BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRYSANNE REDING, Claimant, vs. NORDSTROM DISTRIBUTION CENTER, Employer, Self-Insured, Defendant.	: : : : : : : : : : : : :	File Nos. 5064796, 5068121 ARBITRATION DECISION Head Note Nos.: 1400, 1402, 1402.40, 1800, 1803, 2500, 2700

STATEMENT OF THE CASE

The claimant, Chrysanne Reding, filed two petitions for arbitration seeking workers' compensation benefits from Nordstrom Distribution Center, as the self-insured employer. Eric Loney appeared on behalf of the claimant. James Peters appeared on behalf of the defendants.

The matter came on for hearing on August 21, 2020, before deputy workers' compensation commissioner Andrew M. Phillips in Des Moines, Iowa. An order issued on March 13, 2020, and updated June 1, 2020, and August 14, 2020, by the Iowa Workers' Compensation Commissioner, In the Matter of Coronavirus/COVID-19 Impact on Hearings (Available online at: https://www.iowaworkcomp.gov/order-coronavirus-covid-19 (last viewed August 14, 2020)) amended the hearing assignment order in each case before the Commissioner scheduled for an in-person regular proceeding hearing between March 18, 2020, and November 20, 2020. The amendment makes it so that such hearings will be held by Internet-based video, using CourtCall. The parties appeared electronically, and the hearing proceeded without significant difficulties. The matter was fully submitted on September 30, 2020, after briefing by the parties.

The record in this case consists of Joint Exhibits 1-8, Claimant's Exhibits 1-8, and Defendants' Exhibits A-B**.** Testimony under oath was also taken from the claimant, Chrysanne Reding, and Rachel Frith. Marla Happel was appointed the official reporter and custodian of the notes of the proceeding. All exhibits were received into evidence.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

File Number 5064796:

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury, which arose out of and in the scope of employment, on October 17, 2017.

3. The alleged injury is a cause of temporary disability during a period of recovery.

4. The commencement date of permanent disability benefits, if any are awarded, is September 13, 2018.

5. The claimant had gross earnings of $677.87 per week, was married, and entitled to two exemptions.

6. The weekly rate is $450.63.

7. The costs listed in Claimant's Exhibit 7 have been paid.

Additionally, there is no dispute as to the entitlement for temporary disability and/or healing period benefits. The defendants waived their affirmative defenses.

File Number 5068121:

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant had gross earnings of $714.53 per week, was married, and entitled to two exemptions.

3. The weekly rate is $477.66.

4. Although medical expenses are disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants are not offering contrary evidence.

5. Although causal connection of the medical expenses to a work injury cannot be stipulated, the listed expenses are at least causally connected to the medical condition(s) upon which the claim of injury is based.

6. The costs listed in Claimant's Exhibit 7 have been paid.

Additionally, there is no dispute as to the entitlement for temporary disability and/or healing period benefits. There is no dispute as to the entitlement to credits against any award. The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

File Number 5064796:

1. Whether the alleged injury is a cause of permanent disability.

2. The extent of permanent disability, if any is awarded.

3. Whether the disability is an industrial disability.

4. Whether the claimant is entitled to reimbursement for an independent medical examination (IME) pursuant to Iowa Code section 85.39.

5. Whether the claimant is entitled to alternate care pursuant to Iowa Code section 85.27.

6. Whether the claimant is entitled to an assessment of costs.

File Number 5068121:

1. Whether the claimant sustained an injury, which arose out of, and in the course of, employment, on March 8, 2019.

2. Whether the alleged injury is a cause of temporary disability during a period of recovery.

3. Whether the alleged injury is a cause of permanent disability.

4. The extent of permanent disability, if any is awarded.

5. Whether the disability is an industrial disability.

6. Whether the commencement date for permanent partial disability benefits, if any are awarded, is May 9, 2019.

7. Whether the claimant is entitled to reimbursement of medical expenses as listed in Joint Exhibit 8.

    a. Whether the fees or prices charged by the providers are fair and reasonable.
    b. Whether the treatment was reasonable and necessary.
    c. Whether the listed expenses are causally related to the work injury.
    d. Whether the requested expenses were authorized by the defendants.

8. Whether the claimant is entitled to reimbursement for an IME pursuant to Iowa Code 85.39.

9. Whether the claimant is entitled to alternate care pursuant to Iowa Code 85.27.

10. Whether the claimant is entitled to an assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Chrysanne Reding, the claimant, was 57 years old at the time of the hearing. She is currently a resident of Dubuque, Iowa. (Testimony). She is married. (Testimony). She graduated from Hempstead High School with average grades. (Testimony; Claimant's Exhibit 3:1). She attended cosmetology school, and graduated with honors in 1983. (Testimony). After graduating cosmetology school, she worked as a cosmetologist for three years. (Testimony). She has not worked in cosmetology since 1987. (Testimony). From 1987 through 1998, Ms. Reding worked various service industry jobs, including as a bartender/waitress and a cashier/stocker. (CE 3:3). She also worked in data entry, as a printer, and for a bank. (CE 3:3).

Ms. Reding began employment with Nordstrom Distribution Center (hereinafter "Nordstrom") in 1998 through an employment agency. (CE 3:3; Testimony). She became an employee of Nordstrom in 2000. (CE 3:3; Testimony). She is still employed by Nordstrom. (Testimony). Her job description includes continuous walking and standing. (CE 4:2). She also was required to reach at or below shoulder height. (CE 4:2). The job description also listed the ability to frequently lift/lower below her waist up to 10 pounds, lift/lower between her waist and chest up to 25 pounds, push/pull up to 10 pounds of force, and lift/lower above her shoulder height up to 25 pounds. (CE 4:2). The job description also noted occasional carrying of 10 to 25 pounds, pushing/pulling from 11 to 25 pounds, lifting waist to shoulder height 25 to 40 pounds, and lifting/lowering above the shoulder 25 to 50 pounds. (CE 4:2). She held several positions at Nordstrom including processing boxes, processing returns, processing shoe orders, and processing hanging items. (Testimony). She also worked as a trainer for at least 10 years. (Testimony). While not acting as a trainer, she earned $17.75 per hour. (Testimony). While training, she earned an extra $1.05 per hour to make her hourly earnings $18.80 per hour. (Testimony). One week before the first date of injury at issue in this case, Nordstrom took Ms. Reding off training duties. (Testimony). In 2007, Ms. Reding suffered a previous workers' compensation injury to her shoulder due to working above her shoulder. (Testimony). She visited Finley Hospital in Dubuque, Iowa, for this injury. (JE 1:1-1:5). She complained of bilateral shoulder pain that was worse on the left than the right. (JE 1:1). She also complained of neck pain. (JE 2:1-2). She was assessed with no permanent injury from this work incident. (JE 1:4).

In June of 2013, Ms. Reding reported to Stephen Dalsing, D.C., with complaints of moderate neck pain, moderate mid back pain, and moderate low back pain. (JE 3:1). She followed up with Dr. Dalsing in August of 2014 with the same complaints. (JE 3:2). In May of 2015, Ms. Reding returned to Dr. Dalsing's office with complaints of moderately severe pain in both hips, moderately severe mid back pain, and moderate neck pain on both sides. (JE 3:3-6). Dr. Dalsing provided repeat care to Ms. Reding for the same body parts in August of 2015. (JE 3:6). Ms. Reding again followed-up with Dr. Dalsing in December of 2015 through January of 2016 with continued complaints of mid back pain, upper back pain, moderate neck pain on both sides, and mild pain in both hips. (JE 3:7-10). Ms. Reding continued with sporadic chiropractic care through September of 2017. (JE 3:11-13).

On October 17, 2017, while working at Nordstrom, Ms. Reding was processing boxes. (Testimony). Lifting freight caused a strain on her shoulders. (Testimony). She had a problem in the right shoulder area. (Testimony). She felt a tearing into the shoulder blade and neck. (Testimony). She was put on light duty for about a year, which included clerical work. (Testimony). After a time, Nordstrom returned her to a processor role on the full line where she could work without lifting or pulling. (Testimony).

Ms. Reding reported to Medical Associates Clinic on October 23, 2017, where Emily Armstrong, PA-C, examined her for complaints of a new injury to the right shoulder while working. (JE 4:1-3). Ms. Reding reported injuring her shoulder 10 years prior due to repetitive use, and the pain returned. (JE 4:1). Ms. Reding indicated that she held a tape gun with her upper right extremity, and that pulling the tape gun towards her caused her pain. (JE 4:1). She complained of pain being 3/10 and 7-8/10 when she is using it. (JE 4:1). Someone at Nordstrom gave her a band to do stretching exercises, which caused the front of her shoulder to hurt. (JE 4:1). She had no swelling or deformity to her right shoulder, but did have tenderness with palpation of her AC joint, supraspinatus fossa, infraspinatus, and teres minor regions. (JE 4:1). Her left shoulder had mild tenderness to the coracoid process, but otherwise had no tenderness. (JE 4:1). Physician Assistant Armstrong opined that Ms. Reding's right shoulder pain seems to be coming from her supraspinatus, infraspinatus, and teres minor, based upon her examination. (JE 4:2). Physician Assistant Armstrong further opined that this appeared to be a strain rather than a partial tear, and may have represented an acute exacerbation of underlying chronic shoulder problems. (JE 4:2). Physician Assistant Armstrong prescribed Ibuprofen, and provided restrictions including: no more than 10 pounds lifting/pushing/pulling while keeping her right elbow at her side, and no moving her right elbow away from her body while working. (JE 4:2). An x-ray was also done on October 23, 2017, which showed no acute findings, and minimal osteoarthritis involving the acromioclavicular joint. (JE 4:4).

On November 27, 2017, Ms. Reding returned to Medical Associates Clinic for a recheck of her right shoulder pain with Physician Assistant Armstrong. (JE 4:5). Ms. Reding rated her pain 4/10, which increased with activity. (JE 4:5). Ms. Reding further noted that therapy was not helping and in fact hurt her shoulder. (JE 4:5). Ms. Reding

felt she worsened since her last evaluation. (JE 4:5). Her pain also increased with any resistance movement of her right arm away from her body. (JE 4:5). Ms. Reding also reported that her left shoulder was a little sore, but she blamed this on overuse due to her right shoulder issues. (JE 4:5). She continued to have mild tenderness with palpation of her AC joint, moderate tenderness with palpation of the supraspinatus fossa, infraspinatus, and teres minor. (JE 4:5). Ms. Reding also had slight right lower cervical paraspinous musculature tenderness, but no midline or left-sided neck tenderness. (JE 4:5). Physician Assistant Armstrong administered a steroid injection into the right shoulder and recommended continued physical therapy. (JE 4:5). Physician Assistant Armstrong released Ms. Reding to work with restrictions of no use of her right arm for that day. (JE 4:5). Starting on November 28, 2017, her restrictions included: maximum 10 pound lift/push/pull with her right arm while keeping her elbow at her side, and no overhead work with her right arm. (JE 4:5). Physician Assistant Armstrong wanted to see her back in three weeks for a recheck. (JE 4:5).

On December 22, 2017, Ms. Reding had an MRI with contrast of her right shoulder. (JE 4:6). Thomas J. Knudtson, M.D., interpreted the MRI. (JE 4:6). Dr. Knudtson's impressions were mild tendinopathy involving the supraspinatus and infraspinatus tendons without rotator cuff tearing, mild osteoarthritis involving the acromioclavicular joint, and benign enchondroma versus cystic enthesopathic changes within the medial humeral head. (JE 4:6-7).

Following the right shoulder MRI, Ms. Reding reported to Medical Associates Clinic on December 26, 2017, where Physician Assistant Armstrong performed an additional examination. (JE 4:8). Ms. Reding indicated that she felt about the same as her previous visit, and that her pain varied depending on her activity. (JE 4:8). She reported intermittent radiating pain to her back and down her right arm. (JE 4:8). The previous injection provided no improvement. (JE 4:8). Ms. Reding noted that she followed and tolerated the previously imposed restrictions. (JE 4:8). Physician Assistant Armstrong's diagnoses included: arthritis of the right acromioclavicular joint, pain in the right shoulder, and tendinopathy of the right rotator cuff. (JE 4:8). Physician Assistant Armstrong noted, "[b]ased on patient's current clinical examination I feel the majority of her pain is coming from her infraspinatus and supraspinatus; her AC joint is mildly tender." (JE 4:8). Ms. Reding was referred to orthopedics for further evaluation, and was released to work within her previous restrictions. (JE 4:8).

Ms. Reding returned to Medical Associates Clinic on March 7, 2018, where Scott Schemmel, M.D., examined her for right shoulder complaints. (JE 4:9). Dr. Schemmel noted that Ms. Reding returned to full and unrestricted work at Nordstrom as of February 5, 2018. (JE 4:9). Ms. Reding complained of bilateral shoulder pain in the area of the "upper trap" and periscapular pain. (JE 4:9). She also had anterior shoulder pain. (JE 4:9). Dr. Schemmel noted that Ms. Reding responded positively to an AC injection in the past, but was now complaining of bilateral shoulder pain with the left being worse than the right. (JE 4:9). Dr. Schemmel opined that surgical intervention was not called for, and that Ms. Reding's injuries were repetitive in nature. (JE 4:9). Dr. Schemmel concluded that Ms. Reding needed additional physical therapy, postural

retraining, and/or workplace modifications to accommodate her shoulders. (JE 4:9). Dr. Schemmel provided a full, unrestricted work release effective March 7, 2018. (JE 4:10).

On March 19, 2018, Ms. Reding followed-up with Physician Assistant Armstrong at Medical Associates Clinic. (JE 4:11). Ms. Reding noted that her pain was "on/off depending on use." (JE 4:11). The record notes a right shoulder AC joint steroid injection on January 10, 2018, which provided complete resolution of her right shoulder pain for three to four weeks. (JE 4:11). After that time, her pain gradually returned, to the point that it felt the same during this visit as it did in December of 2017. (JE 4:11). Her left shoulder worsened since her previous visit, which Ms. Reding blamed on "trying to baby her right shoulder." (JE 4:11). Ms. Reding noted an ability to complete her workday and "tolerate it," but that she would not be able to work overtime. (JE 4:11). Physician Assistant Armstrong assessed her with bilateral shoulder pain, and periscapular pain. (JE 4:11). The provider ordered additional physical therapy, and indicated that Ms. Reding's treatment options were nearing their end. (JE 4:11). Physician Assistant Armstrong told Ms. Reding that a functional capacity exam (FCE) needed to be considered for a determination of permanent restrictions. (JE 4:12).

Ms. Reding returned to Medical Associates Clinic on May 10, 2018, for a repeat consultation with Dr. Schemmel. (JE 4:13). Ms. Reding noted the relief that she received from the AC joint injection in January of 2018; however, she further noted that the relief was fleeting and faded after three weeks. (JE 4:13). Dr. Schemmel disagreed with Ms. Reding, and noted that the symptoms she alleged during her March 7, 2018, visit were not the same as their initial visit. (JE 4:13). The symptoms complained of were not consistent with an isolated AC joint problem, and were "more myofascial muscular" and possibly centrally mediated. (JE 4:13). Based upon the previous presentation, Dr. Schemmel did not feel as though Ms. Reding was a candidate for a distal clavicle excision. (JE 4:13). Her pain continued to be "more global than isolated to the AC joint" although she had pain in the area of the AC joint. (JE 4:13). Dr. Schemmel explained to Ms. Reding that there was no definitive evidence of her symptoms relating to her right shoulder. (JE 4:13). Dr. Schemmel agreed to perform another AC joint injection, and make a treatment decision based on the results of that injection. (JE 4:13). Dr. Schemmel completed the injection, and increased Ms. Reding's work restrictions to lifting/carrying/pushing/pulling up to 5 pounds to waist height. (JE 4:13-14).

On June 1, 2018, Ms. Reding again visited Dr. Schemmel for a recheck of her previous right shoulder complaints. (JE 4:15). She had no response to the AC joint injection received three weeks prior. (JE 4:15). She complained primarily of pain at the base of her neck into the upper trapezius and periscapular region. (JE 4:15). Dr. Schemmel noted, "I think that at this point we have effectively ruled out her AC joint as any significant source of her discomfort." (JE 4:15). Dr. Schemmel recommended no surgical intervention and opined that Ms. Reding's pain was not coming from her AC joint or rotator cuff. (JE 4:15). He referred her back to Tri-State Occupational Medicine. (JE 4:15). Dr. Schemmel continued the previous restrictions as laid out in his May 10, 2018 note. (JE 4:16).

Erin J. Kennedy, M.D., examined Ms. Reding on June 12, 2018, for a recheck of her bilateral shoulder pain. (JE 4:17). Ms. Reding stated that her shoulders hurt very much, and that any time her right arm abducted, it was painful. (JE 4:17). Ms. Reding reported pain at the top of the shoulder and pointed from the AC area to the cervical spine. (JE 4:17). She claimed to Dr. Kennedy that if she attempted to use the arm away from her body, it resulted in sharp posterior neck and upper back pain. (JE 4:17). Ms. Reding reported to Dr. Kennedy that her right shoulder was "far worse" than the left. (JE 4:17). Her left shoulder felt the same as it had since her 2007 workers' compensation injury. (JE 4:17). She also reported that her neck pain felt muscular, and had no radiation. (JE 4:17). Her left shoulder had normal range of motion, and pain could not be reproduced. (JE 4:18). Dr. Kennedy diagnosed Ms. Reding with persistent nonfocal right shoulder pain. (JE 4:18). Dr. Kennedy opined that the only possible consideration "might be a bursa about the suprascapular region deeper in shoulder," but noted that this was not demonstrated on a previous MRI of the area. (JE 4:18). Dr. Kennedy recommended an FCE to set permanent restrictions, but allowed the possibility of a second opinion. (JE 4:18). Dr. Kennedy allowed her to work with a 10 pound restriction. (JE 4:18).

Ms. Reding attended an FCE on August 27, 2018, conducted by Aaron Timm, DPT, at E3 Work Therapy Services. (JE 5:1-13). Mr. Timm concluded that Ms. Reding's effort was inconsistent during a repeated measures protocol. (JE 5:1). Ms. Reding failed to give maximum voluntary effort during the FCE, which did not allow the examiner to determine her maximum lifting capabilities and/or functional capabilities. (JE 5:1). Specifically, Ms. Reding failed five of seven validity criteria during the XRTS hand strength assessment. (JE 5:1). She also had an absence of correlation between lifts of unmarked steel bars and the corresponding lifts on the XRTS lever arm. (JE 5:1). Finally, Ms. Reding lifted and carried more weight than documented as a lift described by Ms. Reding as a "maximum lifting capacity" when lifting capacities were assessed. (JE 5:1). Due to these issues, the administrator of the FCE deemed it invalid. (JE 5:1). Ms. Reding's functional abilities for lifting included: bilateral lifting from 10" to the waist of 33.76 pounds; bilateral lift from 20" to the waist of 33.76 pounds; bilateral carrying of 31.86 pounds; and, bilateral lifting above shoulder level of 13.51 pounds. (JE 5:3). Ms. Reding testified that she gave maximum effort, and that she was told that she could not ask questions during the FCE. (Testimony).

On September 12, 2018, Ms. Reding returned to Dr. Kennedy's office to discuss the results of her FCE. (JE 4:19). Ms. Reding indicated no changes since her last visit. (JE 4:19). The FCE results were invalid. (JE 4:19). Ms. Reding demonstrated an ability to lift a minimum of 33 pounds, and due to submaximal effort, Dr. Kennedy opined that Ms. Reding can actually lift more than this. (JE 4:19). Dr. Kennedy's assessment or plan indicated that Ms. Reding had nonfocal right shoulder pain with questionable validity of pain report and function that persisted despite a "thorough course of eval (sic) and treatment." (JE 4:19). Dr. Kennedy declared that Ms. Reding reached maximum medical improvement, and returned her to full duty. (JE 4:19). Additionally, Dr. Kennedy noted that she could not rate any permanent impairment for Ms. Reding due to reliance on range of motion for the shoulder as Dr. Kennedy felt that

Ms. Reding would not put forth maximum effort. (JE 4:19). Therefore, Dr. Kennedy opined that Ms. Reding sustained a zero percent permanent partial impairment to her bilateral shoulders from this work incident. (JE 4:19).

After this time, Nordstrom moved Ms. Reding to a processor or "full line" position so that she could work without having to lift or pull. (Testimony).

Ms. Reding attended another FCE on February 5, 2019, with Daryl Short, DPT. (CE 2:1-6). The FCE history noted that Ms. Reding injured her neck, back and bilateral shoulders due to repetitive work in the course of her employment at Nordstrom. (CE 2:1). She limited her activities requiring her to reach away from her body due to ongoing pain. (CE 2:1). Mr. Short measured decreased range of motion in Ms. Reding's neck, especially upon flexion and rotation. (CE 2:2). Ms. Reding's shoulder range of motion was within normal limits on the right and left sides, but did have some minor loss of strength. (CE 2:3). Mr. Short found that Ms. Reding engaged in a consistent effort and performance with all test items. (CE 2:4). Ms. Reding reported her pain at the outset to be 0/10, which increased to 3/10 in her right shoulder and neck as she progressed with the FCE. (CE 2:5). Mr. Short found slight or no limitations in the following areas: forward bent standing, sitting, standing work, walking, stairs, lifting waist to/from floor up to 20 pounds, and front carry up to 25 pounds up to 50 feet. (CE 2:5). Mr. Short found some limitations in the following areas: elevated work, kneeling/half-kneeling, reaching, lifting waist to/from floor up to 25 pounds, lifting waist to/from crown up to 10 pounds, front carry up to 30 pounds up to 50 feet, right arm overhead lift up to 4 pounds, and left arm overhead lift up to 5 pounds. (CE 2:5). Mr. Short found significant limitations with the following areas: lifting waist to/from floor up to 35 pounds, lifting waist to/from crown up to 15 pounds, front carry up to 40 pounds up to 50 feet, right arm overhead lift up to 6 pounds, and left arm overhead lift up to 7 pounds. (CE 2:5). Based upon the WorkWell protocol, and the reduced strength and endurance to Ms. Reding's right shoulder and neck, Mr. Short, placed her capabilities in the lower medium category of physical demand. (CE 2:6). This means lifting up to 25 to 30 pounds on an occasional basis at waist level. (CE 2:6). Mr. Short recommended that she limit material and non-material handling activities at or above chest level to only an occasional basis. (CE 2:6). Mr. Short spent just under three hours completing the examination. (CE 2:6).

Ms. Reding reported for an independent medical evaluation (IME) with Sunil Bansal, M.D., M.P.H., on February 15, 2019. (CE 1:1-23). Dr. Bansal is board certified in occupational medicine. (CE 1:1; CE 1:47-48). Dr. Bansal reviewed Ms. Reding's lengthy treatment history, back to 2006. (CE 1:1-17). Ms. Reding indicated to Dr. Bansal that her left shoulder still caught and clicked even though it did not feel weak. (CE 1:18). Dr. Bansal found tenderness to palpation over Ms. Reding's cervical paraspinal musculature, that was greater on the right side. (CE 1:18). Ms. Reding's right shoulder had tenderness on palpation with the greatest at the acromioclavicular joint into the subacromial bursa. (CE 1:18). Her left shoulder had no tenderness on palpation, and a full range of motion. (CE 1:19). Dr. Bansal opined that Ms. Reding's diagnoses included: cervical myofascial pain syndrome, and right and left shoulder

rotator cuff tendinopathy. (CE 1:20). Ms. Reding continued to complain of pain in her posterior right shoulder. (CE 1:20). She reported using her left arm to lift most of the weight. (CE 1:20). Dr. Bansal noted that Ms. Reding incurred cumulative overuse injuries to her bilateral shoulders; however, her right shoulder injury was greater than her left. (CE 1:21). Dr. Bansal further noted that Ms. Reding's job duties required her to work in a position that stressed the acromioclavicular joint, leading to inflammation of the subacromial space. (CE 1:21). Dr. Bansal also related cervical myofascial pain syndrome to Ms. Reding's shoulder complaints. (CE 1:21). Dr. Bansal opined that Ms. Reding had not received adequate treatment, so the impairment rating was permanent absent further treatment. (CE 1:22). Based upon Dr. Bansal's examination, he provided Ms. Reding with an 8 percent upper extremity impairment rating, and translated that to a 5 percent impairment to the body as a whole. (CE 1:22). Dr. Bansal also provided a 5 percent whole person impairment rating due to Ms. Reding's neck issues. (CE 1:22). Dr. Bansal endorsed the permanent restrictions assigned by Short Physical Therapy on February 5, 2019. (CE 1:23). Dr. Bansal opined that Ms. Reding reached MMI on September 12, 2018. (CE 1:23). Finally, Dr. Bansal recommended a subacromial decompression with distal clavicle excision if Ms. Reding's shoulder worsened. (CE 1:23). For routine maintenance of the right shoulder, Dr. Bansal recommended intermittent steroid injections. (CE 1:23). He also recommended intermittent trigger point injections to her neck. (CE 1:23).

On March 8, 2019, Ms. Reding worked on the full line position. (Testimony). She reported pulling shoe boxes out of larger boxes. (Testimony). Due to her previous injuries, she had to tip the boxes in order to remove the smaller shoe boxes. (Testimony). Ms. Reding reported feeling a pop in her left shoulder, and then immediately stopped working. (Testimony). Ms. Reding claims that she reported the injury to Nordstrom. (Testimony). Initially, her primary care physician would not examine her due to it being a work related incident. (Testimony).

Cynthia Konz, M.D., issued a restriction for Ms. Reding on March 15, 2019. Dr. Konz wrote that Ms. Reding was to avoid continuous and repeated movements with her left arm. (JE 6:1). Dr. Konz also provided a 10 pound weight restriction. (JE 6:1). Dr. Konz wrote that the restrictions were to be in place until a treatment plan was outlined. (JE 6:1).

On March 22, 2019, Ms. Reding had an MRI of her left shoulder at Finley Hospital. (JE 1:7-8). Pranav Patel, M.D., interpreted the MRI. (JE 1:8). Ms. Reding noted a history of left shoulder pain over the previous two weeks, along with repetitive motion. (JE 1:7). Dr. Patel's impressions based upon his review of the MRI included chronic insertional tendinopathy of the distal supraspinatus tendon with mild undersurface partial tearing measuring less than 20 percent of the distal tendon thickness, and mild left acromioclavicular joint degenerative joint disease. (JE 1:8).

Dr. Konz issued another letter, dated March 26, 2019, which indicated that Ms. Reding was to remain off work at a time to be decided based upon a pending orthopedic evaluation. (JE 6:2).

Ms. Reding returned to Dr. Kennedy's office on April 1, 2019, with complaints of a new injury to her left shoulder. (JE 4:21). Ms. Reding outlined her previous history, including that after returning to Nordstrom, she worked on the "full line" where she was able to keep her elbows close to her body. (JE 4:21). In January and February of 2019, Ms. Reding reported that she was placed in other departments, and was lifting a great deal more. (JE 4:21). She reported working in the shoe department on March 8, 2019, when she felt a "tearing" pain in her left shoulder. (JE 4:21). Reaching, pushing or pulling increased the pain, which Ms. Reding indicated to Dr. Kennedy stems from the posterior cuff. (JE 4:21). Dr. Kennedy recounted the results of the March 22, 2019, MRI, and further recounted that Ms. Reding felt a relief in pain after keeping her elbows close to her body. (JE 4:21). On physical examination, Dr. Kennedy found Ms. Reding to be nontender over the AC joint, shoulder girdle, and upper back musculature. (JE 4:21). She did note a focal area of tenderness over the posterior cuff. (JE 4:21). Dr. Kennedy assessed Ms. Reding with left shoulder pain, and noted that the MRI of March 22, 2019, showed chronic findings without any acute issues. (JE 4:22). While Ms. Reding reported feeling worse, Dr. Kennedy opined that she may have provoked her chronic condition with activities outside of her shoulder tolerance. (JE 4:22). Dr. Kennedy noted several courses of action including a referral to an orthopedic doctor, or attempting an injection to restore Ms. Reding to her previous levels of symptoms. (JE 4:22). Ms. Reding elected to have an injection. (JE 4:22). Dr. Kennedy noted that if Ms. Reding's symptoms returned to baseline, it would be nearly impossible for there to be a worsening of her chronic pathology. (JE 4:22). Dr. Kennedy performed the injection procedure. (JE 4:22). Dr. Kennedy gave restrictions of no use of the left arm from April 1, 2019, through April 3, 2019, and from April 4, 2019, through her next visit, Ms. Reding was to keep her left elbow at her side. (JE 4:23).

On April 11, 2019, Ms. Reding returned to Dr. Kennedy's office noting that the injection worked, and that she experienced minimal pain in the front of her shoulder. (JE 4:24). Ms. Reding described her pain as her "usual discomfort." (JE 4:24). Dr. Kennedy explained to Ms. Reding that it was unlikely that a new tear would respond well to an injection. (JE 4:24). Dr. Kennedy opined that Ms. Reding had a worsening of symptoms, but not pathology of chronic tearing. (JE 4:24). Ms. Reding demonstrated a full and fluid range of motion of her left shoulder in all directions without grimace, and cross body testing showed negative impingement at the AC joint. (JE 4:24). Dr. Kennedy placed Ms. Reding at MMI without any permanent partial impairment for any work-related contribution, as it was limited to a worsening of chronic symptoms. (JE 4:24-25). Dr. Kennedy gave Ms. Reding permanent personal restrictions to work with both arms below shoulder level with a 25 pound maximum. (JE 4:25-26). Dr. Kennedy discharged her to her personal care provider. (JE 4:25).

Ms. Reding visited Stephen Pierotti, M.D., on May 7, 2019, with complaints of bilateral shoulder pain. (JE 7:1-3). Dr. Pierotti noted Ms. Reding's long history of shoulder pain starting two to three years prior. Dr. Pierotti also noted that Ms. Reding was doing well with her right shoulder, and that while she had intermittent pain, it did not radiate down her arm. (JE 7:1). Ms. Reding specifically told Dr. Pierotti that her shoulder pain was positional and usually only occurred at shoulder height or above. (JE

7:1). Over the last two to three months, Ms. Reding indicated that pain developed in her left shoulder, despite no injury to that shoulder. (JE 7:1). Ms. Reding received no injections or treatment to her left shoulder. (JE 7:1). On physical examination, Dr. Pierotti found no AC joint tenderness in either shoulder. (JE 7:1). Dr. Pierotti found full active motion in Ms. Reding's shoulders. (JE 7:1). Based upon Dr. Pierotti's examination, he opined that Ms. Reding's symptoms were due to bilateral impingement, tendinopathy, and a partial tear. (JE 7:2). Dr. Pierotti did not think surgery was called for. (JE 7:2). Dr. Pierotti recommended continuing a home exercise program, and offered a cortisone injection if Ms. Reding's pain increased. (JE 7:2).

Ms. Reding called Dr. Pierotti's office on May 9, 2019, and requested a work release indicating no lifting above shoulder height. (JE 7:4). Dr. Pierotti approved this. (JE 7:4). Someone at Dr. Pierotti's office drafted a release in effect "until further notice" and left it for Ms. Reding at the front desk. (JE 7:4-5).

On May 10, 2019, Dr. Kennedy responded to a letter from counsel for defendants and outlined her opinions concerning Ms. Reding's alleged injuries. (Defendants' Exhibit A:3-5). Dr. Kennedy noted never diagnosing Ms. Reding with a cervical spine injury or concern. (DE A:3). While Ms. Reding reported neck pain to Dr. Kennedy, Dr. Kennedy opined that the pain was myofascial and reflected the trapezius muscle. (DE A:3). Dr. Kennedy noted that a dysfunctional shoulder can cause a scapula to become "overused" and sore due to bearing a greater proportion of the weight of the arm than is typical. (DE A:3). Dr. Kennedy reinforced her opinion that the residual symptoms and dysfunction of the bilateral shoulders are personal, and not work related. (DE A:4). Dr. Kennedy noted that a short exposure to a different department than her primary department would not result in a work related injury. (DE A:4). Dr. Kennedy reported that Ms. Reding described the typical job tasks in her regular department at the time of the injury as being "highly variable," not above shoulder level, not repetitive and not forceful. (DE A:4). Dr. Kennedy also noted "even if work in the department where she alleges injury had resulted in a temporary worsening of her bilateral shoulder conditions, it is expected that the worsening would resolve and her condition would return to baseline with removal from those tasks." (DE A:4). Dr. Kennedy further opined that Ms. Reding has had persistent bilateral shoulder pain that does not correlate with her job assignment, which suggests a personal shoulder condition that was symptomatic and unrelated to shoulder activity. (DE A:4). Dr. Kennedy, who is board certified in occupational medicine, certified as an independent medical examiner, and certified as a medical review officer, noted that she has toured the Nordstrom facility on several occasions. (DE A:3-6). Dr. Kennedy concluded that Ms. Reding required no work restrictions due to her cervical spine. (DE A:4). Since the cervical spine condition was not work related, Dr. Kennedy assigned no functional impairment rating. (DE A:4).

Ms. Reding reported to DBF Westmark PT on May 14, 2019, with complaints of pain 2/10 occurring after she extended her arms. (JE 1:9). She noted that the pain came and went, and was worse when her arms were extended. (JE 1:9). Her pain affected her sleep. (JE 1:9).

On October 1, 2019, Ms. Reding visited Grand River Medical Group and Dr. Konz. (JE 6:3-5). Ms. Reding described herself as "OK" and that her shoulder pain finally improved after physical therapy. (JE 6:3). Dr. Konz noted improved range of motion in Ms. Reding's shoulders. (JE 6:4). Ms. Reding also reported doing exercises for her shoulders. (JE 6:4). Ms. Reding took Naprosyn and Aleve for her left shoulder pain. (JE 6:4).

Dr. Bansal performed another IME on Ms. Reding on June 12, 2020. (CE 1:24-46). On examination, Dr. Bansal again noted tenderness to palpation over the cervical paraspinal muscles. (CE 1:42). He also noted tenderness to palpation, especially at the acromioclavicular joint into the subacromial bursa. (CE 1:42). Dr. Bansal also found tenderness to palpation in Ms. Reding's left shoulder. (CE 1:42). Dr. Bansal continued to diagnose Ms. Reding with cervical myofascial pain syndrome, and right and left shoulder rotator cuff tendinopathy. (CE 1:43). This diagnoses was unchanged from Ms. Reding's previous IME. Ms. Reding reported to Dr. Bansal that both of her shoulders caused pain. (CE 1:44). She could raise her arms to about shoulder level, but had difficulty raising them over shoulder level. (CE 1:44). Ms. Reding reported feeling tight in her shoulders. (CE 1:44). Her neck pain radiated into her shoulder blades. (CE 1:44). She could lift five pounds once with either arm. (CE 1:44). Dr. Bansal noted, "I stand by the opinions as stated in my prior IME report regarding her right shoulder and neck." (CE 1:44). Dr. Bansal opined that Ms. Reding aggravated her left shoulder pathology as overuse and overcompensation from her right shoulder. (CE 1:44). Dr. Bansal reinforced this opinion by noting that Ms. Reding relied on her left arm more for completing her job tasks. (CE 1:44). Dr. Bansal left his impairment ratings to Ms. Reding's right shoulder and neck unchanged. (CE 1:44). Dr. Bansal rated Ms. Reding's left upper extremity with a 3 percent impairment, which he translated to a 2 percent impairment of the body as a whole. (CE 1:45). Dr. Bansal adopted the restrictions as assigned by the February 5, 2019, FCE, and placed Ms. Reding at MMI effective June 12, 2020. (CE 1:45). Dr. Bansal opined that Ms. Reding would benefit from intermittent steroid injections to her bilateral shoulders. (CE 1:45). If her pain worsened, Dr. Bansal suggested a surgical decompression. (CE 1:45).

Since the alleged injuries to her shoulders, Ms. Reding experienced difficulties around the house. She described needing to rethink how to do certain activities which require lifting. (Testimony). For example, she has difficulty lifting groceries or laundry detergent, gardening has become increasingly difficult, mopping and sweeping are difficult, vacuuming causes increased pain, and she has experienced great difficulty with sleeping. (Testimony). Ms. Reding expressed a desire to continue to work for Nordstrom. (Testimony). Ms. Reding now makes $19.70 per hour at Nordstrom, an increase over her wage at the time of the injury. (Testimony). She noted that she has not been back to training since prior to the 2017 work injury. (Testimony). She claims that this causes her to miss out on $1.05 per hour in wages. (Testimony). She would like to retire at age 65. (Testimony).

Rachel Frith testified on behalf of Nordstrom. (Testimony). She is a Health & Safety Technician, and has worked in the position since June of 2018. (Testimony).

She started at Nordstrom in 2016 as a processor on the full line. (Testimony). Ms. Frith testified that Ms. Reding is no longer a trainer, or asked to be a trainer due to the approach that she took with other employees. (Testimony). Ms. Frith conceded that Ms. Reding's restrictions would also preclude her from being a trainer. (Testimony). She also testified that, for a time, Ms. Reding was laid off due to the ongoing COVID-19 pandemic; however, Ms. Frith noted that this was a voluntary layoff. (Testimony).

Ms. Reding requested no specific referral for additional medical care or physical therapy by way of alternate care, she simply requested alternate care.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6)(e).

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence that the employee's injuries arose out of, and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). 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. Id. An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held that an injury occurs "in the course of employment" when:

> [i]t is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

Whether a claimant's injury arises out of the claimant's employment is a "mixed question of law and fact." Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007). The Iowa Supreme Court has held:

> [t]he factual aspect of this decision requires the [trier of fact] to determine the "operative events that [gave] rise to the injury." Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). Once the facts are determined, a legal question remains: "[W]hether the facts, as determined, support a conclusion that the injury 'arose out of … [the] employment,' under our workers' compensation statute."

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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Community School Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

File No. 5064796:

On October 17, 2017, Ms. Reding was pulling freight from the line when she injured her right shoulder. She alleges a neck injury, as well. She reported immediate right shoulder pain, and development at a later time of neck pain. During her initial treatment with Medical Associates in late October of 2017, Physician Assistant Armstrong opined that Ms. Reding's right shoulder pain appeared to come from her supraspinatus, infraspinatus, and teres minor regions. Ms. Reding had several injections into her right shoulder, which provided minimal relief. In December of 2017, Ms. Reding had an MRI of her right shoulder, which showed mild tendinopathy involving the supraspinatus and infraspinatus tendons without rotator cuff tearing, along with mild osteoarthritis involving the acromioclavicular joint. After several visits and injections by

Dr. Schemmel, he concluded that the source of her discomfort was neither her AC joint or her rotator cuff. Dr. Schemmel rejected the idea of surgical intervention and returned her care to Dr. Kennedy. Dr. Kennedy reported by June of 2018, that Ms. Reding had normal range of motion in her right shoulder, and diagnosed her with persistent nonfocal right shoulder pain, as the alleged pain could not be reproduced upon examination. Ms. Reding had competing FCEs, one of which was declared invalid due to inconsistent effort, and another arranged by her counsel. Of note, the claimant's arranged FCE with Mr. Short showed that Ms. Reding's range of motion in both shoulders was within normal limits. Finally, Ms. Reding underwent an IME with Dr. Bansal, who found tenderness to Ms. Reding's neck, and diagnosed her with right and left shoulder rotator cuff tendinopathy.

During the course of her treatment, there was minimal discussion of any neck pain, and no active diagnoses of a neck injury. It would be anticipated that an examination, imaging, or treatment would be provided should a provider find a credible complaint of a neck injury. Dr. Bansal is the first doctor, during an IME arranged by claimant's counsel, to make any diagnosis related to Ms. Reding's neck.

Based upon my review of the evidence and record, I find the opinions of Dr. Kennedy and Dr. Schemmel to be more persuasive than that of Dr. Bansal. I find the opinions of Dr. Kennedy and Dr. Schemmel to be more persuasive due mostly to the fact that they were treating physicians, who saw Ms. Reding on a routine basis and were most aware of her medical history. I find that Ms. Reding is not entitled to any permanency benefits for her right shoulder injury. I also find that Ms. Reding did not carry her burden of proof to show entitlement to any permanency benefits for her alleged neck injury.

Since there is no entitlement found for permanent disability benefits, there is no need to discuss the extent of permanent disability, or the type of permanent disability benefits owed to the claimant.

File No. 5068121:

The claimant contends that the March 8, 2019, injury arose out of, and in the course of, Ms. Reding's employment with Nordstrom. The defendants contend that Ms. Reding had a prior left shoulder injury, and that any pain was connected to that personal condition. Ms. Reding testified that she was pulling shoe boxes out of a larger box on March 8, 2019. Due to her right shoulder injury and previous restrictions to her left shoulder, she modified the way that she performed this task. Ms. Frith testified that other Nordstrom employees also modified their performance of this task due to their own restrictions or preferences. Ms. Reding testified that, while she was working, she felt a pop in her left shoulder. She sought additional care from her personal physician, and eventually followed up with Dr. Kennedy. Based upon the evidence in the record, it appears that Ms. Reding aggravated a prior shoulder condition while working. I conclude that her alleged injury arose out of, and in the course of, her employment with Nordstrom on March 8, 2019.

In late March of 2019, the claimant had an MRI, which showed chronic insertional tendinopathy of the distal supraspinatus tendon with mild undersurface tearing measuring less than 20 percent of the distal tendon thickness and mild left acromioclavicular joint degenerative joint disease. Ms. Reding returned to Dr. Kennedy on April 1, 2019. Dr. Kennedy noted that Ms. Reding may have provoked her chronic left shoulder condition by undertaking activities outside of her tolerance. Dr. Kennedy offered an injection to the left shoulder, and noted that if Ms. Reding's pain levels returned to their baseline, it would be "nearly impossible" to be a worsening of her chronic left shoulder pathology. Ms. Reding returned to Dr. Kennedy's office on April 11, 2019, and indicated that the injection worked. She further indicated that she suffered minimal pain and discomfort to the shoulder beyond her "usual discomfort." Dr. Kennedy thus concluded that Ms. Reding suffered a worsening of her symptoms, but not chronic tearing in the shoulder. Dr. Kennedy also noted full and fluid range of motion with negative impingement in the shoulder during this exam. Dr. Bansal opined in his IME report that Ms. Reding aggravated her prior left shoulder pathology by overuse and overcompensation due to the right shoulder injury.

I find the opinion of Dr. Kennedy, as the treating physician, to be more persuasive than the opinion of Dr. Bansal. The most persuasive findings in this case, based on my review, were Dr. Kennedy's note that if a proposed injection improved Ms. Reding's pain levels, it would be "nearly impossible" that Ms. Reding suffered a worsening of her chronic left shoulder pathology. The injection improved Ms. Reding's subjective pain.

Therefore, I find that Ms. Reding failed to carry her burden of proof that the injury suffered in the course and scope of her employment with Nordstrom is a cause of temporary or permanent disability as it relates to her left shoulder. The claimant is thus not entitled to temporary or permanent disability benefits. Since I found that the claimant failed to carry her burden of proof, there is no need to discuss the extent of any claimed disability, whether the claimant sustained an industrial disability, or the commencement date of any permanent disability benefits.

Alternate Care

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care…. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care,

> the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that care was unduly inconvenient for the claimant. Id. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," and injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id. Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgement of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

In this case, the claimant simply requests continued treatment for her bilateral shoulders. While the parties stipulated, and I found that both shoulder injuries occurred in the course and scope of Ms. Reding's employment, Ms. Reding needed to show that the previously authorized care was unreasonable. I find nothing in the record indicating that Ms. Reding is entitled to alternate medical care, or that the care provided was unreasonable. Furthermore, during the arbitration hearing in this matter, Ms. Reding could not articulate what, if any, additional care she requested. In her post-hearing brief, Ms. Reding alleges that Dr. Bansal provides a recommendation of care. I have not adopted any of Dr. Bansal's findings, nor do I find them especially credible in this matter. Additionally, any subsequent care is unrelated to these work incidents. Therefore, I decline to order any alternate care for the complained injuries.

Reimbursement of Medical Expenses

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. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

In this case, the claimant seeks reimbursement for medical expenses as listed in Joint Exhibit 8. The billing requested is as follows:

Provider	Date(s) of Service	Amount Billed	Amount Paid by Claimant
UnityPoint Health Finley Hospital	5/14/2019 – 5/31/2019	$1,725.00	$129.75
Finley Hospital	3/22/2019	$513.77	$513.77
UnityPoint Dubuque	4/16/2019	$241.60	$27.60
Dubuque Orthopedic Surgeons	5/7/2019	$450.00	$55.80

No evidence was presented as to whether or not Ms. Reding's bills for the above dates of service were paid by employer provided insurance. The records indicate that Blue Cross Blue Shield or another insurer paid those amounts. Since I found that the claimant was injured in the course and scope of her employment on March 8, 2019, and the above dates of service appear to pertain to treatment stemming from the March 8, 2019, injury, I award the claimant medical expenses. If there are any outstanding amounts to the above noted bills, I order the defendants to reimburse the provider as appropriate. I award the claimant $726.92 for the amounts paid by the claimant as noted above.

IME Reimbursement Pursuant to Iowa Code section 85.39:

Iowa Code 85.39(2) states:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

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

Iowa Code 85.39 was amended in 2017. Iowa Code 85.39(2) added:

> An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

The claimant seeks reimbursement for two IMEs by Dr. Bansal, on February 15, 2019, and June 12, 2020. The first IME came after Dr. Kennedy, a treating physician, opined that Ms. Reding sustained a zero percent impairment rating. The first IME contained charges for examination of Ms. Reding's back, and neck. The back was not an issue in this case. The defendants denied the neck condition, and no impairment rating was provided by Dr. Kennedy with regard to the neck. Therefore, I award the claimant $3,088.33 for the first IME. Dr. Kennedy never provided a work related impairment rating from the second injury, therefore, the claimant is not entitled to reimbursement for the second IME by Dr. Bansal.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 7. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> 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, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Based upon my discretion, I decline to award costs in this matter.

ORDER

THEREFORE, IT IS ORDERED:

That defendants shall reimburse claimant seven hundred twenty-six and 92/100 dollars ($726.92) for previously paid medical bills.

That defendants shall reimburse claimant three thousand eighty-eight and 33/100 dollars ($3,088.33) for the first IME of Dr. Bansal.

That the claimant shall take nothing further.

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

Signed and filed this __10th__ day of November, 2020.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Eric Loney (via WCES)

James Peters (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.