BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TONYA CLARK, Claimant, vs. ARCONIC, INC., Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendants.	:	File No. 5061553.01 ARBITRATION DECISION Head Note Nos.: 1801, 1803, 2500, 2907

STATEMENT OF THE CASE

Claimant, Tonya Clark, has filed a petition for arbitration seeking worker's compensation benefits against Arconic, Inc., employer, and Indemnity Insurance Company of North America, insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on March 19, 2021, via Court Call. The case was considered fully submitted on April 12, 2021 upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-15; claimant's exhibits 1-6; defendants' exhibits D-L, N-S and the testimony of claimant, Tonya Clark, Jessica Clark, Keevyn Kilburg, and Brandon Council.

ISSUES

1. Whether claimant is entitled to temporary benefits beginning January 12, 2018, up to the present;
2. Whether claimant sustained a permanent mental injury;
3. The extent of permanent partial disability, if any;
4. Whether claimant's industrial disability should be measured pursuant to Iowa Code section 85.34(2)(v);

5. The appropriate commencement date of permanent partial disability, if any are awarded;
6. Future medical care.
7. Costs.

STIPULATIONS

The parties stipulate the claimant was an employee at the time of the alleged injury and that claimant sustained a physical injury to the ribs and a mental injury arising out of and in the course of her employment on January 12, 2018.

They agree that if the injury is found to be a cause of permanent disability, it is industrial in nature.

At the time of the alleged injury the claimant's gross earnings were $1,266.11 per week. The claimant was single and entitled to one exemption. Based on the foregoing the weekly benefit rate is $721.84.

Defendants waive all affirmative defenses.

While defendants dispute claimant's entitlement to costs, they stipulate that the expenses and/or costs have been paid.

FINDINGS OF FACT

At the time of the hearing, claimant was a 57-year-old person. Her education consists of a GED. She has worked constantly since her departure from school. (CE 1:3) She earned a cosmetology license in 1993 and a CDL in 2004. While employed for defendant employer, she received training for loading, expediting, and crane work. (CE 1:3)

Her medical history is significant for breast cancer and mental health treatment.

Claimant began treatment at Vera French on June 10, 2008, having been referred by her cancer specialist for treatment of claimant's depression. (JE 1:1) Claimant had been fired from her job at a local restaurant after her cancer diagnosis and resultant absences due to medical treatment and illness. (JE 1:1) Shortly after the termination, claimant's grandmother died. (JE 1:1) William Nissen, M.D., started claimant on Effexor XR 150 mg and Trazodone 50 mg at bedtime with a referral to a therapist. (JE 1:2)

Claimant has a history of drug and alcohol abuse in the distant past. (DE H:36) On November 17, 2012, her son was shot by a stray bullet. The bullet struck him in the front left lobe. He required significant care to regain function. She provides support services to her son such as doing his laundry, prepping meals, making appointments, driving him to appointments, and other activities of daily living. She receives payment

for this work from the State of Iowa and acknowledges that if she was not providing this care, another person would need to be paid to provide it.

She has three adult children and twelve grandchildren. Claimant described her family as close.

Claimant began working for defendant employer in June 2014 in the logistics department. She is currently working there on a full-time basis with overtime. She shared with Tracy Thomas, Ph.D., that she needs the full time pay and overtime to continue to meet her financial obligations and maintain her current quality of life. (CE 1:9) As of February 12, 2021, her pay rate was $28.236. (Ex F:26) At the time of her injury, the rate of pay was $24.798 per hour. (Ex F:17)

Currently, claimant is working the C shift from 3:00 p.m. to 11:00 p.m., as a flatbed trucker in the logistics department moving metal.

Her past medical history includes cancer, high blood pressure, and difficulty sleeping. (JE 5:74-75)

Claimant attended a few therapy appointments in October through December 2008, ultimately discharged on February 26, 2010, with a notation that she was last seen on December 15, 2008. (See e.g. JE 1:11)

Claimant mentioned stress after losing her job in June 2012 during her breast cancer appointment. (JE 2:33) She was initially scheduled for a psychology appointment but was not able to keep the appointment and did not reschedule, citing personal improvement as the reason. (JE 2:35) Stress and anxiety were mentioned again during an appointment with therapist Sarah Jauron in November 2013. (JE 3:49) Claimant continued to treat with Ms. Jauron through January 2014 for a diagnosis of dysthymic disorder. (JE 3:50-71)

On January 12, 2018, claimant was employed as part of a crew designated to secure a 16-ton steel beam to an overhead crane that would transport the beam from the warehouse to a flatbed truck. On the same date, she was on a catwalk when she was struck by the beam and knocked off balance. The catwalk collapsed underneath her and she fell to the ground.

A nurse from the plant was called to the scene. She found the claimant sitting on the floor holding her left chest and abdomen. (JE 5:78) Ice packs were applied and OTC Ibuprofen administered. (JE 5:78) Claimant was instructed to call the company if she had any complications. (JE 5:78) Claimant continued to report pain in the upper rib area and after a consultation with the plant Medical Director, Hephzibah H. Chelli, M.D., claimant was taken to the Trinity Point Emergency Room. (JE 5:79)

She presented to the ER around 5:12 p.m., with complaints of pain in her abdomen and chest. (JE 9: 141) A CT scan of the chest revealed no acute

abnormalities. (JE 9:143-44, 147-48) Claimant was discharged with a prescription for Norco to be taken every six hours as needed for pain. (JE 9:145)

Claimant returned to work on the following day. She was tearful and apprehensive about returning to the dock where she was working at the time of the incident. The area manager, Toney Hickman, agreed to have her placed in another area within the department where she could work at a slower pace and receive assistance if necessary. (JE 5:80)

She continued to complain to the plant medical department of pain in her chest and ribs. (JE 5:81) On January 26, 2018, claimant was referred to Steve Broomhead and John Brooke for an evaluation. (JE 5:88-89)

On February 5, 2018, Dr. Broomhead evaluated claimant and issued work restrictions of no lifting greater than 10 pounds and no climbing until March 5, 2018. (JE 5:95)

On February 19, 2018, claimant saw the company medical director, Naomi Chelli, who questioned claimant as to whether she had a past motor vehicle collision in the past due to the back pain. (JE13:164) Claimant was upset with this line of questioning and was unhappy with Dr. Brooke's care. (JE 13:164) Dr. Chelli advised claimant to take her medication, start physical therapy and continue her regular duties at a slower pace. (JE 13:164)

On March 30, 2018, claimant underwent a CT scan of the head for the neck pain and headaches. (JE 10:152) This study was negative for abnormalities. (JE 10:152)

On May 1, 2018, an MRI study of the head was performed which showed only an incidental pineal cyst dating back to 2011. (JE 10:154)

On August 28, 2018, Dr. Brooke wrote an email to defendants to let them know that he felt that she was at maximum medical improvement (MMI) but that she likely had lasting damage in the form of being unwilling to go up on catwalks. (JE 11:160) He concluded his care after a total of 14 sessions. Id.

Dr. Brooke released claimant from his care, stating that she was at MMI from a psychological perspective regarding the work injury, that she has resolved an adjustment disorder and had no work restrictions other than to avoid working on or from a cat walk. (JE 14:165) He noted that throughout the treatment, claimant was sincere and her effort was obvious. (JE 14:165)

This was recorded by defendant employer in their own medical records. (JE 5:107)

On November 8, 2018, Scott C. Jennisch, M.D., conducted an IME of claimant. (DE J) He found claimant "quite dramatic" in describing the injury. (DE J:178) She described anxiety in reference to the catwalk and while driving, along with nightly

nightmares. (DE 1:179) Dr. Jennisch found her psychiatric examination to be consistent with the MMPI-2-rf results provided by Dr. Brooke. (DE J:182) While Dr. Jennisch kept malingering as a differential, he acknowledged that the medical records lent credibility to a psychiatric condition developing after the injury rather than for secondary gain. (DE J:182) He concluded claimant sustained PTSD as a result of the injury on January 12, 2018, and that while claimant had previous episodes of depression and anxiety they were not active problems at the time of the January 2018 trauma. (DE J:183) He found Dr. Brooke's conclusions that claimant was at MMI difficult to reconcile after a dozen therapy appointments and that the other medical records and claimant's presentation at the IME indicated she remained symptomatic. (DE J:184) She needed more treatment and other medications. (DE J:184)

This was noted in her medical record at work. (JE 5:108)

On January 25, 2019, claimant was seen for a mental health evaluation by Daniel Campbell, a therapist at Vera French. (DE H:38)

On May 8, 2019, Dr. Chelli wrote to Mr. Parcel that restricting claimant from the loading department would be detrimental to her recovery. (JE 5:112) At that time claimant had been working in the logistics loading department but with instructions to work at a slower pace and seek assistance as needed. (JE 5:112) She had no problem informing others if she needed to take a break due to her anxiety. (JE 5:112)

Mr. Parcel continued to request an accommodation. (JE 5:113)

On February 21, 2020, all work comp restrictions were lifted according to the company. (JE 5:98) However, on that same date, claimant's therapist, Jim Parcel, recommended claimant be restricted from working in logistic loading until further notice. (JE 1:13; 5:101)

Mr. Parcel diagnosed claimant as suffering from post-traumatic stress disorder (PTSD) and major depression. (JE 1:12) It was his professional opinion that the post traumatic stress disorder was most likely closely connected to the accident on January 12, 2018. (JE 1:12) He found that claimant's on-going struggles with coping in the work environment and other related triggers of the accident were a causal factor in the diagnosis of major depression. (JE 1:12) Mr. Parcel recommended claimant continue with weekly to biweekly psychotherapy and medication management appointments. (JE 1:12-13)

In response to a question as to whether claimant has reached or was anticipated to reach maximum medical improvement, Mr. Parcel stated:

> Ms. Clark continues to experience triggering of high levels of anxiety and PTSD symptoms, including nightmares causally related to the accident during her employment with Arconic, Inc. on January 12, 2018 in my professional opinion. In my professional opinion she has reached

> maximum benefit for medical improvement for the injury during Ms. Clark's employment with Arconic, Inc. on January 12, 2018. She does work very hard to utilize coping mechanisms to deal with her PTSD and depressive symptoms and in this respect demonstrates some improvement with management aspects. However, the PTSD symptoms continue to be significantly problematic for her. Her PTSD symptoms are described by Ms. Clark as quite disturbing and require a great amount of effort to cope with them. Improved ability to cope and manage symptoms is not ment [sic] to necessarily imply over-all improvement with the PTSD condition. I would recommend she continue with psychotherapy to assist her with coping with her mental health symptoms, as she indicates this to be helpful to her at this time. I would recommend she continue psychiatric care with Ms. Gentile-Archer, ARNP, per her recommendations.

(JE 1:13)

He recommended she be restricted from working in the logistic loading area until further notice. (JE 1:13)

On May 11, 2020, claimant underwent a workplace impairment evaluation with Tracy A. Thomas, Ph. D., a licensed forensic psychologist. (CE 1) Ms. Thomas spoke personally with Mr. Parcel, Ms. White, claimant's coworker; Tony Wilson, claimant's coworker; Jessica Clark, claimant's daughter; and Billy Bassett, claimant's son.

A coworker, Ms. White, described claimant as hysterical at the scene of the accident and that following the event, claimant did appear different. When things get busy, claimant grows panicky. Claimant has discussed the fear of dying and leaving her grandchildren and children. Some coworkers have treated claimant differently since the accident as claimant slows things down during periods of anxiety. Mr. Wilson reported claimant to be more stressed and anxious and not as happy. (CE 1:16)

Dr. Thomas diagnosed claimant with PTSD as claimant met the diagnostic criteria and that while claimant may have had stressors in the past, none of those were temporally or contextually linked to claimant's current mental state. (CE 1:18, 20) Ms. Thomas also concluded that claimant was totally and permanently disabled relative to work in a heavy industrial environment. (CE 1:24)

For the diagnosis, Dr. Thomas pointed to several diagnostic criteria for PTSD and the supporting facts of claimant meeting said criteria. Claimant was directly involved in an incident that exposed her to a threat of death and serious injury. She has reported to multiple people, including coworkers and family, that she has recurrent intrusive symptoms including memories, dreams, flashbacks, prolonged psychological distress, and marked physiological reactions. (CE 1:18)

She also avoids stimuli associated with the traumatic event such as not wanting to work on a catwalk, avoiding loud noises. (CE 1:18) She also is more irritable and

angry prior to the event as well as feeling disconnected from family and friends. (CE 1:19) At the time, there was no signs of usage of substances or other medical condition that would lead to a physiological disturbance. (CE 1:20)

On August 3, 2020, Barbara Laughlin performed an employability assessment of claimant. (CE 5: 35) Due to claimant' s lack of concentration and focus, Ms. Laughlin limited claimant's work pool from environmental hazards such as working in high exposed places or with exposure to toxic/caustic chemicals. (CE 5:12)[1] Ms. Laughlin also reduced claimant's ability to work supervisory roles due to irritability, suspiciousness and inability to maintain conversations. Id. Claimant required others to slow down the pace of work due to her anxiety and she misjudges the dangerousness of certain situations. As a result, she could be unsafe to herself and others operating some equipment. Based on the foregoing, it is determined that she suffered a loss of 97.5 percent of generally transferable occupations and 99 percent of unskilled occupations. Id.

Due to a positive marijuana test, claimant started a group therapy program at Rosecrance for substance abuse on September 1, 2020. (JE 15:177) The majority of the treatment was focused on her alcohol usage as she was not a habitual marijuana user. (JE 15 et seq)

On September 14, 2020, Mr. Parcel clarified that his work restriction included not working on the cranes or the grab. (JE 1:15)

On September 21, 2020, claimant was seen for medication management by Anne Gentil-Archer, ARNP. (JE 1:19) Claimant was not compliant with her medications which she attributed to her work shifts. (JE 1:16) She was experiencing nightmares and anxieties and discussed requesting job accommodation to return to second shift to be able to take medications on a more regular basis. (JE 1:19) On the same date, Ms. Gentil-Archer made a request for the claimant to not work the swing shift as the medications adversely affect her sleep. (JE 1:21) She had been doing well on working the C shift from 3:00 to 11:00 p.m. (JE 1:21)

On September 23, 2020, Medical Director Theodore Koerner wrote to Mr. Parcel and Ms. Gentil-Archer requesting clarification as claimant was not working in the logistic loading department and that it was the defendant employer's policy not to accept restrictions that exclude specific job tasks or specified hours of work but rather indicate functional tasks that an employee is limited from performing based on medical necessity or a limitation as to the number of hours of work an employee is able to perform. (JE 5:121)

It was ultimately agreed that claimant would work the 3:00 to 11:00 p.m., shift and to not be assigned loading of over the road trucks. (JE 5:124)

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[1] The numbering of the claimant's exhibits is not consistent unfortunately.

On October 5, 2020, claimant's father passed away. Claimant testified that they were very close.

On December 21, 2020, claimant returned to Ms. Gentil-Archer for a medication review. (JE 1:27) Claimant was experiencing flashbacks, anxiety, and nausea but the medications were working well. (JE 1:28)

On February 14, 2021, Dr. Jennisch wrote in response to follow up requests from defendants. (DE Q) He reviewed multiple records of employment, criminal history, medical treatment and therapy. (DE Q: 205-213) He also conducted his own examination. (DE Q:214) Claimant admitted that some coping procedures learned from Dr. Brooke were helpful such as holding a machine that helps with breathing calmly. (DE Q:214) She enjoyed activities with her grandchildren whom she saw on a weekly basis and that she cleans her own home, plays games on her phone, and intermittently takes the dog outside. (DE Q:214) She had feelings of nervousness, shaking of hands, knots in her stomach, the sensation of nausea when the anxiety surfaces. (DE Q:215) At home, she can take a break to be alone. (DE Q:215) One of her work stressors was Tony Hickman[2], one of her supervisors. (DE Q:216)

Dr. Jennisch remained concerned about claimant's credibility, finding that her Trauma Symptom Inventory-2 showed evidence of symptom magnification. (DE Q:218) At times, Dr. Jennisch felt claimant was evasive about specific symptoms and used language suggesting a certain temperament and emotional reactivity. (DE Q:219)

Dr. Jennisch referenced two past instances in which claimant sought counseling involving issues that were in litigation and then later did not keep appointments. (DE Q:220) Dr. Jennisch inferred that claimant's need for counseling evaporated once she had reached a settlement for her litigation claims.

He did not find her level of functioning to be severely impaired, at least not to the level described by Dr. Thomas and Ms. Laughlin. He further found her surveillance videos and Facebook postings not consistent with an individual disabled by her psychiatric condition. (DE Q:222) Ultimately, he was not able to identify a psychiatric condition with any reasonable degree of medical certainty. (DE Q:222) He did not go so far as to state that she did not experience PTSD or depression but that he was not able to reliably assess these conditions due to his conclusion that she might be motivated by secondary gain. (DE Q:222) Current functioning suggested that she was able to maintain full-time employment based on current restriction but Dr. Jennisch was not certain those restrictions were necessary. (DE Q:222)

He finally concluded that due to a number of issues including past psychiatric history, recent death of her father, concerns over substance abuse, and ongoing litigation, claimant would likely benefit from ongoing medication management and

[2] Previously spelled as Toney in Joint Exhibit 5, page 80.

therapy services but that those medical needs were unrelated to the January 2018 work incident. (DE Q:222)

Claimant testified that at this appointment, she found Dr. Jennisch to be cold and abrupt toward her whereas previously he had been caring and understanding.

Two of claimant's supervisors testified at hearing. Keevyn Kilburg supervised claimant on and off for approximately four years. There would be periods of time when he would not see her for six weeks at a time. Mr. Kilburg testified that he did not observe claimant to have any apparent difficulty doing her job and did not receive any complaints from coworkers that claimant was not keeping up with the rest of the team. He did indicate that there were times when he would need her to do additional "moves" such as moving a trailer or a truck and when he asked her to do those tasks, she would perform them. This testimony appeared to imply that claimant had hesitancy when performing some tasks but would do them when prompted by a supervisor.

Brandon Council supervised claimant from approximately May of 2020 to January 2021. On occasion, he worked directly with the claimant facilitating material movement to specific machines. During this time, claimant was expediting which meant working underneath a crane and communicating via radio to the grab operator. He did not observe claimant to have any difficulty performing her job. He did not observe any triggers on the job nor did he hear direct complaints from the claimant regarding triggers.

When asked whether he heard any complaints about claimant's work performance, he stated:

> Nothing out of the ordinary. Generally, it's:
>
> "They're not keeping up," but not because of that.
>
> Like: "Why isn't the other crew doing this or that?"
>
> It's not specific to--nothing out of the ordinary.

(Transcript p. 110)

He testified that everyone complains about what other people aren't doing.

Based on the testimony of the two supervisors, it appears claimant's coworkers did complain about her work and that Mr. Kilburg had to directly instruct claimant to do tasks such as moving a trailer or truck. This testimony is consistent with claimant's reports of coworker complaints, as well as her own testimony regarding a reluctance, at times, to undertake certain work tasks. These accounts are also consistent with the statements taken by Dr. Thomas.

Defendants included multiple screenshots of claimant's Facebook account showing her eating food, celebrating her family, enjoying her time off. She also posted about body aches, illnesses, mental health loss, depression and PTSD.

Claimant testified she is not the same person as she was prior to the work incident. She used to laugh more readily and was always ready to work. Now she's often scared. Loud noises startle her. Physically, her neck still has a clicking sound. Her ribs ache. She suffers from headaches, nausea, light-headedness and dizziness. She also suffers panic attacks.

At work, she describes being triggered from time to time by a number of events such as busyness in the logistics department where many members are engaged in tasks close to her with various equipment or when a grab is changed[3] which involves cranes and the movement of 87,000 pounds of metal. She testified that the triggers happen often, sometimes three days out of five.

Claimant serves as a union steward and has held that position since before the January 12, 2018, work incident. As part of her duties as a union steward, she attends notice meetings and tries to ensure that the coworker's union rights are followed during the notice meeting. Some union members have specifically requested claimant as their union steward.

Defendants assert claimant was not credible due to discrepancies in her medical histories provided to different professionals. For instance, claimant did not share her substance abuse treatment to Nurse Practitioner Anne Gentil-Archer. Claimant did not share that she was involved in a legal issue concerning a domestic abuse charge. Defendants further argue that claimant misrepresented her past troubles sleeping. While claimant could have been a better medical historian, her past medical history is detailed and complicated. She also could have been more forthcoming regarding her marijuana use with NP Anne Gentil-Archer, as well as the pending domestic abuse situations. However, failure to relate these incidents to NP Gentil-Archer is not sufficient to sustain a finding of lack of credibility.

While she may have had trouble sleeping in the past, her current sleep problems are related to nightmares associated with a workplace incident wherein she believed she could have lost her life. Further, lack of sleep was not the only symptom she described post the January 12, 2018, work incident.

Claimant does assist her son in regaining his independence, but claimant's daughter testified that claimant is more emotional, gets upset more often, is more anxious. She will stay in her room more often instead of mingling with family members when they are visiting.

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[3] Claimant testified that the change of grabs happens occasionally, on a monthly basis

Claimant's symptoms following the January 12, 2018, incident have been consistent. She has described herself as anxious, depressed, and scared with a lack of focus. She underwent at least two psychological tests such as the MMPI with Dr. Brooke and the PAI with Dr. Thomas. These two tests were based on similar recollections and accounts by claimant of her mental status following the January 12, 2018, workplace injury and the accounts are largely the same.

Dr. Brooke believed that claimant experienced these traumas and advised claimant on coping techniques. He described her as having remarkable progress at one point and that during his treatment she was sincere and her effort to recover was obvious.

Her omissions to her medical providers may affect the weight to be afforded the medical provider or expert opinion, but based on the medical records, claimant's deposition and hearing testimony, and her demeanor during the hearing, it is found claimant is a credible witness.

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 R. App. P. 6.904(3).

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

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).

Nontraumatically caused mental injuries are compensable under Iowa Code section 85.3(1). Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995).

Under Dunlavey, mental injuries caused by work-related stress are compensable if, after demonstrating medical causation, the employee shows that the mental injury was caused by work place stress of greater magnitude than the day to day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer. Id. at 857.

Both medical and legal causation must be resolved in claimant's favor before an injury arising out of and in the course of the employment can be established. To establish medical causation, the employee must show that the stresses and tensions arising from the work environment are a proximate cause of the employee's mental difficulties. If the medical causation issue is resolved in favor of the employee, legal causation is examined. Legal causation involves a determination of whether the work stresses and tensions the employee experienced, when viewed objectively and not as the employee perceived them, were of greater magnitude than the day to day mental stresses workers employed in the same or similar jobs experience routinely regardless of their employer.

The employee has the burden to establish the requisite legal causation. Evidence of stresses experienced by workers with similar jobs employed by a different employer is relevant; evidence of the stresses of other workers employed by the same employer in the same or similar jobs will usually be most persuasive and determinative on the issue. Id. at 858.

The crux of the dispute is whether claimant has sustained a permanent industrial disability arising out of her accepted work injury of January 12, 2018.

On the date of her injury, claimant was part of a crew who was to secure a metal slab to an overhead crane that would then move the metal slab to a flatbed truck. The

16-ton metal slab struck her and she fell to the ground. Shortly after the injury, claimant described mental and psychological distress associated with the traumatic event.

She began treatment, both pharmaceutical and therapy. Dr. Brooke managed claimant's care and taught her coping exercises which claimant reported to another provider that she did not find helpful. However, Dr. Brooke deemed her at MMI as of August 28, 2018.

Initially, the retained experts were in agreement that claimant had not reached MMI for her psychological injury as of August 28, 2018. Dr. Jennisch and therapist Jim Parcel diagnosed claimant with PTSD.

Dr. Jennisch found her psychiatric examination to be consistent with the MMPI-2-rf results provided by Dr. Brooke and while Dr. Jennisch acknowledged that claimant could be malingering, he felt that the medical records supported his diagnosis. He also dismissed and disagreed with the opinions of the employer's choice of medical provider, Dr. Brooke. Dr. Brooke's conclusions were not consistent with the dozen therapy appointments, other medical records and claimant's presentation at the first Dr. Jennisch IME.

Dr. Jennisch found that claimant needed further medical care and Mr. Parcel also found claimant to need further care and did not find her to be at MMI until February 21, 2020. (JE 1:12-13) Dr. Thomas, claimant's expert, deemed claimant to be at MMI as of May 20, 2020. Claimant continued to receive mental health treatment provided by defendants through February 18, 2021.

Dr. Jennisch later reversed his opinion and found his concerns over claimant's credibility and a possible profit motive impaired his belief that claimant had suffered an ongoing psychological trauma due to the work injury of January 12, 2018. He did find that it was likely claimant would need ongoing mental health care but attributed that need to other factors such as substance abuse, her father's death, and ongoing litigation.

Claimant's brief urges the undersigned to consider alexithymia as a possible explanation for claimant's behavior during her second interview with Dr. Jennisch. Claimant's brief states "there is a lot of information about alexithymia that can be accessed via Google." Obviously this is not information that the undersigned should search out or rely upon as it is not in the record and not attested to by any of the medical professionals in this case. Should the claimant wish for medical diagnosis to be considered by a judiciary, experts should be presented to discuss the medical condition and explain how it pertains to the injured worker rather than exhorting the agency to search up conditions on the internet and blindly apply diagnoses based on information collected on random internet sites.

Much of Dr. Jennisch's second opinion rests on his belief that claimant had not been truthful with him during the first visit and that her psychological distress arose out

of secondary gain. Having found that the claimant is credible, less weight is given to Dr. Jennisch's second opinion. Instead, the first opinion that he gave wherein he diagnosed claimant as suffering PTSD following the January 12, 2018, incident is relied upon as are the opinions of claimant's treaters, Jim Parcel, Ms. Gentile-Archer, and, independent medical examiner, Dr. Thomas.

Defendants argue that Dr. Thomas' opinions are not credible as the opinions are based on erroneous information. Dr. Thomas did not document or was unaware of claimant's substance abuse treatment. Dr. Thomas characterized claimant as self-isolating, with few social contacts, and inability to adapt to current work setting. Defendants argue that claimant's union steward work, her care for her son, and her Facebook posts contradict how she presented to Dr. Thomas.

Dr. Thomas' opinions were based not only on claimant's own history, but on interviews with friends and coworkers and other health practitioners. Even if claimant's recitation of events was not fully forthcoming, Dr. Thomas weighed other perspectives and other accounts to seek either corroboration or contradiction. Dr. Thomas found the other perspectives and statements to be corroborative.

It is found claimant sustained PTSD arising out of the January 12, 2018, work incident and that the PTSD has continuing effects on claimant's ability to work and be gainfully employed.

The extent claimant's disability is constrained by Iowa Code 85.34(2)(v).

> v. In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "u" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement

> for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

Claimant was earning more at the time of the hearing than she did at the time of the work injury. Therefore, her injury is measured on a functional impairment basis and not an industrial disability basis. Functional impairment is measured by the AMA Guides to the Evaluation of Permanent Impairment. (Iowa Code section 85.34(2)(x) Mr. Parcel deferred to a forensic psychologist regarding permanent disability. Ms. Gentile-Archer offered no percent impairment. Dr. Brooke and Dr. Jennisch similarly offer no percent impairment. Dr. Thomas found claimant to be 100 percent disabled from heavy duty machinery work despite evidence that claimant was working in a heavy duty environment, albeit with issues.

However, given that Iowa Code section 85.34(2)(x) demands that the undersigned use no agency expertise in determining loss or percentage of impairment when determining functional disability, Dr. Thomas' disability rating is adopted herein. Claimant is determined to be 100 percent functionally disabled from a heavy duty work environment and awarded 500 weeks of compensation.

Permanent partial disability commences when one of the conditions of Iowa Code 85.34 are met.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, Iowa App 312 N.W.2d 60 (1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant returned to work the day following her work injury and while she needed, and, was given accommodations, the work she was doing was substantially the same. Thus, the commencement date of permanent partial disability benefits is January 13, 2018.

Claimant also seeks future medical care.

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).

Having found previously claimant sustained a permanent and ongoing mental disability arising out of a work injury of January 12, 2018, claimant is entitled to ongoing reasonable medical care for that mental injury.

Pursuant to 876 IAC 4.33, it is within the discretion of the undersigned to award costs. Claimant seeks reimbursement for the costs associated with four reports and examinations of Dr. Thomas.

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.

According to rule 876 IAC 4.33, the transcript, the filing fee, the service fee, and one report of Dr. Thomas and one report of Ms. Laughlin can be assessed. Ms. Laughlin's report offered little utility in this decision and therefore is not assessed as a cost. The reasonable cost of obtaining the first report of Dr. Thomas included a phone consultation, a record review, a review of the AMA Guides, an interview with claimant, interviews of other witnesses, test scoring, and report preparations. The costs incurred between March 17, 2020, through May 11, 2020, as reflected in the claimant's list of costs are awarded herein.

ORDER

THEREFORE, it is ordered:

That defendants are to pay unto claimant five hundred (500) weeks of permanent partial disability benefits at the rate of seven hundred twenty-one and 84/100 dollars ($721.84) per week from January 13, 2018.

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

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

That defendants 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 including the hearing transcript, filing fee, service fee, and the costs of obtaining the first report of Dr. Thomas for the period of March 17, 2020, through May 11, 2020.

Signed and filed this 15th day of November, 2021.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Earl Payson (via WCES)

Troy Howell (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.