nervous system, the disability shall be evaluated industrially.

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

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

Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

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

The claimant has proven a minor industrial disability. Her position with the Ida County Sheriff's Department is the best job claimant has held. At the time of hearing, she was 44 years old with a high school education. I think she is bright, having taken numerous courses through the years to obtain valuable employment skills. She has some computer skills.

She has a significant impairment to her peripheral nervous system which primarily impacts the function of her right upper extremity. The impairment causes significant pain which affects her ability to perform activities with her right hand and arm. The best functional impairment rating in the record is that she has lost 31 percent of the function in her arm. Dr. Sassman recommended restrictions of using her right hand glove while at work and avoiding gripping or grasping with the right hand. She should not use vibratory tools. (Cl. Ex. 12, p. 10)

Ms. Luscombe has demonstrated that she can perform her regular job for the employer without following these specific accommodations. She has changed the way that she works which she has been able to do without any formal or specific employer accommodations. She has received pay increases and earns more now than she did at the time of hearing. Her job is not in jeopardy at the current time.

Considering the foregoing, and all of the factors of industrial disability, I find that the claimant has suffered a 20 percent industrial loss as a result of her October 23, 2012, work injury. This entitles claimant to 100 weeks of benefits commencing on the date healing period benefits ended, February 19, 2013.

The next issue is claimant's entitlement to medical expenses and alternate medical care under Iowa Code section 85.27. Claimant seeks the medical expenses outlined in Claimant's Exhibits 21, 24 and 25. Defendants contest these expenses primarily based upon causal connection, but also contend the treatment was not reasonable and necessary, nor authorized by defendants.

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 16, 1975).

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

I conclude that the summary set forth in Claimant's Exhibit 24 accurately reflects claimant's treatment for her right hand and arm injury. She is entitled to the expenses set forth therein. Claimant is entitled to out-of-pocket expenses. Any unpaid bills should be paid directly to the provider. Authorization is not a valid defense since the claim was denied in August 2013. Furthermore, claimant is entitled to her transportation expenses as outlined in Claimant's Exhibit 25.

The final issue is the claimant's need for alternate medical care.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

The claimant is entitled to further medical treatment. Defendants contend that no further treatment is needed per Dr. Wampler. At this point in time, Dr. Cook has been providing the treatment for claimant's condition and he is deemed the authorized treating physician.

ORDER

THEREFORE IT IS ORDERED

Defendants shall pay the claimant one hundred (100) weeks of permanent partial disability benefits at the rate of four hundred and one dollars and 79/100 (\$401.79) per week from February 19, 2013.

Defendants shall pay accrued weekly benefits in a lump sum.

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

No further healing period benefits are owed as the date of hearing, however, claimant shall be paid an amount equivalent to the wages lost at the employee's rate of pay for the time she was required to leave work for medical treatment as set forth in Iowa Code section 85.27(7), for the treatment dates listed in Claimant's Exhibit 27.


Defendants shall pay the medical expenses as set forth in Claimant's Exhibit 24. Unpaid bills shall be paid directly to the provider. Out-of-pocket expenses paid by the claimant shall be reimbursed directly to claimant. Defendants are entitled to a credit for any expenses paid by the employer's insurance carrier.

Defendants shall authorize Dr. Cook to provide care for the claimant.

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

Costs are taxed to defendants in the amount of five hundred thirty-seven and 64/100 dollars (\$537.64) as requested in the hearing report.

Signed and filed this 7th day of October, 2016.


JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Suzan E. Boden
Attorney at Law
613 Pierce St.
PO Box 1557
Sioux City, IA 51102
sboden@siouxcitylawyers.net

Jane V. Lorentzen
Attorney at Law
2700 Grand Ave., St. 111
Des Moines, IA 50312
jlorentz@hhlawpc.com

JLW/kjw

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.