BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RUBELINDA QUINTANILLA, Claimant, vs. WELLS ENTERPRISES, INC., Employer, Self-Insured, Defendant.	:	File No. 21700457.01 ARBITRATION DECISION Headnotes: 1801, 2501, 2907

Claimant Rubelinda Quintanilla filed a petition in arbitration on May 10, 2021, alleging she sustained injuries to her neck, bilateral shoulders, back, and hip, while working for Defendant Wells Enterprises ("Wells"). Wells filed an answer on May 18, 2021.

An arbitration hearing was held *via* Zoom video conference on April 28, 2022. Attorney Judy Freking represented Quintanilla. Quintanilla appeared and testified. Perla Alarcon-Flory provided Spanish interpretation services during the hearing. Attorney Steven Durick represented Wells. David Calhoun appeared and testified on behalf of Wells. Joint Exhibits ("JE") 1 through 3, and Exhibits 1 through 11 and A through G were admitted into the record. The record was held open through June 3, 2022, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

At the start of the hearing the parties submitted a Hearing Report, listing stipulations and issues to be decided. Wells waived all affirmative defenses. The Hearing Report Order was approved and filed at the conclusion of the hearing.

STIPULATIONS

1. An employer-employee relationship existed between Wells and Quintanilla at the time of the alleged injury.

2. Quintanilla sustained injuries, which arose out of and in the course of her employment with Wells on February 22, 2021.

3. Although entitlement to temporary benefits cannot be stipulated, Quintanilla was off work from May 4, 2021, through April 19, 2022.

4. At the time of the alleged injury Quintanilla's gross earnings were $1,252.00 per week, she was single, and entitled to one exemption, and the parties believe the weekly rate is $750.81.

5. Prior to the hearing Quintanilla was paid the compensation set forth in Exhibit 7.

ISSUES

1. Is the alleged injury a cause of temporary disability during a period of recovery?

2. Is Quintanilla entitled to temporary total disability, temporary partial disability, or healing period benefits from May 4, 2021, through April 19, 2022?

3. Did Quintanilla refuse suitable work through her termination?

4. Is Quintanilla entitled to payment of medical expenses?

5. Should penalty benefits be assessed against defendant?

6. Should costs be assessed against either party?

FINDINGS OF FACT

Quintanilla lives alone in Le Mars. (Transcript, page 7; Exhibits 1, p. 4; G, pp. 43-44) At the time of the hearing she was 56. (Tr., p. 7)

Quintanilla commenced employment with Wells on March 24, 1996. (Exs. 2, p. 15; G, p. 45) Quintanilla worked for Wells for 25 years until her termination in 2021. (Tr., p. 7)

On February 22, 2021, Quintanilla was working on the Hoyer wrapper packing boxes when one of the guards became loose and struck her on the side of the shoulder. (JE 2, p. 5; Exs. 2, p. 22; G, p. 48) Quintanilla initially received treatment through the company nurses at Wells. (Ex. G, p. 49)

On March 23, 2021, Wells offered Quintanilla a restricted duty assignment of no lifting over 10 pounds with one to two hours of bending, squatting, and twisting, and occasional gripping, pinching, pushing, pulling, and reaching above her shoulder. (Ex. 3, p. 23) Quintanilla accepted the temporary work on March 24, 2021. (Ex. 3, p. 23; Tr., p. 11) Quintanilla testified she continued to work her normal duties on the Hoyer after receiving work restrictions. (Tr., p. 11)

On May 3, 2021, Wells terminated Quintanilla for violating the work rules. (Exs. 2, p. 15; 5) Wells noted Quintanilla had no disciplinary action on file within the last 12 months. (Ex. 5, p. 26) Quintanilla testified during her entire 25-year career she had not been disciplined before her termination. (Tr., p. 37)

According to the termination paperwork, “[o]n 4/29/21 it was brought up to the supervisor that Rubelinda was yelling and grabbed Erika Morales by the arm.” (Ex. 5, p. 26) Wells documented Quintanilla admitted she touched Morales by the arm and she was talking loud to her, and after talking to two other witnesses “it is believed Rubelinda did yell and grab Erika by the arm,” which is a violation of “Company Policy 601.” (Ex. 5, p. 26) The termination paperwork is not signed by Quintanilla and notes she was not

present. (Ex. 5) Wells called Quintanilla and informed her she had been terminated. (Tr., p. 35)

The Wells Employee Handbook provides under 601 Employee Conduct and Work Rules that "[c]onduct that results in disciplinary action, up to and including termination of employment includes, but is not limited to" . . . "Fighting or threatening violence in the workplace . . .Discourtesy to a fellow employee, visitor, or customer. . . Violation of personnel policies." (Ex. F, pp. 38-39)

Quintanilla testified she did not grab her coworker. (Tr., p. 17) Quintanilla reported Erika Morales came looking for her while she was working on the production line and started confronting her about things in Spanish. (Tr., pp. 17-18) Quintanilla testified Morales confronted her for saying she was taking long breaks and Quintanilla denied saying anything like that. (Tr., p. 19) Quintanilla's counsel inquired and she responded:

> Q. Okay. So Wells alleges that when she came to confront you, that you somehow grabbed her arm; is that correct?
>
> A. No. No, I only touched her and I said, "Hold on. Tell me who told you that."
>
> Q. Okay. So Erica [*sic*] had some drama that she brought to your line when you were working and that is the basis of your termination from Wells?
>
> A. That is correct.

(Tr., p. 19) At the time of her termination, Quintanilla continued to have restrictions and she did not have surgery until several months later. (Tr., p. 20)

Quintanilla testified she did not yell at Morales and that Exhibit 5, which documents she yelled at Morales is incorrect. (Tr., pp. 30-31) Quintanilla admitted she touched her only. (Tr., p. 31) On cross-examination, Quintanilla responded, as follows:

> Q. So you did make physical contact with Erica [*sic*] Morales during that physical contact, correct?
>
> A. The contact – I only touched her.
>
> Q. Okay. So you dispute that you grabbed her?
>
> A. I touched her. I didn't hit her.

(Tr., p. 31)

Calhoun is the director of corporate risk management for Wells. (Tr., p. 40) Calhoun testified he did not have any personal involvement in Quintanilla's termination. (Tr., p. 42) Calhoun reported that but for her termination, Wells could have accommodated Quintanilla's restrictions. (Tr., pp. 43-47)

On May 4, 2021, Quintanilla attended an appointment with Rodney Cassens, M.D. (JE 1, p. 1) Dr. Cassens examined Quintanilla, assessed her with bilateral shoulder contusions and strains, and a lumbar strain, and ordered physical therapy. (JE 1, p. 1) Dr. Cassens found Quintanilla could perform regular duty work for two hours per day and imposed restrictions for the remainder of the day of occasional bending, squatting, twisting, pulling, reaching, gripping, and pinching, and no lifting over 10 pounds. (JE 1, p. 1)

Quintanilla returned to Dr. Cassens on May 18, 2021, reporting her overall pain had improved, but complaining of intermittent, sharp pain radiating to her shoulders bilaterally that is more severe on the right than the left. (JE 1, p. 2) Dr. Cassens assessed Quintanilla with a bilateral rotator cuff strain/contusion, more severe on the right than the left, and a stable lumbar strain. (JE 1, p. 2) Dr. Cassens continued Quintanilla's physical therapy, recommended right shoulder magnetic resonance imaging, and imposed restrictions of no lifting over 10 pounds, occasional bending, squatting, twisting, gripping, pinching, pushing, pulling, and reaching. (JE 1, p. 2)

On June 11, 2021, Quintanilla attended a follow-up appointment with Dr. Cassens, reporting her lumbar strain pain had improved, but she was continuing to experience intermittent, severe right shoulder pain. (JE 1, p. 3) Dr. Cassens noted the right shoulder magnetic resonance imaging revealed a partial tearing of the supraspinatus and infraspinatus tendons of the right rotator cuff. (JE 1, p. 3) Dr. Cassens assessed Quintanilla with a tear of the right shoulder rotator cuff and resolved lumbar strain, found she had reached maximum medical improvement for her lumbar strain, continued her restrictions, and referred her to orthopedics for evaluation and treatment of her right rotator cuff tear. (JE 1, p. 3)

Quintanilla attended an appointment with Ryan Meis, M.D., an orthopedic surgeon on July 7, 2021, regarding her right shoulder pain. (JE 2, p. 5) Quintanilla reported she had worked for Wells for 25 years, but she had recently been terminated. (JE 2, p. 5) Quintanilla complained of pain in both shoulders and neck, reporting she experiences pain that goes down her arm and sometimes has some hand pain and low back pain, and that she has some numbness and tingling on occasion. (JE 2, p. 5) Dr. Meis examined Quintanilla and reviewed her imaging, noting "[i]t is difficult to see her rotator cuff attachment site posteriorly and she may in fact have at least a partial thickness tear of her supraspinatus and infraspinatus," but he could not say with any certainty that she has a full thickness tear. (JE 2, p. 6) Dr. Meis assessed Quintanilla with chronic right shoulder pain, opined she is not an ideal surgical candidate, recommended and performed a corticosteroid injection, and recommended a home exercise program with over-the-counter medications and topical agents. (JE 2, pp. 6-7)

On August 4, 2021, Quintanilla returned to Dr. Meis, reporting she had some improvement. (JE 2, p. 8) Dr. Meis found her range of motion was better and Quintanilla reported having less pain and she was sleeping better, but she was still experiencing pain reaching away from her body. (JE 2, p. 8) Dr. Meis assessed Quintanilla with chronic right shoulder pain, imposed restrictions of no lifting over 10 pounds, no overhead lifting, and occasional pushing and pulling. (JE 2, p. 8)

After her termination, Quintanilla applied for unemployment insurance benefits. (Ex. 6) Iowa Workforce Development denied her claim on August 6, 2021, because its records indicated she was discharged from work on May 3, 2021, for violation of a known company rule. (Ex. 6, p. 29)

Quintanilla attended an appointment with Dr. Meis on September 8, 2021, complaining of bilateral shoulder pain. (JE 2, p. 11) Quintanilla relayed her right shoulder had reached a steady point, but it was not normal, and while her right shoulder pain was worse for a while, her left shoulder pain was the same as her right shoulder pain, noting her pain is worse with activity and better with rest. (JE 2, p. 11) Quintanilla complained of occasional achiness and stabbing pain in her shoulder, difficulty sleeping due to the pain, and difficulty reaching away from her body. (JE 2, p. 11) Dr. Meis assessed Quintanilla with bilateral shoulder pain, recommended left shoulder magnetic resonance imaging, and continued her restrictions. (JE 2, p. 12)

On October 13, 2021, Quintanilla attended a follow-up appointment with Dr. Meis. (JE 2, p. 16) Dr. Meis noted magnetic resonance imaging revealed a large full thickness rotator cuff tear, partial biceps tendon tear, labral tear, and findings consistent with impingement. (JE 2, p. 16) Quintanilla complained of stabbing pain in her left shoulder, localized to the rotator cuff insertion, and stated she would like to move forward with surgery. (JE 2, p. 16) Dr. Meis listed an impression of a large, full-thickness rotator cuff tear, impingement, and possible biceps tendinitis, morbid obesity, and hypertension, and recommended a left shoulder arthroscopy, subacromial decompression, possible biceps tenotomy, and rotator cuff repair. (JE 2, p. 17)

Quintanilla underwent a left shoulder arthroscopy with arthroscopic rotator cuff repair, subacromial decompression, extensive debridement, biceps tenotomy, and subacromial decompression on October 21, 2021. (JE 3, pp. 32, 35)

On November 8, 2021, Wells's counsel sent an e-mail to Quintanilla's counsel stating,

> [i]t is my understanding that your client has been released back to light duty work at Wells. It has been confirmed that but for your client's previous termination from Wells (for an altercation with a co-worker) they would have been able to accommodate such light duty restrictions. Therefore, under Reynolds v. HyVee, please accept this email correspondence as notice that your client's benefits are being terminated as of 11/4/21 under ICA 85.33.

(Ex. C, p. 34)

Quintanilla returned to Dr. Meis's office following surgery and she was examined by Nichole Friessen, PA-C, on December 1, 2021. (JE 2, p. 23) Quintanilla reported she thought her range of motion was improving and she did not have significant pain. (JE 2, p. 23) Friessen cautioned Quintanilla about doing too much too soon, told her not to use her left upper extremity, and ordered her to continue physical therapy and her home exercise program. (JE 2, p. 23)

On January 19, 2022, Quintanilla attended an appointment with Dr. Meis, reporting she was doing well and that her pain was controlled. (JE 2, p. 27) Dr. Meis examined Quintanilla, found she could elevate to 155 degrees with assistance, documented Quintanilla was doing a nice job managing her rehabilitation with a very large tear, ordered additional physical therapy, and imposed restrictions of light duty work with no lifting over 10 pounds. (JE 2, p. 27)

Quintanilla returned to Dr. Meis on March 9, 2022, regarding her left shoulder. (JE 2, p. 29) Dr. Meis examined Quintanilla, listed an impression of status post left shoulder rotator cuff repair making improvements, and right shoulder impingement and partial thickness rotator cuff tear, imposed restrictions of no lifting over 10 pounds, no overhead lifting, and occasional pushing, and pulling, and recommended conservative care for her right shoulder. (JE 2, p. 30)

Quintanilla testified on April 20, 2022, Wells sent her to a new physician and her restrictions were lifted for the first time since the work injury. (Tr., p. 20) While Quintanilla has not worked since Wells terminated her employment, she testified she has not refused any light duty work since her work injury. (Tr., p. 23)

CONCLUSIONS OF LAW

I. Temporary Benefits

Iowa Code section 85.33 (2021) governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

An employee has a temporary partial disability when because of the employee's medical condition, "it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability." Iowa Code § 85.33(2). Temporary partial disability benefits are payable, in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee's temporary partial disability, and "shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury." Id.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Dunlap, 824 N.W.2d at 556.

Temporary total, temporary partial, and healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986); Stourac-Floyd v. MDF

Endeavors, File No. 5053328 (App. Sept. 11, 2018); Stevens v. Eastern Star Masonic Home, File No. 5049776 (App. Dec. Mar. 14, 2018).

Quintanilla seeks temporary disability benefits from May 4, 2021, through April 19, 2022. The parties stipulated Quintanilla was off work for this period of time. Wells avers Quintanilla is not entitled to temporary benefits because she refused suitable work through her termination because Wells could have accommodated her temporary restrictions.

Refusal of suitable work has been an affirmative defense in workers' compensation cases in Iowa for many years. In 2017, the Iowa Legislature codified the affirmative defense and imposed additional requirements on the parties that were not required under the common law.

Iowa Code section 85.33(3) now provides:

> *a.* If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. Work offered at the employer's principal place of business or established place of operation where the employee has previously worked is presumed to be geographically suitable for an employee whose duties involve travel away from the employer's principal place of business or established place of operation more than fifty percent of the time. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily, partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.
>
> *b.* The employer shall communicate an offer of temporary work to the employee in writing, including details of lodging, meals, and transportation, and shall communicate to the employee that if the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing and that during the period of the refusal the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable. If the employee refuses the offer of temporary work on the grounds that the work is not suitable, the employee shall communicate the refusal, along with the reason for the refusal, to the employer in writing at the time the offer of work is refused. Failure to communicate the reason for the refusal in this manner precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

Thus, the statute precludes an employee who refuses suitable work offered by the employer, consistent with the employee's disability, from receiving temporary or healing period benefits during the period of refusal. Id.; Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 520 (Iowa 2012). The employer bears the burden of providing the affirmative defense. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 559 (Iowa 2010).

The issue of whether an employer has offered suitable work is ordinarily an issue for the trier of fact. Neal, 814 N.W.2d at 518. The Iowa Supreme Court has held under the express wording of the statute, the offered work must be "'suitable' and 'consistent with the employee's disability' before the employee's refusal to accept such work will disqualify [the employee] from receiving temporary partial, temporary total, and healing period benefits." Id. at 519.

Quintanilla alleges the offer of work made by Wells was not suitable because the work assignment Wells provided in writing that she accepted was not actually provided to her. After Wells provided the suitable work offer, Quintanilla accepted the offer and she worked for Wells until Wells terminated her employment. Quintanilla did not resign stating the work was not suitable. I do not find her argument has merit.

For misconduct to disqualify an employee from compensation, the misconduct must be tantamount to a refusal of suitable work. Reynolds v. Hy-Vee, Inc., 2017 WL 5176028, File No. 5046203 (Iowa Workers' Comp. Comm'n Oct. 31, 2017). "Termination by itself is not sufficient grounds to disqualify an employee from temporary benefits under Iowa Code section 85.33(3)." Gully v. Liguria Foods, Inc., 202 WL 599659, File No. 5063429 (Iowa Workers' Comp. Comm'n Jan. 30, 2020) (internal citations omitted). The Commissioner has held

> [t]he misconduct must be serious and the type of conduct that would cause any employer to terminate any employee. The misconduct must have a serious adverse impact on the employer. The misconduct must be more than the type of inconsequential misconduct that employers typically overlook or tolerate. An employee working with restrictions is not entitled to act with impunity toward the employer and the employer's interests. Nevertheless, not every act of misconduct justifies disqualifying an employee from workers' compensation benefits even though the employer may be justified in taking disciplinary action.

Reynolds, 2017 WL 5176028 at *2 (internal citations omitted) (finding misconduct of stealing items from the employer was tantamount to a refusal to perform light duty work because the conduct was serious and the type of conduct that would reasonably cause an employer to terminate any employee).

I do not find Wells has established Quintanilla engaged in disqualifying misconduct. See Cameron v. Pacifica Health Servs., 2021 WL 3609608, File No. 5063931 (Iowa Workers' Comp. Comm'n Jan. 21, 2021) (finding while claimant was angry, agitated, yelled, and accused an employee of lying, which was inappropriate and demonstrated poor judgment, claimant did not engage in the type of conduct that is tantamount to a refusal of suitable work and claimant was not disqualified from receiving

benefits). Quintanilla denied she yelled at her coworker and grabbed her arm. No witnesses to the incident testified at hearing regarding the incident other than Quintanilla. Quintanilla had an unblemished record of 25 years of employment with Wells prior to the incident. I do not find Quintanilla engaged in the type of conduct that is tantamount to a refusal of suitable work. Quintanilla continued to have temporary restrictions through April 19, 2022. (Tr., p. 20) I find she is entitled to temporary total disability benefits from May 4, 2021, through April 19, 2022, at the stipulated weekly rate of $750.81.

II. Penalty Benefits

Quintanilla alleges Wells should be assessed penalty benefits because Wells did not actually provide her with an assignment within her restrictions and then terminated her employment without performing a legitimate and reasonable investigation into the incident that lead to her termination. Wells avers no penalty benefits should be assessed because it had a reasonable or probable excuse for refusing to pay her temporary benefits.

Iowa Code section 86.13 governs compensation payments. Under the statute's plain language, if there is a delay in payment absent "a reasonable or probable cause or excuse," the employee is entitled to penalty benefits, of up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse. Iowa Code § 86.13(4); see also Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (citing earlier version of the statute). "The application of the penalty provision does not turn on the length of the delay in making the correct compensation payment." Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 236 (Iowa 1996). If a delay occurs without a reasonable excuse, the commissioner is required to award penalty benefits in some amount to the employee. Id.

The statute requires the employer or insurance company to conduct a "reasonable investigation and evaluation" into whether benefits are owed to the employee, the results of the investigation and evaluation must be the "actual basis" relied on by the employer or insurance company to deny, delay, or terminate benefits, and the employer or insurance company must contemporaneously convey the basis for the denial, delay, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits. Iowa Code § 86.13(4). An employer may establish a "reasonable cause or excuse" if "the delay was necessary for the insurer to investigate the claim," or if "the employer had a reasonable basis to contest the employee's entitlement to benefits." Christensen, 554 N.W.2d at 260. "A 'reasonable basis' for denial of the claim exists if the claim is 'fairly debatable.'" Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 267 (Iowa 2012). "Whether a claim is 'fairly debatable' can generally be determined by the court as a matter of law." Id. The issue is whether the employer had a reasonable basis to believe no benefits were owed to the claimant. Id. "If there was no reasonable basis for the employer to have denied the employee's benefits, then the court must 'determine if the defendant knew, or should have known, that the basis for denying the employee's claim was unreasonable.'" Id.

Benefits must be paid beginning on the 11th day after the injury, and "each week thereafter during the period for which compensation is payable, and if not paid when due," interest will be imposed. Iowa Code § 85.30. In Robbennolt, the Iowa Supreme Court noted, "[i]f the required weekly compensation is timely paid at the end of the compensation week, no interest will be imposed . . . . As an example, if Monday is the first day of the compensation week, full payment of the weekly compensation is due the following Monday." Robbennolt, 555 N.W.2d at 235. A payment is "made" when the check addressed to the claimant is mailed, or personally delivered to the claimant. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996) (abrogated by Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299 (Iowa 2005) (concluding the employer's failure to explain to the claimant why it would not pay permanent benefits upon the termination of healing period benefits did not support the commissioner's award of penalty benefits)).

When considering an award of penalty benefits, the commissioner considers "the length of the delay, the number of the delays, the information available to the employer regarding the employee's injuries and wages, and the prior penalties imposed against the employer under section 86.13." Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 336 (Iowa 2008). The purposes of the statute are to punish the employer and insurance company and to deter employers and insurance companies from delaying payments. Robbennolt, 555 N.W.2d at 237.

While I did not find Wells established Quintanilla engaged in disqualifying conduct, I do find Wells has established it had reasonable cause for not paying Quintanilla temporary benefits. However, Wells did not contemporaneously convey the reason it was refusing to pay Quintanilla temporary total disability benefits. The record reflects it did not inform Quintanilla of the reason until November 2021, months after her termination. (Exs. C-D) I find Wells should be assessed a $1,000.00 penalty to discourage Wells and other employers and insurance carriers from engaging in similar conduct in the future.

III. Medical Bills

Quintanilla sought to recover medical bills set forth in Exhibit 9. In its post-hearing brief Wells agreed to pay the medical bills. Quintanilla did not address the issue in her post-hearing brief. Wells is responsible for the medical bills set forth in Exhibit 9.

IV. Costs

Quintanilla seeks to recover the $145.00 cost of interpreter services from July 23, 2021. (Ex. 10, p. 38) Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 Iowa Administrative Code 4.33, provides costs may be taxed by the deputy workers' compensation commissioner for: (1) the attendance of a certificated shorthand reporter for hearings and depositions; (2) transcription costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses; (5) the cost of doctors' and practitioner's deposition testimony; (6) the reasonable cost of obtaining no more than two doctors' or practitioners' reports; (7) filing fees; and (8) the cost of

persons reviewing health service disputes. The rule does not expressly allow for the recovery of the interpreter services. I find Quintanilla is not entitled to recover the $145.00 cost of the interpreter services.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay Claimant temporary total disability benefits from May 4, 2021, through April 19, 2022, at the stipulated weekly rate of seven hundred fifty and 81/100 dollars ($750.81).

Defendant is entitled to a credit for all benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendant shall pay claimant one thousand and 00/100 dollars ($1,000.00) in penalty benefits.

Defendant is responsible for all causally connected medical bills, as stipulated in its post-hearing brief.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this ___5th___ day of July, 2022.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Judy Freking (via WCES)

Al Sturgeon (via WCES)

Steven Durick (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.