BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIA ULLOA,

Claimant,

vs.

HNI CORPORATION,

Employer,
Self-Insured,
Defendant.

File No. 5041244

ARBITRATION

DECISION

Head Note Nos.: 1803; 2500; 2700; 2907

STATEMENT OF THE CASE

Maria Ulloa, claimant, filed a petition in arbitration seeking workers' compensation benefits against HNI Corporation, self-insured defendant, for a work injury date of July 7, 2011.

This case was heard on July 7, 2015, in Davenport, Iowa. The record was left open until July 17, 2015 for the sole purpose of allowing the defendant to review and present objections to claimant's late exhibits 20-22. The defendant did not have any objections and the record was closed. The case was considered fully submitted on July 28, 2015, upon the simultaneous filing briefs.

The record consists of claimant's exhibits 1-22, defendant's exhibits A-K, M-R, T-W. Defendant voluntarily removed exhibits L and S. The record also includes the testimony of the claimant, Jack Reid, Nick Roefer, Natalie Lopez, Lucas Harger, and Ryan Mockmore, the latter two via deposition.

ISSUES

The extent of claimant's industrial disability;

1. Whether claimant is entitled to payment of medical expenses;

2. Whether the claimant is entitled to alternate care under Iowa code section 85.27 with Dr. Hostetler; and

3. Which parties are entitled to an assessment of costs.

STIPULATED FACTS

The parties agree claimant sustained an injury to her right shoulder on July 7, 2011. Prior to the hearing, the claimant was paid 56 weeks of compensation at a rate of $384.06.

The parties agree that at the time of the claimant's injury her gross earnings were $578.80 per week. She was single and entitled to 1 exemption. Based on those foregoing numbers the parties believe the weekly rate be $369.31

The commencement date for permanent partial disability benefits is December 30, 2013.

FINDINGS OF FACT

At the time of the hearing, the claimant was a 58-year-old woman with some education received in Ecuador. Her primary language is Spanish; however, she can read and speak some English. The services of an interpreter were utilized during the hearing. At the time of the injury, the claimant's gross earnings were $578.80 per week and she was single and entitled to 1 exemption.

The parties stipulated to a right shoulder injury on July 7, 2011.

Her prior work history includes work as a laborer for Acadian Planters, an industrial seamstress, and a babysitter/office person for a doctor in Puerto Rico. At one time claimant listed on an application for employment that she had worked as a housekeeper and a nurse's aide while in Puerto Rico. During the hearing, she admitted that she had not worked at those places, but had used those as references so she could obtain employment.

At the time of her injury on July 7, 2011, claimant was working as a technical sewer in the mesh cell. The mesh cell team is comprised mainly of three individuals who are responsible for constructing the seat back of a chair. Rolls of mesh are taken to a laser cutter and then a strip of plastic is sewn around the mesh pieces. Once the sewing is complete and the mesh is inserted into the frame of the chair back, the items are heat shrunk and the finished products are sent to the builders. Individually, the items are lightweight.

At the time of her injury, claimant testified she was placing an arm on a chair and the force caused an injury to her right shoulder. Claimant sustained a full-thickness rotator cuff tear, which was repaired surgically on December 16, 2011. (Exhibit E, page 50)

The job description for a semiskilled operator of a machine for the defendant employer requires an individual to be able to work up to 10 hour days continuously standing or in motion on a concrete floor, lift and carry up to 40 pounds for up to 10 feet

on continuous basis, frequently use hands, arms, legs and/or back in a push-pull motion for up to 25 pounds, use of abdominal and lower back muscles to support part of the body frequently and continuously over time without fatiguing, continuous movement of the hand, hand together with the arm, or two hands to grasp, manipulate, or maneuver raw materials to machine processes, and the frequent reaching and lifting up to 15 pounds at or above the shoulders. (Ex. 7, p. 48) Nick Roefer, group lead of the mesh cell, testified that the mesh cell does not require the lifting of 40 pounds. (Ex. 12, p. 6) Roefer's hearing testimony was impeached at least twice and the testimony he gave during the deposition is more reliable.

In the answers to interrogatories, the defendant admits that the claimant sustained a permanent partial impairment to her right side, resulting in 11 percent body as a whole injury. (Ex. A, p. 56) It also agreed that the claimant had permanent work restrictions of lifting up to 15 pounds on the right and no lifting above the shoulder/chest level. (Ex. 8, p. 56) The defendant asserts that it has accommodated claimant's restrictions by allowing her coworkers to do the lifting and reaching about 15 pounds.

Claimant is required to work overtime, if it is scheduled. However, claimant has requested that she not work overtime. She has no doctor's orders restricting her to only eight hours a day. She was instructed to obtain a work restriction pertaining to hours. She has not done so.

Failure to work mandatory overtime results in a "point" or mark against her work record.

In the claimant's cell, she works with primarily two other individuals. Lucas Harger and Raymond Mockmore both were deposed on June 8, 2015. (Ex. 10) Mr. Harger testified that claimant's primary job is to sew a plastic strip around the mesh to create a seat back. The completed item is then snapped into a frame. He testified that "it'll wear on you after awhile. [sic] It'll make your arm up here—you'll feel it." (Ex. 10, p. 3) He further testified that claimant will run the laser from time to time. The laser is a cutting machine and this is the area in which the claimant needed assistance. The rolls of mesh weigh more than her 15 pound restriction. He also assisted her in carrying stacks of finished mesh to the builders. He did not know if they weighed more than 15 pounds and in fact testified that they weighed about 8 to 10 pounds. (Ex. 10, p. 3)

He testified that he has seen her work while she is hurting and that he has seen her use the TENS unit. (Ex. 10, p. 3)

Raymond Mockmore testified that the mesh cell was not incentive-based. (Ex. 11a, p. 2) However, they are required to produce at a certain rate. (Ex. 12, p. 10; testimony of Nick Roefer) He testified that he assists her regularly so claimant can remain within her restrictions and that she often works with pain and discomfort. He believes that the claimant's arm swells at the end of the night. (Ex. 11a, p. 3)

During the social security disability assessment, it was noted that the claimant receives minimal assistance at work. "In the worst of times she is unable to do her job 30 minutes in an 8 hour day." (Ex. N, p. 161)

Claimant asserts that her left shoulder and left upper extremity injuries are the result of carrying/lifting heavy items such as buckets and/or doing repetitive activities of a sewer. (Ex. 14, p. 67) There was no testimony from any other witnesses that claimant's job involved the carrying of buckets. Further, both coworkers testified that they frequently helped the claimant so she would remain within her restrictions.

Complaints regarding hand pain, shoulder pain on the right side extending into the arm, and cervical pain began shortly after claimant's injury on July 20, 2011. On August 29, 2011, she complained of shoulder, neck, arm and right hand numbness. (Ex. G, p. 56)

On February 6, 2012, Michael M. Durkee M.D., took a phone call from claimant's physical therapist, David Hodges. Mr. Hodges reported the claimant was having extraordinary pain. (Ex. D, p. 47) Her passive range of motion was close to normal, but her active range of motion was very low. Mr. Hodges could not find any abnormalities within the arm or any evidence of reflex sympathetic dystrophy (RSD) or other non-obvious syndromes. (Ex. D, p. 47)

On June 4, 2012, she was examined by R. Tyson Garrett, M.D., at the request of Dr. Durkee. Claimant explained to Dr. Garrett that she had pain in the right shoulder "all over. She points to the front breast area, the deltoid, the supraspinatus. Even if she pushes her skin down she has pain and she has limitation of motion. She cannot do internal or external rotation without pain." (Ex. F, p. 52) He did not see signs of nerve damage or atrophy or any impressive weakness. Her primary limitation was rotation due to pain. (Ex. F, p. 54) He wondered if she had fibromyalgia. (Ex. F, p. 54)

In a letter to the claims adjuster for the defendant insurer, Dr. Durkee opined the claimant sustained a rotator cuff tear and a labral tear as a result of her work for the defendant employer. He noted that she was working with permanent work restrictions of occasional lifting of 15 pounds with the right arm and no lifting above chest level. She had reduced range of motion in her right shoulder. Based upon those issues, Dr. Durkee assigned an 18 percent impairment of the right upper extremity. (Ex. 1, p. 3) He noted that the maximum medical improvement (MMI) date would be December 3, 2012. (Ex. 1, p. 4)

Claimant underwent an independent medical examination (IME) with Robin L. Sassman, M.D., on March 19, 2013, with symptoms of right shoulder pain, numbness and tingling in her right hand and posterior neck pain on the left side, radiating into the arm. (Ex. J, p. 104) Dr. Sassman suspected claimant had degenerative changes aggravated by the injury. (Ex. J, p. 107)

In a patient information form completed by the claimant, she maintained that her sewing job required lifting over the shoulder 30 percent of the time. She also failed to include that she had been given permanent restrictions by Dr. Durkee of no lifting above the shoulder and chest height with her right arm and that those restrictions have been accommodated.

Dr. Sassman did not believe claimant was at MMI in spring of 2013 and recommended additional testing. (Ex. J, p. 107) At that time, she could not assign a ratable impairment for the left shoulder but did assign 15 percent impairment to the cervical spine due to loss of sensation in a dermatomal pattern. (Ex. J, p. 108) Dr. Sassman recommended restrictions of "limiting lifting, pushing, pulling and carrying to 15 pounds occasionally from floor to waist and waist to shoulder and 10 pounds rarely over the shoulder." (Ex. J, p. 109)

On April 12, 2013, claimant underwent an independent medical examination with Benjamin D. MacClellan M.D. (Ex. C, p. 31) During the history, claimant explained that she was pushing arm parts onto a chair using a lot of force and subsequently felt a pain in her right shoulder and she felt numbness going down the right arm into the hand. She underwent surgery on December 2011, but continued to have right shoulder pain. As well as right-sided sharp neck pain that constantly ached. She complained of numbness radiating down the arm constantly in a cold numb type sensation into the fourth and fifth digits of her hand. She said that her TENS unit helps at times, but that her condition was worsening.

On examination claimant was cooperative and Dr. MacClellan believed that she was trying to do her best throughout the exam. She had a steady gait and good cervical spine range of motion. She was able to touch her chin to her chest, was able to rotate side to side, and she was able to move her ear to her shoulder on both sides with lateral bending. He believed that she had a slightly decreased range of motion in the five to ten percent range. She exhibited mild tenderness to palpation throughout the right paraspinals, right trapezius. (Ex. C, p. 32) She had decreased sensation in the right lateral shoulder and some weakness of right grip strength. (Ex. C, p. 32)

She showed signs of impingement with provocative maneuvers on the right shoulder. Dr. McClellan recommended she obtain a cervical MRI to see if she had severe stenosis to match the pattern of the right arm. (Ex. C, p. 33) Claimant underwent an MRI on April 30, 2013. The MRI revealed mild degenerative disease through the cervical spine mostly in the mid-levels to the upper levels. The spinal cord showed no significant abnormalities. (Ex. C, p. 28) In sum, there was no objective evidence consistent with the claimant's reports of pain.

On June 6, 2013, claimant was seen by Dr. Durkee for a marked amount of pain in the right shoulder. The findings were unchanged from the previous evaluation and there was no medical intervention that Dr. Durkee believed would be helpful. Claimant stated that she was satisfied with the restrictions and that the restrictions did need to be changed. (Ex. D, p. 42)

On March 18, 2014, she was seen by Kathleen J. Mitcham, PA-C at the Quad Cities Muscatine clinic for pain in the right upper thoracic, shoulder and arm, but specifically denied neck pain. (Ex. H, p. 62) She complained of pain and numbness in the right shoulder. "They have continued to put her back to work saying that she has restrictions, but in reality, she is doing pretty much the same thing that she was doing previously, but now just using her left arm. This is now causing pain in her low left shoulder . . . . She has had injections into her right shoulder as well, but these have not improved her symptoms." (Ex. H, p. 61) On September 29, 2014 and November 9, 2014, claimant was seen by Brett C. Lockman, D.O., an unauthorized visit, for an injection to treat the pain in her neck, shoulder and left extremity. (Ex. I, pp. 65, 69) Dr. Lockman wrote to claimant's lawyer on September 4, 2014, and opined that claimant's left upper extremity problems were related to overcompensation.

> She reports to me that her left elbow pain at the lateral epicondyle developed insidiously since shortly after the onset of her limited right shoulder dysfunction correlating directly in time with the work-activity postural compensations she had to make to perform her job. She denies any specific incident of trauma to the left elbow or forearm.
>
> On physical examination she is tender to palpation at the lateral epicondyle, with radiation of pain distally along the extensor compartment, and worse with wrist extension. She has give-way weakness on resisted wrist extension and this is secondary to exquisite pain upon stressing the common extensor tendon attachment.
>
> Clearly this is a lateral epicondylitis repetitive strain injury with an associated myofascial referred pain pattern distally on the dorsal forearm, which in my medical opinion more likely than not is a compensatory sequelae of her limited use of the right upper limb.

(Ex. I, pp. 70-71)

Dr. Lockman recommended platelet rich injections, osteopathic manipulation, physical therapy, and even Botox injections. (Ex. I, p. 72)

Contrary to what Lockman and Mitcham recorded, claimant acknowledged that her sewing job met the permanent restrictions she had been given by Dr. Durkee. The only part of her job that exceeded her restrictions prior to her injury was lifting mesh rolls and that task was no longer required of her.

Claimant sought help from her primary care treater, Colette N. Hostetler, M.D., on November 7, 2014 for elevations in her blood pressure. During the visit, claimant reported having a hard time continuing to work and had to adapt to make it easier on her joints, muscles, and tendons. (Ex. H, p. 58)

On November 26, 2014, claimant was seen by Rhea J. Allen M.D., for the injury of July 7, 2011. On examination, Dr. Allen determined the claimant had "vague, widespread joint pain." (Ex. B, p. 20) Claimant reported pain in her left shoulder and elbow and wrists was due to pulling the fabric from left to right at her sewing job. She also felt that care under Dr. Lockman had made her feel worse. Dr. Allen believed that her injury was consistent with the described work activity, but that it was unlikely that she sustained any internal derangement given the lack of force and lack of acute injury. (Ex. B, p. 20)

On November 30, 2014, claimant returned to Dr. Allen for a recheck of pain in her right shoulder, left shoulder, left elbow, and right wrist. She admitted that she was feeling better and that the new job was easier on her upper extremities. (Ex. B, p. 14) While Dr. Allen recommended claimant see the orthopedic doctor again, Dr. Allen believed that the reasonable thing to do was to continue to treat claimant conservatively with a TENS unit, medications, and home exercise. There was no internal derangement of the left shoulder, elbow or wrist and Dr. Allen believed that she was at MMI. (Ex. B, p. 15)

On December 17, 2014, claimant was seen by Dr. Durkee for follow-up to her right shoulder pain. (Ex. D, p. 37) He noted that the claimant had changed her job and that she was working ergonomically in a low risk position. "She is doing less repetitious work and has very light lifting." (Ex. D, p. 37) He diagnosed her with left medial epicondylitis and mild flexion contracture of the left elbow. (Ex. D, p. 38) He recommended conservative treatment and opined that she remained at MMI for her right shoulder. (Ex. D, p. 39)

Claimant was sent to Joseph J. Chen, M.D., on April 6, 2015. (Ex. 6, p. 40) She reported to Dr. Chen that she had pain that started in the right shoulder and that had spread to the left arm. (Ex. 6, p. 40) She expressed concern that her moderate day-to-day activities were limited such as lifting or carrying groceries or doing work around the house. (Ex. 6, p. 41) She placed her pain level at eight out of ten. On examination she exhibited normal gait, and gross motor function along with some dramatic pain behavior. Her upper extremity strength was normal bilaterally along with her reflexes and coordination. He did not observe any dermatomal loss of sensation. (Ex. 6, p. 43) Claimant did exhibit some decreased range of motion in the cervical spine. Palpation to the C-spine was normal. (Ex. 6, p. 44) Dr. Chen believed the claimant had a chronic musculoskeletal pain condition but could not say with any reasonable degree of medical certainty that her current chronic neck and arm pain symptoms were causally related to her work injury of July 2011. (Ex. 6, p. 44) Chronic pain conditions such as the claimant is currently suffering from can arise even in the absence of a specific work or cumulative trauma.

Dr. Chen did not recommend any further medical care because he believed that additional medical treatment would perpetuate an unending cycle of misunderstandings of pain, increased pain behaviors, and over treatment for chronic pain. He noted that there were several conservative treatments that had been taken in the past such as

prolotherapy, Botox injections and others that had not resulted in any kind of improvement for the claimant. (Ex. 6, p. 44) There was some indication that there was a cognitive behavioral therapy performed in Spanish that could be useful. (Ex. 6, p. 44) He did not recommend any permanent work restrictions and encouraged her to resume work activities within her physical abilities and her tolerance for increased pain. (Ex. 6, p. 44)

On April 21, 2015, claimant underwent a second IME with Robin Sassman M.D. She described her job as lifting 15 to 75 pounds and working above her shoulders 25 percent of the day. (Ex. J, p. 75) Dr. Sassman diagnosed claimant with left shoulder pain due to compensation for the right shoulder injury along with left medial epicondylitis and neck pain with radiculopathy. (Ex. 2, p. 16) Dr. Sassman based this conclusion on the fact the claimant did not have any prior right shoulder symptoms and that there were no medical records documenting any prior treatment. Further, Dr. Sassman noted that the mechanism of injury was consistent with the claimant's complaint. Dr. Sassman also agreed that the left shoulder symptoms came about as a result of the compensation for the right shoulder injury and that the neck and epicondylitis issues were a result of repetitive work required by her position at the defendant employer. (Ex. 2, p. 17) Dr. Sassman recommended a second opinion on both shoulders as well as a visit to a pain management specialist. (Ex. 2, p. 17)

The claimant's neck was unchanged from her previous 2013 examination with Dr. Sassman and Dr. Sassman's impairment rating of 15 percent remained the same. The shoulder range of motion increased on the right (100 versus 60) but decreased on the left dramatically (80 versus 180). Extension was decreased on the left and abduction was markedly different. She had better internal and external rotation on the left and the right. (Ex. J, p. 106) She had generally the same shoulder strength on both sides (which was in the normal range). Her wrists and elbows, bilaterally were also largely unchanged. (Ex. 2, p. 16; Ex. J, p. 106)

For the right shoulder, Dr. Sassman assessed 25 percent upper extremity impairment and for the left a 14 percent upper extremity impairment. She also assigned 2 percent for the left elbow. (Ex. 2, p. 18) Overall, Dr. Sassman believed the claimant was impaired 34 percent of the body as a whole. (Ex. 2, p. 18) Dr. Sassman would recommend limiting lifting, pushing, pulling and carrying to 15 pounds occasionally from floor to waist and waist to shoulder. She would not recommend lifting, pushing, pulling, or carrying above shoulder height and abstain from use of ladders. Gripping and grasping should be limited to at or below shoulder height and she would not recommend using vibratory or power tools. (Ex. 2, p. 18)

Dr. Sassman's high impairment rating does not to appear consistent with claimant's actual function. Claimant is working essentially the same position that she had prior to the injury with some modifications.

Dr. Chen wrote to defendant's counsel on June 25, 2015, in response to Dr. Sassman's IME report and letter of March 19, 2015 in addition to a June 3, 2015 follow-

up report. (Ex. A, p. 1) Dr. Chen reiterated his position that claimant did not have a cervical radiculopathy based upon her normal reflexes and did not believe an epidural steroid injection solely based upon her subjective pain complaints would be advisable. (Ex. A, p. 1) Dr. Chen was unable to determine whether claimant's painful range of motion was due to adhesive capsulitis or myofascial pain but his medical opinion was that it is myofascial pain. He would not assign any permanent work restrictions but would expect the claimant would have increased pain with lifting more than 15 pounds, but that she would not cause harm or damage to her shoulders and neck should she exert herself past that level. Lifting activities as well as pushing, pulling, carrying, use of ladders, grasping and use of vibratory power tools would undoubtedly lead to increased pain, but was not expected to lead to permanent damage of her body. (Ex. A, p. 2)

Colette Hostetler, M.D. opined claimant sustained depression as a result of claimant's work injury. (Ex. 3, p. 29) The letter of opinion did not indicate that claimant could not work as a result of the mental injury or that the mental injury reduced claimant's employment opportunities. Id. However, she did believe that claimant could benefit from an evaluation by a pain clinic and from a Spanish-speaking therapist who treats the psychological effects of chronic pain. (Ex. 3, p. 30) Dr. Hostetler had issued a prescription for Cymbalta in 2014, but claimant never filled the prescription. (Ex. H p. 61, Testimony of claimant) It is unknown whether Dr. Hostetler was aware that the prescription went unfilled.

Claimant also reported epigastric pain and symptoms of menopause including hot flashes, difficulty sleeping, and irritability. Dr. Hostetler prescribed medication, but claimant did not fill the prescriptions. (Ex. 20, p. 295)

Claimant filed for social security disability but was denied on March 21, 2015, due to the fact that she was working and earning more than $1,090.00 per month. (Ex. 10, p. 163) Claimant's wages have increased since her injury.

> You were promoted in October 2014 to a job that you say was easier and did not have quotas. You said that you receive some assistance from co-workers in order to move some of the boxes and supplies that you work with. You said that normally this would take up to 15 minutes in an 8 hour period. You stated you recently had a performance review at work and that your boss was complimentary of your performance.

(Ex. N, p. 163)

Defendant takes issue with claimant's credibility, pointing to the falsities on her employment application and discrepancies throughout her testimony, such as the extent of her ability to speak, read and write English. For instance, for most of her medical treatment including her two examinations with the medical examiner hired by her attorney to provide opinions, claimant did not use the services of a translator and on cross-examination, claimant answered before the interpreter could provide his services. During her August 29, 2011, visit with Tina M. Stec, M.D., claimant was noted to have

been born in Ecuador, but spoke English fluently. (Ex. G, p. 56) Dr. Chen described claimant's pain behaviors as dramatic and claimant did not fully relate the extent of her medical history to Dr. Sassman.

Despite those issues, the undersigned found the claimant to be generally credible as it relates to her pain in her bilateral shoulders, neck, and left upper extremity. Even if the claimant is prone to exaggerate her pain, it does not mean the pain does not exist.

CONCLUSIONS OF LAW

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 Rule of Appellate Procedure 6.14(6).

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).

Claimant asserts that she sustained a mental injury and left-sided sequelae as a result of her July 7, 2011, work injury. For the mental injury, claimant relies on the opinions of Dr. Hostetler who opines that claimant suffers from depression as a result of the work injury. Dr. Hostetler prescribed Cymbalta for the condition and claimant did not fill that prescription. The medical records surrounding Dr. Hostetler's treatment of claimant's mental injury are thin. The evidence includes a February 18, 2014, visit wherein she described being back to work doing the same thing she was previously doing but with her left arm. (Ex. H, p. 61) This is not consistent with the testimony of the claimant and others that she worked an accommodated position which did not

violate restrictions set forth by Dr. Durkee. She was looking discouraged and sad during the interview and Cymbalta was ordered. (Ex. H, p. 61) During the November 7, 2014, visit claimant was seen for pain and "depressed mood and affect" while her behavior was normal. (Ex. H, p. 59) Despite the prescription, claimant did not fill it. From these two visits, Dr. Hostetler concluded that claimant was depressed as a result of her work and needed additional treatment. (Ex. 3, p. 29) Claimant did not pursue the treatment recommended by Dr. Hostetler.

Dr. Chen, the examiner retained by the defendant, indicated that claimant has a chronic musculoskeletal pain condition that may or may not be related to the work injury of July 7, 2011. He did note that "cognitive-behavioral therapy performed in Spanish" may be helpful. (Ex. 6, p. 44)

Based on Dr. Chen's summary, along with Dr. Hostetler's opinions, the claimant has carried her burden in proving that she has sustained a mental health injury as a result of the July 7, 2011, work injury that could benefit from treatment.

However, there is no medical evidence, either from Dr. Hostetler or Dr. Chen, that supports a finding that claimant's ability to work is somehow impaired by her mental injury. To that extent, no impairment is assessed as result of the mental injury.

The claimant is entitled to care for the mental injury and the defendant is entitled to direct that care.

Claimant also seeks a finding that the left upper extremity injuries are found to be related to the work injury of July 7, 2011. Dr. Chen is unwilling to opine that the claimant's chronic musculoskeletal pain is related to her work injury, but most of the medical records treat claimant's left-sided pain as sequalae due to overcompensation. Claimant does not have any objective findings to support her pain complaints, but the complaints of pain are consistent despite the diffuseness of them. Defendant admits to accepting the left shoulder and arm and provided medical care for those complaints with Dr. Durkee, Dr. Allen, and Dr. Chen. The left upper extremity is found to be related to the work injury in question. The next issue is the extent of claimant's industrial disability.

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.

Claimant's past work history includes mostly light duty employment such as working in an office, as an industrial seamstress, and as a babysitter. Claimant's current position includes tasks within her work restrictions, but for the lifting of the mesh rolls.

Dr. Sassman's findings are troubling because claimant over exaggerated or even misinformed Dr. Sassman about claimant's work conditions including 25-30 percent of her work being over her shoulder when in fact it might, at most, be 30 minutes out of an 8-hour work day as found by the Social Security Administration.

Further, Dr. Sassman's whole body impairment finding is not consistent with claimant's actual working ability. She continues to work in the mesh cell doing all the tasks required of her, but for the overhead lifting. Her wages have increased.

Dr. Durkee's restrictions of no lifting more than 15 pounds occasionally and no lifting above shoulder or chest level is the more reliable evidence and is adopted herein. Dr. Durkee's impairment rating was 11 percent initially and then increased to 13 percent after assessment of the left-sided injury.

Claimant is motivated to work, albeit without the desire to put in mandatory overtime. She has some lifting and overhead work restrictions. She is an older worker with some language limitations. Even if she is fluent in English, she may not be able to work certain jobs that would require significant reading and writing of English. Her experience is mostly in light labor, unskilled work.

Based on the foregoing, it is determined that claimant has sustained a 30percent industrial loss.

The next issue is one of medical bills. Exhibit 18 contains the medical bills for which the claimant seeks reimbursement. (Ex. 18)

> Although an employee may assert a claim for expenses of the unauthorized medical care, the employee must prove the unauthorized care was reasonable and beneficial under all the surrounding circumstances, including the reasonableness of the employer-provided care, and the reasonableness of the decision to abandon the care furnished by the employer in the absence of an order from the commissioner authorizing alternative care. Consistent with the rationale

> for giving the employer control over medical care, the concept of reasonableness in this analysis includes the quality of the alternative care and the quality of the employer-provided care.

Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

One of the medical bills is payable to Trinity Muscatine in the amount of $1,216.00. There is no medical record for this date of service. It appears claimant sought treatment at the emergency room, but there is no indication that the claimant's condition required an emergency room visit. The claimant failed to show the unauthorized care was reasonable and beneficial.

The second set of charges is for services rendered by claimant's personal health care physician, an unauthorized treater. It is not enough for the claimant to merely present the medical bills and hope that they are reimbursable. The claimant has an obligation to prove in the record how the medical bills are related to the work injury and how they are reasonable and beneficial under all the surrounding circumstances. The claimant has failed to meet that burden. For instance, Amlodipine is a medication for high blood pressure. Duloxetine was a prescription claimant admitted she did not have filled.

The claimant did not prove by a preponderance of the evidence that the medical bills were for unauthorized care that was reasonable in light of the authorized care that was available to her.

Defendant seeks an assessment of costs as does the claimant. Costs are within the discretion of the undersigned. Claimant seeks assessment of the depositions of HNI employees, the filing fee, certified mail for the alternate care petitions, interpreter costs and deposition transcripts of the claimant, among others. Defendant seeks assessment of costs as well.

Iowa Administrative Rule 4.8(2) allows that the filing fee may be taxed as a cost to the losing party in the case. Rule 4.32 permits that the record of the proceedings may be taxed as a cost. The defendant was ordered to bear the burden of the transcript. Rule 4.33 allows for the following to be taxed:

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

In DART v. Young, No. 14-0231 (Iowa June 5, 2015), the Iowa Supreme Court elaborates on the rule and allows that costs of deposition testimony are appropriate when it is necessary to conduct the hearing.

To that end, claimant is allowed to be reimbursed for the deposition transcripts of Lucas Harger and Ryan Mockmore, who did not appear at hearing for testimony along with the filing fee of the arbitration petition and the service fee of the arbitration petition. All other costs are considered duplicative or not necessary to conduct the hearing.

Defendant is not the prevailing party and will not be awarded any costs.

ORDER

THEREFORE, it is ordered:

That defendant is to pay unto claimant one hundred fifty (150) weeks of permanent partial disability benefits at the rate of three hundred sixty-nine and 31/100 dollars ($369.31) per week from December 30, 2013.

That defendant shall pay accrued weekly benefits in a lump sum.

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

That defendant is to be given credit for benefits previously paid.

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

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33 consistent with the manner described above: the deposition transcripts of Lucas Harger and Ryan Mockmore, the filing fee of the arbitration petition and the service fee of the arbitration petition.

Signed and filed this 24th day of September, 2015.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JGL/srs

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.