BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEBBORAH ELLIOTT, Claimant, vs. FLYNN COMPANY, INC., Employer, and MIDWEST BUILDERS' CASUALTY MUTUAL COMPANY, Insurance Carrier, Defendants.	File No. 20003792.03 ARBITRATION DECISION Head Notes: 1402.30, 2502

STATEMENT OF THE CASE

Claimant, Debborah Elliott, filed a petition in arbitration seeking workers' compensation benefits from Flynn Company, Inc. (Flynn), employer, and Midwest Builders' Casualty Mutual Company, insurer, both as defendants. This matter was heard on February 24, 2022, with a final submission date of April 4, 2022.

The record in this case consists of Joint Exhibits 1 through 8, Claimant's Exhibits 1 through 14, Defendants' Exhibits A through E, and the testimony of claimant, her husband, Rick Elliott, Mark Gorton, and Jeffrey Flynn.

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

ISSUES

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether the injury resulted in a temporary disability.

3. Whether the injury resulted in a permanent disability; and if so,

4. The extent of claimant's entitlement to permanent partial disability benefits.

5. Whether there is a causal connection between the injury and the claimed medical expenses.

6. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39.

7. Whether claimant is entitled to alternate medical care under Iowa Code section 85.27.

8. Rate.

FINDINGS OF FACT

Claimant was 57 years old at the time of hearing. Claimant graduated from high school. Claimant went to community college and received a certification to become a dental assistant. Due to a back injury caused by a motor vehicle accident, claimant has never worked as a dental assistant. Claimant has a commercial driver's license. (Hearing Transcript pages 12-13)

Claimant has worked at a restaurant and as a teaching assistant at a daycare center. She has worked as a janitor and school bus driver. Claimant has also worked as a delivery driver. (Tr., pp. 14-20)

Claimant was unemployed from 1994 through 2004 and stayed at home to raise her children. During this time, claimant received Social Security Disability benefits based on ADHD and weight. (Tr., pp. 20-21)

Claimant began as a water truck driver for Flynn in September 2014. Flynn Company does concrete paving for highways, airports and commercial paving jobs. (Tr., p. 138) Claimant drove a water truck with a 3,500 to 4,000 gallon tank. Claimant would collect water at a source location, such as a fire hydrant, and transport that water to an on-site paving job. The water from the water truck was used to make concrete on-site at the paving job. (Tr., pp. 114-115) Photos of the water truck claimant drove are found in Exhibit 6.

Claimant testified she had to repeatedly climb in and out of the water truck, hook a hose to a water source, load the truck with water, shut off the water source, unhook the hose, and drive the truck to the jobsite. (Tr., pp. 23-24) Claimant testified it was not uncommon for her to repeat this process approximately 20 times a day. (Tr., pp. 25-26)

Claimant's job was seasonal, and she usually worked from April to November. (Tr., p. 26) Claimant said she usually worked Monday through Friday and sometimes Saturday. Claimant said she worked at least 40 hours per week. (Tr., pp. 26-27)

Claimant's prior medical history is relevant. Claimant testified at hearing she had a motor vehicle accident in approximately 1988 where she injured her lower back. (Tr., p. 13)

In September 2017, claimant received chiropractic treatment for her back and leg pain. (Joint Exhibit 2, p. 5)

Claimant was off work for non-work related foot surgery in November 2018. Claimant did not return to work at Flynn until June 10, 2019. (Tr. pp. 64-65) On June 11, 2019, claimant was seen at Drees Chiropractic for lower back and neck pain. Claimant indicated pain in the posterior area of both shoulders. (JE 2, p. 7)

On June 12, 2019, claimant returned to Drees Chiropractic. She indicated improvement in her pain. Claimant only had cervical pain and pain in the posterior areas of both shoulders. (JE 2, p. 8)

Claimant testified that, on June 14, 2019, she was climbing into her water truck when her foot slipped on a step while hoisting herself in the truck. Claimant held onto a bar on the truck and eventually pulled her feet back onto the stairs. Claimant testified she called her husband and told him about slipping on the truck. She said she finished her work shift. Claimant said she told Bob Swalley, her supervisor, that she almost fell off the truck and injured herself, but said he only laughed. (Tr., pp. 29-30; 32-33, 101-102)

In claimant's answers to interrogatories in her deposition, claimant indicated she hurt herself while getting out of her water truck. (Defendants' Exhibit D, p. 2; Ex. E, depo p. 44)

Claimant testified that, on June 18, 2019, she reported to Mark Gorton she hurt her IT band and shoulder when she almost fell off her truck. She said she also reported her injury again to Mr. Swalley. (Tr., p. 33)

Mark Gorton testified he was a project manager and safety supervisor at Flynn on the date of the alleged injury. In that capacity, he is familiar with the claimant and her alleged injury. Mr. Gorton testified that if an employee is injured at Flynn, they report the injury to a supervisor or to him. That information would then be passed onto Jeff Schueller, who would send the information to the insurer. Mr. Gorton testified Mr. Schueller did not appear at hearing as he had died. (Tr., pp. 111-113)

Mr. Gorton testified claimant never reported an injury to him regarding slipping or falling off a water truck. Claimant never indicated she needed to complete an injury form. (Tr., pp. 119, 121)

On June 14, 2019, claimant was seen at Drees Chiropractic. Records from that visit indicate claimant had back and neck pain. Claimant still had dull and burning pain in both shoulders. (JE 2, p. 9)

Claimant testified in deposition that she received medical treatment for her alleged injury on June 17, 2019. She said at that visit she informed Drees Chiropractic how she was injured. (Ex. E, depo pp. 45-46; Tr., pp. 77-78)

On June 17, 2019, claimant returned to Drees Chiropractic. Claimant's low back pain had improved. Claimant still had dull and burning pain in the neck and posterior area of both shoulders. (JE 2, p. 9)

On June 19, 2019, claimant texted her supervisor, Gary "Huffy" Huffman. Claimant texted, "Huffy, I told Steve I can't take the pain in my leg and I need to go Steve said call you." (Ex. B, p. 22)

Claimant testified in deposition that she believes she told Mr. Huffman she hurt her right leg and shoulder at work. (Ex. E, depo pp. 45-46)

On June 18, 2019, claimant returned to Drees Chiropractic. Claimant had improvement in her lower back pain. Claimant had continued dull and burning pain in her neck and posterior area of both shoulders. (JE 2, p. 10)

Claimant returned to Drees Chiropractic on June 19, 2019, June, 20, 2019, June 21, 2019, June 24, 2019, and June 29, 2019. Claimant had some improvement in lower back and cervical pain. Claimant had continued dull burning pain in the cervical area and bilateral posterior shoulders. (JE 2, pp. 10-14)

Claimant testified she called Jeff Schueller, the Flynn workers' compensation contact, on July 2, 2019, regarding her work injury. She testified Mr. Schueller yelled at her and then hung up the phone. (Tr., pp. 36-37; Claimant's Exhibit. 4, p. 7)

Claimant returned to Drees Chiropractic on July 3, 2019, July 8, 2019, and July 9, 2019. Claimant had continued dull burning pain in the neck and posterior areas of both shoulders. (JE 2, pp. 14-16)

Claimant was referred to physical therapy at Athletico by Drees Chiropractic on July 12, 2019. Claimant's intake form indicated her symptoms began the week of June 10, 2019, and that claimant had pain in the right leg. The form has an area indicating if the injury is a work comp injury. That portion of the form is blank. (JE 5, pp. 43-44)

Claimant indicated pain in her leg and had been hurting since June 10, 2019, after returning to work and climbing in and out of a water truck. (JE 5, p. 46) A section of the form asks if the injury is due to a fall, and claimant has marked "no." (JE 5, p. 45) Claimant was assessed as having right hip pain and weakness in the right hip. The mechanism of the injury was found to be a repetitive overuse injury. (JE 5, p. 47)

On July 13, 2019, claimant texted Mr. Hoffman. She was seeing a chiropractor to put her hip back into place. (Ex. B, p. 22)

Claimant received treatment at Drees Chiropractic on July 13, 2019, July 15, 2019, and July 16, 2019. Records indicate claimant still had a dull burning pain in her neck and posterior areas of her shoulders. (JE 2, pp. 16-18)

Claimant was laid off for the season on July 16, 2019. (Ex. D, p. 32)

On July 29, 2019, claimant began treatment at Manchester Chiropractic. Claimant had neck, lower back and mid-back pain. Claimant had further treatment at

Manchester Chiropractic on August 5, 2019, August 14, 2019, August 19, 2019, August 21, 2019, August 26, 2019, June 15, 2021, and June 25, 2021. (Tr., p. 83; JE 3)

Claimant said she spoke with Mr. Schueller on August 26, 2019, and asked him if he turned in her alleged reported injury to workers' compensation. Claimant said Mr. Schueller told her he had not. Claimant testified that on that call, she told Mr. Schueller she injured her right leg and both shoulders. (Tr., pp. 36-38)

Greg Flynn testified he is the president of Flynn. He said that he learned, in approximately August of 2019 from Mr. Schueller, that claimant was claiming she had a workers' compensation injury. He said he did not talk to claimant at that time. (Tr., pp. 137, 140, 144-145)

On August 27, 2019, claimant saw Stephanie Vogeler, PA-C. At that time claimant had lower back pain radiating to her right leg after returning to work following foot surgery. Claimant had seen a chiropractor and physical therapist. Claimant was interested in having an MRI. (JE 1, p. 4)

On September 9, 2019, claimant had a statement taken by defendant insurer. Claimant indicated she injured herself on June 13, 2019, when she slipped on a stair while trying to get into a water truck. She said she did not report the injury at the time it happened. She said she reported the injury to Bob Swalley on June 18, 2019, approximately five days later. She said she also reported the injury on June 18, 2019, to Mr. Gorton. (Ex. 4, p. 7)

In the statement, claimant said she told Mr. Gorton on June 18, 2019, that she needed to see her chiropractor for a work-related injury. (Ex. 4, p. 7) She indicated in her statement that she had no prior injuries like this one. (Ex. 4, p. 8)

In February of 2020, defendants attempted to send claimant to Kevin Eck, M.D., for evaluation. Dr. Eck's office refused to see claimant. (JE 4, pp. 24-25)

In a March 6, 2020, report, Jeffrey Westpheling, M.D., gave his opinions of claimant's condition following an IME. Claimant indicated pain in both shoulders radiating to the upper arms. Claimant denied neck or back pain. Claimant had pain in the right IT band. (Ex. C)

Dr. Westpheling found claimant's shoulder and right leg condition were not related to an injury on June 13, 2019. He did not assign any permanent restrictions from the alleged injury. Dr. Westpheling did not believe claimant required further medical treatment. He found claimant's current medical conditions were idiopathic or related to personal health conditions. (Ex. C)

Claimant testified that, on or about March 10, 2020, her husband was told Flynn would not be re-hiring her as a water truck driver. (Tr., pp. 42, 102-103, 142)

Mr. Gorton testified claimant was laid off in 2019 and not called back to work as Flynn needed claimant to be able to drive multiple trucks. Claimant only drove an automatic shift. Mr. Gorton said Flynn needed claimant to be able to drive trucks with manual transmissions. (Tr., pp. 126-132)

Mr. Flynn testified that an employee's ability to be able to drive both manual and automatic transmissions was an important consideration in retention of a worker. (Tr., pp. 141-142, 146)

On March 23, 2020, claimant had a tele-medicine phone visit. Claimant had shoulder pain. Claimant was injured when she fell off a truck and held herself up with her arms. Claimant was prescribed pain medication. Physical therapy was recommended if available due to Covid. (JE 4, pp. 30-31)

From March 24, 2020, through May 29, 2020, claimant underwent physical therapy on approximately 16 occasions with Athletico. (JE 5, pp. 74-111)

On July 14, 2020, claimant underwent an MRI of the right shoulder. It showed tendinopathy in the rotator cuff area and a probable labral tear. (JE 6, pp. 112-113)

On September 17, 2020, claimant was evaluated by Matthew Bollier, M.D., at the University of Iowa Hospitals and Clinics (UIHC). Claimant indicated she was getting out of a water truck at work when she slipped on a step and caught herself with her right arm. Claimant's MRI of July 14, 2020, was reviewed. It showed a moderate tendinopathy of the supraspinatus insertion site with a possible partial tear at the insertion site. Because of a possible SLAP tear, Dr. Bollier recommended surgery. Surgery was chosen as a treatment option. (JE 6, pp. 114-120)

In a November 16, 2020 letter written by claimant's attorney, Dr. Bollier indicated the history and causation described by claimant were consistent with a work injury. (Ex. 10, pp. 32-33)

On December 8, 2020, claimant underwent shoulder surgery performed by Dr. Bollier. Claimant underwent a right rotator cuff repair, a labral repair, a distal clavicle excision and a subacromial decompression. (JE 7, pp. 123-125)

Claimant saw Dr. Bollier in follow-up after her right shoulder surgery. On April 20, 2021, claimant was given a right glenohumeral joint and subacromial bursa injection for pain. (JE 7, pp. 138-139) On October 18, 2021, claimant reported 70 percent improvement in her right shoulder. (JE 7, p. 145)

In a January 13, 2021, letter Dr. Bollier found that claimant had a 5 percent permanent impairment to the right upper extremity, converting to a 3 percent permanent impairment to the body as a whole. Claimant had no permanent restrictions. (Ex. 10, p. 34)

In a December 30, 2021, report, Mark Taylor, M.D., gave his opinion of claimant's condition following an IME. Claimant had right and left shoulder pain. Claimant had right hip and lateral buttock pain with pain down the thigh. Claimant had problems with standing, going up and down stairs, lifting, pushing and pulling. Claimant also had problems doing personal hygiene due to the condition of her shoulders. (Ex. 11, pp. 41-42)

Regarding causation, Dr. Taylor noted "the challenge with regard to causation is mainly related to the lack of documentation . . . The incident then occurred on June 14,

2019, but there was no mention by the chiropractor in his notes. In other words, he did not mention the injury itself." (Ex. 11, p. 45) Dr. Taylor went on to note inconsistencies when comparing Dr. Bollier's records with early medical records. He also noted that assuming the incident occurred as alleged, that he believed the June 14, 2019, work incident represented a significant contributing factor to claimant's right shoulder issue. (Ex. 11, pp. 45-46)

Regarding the right hip, thigh and leg, Dr. Taylor was unable to state claimant's issues were related to the alleged injury or work activity. (Ex. 11, p. 46)

Dr. Taylor agreed with Dr. Bollier that claimant was at maximum medical improvement (MMI) to the right shoulder as of October 18, 2021. He found that claimant had an 18 percent permanent impairment to the right upper extremity, converting to 11 percent permanent impairment to the body as a whole. He recommended claimant lift no more than 20 pounds above shoulder height. He recommended claimant continue to do home exercises for the right shoulder and should be referred to an orthopedic specialist for the left. (Ex. 11, pp. 45-48)

Claimant testified she does not believe she could return to work at Flynn given her limitations. (Tr., pp. 57-58) She testified she did not believe she could return to work as a waitress, as a childcare provider or as a janitor. (Tr., pp. 58-60) She said she could potentially return to work as a school bus driver. (Tr., p. 60)

Mr. Elliott testified that when his wife was still working at Flynn, after her alleged injury, he had to help her in and out of their vehicle. He said that after her injury, he had to do more household chores as his wife was unable to perform chores around the house. (Tr., p. 102)

CONCLUSION OF LAW

The first issue to be determined is whether claimant sustained an injury that arose out of and in the course of employment.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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

performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

Claimant testified at hearing she was climbing ***into*** her water truck at work on June 14, 2019, when her foot slipped on a step while she was hoisting herself into the truck. She said she held onto the bar of the truck and eventually pulled herself back to the stair of the truck. (Tr., pp. 29, 32-33, 101-102)

In answer to interrogatories, claimant indicates she injured herself when she was exiting the truck. (Ex. D, p. 32) Records from physical therapy indicate claimant's injury was a repetitive overuse injury. (JE 5, p. 47) In deposition, claimant testified her injury occurred while getting out of her truck. (Ex. E, depo p. 40)

Claimant testified at hearing she reported the injury to her supervisor, Mr. Swalley, but he only laughed. (Tr., pp. 29-30, 32-33) She testified she also reported the injury to Mr. Gorton. (Tr., pp. 33-34)

Mr. Gorton testified claimant did not report a work injury to him. (Tr., pp. 119, 121)

Text messages in the record do indicate that claimant informed her supervisors she was taking time off for chiropractic treatments. The texts make no mention of a work injury. (Ex. B, pp. 21-26)

Claimant received chiropractic care for her shoulders and neck on the date of the alleged injury, June 14, 2019. Claimant testified that at that visit she informed Drees Chiropractic how she was injured. (Ex. E, depo pp. 45-46; Tr., pp. 77-78)

There is no mention of a work injury in the June 14, 2019, records from Drees Chiropractic. (JE 2, p. 9)

Claimant had chiropractic care at Drees Chiropractic on June 17, 2019, June 18, 2019, June 19, 2019, June 20, 2019, June 21, 2019, June 24, 2019, June 29, 2019, July 3, 2019, July 8, 2019, July 9, 2019, July 13, 2019, July 15, 2019, and July 16, 2019, for lower back and bilateral shoulder pain. There is no mention in any of the records from Drees Chiropractic that claimant had a work injury of any kind. (JE 2, pp. 9-18)

Claimant received chiropractic care at Manchester Chiropractic on July 29, 2019, August 5, 2019, August 14, 2019, August 19, 2019, and August 21, 2019. There is no mention in any of the Manchester Chiropractic records that claimant had a work injury of any kind. (JE 3, pp. 19-22)

Claimant had physical therapy with Athletico on July 12, 2019, through a referral from Drees Chiropractic. Records from that visit indicate claimant's leg was hurting since returning to work on June 10, 2019, after climbing in and out of a water truck. (JE 5, p. 46)

Claimant had physical therapy with Athletico on July 16, 2019, July 22, 2019, July 25, 2019, July 29, 2019, August 2, 2019, August 5, 2019, August 8, 2019, and August 12, 2019. There is no mention in any of these physical therapy visits that claimant had a work injury at Flynn by either slipping while getting out of or into a truck. (JE 5, pp. 49-63)

In deposition, claimant testified she had never had any issues with her shoulders prior to June 14, 2019. (Ex. E, depo pp. 31-32) Records from Drees Chiropractic on June 11, 2019 and June 12, 2019, indicate claimant reported dull and burning pain in her bilateral shoulders. (JE 2, pp. 7-8)

Three experts have opined regarding causation of claimant's shoulder and lower extremity condition. Dr. Westpheling opined that claimant's shoulder and right leg condition were not related to her alleged work injury. (Ex. C)

Dr. Taylor evaluated claimant once for an IME. He noted, "assuming" that claimant's injury occurred as alleged, he believed the June 14, 2019, incident represented a significant contributing factor to claimant's shoulder issue. (Ex. 11, pp. 45-46)

Dr. Taylor noted that finding causation in claimant's case was challenging due to the lack of documentation. (Ex. 11, p. 45) Dr. Taylor does reference the inconsistency in claimant's history of the alleged incidents when compared with medical records. As noted above, claimant had approximately 25 visits for chiropractic care and physical therapy from the date of the injury for approximately 3 months. There is no mention, in any of these records, of an incident where claimant slipped on a water truck step and injured her shoulders. Dr. Taylor offers little rationale or explanation why claimant saw providers on 25 different occasions and yet there is no reference, in any of these records, to a slipping injury on a truck. Based on this lack of explanation or rationale for the inconsistencies in documentation when compared with claimant's history of the injury, Dr. Taylor's opinions regarding causation are found not convincing.

Dr. Bollier treated claimant for an extended period of time and performed surgery on claimant's shoulder. In a letter written by claimant's counsel, Dr. Bollier indicated the history as "described" by claimant fit a work injury. (Ex. 10, pp. 32-33)

There is no evidence in the record Dr. Bollier had access to the approximately 25 chiropractic and physical therapy visits covering three months where there is no reference to a work injury. Based on the letter, it appears Dr. Bollier's only information regarding the injury is a history of the injury given by claimant. As Dr. Bollier's opinion regarding causation appears to lack knowledge of the medical record discrepancies in this case, Dr. Bollier's opinion regarding causation is found not convincing.

As noted above, claimant had approximately 25 visits with chiropractic and physical therapists for approximately 3 months after the alleged injury. None of these records refer to an injury caused by slipping on a truck. Claimant's testimony regarding the mechanism of the accident is inconsistent. Claimant's testimony of reporting of the

injury is inconsistent with texts and the testimony of Mr. Gorton and Mr. Flynn. The opinions of Dr. Bollier and Dr. Taylor are found not convincing regarding causation. The opinion of Dr. Westpheling regarding causation is found not convincing. Given this record, claimant has failed to carry her burden of proof she sustained an injury on June 14, 2019, that arose out of and in the course of her employment.

As claimant failed to carry her burden of proof she sustained an injury that arose out and in the course of employment, all other issues are moot, except for the issue of reimbursement of the IME.

The next issue to be determined is whether claimant is entitled to reimbursement for an IME.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

Claimant was evaluated by Dr. Westpheling, the employer-retained physician, on June 6, 2020. In a report from that date, Dr. Westpheling found no causation between claimant's alleged injury and her condition. (Ex. C)

In Kern v. Fenchel, Doster and Buck, P.L.C., No. 20-1206, slip op. at 10 (Iowa Court of Appeals)(Sept. 1, 2021), the Iowa Court of Appeals found that an opinion finding a lack of causation was tantamount to a zero impairment.

In a December 30, 2021 report, Dr. Taylor gave his opinion regarding claimant's permanent impairment. Based on the chronology of the reports, and the holding in Kern, claimant is entitled to reimbursement for the IME.

ORDER

THEREFORE IT IS ORDERED:

That claimant shall take nothing from these proceedings in the way of any benefits.

That defendants shall reimburse claimant for costs associated with Dr. Taylor's IME.

That both parties shall pay their own costs.

Signed and filed this 21st day of June, 2022.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Shaull (via WCES)

Kathryn Johnson (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.