BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRENDA CHILTON,	:	
	:	File No. 5042244
Claimant,	:	
vs.	:	REVIEW-REOPENING
HORMEL FOODS CORP.,	:	DECISION
Employer,	:	
Self-Insured,	:	
Defendant.	:	Head Note Nos.: 2905, 2300

STATEMENT OF THE CASE

The claimant, Brenda Chilton, filed a petition for review-reopening and seeks workers' compensation benefits from Hormel Foods Corporation, a self-insured employer. The claimant was represented by Ryan Beattie. The defendants were represented by Edward Rose.

The matter came on for hearing on October 22, 2018, before deputy workers' compensation commissioner Joe Walsh in Des Moines, Iowa. The record in the case consists of joint exhibits 1 through 5; claimant's exhibits 6 through 7; and defense exhibits A through B. The claimant testified under oath at hearing. Amy Pederson was appointed the official reporter and custodian of the notes of the proceeding. The parties also requested the agency take administrative notice of portions of the agency file. The matter was fully submitted on December 10, 2018, after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. The primary issue in this case is whether the claimant has proven the prerequisites to demonstrate she is entitled to review-reopening benefits under Iowa Code section 86.14.

2. Whether the claimant is entitled to medical expenses under Iowa Code section 85.27 as set forth in Claimant's Exhibit 7.

3. Costs are disputed, including the medical evaluation of Sunil Bansal, M.D.

STIPULATIONS

Through the hearing report, the parties stipulated and/or established in the prior hearing:

1. The parties had an employer-employee relationship at the time of the injury.

2. Claimant sustained an injury which arose out of and in the course of employment on August 13, 2001.

3. This work injury is a cause of both temporary and permanent disability.

4. In an October 9, 2014, arbitration decision, claimant was awarded a 15 percent industrial disability. This decision was affirmed on appeal on November 30, 2015.

5. Temporary disability/healing period and medical benefits are not in dispute.

6. The weekly rate of compensation is $426.36.

7. Affirmative defenses have been waived.

FINDINGS OF FACT

Brenda Chilton lives in Lovilia, Iowa and has worked at Hormel Foods for the past 27 years as of the time of hearing. She testified live and under oath at hearing. She is a credible witness. She was an accurate historian. Her testimony generally comports with the other evidence in the record. There was nothing about her demeanor at hearing which caused the undersigned any concern regarding her truthfulness.

This case is extraordinarily old. The first snapshot of claimant's condition was taken on March 7, 2014. On October 9, 2014, the agency entered a decision which legally established Ms. Chilton's condition as of March 7, 2014. Relevant findings of fact are set forth below.

Claimant was 54 years old at the time of hearing. Claimant graduated from high school. She attended a community college at Indian Hills but did not graduate. (Transcript pages 10-12)

Claimant has worked as a bartender and a cook at a bar. She has worked at a convenience store. Since 1992 claimant has worked as a production line worker with Hormel. (Ex. H, p. 3; Tr. pp. 13-14)

During her employment with Hormel, claimant also worked part time as a cook at the North End Tap. Claimant worked at the North End Tap from 1985 through 2009. (Ex. H, p. 6; Tr. pp. 15-16)

At the time of her injury, claimant worked in the Cryovac line at Hormel. On the Cryovac line claimant worked with salami rolls, approximately 17 inches long and 5-6 inches in diameter. Claimant was also involved with the cutting and bagging of meat, boxing meat and palletizing the boxes. (Tr. 18-25)

Claimant testified that at approximately every hour, workers on the Cryovac line changed jobs. She said she worked an average of 10 hours per day 5-6 days per week. (Tr. p. 26) Claimant testified she used her right arm constantly on her job. (Tr. p. 39)

In 2001 claimant began experiencing pain in her right shoulder. She noticed her right arm began to be swollen. (Tr. pp. 26-27)

On August 13, 2001 claimant was evaluated by Jeffrey Davick, M.D. with complaints of right shoulder pain. Claimant was assessed with right shoulder impingement with trapezius pain. (Ex. A, pp. 1-2)

Claimant returned to Dr. Davick in October of 2003 with complaints of symptoms in the right shoulder. She was assessed as having an impingement syndrome on the right. Claimant was recommended to go to Iowa City to be evaluated. (Ex. A, pp. 3-4)

On January 9, 2004 claimant was evaluated by Lynn Nelson, D.O. for neck and right shoulder pain. A cervical MRI was recommended. (Ex. A, pp. 4-7) Claimant underwent an MRI. It showed small degenerative protrusions from level C4-C7 and a C5-6 level disc herniation. Claimant declined work restrictions. She was treated with medication. (Ex. A, pp. 7-11)

In a September 29, 2005 note claimant was restricted from working the pre-break or batching jobs at Hormel. (Ex. 2, p. 5) In a December 22, 2005 note claimant was also restricted from lifting more than 50 pounds, or pushing more than 100 pounds more than 5 times an hour, due to her shoulder condition. (Ex. 2, p. 6)

In approximately 2009 claimant quit working at the North End Tap. She began working at the South End Tavern. Claimant worked at the South End Tavern, and continues to work there, approximately 10-20 hours a week. Claimant cooks and tends bar. Claimant testified she gave her son money to purchase the South End Tavern and that she only works there to help him out. (Tr. 73-74)

Claimant was returned to work with no restrictions on January 28, 2010. (Ex. 2, p. 10)

On April 5, 2010 claimant saw Dr. Davick with complaints of numbness in the right hand. EMG and nerve conduction velocity (NCV) studies were recommended. (Ex. 8, p. 12)

EMG/NCV testing was done on the right on April 7, 2010. Test results were normal. Claimant was given a subacromial injection by Dr. Davick for pain. (Ex. A, p. 12; Ex. C, pp. 1-2)

An MRI of claimant's cervical spine on June 4, 2010 showed degenerative spondylosis with mild disc protrusions at the C5-C7 levels. Claimant was referred to a hand specialist. (Ex. 2, p. 15; Ex. A, p. 14)

Claimant saw Delwin Quenzer, M.D., a hand specialist, on July 14, 2010. Dr. Quenzer recommended against surgery. Claimant indicated she did not want to take off or be restricted from work. (Ex. A, pp. 16-17)

On October 11, 2011 claimant underwent EMG/NCV studies. They showed claimant had a right carpal tunnel syndrome, but did not show evidence of a right cervical radiculopathy. (Ex. C, pp. 3-4)

On October 15, 2010 claimant was evaluated by Christian Ledet, M.D. Dr. Ledet is an anesthesiologist specializing in pain management. A cervical epidural steroid injection (ESI) was recommended. Claimant was found to be at maximum medical improvement (MMI) and had no permanent impairment for her neck. (Ex. A, pp. 24-26)

On December 14, 2010 claimant underwent a right shoulder surgery consisting of a subacromial decompression and a distal clavicle excision. Surgery was performed by Dr. Davick. (Ex. A, pp. 28-30)

On February 9, 2011 claimant was returned to work with no restrictions by Dr. Davick. She was found to be at MMI. (Ex. A, pp. 34-35)

In a February 16, 2011 note, Dr. Davick found claimant had a 14 percent permanent impairment to the right upper extremity, converting to an 8 percent permanent impairment to the body as a whole. Claimant had no permanent restrictions. (Ex. A, p. 37)

On October 6, 2011 claimant was evaluated by Dr. Quenzer with complaints of elbow pain and some finger numbness. EMG and NCV studies were recommended. (Ex. A, pp. 43-44)

EMG/NCV studies performed on October 11, 2011 found that claimant had a right carpal tunnel syndrome in the right upper extremity. (Ex. C, pp. 3-4)

In February, April, and July of 2012 claimant was evaluated at Mercy Ruan Neurological Clinic for migraines. Claimant believed her migraines were triggered by her right arm pain. Claimant was treated with medication. (Ex. 3, pp. 18-23)

Claimant testified she was sent to Mercy Ruan by Dr. Ledet. (Tr. 49) She said an overuse of her right arm and pain in her right shoulder seemed to trigger her migraines. She testified she takes prescription medication for migraines, which seemed to help with her symptoms. (Tr. pp. 50-54)

In an August 21, 2012 report, Sunil Bansal, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant complained of continued right shoulder and arm pain. Claimant also had numbness and tingling in the right hand. Claimant noted difficulty with sleeping due to pain. (Ex. 1)

Dr. Bansal agreed claimant was at MMI on February 9, 2011. He found claimant had a 5 percent permanent impairment to the neck. He also found that claimant had an 18 percent permanent impairment to the right shoulder, converting to a 10 percent permanent impairment to the body as a whole. He opined that the combined values of both the neck and right shoulder resulted in a 15 percent permanent impairment to the body as a whole. He restricted claimant from lifting no more than 35 pounds and pushing and pulling no more than 40 pounds. He also found claimant had a depressive condition as a result of the August 13, 2001 injury, and recommended claimant be evaluated for depression. (Ex. 1)

Claimant testified that she has daily pain across her right shoulder, through her trapezius muscle, into the right side of her neck. She said this pain is aggravated by work. (Tr. pp. 54-55) Claimant said that improvements made in the line at Hormel have made work less aggravating to her neck and shoulder condition. (Tr. p. 40)

Claimant testified that because of her shoulder pain, she is limited in activities with her grandchildren. She said she was also limited in yard work and work around her house. (Tr. p. 56)

Claimant testified she has worked full duty for most of the last 14 years. She said she sometimes works up to 48 hours per week. Claimant testified she works the same hours now as she did in 2001. She said she makes more money now than she did in 2001 because of increases in her hourly wages under a collective bargaining agreement. (Tr. pp. 68-71)

> Todd Yocum testified he is the plant superintendent at Hormel plant where claimant works. In that capacity he is familiar with claimant and her job at Hormel. (Tr. 88-89) Mr. Yocum testified claimant works full time and sometimes works overtime hours. (Tr. 93)
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> Mr. Yocum testified that Hormel has improved the line where claimant works. He said these improvements were not done specifically for claimant, but benefit all workers on the line. (Tr. 93) Mr. Yocum testified that claimant's direct supervisor, John Short, has not indicated that claimant has difficulty doing her job. Mr. Yocum testified that he occasionally sees claimant working and that claimant does not appear to have difficulty performing her job. (Tr. pp. 94-96)
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> Mr. Yocum said that claimant has not been put in a job due to her shoulder problems. He said that claimant has been taken out of heavier physical positions at the plant. This decision was based on restrictions given to him by Lloyd Thurston, D.O. (Tr. 99-106)

(Arb. October 9, 2014, pp. 2-5)

Based upon these findings of fact, the agency awarded the claimant a 15 percent industrial disability. (Arb., p. 6) The agency also awarded Ms. Chilton medical expenses and alternate medical care with Mercy Ruan Neurology for her headaches.

> As detailed above, Dr. Ledet, an authorized physician, referred claimant to Mercy Ruan Neurology. (Ex. 3, p. 2; Ex. A, p. 21; Tr. p. 49) As an authorized treating physician has referred claimant to treat at Mercy Ruan Neurology, claimant is entitled to the alternate medical care with Mercy Ruan Neurology.

(Arb., p. 8)

The second snapshot of Ms. Chilton's condition was taken on October 22, 2018. After her March 2014, hearing, she continued to work on the cryovac line for a period of time. Eventually, through the union bid process, she was able to secure a different position. While she was still on the cryovac line, she became an operator. This position did not require lifting. Instead, she slid five pound pieces of meat into bags. She continued to experience symptoms in her neck and shoulder. She testified that her headaches became more frequent and the pain was worse.

Sometime thereafter, Ms. Chilton bid onto the rosa line. This job required her to seal and palletize 10-pound bags of meat. She testified that the rosa line position was significantly lighter than the operator position, although it still aggravated her symptoms. In 2016, Hormel closed the rosa line. Ms. Chilton briefly moved to the slice line before securing a utility position. The utility position is essentially a cleaning job. She uses a

squeegee to remove pepperoni from the floor, she dumps garbage cans and moves film around in dry storage. The utility position is lighter than any of the other positions she has held.

Ms. Chilton testified at hearing that her right shoulder has gotten worse primarily due to the physical activities at work. Regular use of her shoulder aggravates her symptoms and this can vary on a daily basis. She testified at hearing that seemingly insignificant activities such as turning wrong or jerking her arm can set off pain across her shoulder and up her neck, which leads to headaches.

Ms. Chilton's medical care since the first hearing has primarily been managed by her primary care physician at Pella Regional Medical Clinics (PRMC). In 2015, PRMC documented right shoulder pain and weakness beginning in 2001 and cervical discomfort. (Joint Exhibit 5, page 52) Her diagnoses were chronic migraine cephalgia, chronic cervical spine and shoulder pain and depression. (Jt. Ex. 5, p. 54) Her treatment provider managed her medications, provided FMLA paperwork and follow up with her routine appointments through Mercy Neurology Clinic. She has continued to follow up through PRMC through the date of hearing. (Jt. Ex. 5, p. 55-82) In May 2018, she requested a referral to Iowa Ortho for evaluation of her right shoulder pain. (Jt. Ex. 5, p. 84)

During this same timeframe, Ms. Chilton has continued to treat with Mercy Ruan Neurology for her headaches. (Jt. Ex. 1, pp. 7-29) Mark Puricelli, D.O., last saw Ms. Chilton on April 14, 2017, providing medications and other treatment for her.

On November 14, 2017, after conferencing with defense counsel, Dr. Puricelli signed an opinion letter written by defense counsel on defense counsel letterhead indicating his medical opinion regarding Ms. Chilton's headaches.

> It is merely 'possible', as opposed to 'probable' or 'likely', that Ms. Chilton's cumulative work injury date of 8/13/01 and further cumulative work at Hormel thereafter forms a 'material' causally contributing factor with respect to her chronic migraine headaches.

(Jt. Ex. 1, p. 31) I do not find this medical opinion compelling.

In approximately May 2018, Ms. Chilton testified she aggravated her ongoing right shoulder pain while pushing a box on a taper machine. Ms. Chilton returned to Dr. Davick on June 18, 2018. (Jt. Ex. 2, pp. 32-33) Dr. Davick noted that she was doing well with her right shoulder until recently, stating "she was doing well with her right shoulder until a month ago. She was moving some boxes and had to force them through a taper. This caused pain in the right shoulder that has persisted." (Jt. Ex. 2, p. 32) He diagnosed right shoulder rotator cuff tendonitis and right shoulder previous decompression and distal clavicle excision. (Jt. Ex. 2, p. 33) He ordered a new MRI, which did not demonstrate any new tearing. (Jt. Ex. 3, p. 43) He also sent her to physical therapy. He provided an injection for pain on July 30, 2018. (Jt. Ex. 2, p. 36)

Dr. Davick signed an opinion letter on defense counsel letterhead, indicating he opined that her "current right shoulder condition, for which she initially saw you on 6/18/18 is not causally related to her 8/13/01 work injury based upon the history she conveyed to you." (Jt. Ex. 2, p. 40)

I find this opinion somewhat puzzling. Dr. Davick's working diagnosis in June 2018 included right shoulder previous decompression and distal clavicle incision, which was the surgery from the August 2001 injury. I interpret his opinion to mean that he believes her injury in May 2018, was a new, intervening injury which substantially aggravated her preexisting condition.

In September 2018, Sunil Bansal, M.D., evaluated Ms. Chilton. He thoroughly reviewed her medical records since her previous hearing and examined her. (Cl. Ex. 6, pp. 2-7) He also took a complete history. (Cl. Ex. 6, p. 6) He had previously examined her prior to the first hearing in 2012. (Arb. Ex. 1) I have reviewed the previous report thoroughly. Dr. Bansal opined that "Ms. Chilton's right shoulder range of motion and functionality has worsened since she was last seen". (Cl. Ex. 6, p. 8) He then rated her impairment based upon his examination, opining she now suffers from a 13 percent whole body impairment, rather than a 10 percent whole body impairment based upon documented range of motion measurements. (Cl. Ex. 6, pp. 8-9) I find there is some decrease in her range of motion from the time of the first hearing. (Compare Cl. Ex. 6, p. 8 with Arb. Ex. 1, p. 14) Dr. Bansal recommended severe permanent restrictions, including no "lifting greater than 10 pounds occasionally , or 5 pounds frequently with the right arm, along with no lifting above shoulder level away from the body with the right arm." (Cl. Ex. 6, p. 9) He also recommended no frequent reaching. (Cl. Ex. 6, p. 9) Ms. Chilton, however, does not utilize these restrictions at work because she has to keep working. She testified she has looked for other jobs because she does not feel that she can keep working for Hormel. It is too hard on her shoulder.

Ms. Chilton presented unpaid medical bills from Mercy Ruan Neurology in the amount of $3,932.00, for headache treatment in 2017. (Cl. Ex. 7) I find these medical expenses are causally connected to the August 13, 2001, work injury.

CONCLUSIONS OF LAW

The first and primary question is whether the legal elements for review-reopening have been met in light of the findings of facts set forth above. Ms. Chilton alleges she has proven that her right shoulder and cervical symptoms have worsened since March 2014, causing an increase in industrial disability. The defendants argue that her condition has not changed significantly and that she has suffered a new injury which explains her current problems.

In a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.14, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon. Iowa Code section 86.14(2) (2017). In order to demonstrate

eligibility for an increase of compensation under section 86.14(2), the claimant must demonstrate what her physical or economic condition was at the time of the original award or settlement. At a subsequent review-reopening hearing, claimant has the burden to prove that there is a substantial difference in such condition which warrants an increase in compensation. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009). The difference can be economic or physical. Blacksmith v. All-American Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). Essentially, two snapshots of the claimant's condition are taken; one in each hearing or settlement. The claimant must prove that there is something substantially different between the two snapshots such that it warrants an increase in benefits. Gosek v. Garmer & Stiles Co., 158 N.W.2d 731, 735 (Iowa 1968).

The principles of res judicata apply and the agency should not reevaluate facts and circumstances that were known or knowable at the time of the original action. Kohlhaas at 392. Review-reopening is not intended to provide either party with an opportunity to relitigate issues already decided or to give a party a "second bite at the apple." The agency, however, is forbidden from speculating as to what was contemplated at the time of the original snapshot. Id.

The burden remains upon the injured worker to prove by a preponderance of the evidence that the current condition is proximately caused by the original injury. Kohlhaas, 777 N.W.2d at 392. When a work-related injury causes another injury to the worker, this new injury (sequela) may also be considered as a work-related injury under Iowa's workers' compensation laws.

When an employee suffers from a compensable injury and another condition or injury arises that is the consequence or result of the previous injury, the sequelae rule applies. If the employee suffers a compensable injury and later suffers further disability, which is the proximate result of the original injury, such further disability is compensable. If the employee suffers a compensable injury and thereafter returns to work and, as a result, the first injury is aggravated and accelerated so that the employee is more greatly disabled than they were before returning to work, the entire disability may be compensable. The employer is liable for all consequences that naturally and proximately flow from the accident. Oldham v. Scofield & Welch, 222 Iowa 764, 767-68, 266 N.W. 480 (1936).

In order to apply the facts to the law, the two snapshots must be contrasted and compared. The first snapshot was taken at the time of the first hearing in March 2014. At that time, Ms. Chilton had a surgically-repaired right shoulder condition with an impairment rating between 8 and 10 percent. Dr. Bansal had recommended restrictions or lifting no more than 35 pounds and pushing and pulling no more than 40 pounds. She continued to work at Hormel on the cryovac line, earning more money than she did prior to the injury. Dr. Davick had released her with no restrictions. She had ongoing symptoms in her right shoulder and cervical spine which caused disabling migraine

headaches several times per month. She was apparently working under some medical restrictions at that time from Dr. Thurston which prevented her from securing permanent employment at that time.

The second snapshot was October 2018. At that time, there were few objective changes in Ms. Chilton's right shoulder condition. There is evidence that her range of motion had decreased some between March 2014 and October 2018, creating additional functional impairment (increased from 10 percent to 13 percent whole body). Dr. Bansal recommended much more severe restrictions, including no "lifting greater than 10 pounds occasionally, or 5 pounds frequently with the right arm, along with no lifting above shoulder level away from the body with the right arm." (Cl. Ex. 6, p. 9) He also recommended no frequent reaching. (Cl. Ex. 6, p. 9) Ms. Chilton does not follow these restrictions as of the date of hearing. Rather, she treats them as recommendations. She had regular treatment for headaches following March 2014. This treatment was denied in 2017. She had some additional treatment on her right shoulder in mid-2018, however, MRI tests revealed no new tears or other pathology.

Ms. Chilton testified credibly that she feels her pain is worse since March 2014. While it is undoubtedly true that she subjectively feels this is the case, it is not quantifiable in any meaningful way. She has changed jobs to an easier position at Hormel. With her years of seniority, her position appears secure at the time of hearing. Ms. Chilton needs to keep working and earning enough money to survive, so she has not quit. She has, however, begun looking for alternative, lighter employment which would be easier on her medical condition.

Considering all of the appropriate factors for weighing Ms. Chilton's claim for review-reopening, I find that she has failed to meet her burden of proof that review-reopening is warranted. While she has had some reduction in her range of motion, I do not find this significant enough to warrant review-reopening. Her new recommended restrictions also do not warrant review-reopening. While Ms. Chilton probably should have switched jobs, she has not done so for economic reasons. She is able to continue working a real, unaccommodated job for Hormel and she earns more money than she did at the time of her injury.

The next issue is medical expenses. The claimant seeks medical payments for the bills from Mercy Ruan Neurology which were deemed compensable in the prior arbitration award. Defendants argue that these bills are not causally connected to her work injury.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v.

Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Evidence in administrative proceedings is governed by section 17A.14. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence. The rules of evidence followed in the courts are not controlling. Findings are to be based upon the kind of evidence on which reasonably prudent persons customarily rely in the conduct of serious affairs. Health care is a serious affair.

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

I find that defendant owes the medical expenses set forth in Claimant's Exhibit 7. These expenses were found to be causally connected to her work injury in the original arbitration decision. The fact that the defendant has secured a new expert medical opinion regarding causation is immaterial. The defendant had an opportunity at the first hearing to present medical causation evidence. At the time Hormel secured the new medical causation opinion in 2017, there was no evidence of an intervening injury which would break the chain of causation. Defendant must pay the bills set forth in Claimant's Exhibit 7, as Mercy Ruan Neurology remains an authorized treatment provider.

The final issue is costs.

Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (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. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Using the discretion set forth in Section 85.40, defendant shall pay the cost of Dr. Bansal's report as set forth in Claimant's Exhibit 6, page 12, in the amount of $1,517.00

ORDER

THEREFORE IT IS ORDERED:

Claimant has failed to prove the elements required to reopen the case for additional weekly benefits.

Defendant shall pay medical expenses as set forth in Claimant's Exhibit 7, in the amount of three thousand nine hundred thirty-two and no/100 ($3,932.00), consistent with this decision.

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

Costs are taxed to defendant in the amount of one thousand five hundred seventeen and no/100 ($1,517.00).

Signed and filed this __7th__ day of February, 2020.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Ryan Beattie (via WCES)

Edward Rose (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.