

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KRYSTAL JONES,

Claimant,

vs.

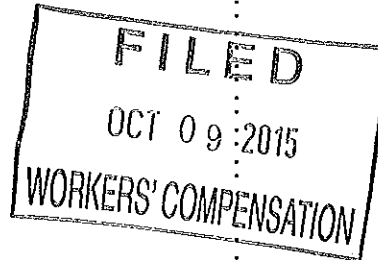
SIMPSON COLLEGE,

Employer,

and

TRAVELERS INDEMNITY COMPANY
OF CT,

Insurance Carrier,
Defendants.



File No. 5060122

ARBITRATION DECISION

Head Note Nos.: 1108; 1803

STATEMENT OF THE CASE

Krystal Jones, the claimant, seeks workers' compensation benefits from defendants, Simpson College, the employer, and its insurer, Travelers Indemnity Company of CT., as a result of alleged injuries on November 23, 2011; February 26, 2013; and March 28, 2014. Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on August 3, 2015, but the matter was not fully submitted until the receipt of the parties' briefs and argument on August 14, 2015. Oral testimonies and written exhibits received into evidence at hearing are set forth in the hearing transcript.

The exhibits received into evidence at hearing were offered jointly and marked numerically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Exhibit 1-2:4." References to a page of a transcript shall be to the actual page number of the original transcript, not to the page number of a copy containing multiple pages of the original transcript.

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. On November 23, 2011, claimant received an injury arising out of and in the course of employment with Simpson College. Defendants dispute the other alleged injuries.

2. Claimant is seeking temporary total or healing period benefits only for four days she was absent from work: January 25, 2013 and from February 27, 2013 through March 1, 2013. Defendants assert that there were only three days of absence authorized by the medical provider.
3. If the injury is found to have caused permanent disability, the type of disability is an industrial disability to the body as a whole.
4. At the time of the alleged injury, claimant was married and entitled to two exemptions for income tax purposes.
5. With reference to the requested medical expenses in Exhibit 26, the parties stipulated that the providers of the requested medical expenses would testify as to their reasonableness and defendants are not offering contrary evidence. The parties also agreed these expenses are causally connected to the medical conditions upon which the claim herein is based, but the issue of their causal connection to the alleged work injuries in this case remains in dispute.

ISSUES

At hearing, the parties submitted the following issues for determination:

1. The proper date of injury for the cumulative trauma injury in this case;
2. The extent of claimant's entitlement to weekly temporary total or healing period benefits and permanent disability benefits, including the appropriate rate of weekly compensation;
3. The extent of claimant's entitlement to medical benefits; and,
4. The extent of claimant's entitlement to reimbursement for the cost of an independent medical evaluation pursuant to Iowa Code section 85.39.

FINDINGS OF FACT

In these findings, I will refer to the claimant as Krystal, and to the defendant employer as Simpson.

At hearing, defendants did not offer any evidence to challenge Krystal's testimony describing her past and current work activities, her work station at Simpson, and the nature and onset of her numerous physical and mental complaints. Defendants assert the medical evidence and expert opinion does not support the work relatedness of her current physical and mental complaints. They also assert that the stipulated injury did not result in any compensable disability because she suffered no permanency and was off work only three days.

Krystal's initial problems began in her neck, left shoulder and left wrist. However, she is also asserting cumulative trauma physical injuries to both hands, wrists, arms and shoulders and shoulder blades caused by repetitive work activities. The primary injury, she claims, is to her neck resulting in a permanent aggravation of cervical spondylosis and myofascial pain syndrome conditions. (Ex. 11-215) She also is seeking benefits for aggravation of a mental condition, insomnia and headache conditions.

In this case, Krystal had prior injuries to her neck and back for which she sought chiropractic treatments after playing volleyball in 1988; after a motor vehicle accident in 1989; and, after two motor vehicle accidents in 1997. (Ex. 16-256) At hearing, Krystal said she subsequently received occasional chiropractic treatments involving her whole spine "to feel better." She considered her neck and back conditions 75-80 percent resolved prior to the alleged work injuries in this case. (Ex. 11-209) On November 3, 2010, she hit her left wrist on gym equipment and obtained medical treatment from her family doctor, Michael Johnson, D.O. Dr. Johnson diagnosed recurrent tendonitis and prescribed a wrist splint to wear for 10 days and Advil. (Ex. 1, p. 1) Krystal said she recovered a few days later. On April 3, 2012, a few months after her stipulated work injury in November 2011, she fell at home injuring her right hand and wrist and was prescribed a wrist splint for a few days. (Ex. 11-209) In the fall of 2014, following blood tests, her family doctor diagnosed fibromyalgia and osteoarthritis. (*Id.*) Despite these prior conditions, the record does not show Krystal with any permanent work activity restrictions at the time of the stipulated injury on November 23, 2011. The record does not show what medications, if any, Krystal was taking at the time of her stipulated work injury.

Krystal began working at Simpson College on July 5, 2000. Initially, she was a secretary in College Development. Beginning in June 2001, she worked full time as an administrative assistant for the college's office of Business and Finance until her termination from Simpson March 28, 2014. At Simpson, full-time hours are 38.7 hours a week. When she was terminated, she signed a separation agreement giving up some litigation rights after being told her job was abolished and no other job could be offered to her as Simpson was undergoing a staff reduction. She said that she felt she would have been fired if she refused. Krystal testified that she was the only person laid off at that time. She received a severance allowance amounting to six months of her salary.

When she left Simpson, she was earning \$35,200.00 per year and received a full range of benefits including a retirement benefit along with vacation, holiday and sick pay. Since she was on her husband's health insurance plan, she received an extra \$75.00 per month for waiving her insurance benefit.

The Simpson job description for Krystal's position involves commonly assigned secretarial duties for the vice president of the department and director of human resources, e.g. computer work, maintaining records, filing, receiving visitors, distributing mail, and answering the phone. The job requires extended viewing of a CRT screen. (Ex. 14-240) Krystal spent 80 percent of her workday at her desk doing work on the

computer. The computer tasks consisted of typing correspondence, entering data on Excel spreadsheets, and entering employee data in the college's database.

At the time of her November 2011 injury, Krystal worked at a large, old wooden desk that could not be adjusted. To her right was a table forming an L-shape with her desk. Her computer was positioned on the table. She had an old chair that could be adjusted only for height. She worked seated facing her computer with paperwork placed on the desktop to her left. Her desk was eventually changed to a more modular type desk, but had a similar L-shape configuration. When she used the telephone, she cupped the receiver between her left shoulder and ear so she could type while talking. There was no ergonomic evaluation of Krystal's work station prior to her work injury.

At hearing, Krystal described her symptoms in late 2011. She had constant neck aching, stiffness and lost range of motion. She had muscle stiffness in her left shoulder and pain in her left shoulder blade was constant and when reaching she experienced a sharp, burning pain. Her wrist pain was constant, but varied in severity from an ache to a sharp, stabbing pain. She also had some numbness and tingling in her left hand. Her symptoms would increase during the course of a work day.

On November 23, 2011, Krystal stated her symptoms worsened to the point she sought medical treatment. At that time, she was under pressure to complete a large project. (Ex. 6-156) For a period of two days she was reading data of documents on the desk to her left, turning the pages of data with her left hand, and then looking up to the monitor directly in front of her to enter the data with her right hand. This occurred just before the Thanksgiving holiday. Krystal thought her symptoms might settle down over the long weekend, but they returned after she resumed her work. (Ex. 25- 25) Krystal reported her injury to the director of human resources and defendants authorized medical treatment, by Dr. Johnson, her family doctor.

Dr. Johnson saw Krystal on November 30, 2011. He diagnosed cervical pain, left periscapular weakness, and left wrist tendonitis. (Ex. 1- 4) X-rays indicated moderate arthritis at mid-level of the neck. The doctor ordered physical therapy and referred Krystal to Brian Walsh, M.D., a neurosurgeon. In January 2012, Dr. Walsh stated EMG studies revealed no cervical radiculopathy, but did show mild median nerve neuropathies. He also noted flexion and extension films of the cervical spine show significant degenerative changes at the C5-6 and C6-7 vertebral levels and slight change at the C4-5 level. After discussing these studies with Krystal, he did not provide further treatment because she was not interested in spine surgery. (Ex. 2-13:14) At hearing, Krystal explained she did not want to consider surgery at that time because she was hopeful that more conservative measures might resolve her pain.

Between December 5, 2011, and February 7, 2012, Krystal attended 17 physical therapy sessions. (Ex. 12-223:225) The physical therapy included cervical traction. (Ex. 12-224:225) During this time, she began to have increased headaches. Krystal testified that the physical therapy was helpful while she attended the sessions, but her symptoms never resolved.

On February 28, 2012, Krystal began treating with Jason Holgers D.O., a specialist in physical medicine and rehabilitation (a physiatrist). Krystal' chief complaint was neck pain. Dr. Holgers performed osteopathic manipulations and prescribed cyclobenzaprine for her myofascial pain. His last assessment on August 20, 2012 states as follows:

1. Multiple pain complaints following work-related injury on November 23, 2011. This began with left arm and hand pain and she was diagnosed with tendinitis/tendinopathy of the wrist. Her most significant complaint form [sic] he [sic] has been cervical spine and left greater than right Neck and upper trapezius pain as well as upper thoracic pain consistent with myofascial pain.
2. Intermittent upper extremity paresthesias. She does have Underlying [sic] cervical degenerative disc disease And [sic] spondylosis resulting in 6 [sic] neuroforaminal narrowing left great than right treatment and radicular symptoms.
3. Underlying cervical central canal stenosis that is mild.

(Ex. 4-47)

Dr. Holgers reported that Krystal was improving and would require more treatments, but stated that a referral to the Des Moines University physical medicine and rehabilitation department may be beneficial. (Id.)

Krystal continued to work full duty without restrictions during the period she was treated by Dr. Holgers. Krystal had ten additional physical therapy sessions while waiting to commence treatment at Des Moines University. (Ex. 12-226:27) She testified that the physical therapist was able to get the muscle around her left periscapular area to release and her symptoms in that area improved somewhat.

On November 14, 2012, Krystal began treating with, osteopathic manipulation clinic for the following conditions:

1. Chronic neck and shoulder pain.
2. Cervical degenerative disk disease and spondylosis, especially C5-6, with herniated nucleus pulposus, as well as bone spurs contributing to central stenosis, mobile listhesis of 1.8 mm.
3. History of repetitive motion injury with acute onset November 23, 2011, while at work.
4. Left upper extremity pain and paraesthesias with differential diagnosis, including neurologic conditions such as cervical myelopathy versus cervical root versus peripheral nerve. Patient's MRI does not show

evidence of signal changes in the spinal cord; however, she does have a mobile listhesis and I do question whether this may be more of a dynamic phenomenon in certain positions with her neck.

5. Myofascial pain, in particular the left upper trapezius.
6. Abnormal neural exam with hyperreflexia symmetrically in the upper extremities, lower extremities, as well as weakness left C5-6, T1.

(Ex. 6-65)

Drew Lewis, D.O., compared the latest MRI with the one taken 11 months earlier and found the spondylosis at the C5-6 and C6-7 levels had progressed along with more central canal narrowing (stenosis) at C5-6. (Id.)

On November 28, 2012, Dr. Lewis imposed activity restriction to avoid repetitive motion and overuse as much as possible and continued her pain medications. (Ex. 6-67)

Krystal testified that the osteopathic manipulations performed by Dr. Lewis were of some benefit, but her problems persisted. She attempted to abide by Dr. Lewis' restrictions by alternating duties. She also believed that Dr. Lewis had the best understanding of her condition.

Sometime in 2012, Simpson conducted an ergonomic study of Krystal's work space which resulted in changing the height of her computer monitor, discontinuing use of a keyboard tray, raising her chair and instructions to keep her arms and knees at 90 degree angles. However, Krystal states that these changes did not resolve her symptoms because she was still required to work at her desk for long periods of time. (Ex. 6-71)

On December 12, 2012, Dr. Lewis instructed Krystal to take breaks every 30 minutes to get up and move around, minimize lifting, and minimize repetitive tasks utilizing the upper limbs. (Ex. 6-73) Again, Krystal did not ask for a change in job duties because she felt she could self-monitor. (She took time for physician appointments and physical therapy over her lunch hour or after work. (Id.) Her goal was to not let her injury interfere with her work.

On Friday morning, January 25, 2013, Dr. Lewis performed trigger point injections on the bilateral upper trapezius and left infraspinatus. (Ex. 6-80:81) Krystal took off the rest of the day from work. Defendant asserts Dr. Lewis did not authorize time off after the injection. However, the doctor instructed Krystal on home treatment aftercare following the injection which included heat and exercises over the next three days. The injection was on a Friday and the remaining two days occurred during the weekend. Dr. Lewis clearly expected claimant not to return to work on Friday. On February 18, 2013, Krystal reported a 50 percent relief in her symptoms as a result of

the first trigger point injections. (Ex. 6-85) Krystal took her accumulated sick or vacation pay for these absences.

On Wednesday, February 27, 2013, Dr. Lewis performed another set of trigger point injections on the bilateral upper trapezius, bilateral levator scapulae, and the right sternocleidomastoid. (Ex. 6-80:81) Dr. Lewis wrote as follows:

I do suspect there are some chronic perpetuating factors with her myofascial pain syndrome. In particular, we spent quite a bit of time asking questions about and discussing the ergonomics of her current work situation.

(Ex. 6-89)

Krystal missed work after the injection from February 27, 2013 through March 1, 2013. This time the doctor filled out an authorization slip. Initially, she was to return to work on March 1, 2013, but then extended the time off to include March 1. (Ex. 6-93:94) Krystal again used either sick or vacation pay for these missed hours of work. The prior work restrictions were maintained.

On March 26, 2013, Krystal reported to Dr. Lewis she did not benefit from the trigger point injections, but was willing to try another one. It does not appear from Dr. Lewis' records that a third set of injections was performed.

In May 2013, apparently defendants were pressuring Dr. Lewis to place Krystal at maximum medical treatment (MMI). After stating his treatment at that point did not appear to provide a definitive cure, he added as follows:

I do not know of any other treatment options that may provide a more definitive cure for her condition. Unfortunately, her current work duties and station do appear to be a substantial perpetuating factor for this condition. I am not a worker's compensation expert, however, the above opinions may be consistent with having reached maximum medical improvement.

(Ex. 6-109)

He did not end his treatment and claimant was seen the next month.

In July 2013, defendants sent Krystal to another physiatrist, Robert Rondinelli, M.D., asking for an impairment rating. However, Dr. Rondinelli opined that Krystal was not at MMI and recommended further treatment to clarify her diagnoses, to continue present medications, and to undergo stress management counseling. He also recommended a neurosurgical consult. He declined to provide a permanent impairment rating and stated Krystal's work activity, at most, only caused a temporary aggravation. He added as follows: "Linking her symptoms to a trauma or injury has not been forthcoming..." (Ex. 5-053)

On September 27, 2013, defendants sent Krystal to yet another physiatrist, Farid Manshadi, M.D., to answer questions they posed to him. After reviewing medical records and examining Krystal, Dr. Manshadi diagnosed a left shoulder rotator cuff syndrome and recommended further evaluation of the left shoulder for possible impingement. He questioned the benefit of further manipulation and massaging by Dr. Lewis for the neck condition. (Ex. 7-161) On causation, Dr. Manshadi opined that Krystal's job duties at Simpson could be aggravating her prior conditions and opined that the left shoulder rotator cuff syndrome is causally related to her work activities at Simpson. (Ex. 7-162) The doctor also recommended evaluation by a neurosurgeon. (Id.)

Krystal continued to treat with Dr. Lewis until November 8, 2013 and he reports some improvement. (Ex. 6-99:152) In a report dated June 15, 2015 in which Dr. Lewis answered questions posed to him by Krystal's attorney. The following is a summary of Dr. Lewis' responses which are contained in Exhibit 6 at pages 153 through 155:

1. The final diagnoses were much the same as his first diagnoses;
2. Krystal's diagnosed conditions were very resistant to treatment;
3. After reviewing an affidavit by Krystal describing her work duties at Simpson the doctor opines although the many conditions he diagnosed may have pre-existed her work injury of November 23, 2011, her repetitive work duties certainly aggravated the conditions identified in the diagnostic impression and he provided a statement to the insurance carrier in this case causally relating his diagnoses to the November 23, 2011 work injury;
4. The shoulder and neck condition cause or significantly contributed to her headaches;
5. A negative EMG does not rule out cervical radiculopathy as it tests only the peripheral nervous system, not the central nervous system;
6. When he last saw Krystal he continued the same work restrictions he imposed during this treatment.
7. It is medically reasonable to take off work for three days following a trigger point injection.

After reviewing Krystal's affidavit given to Dr. Lewis, I find the description of her duties consistent with her job description and her testimony at hearing. At the November 8, 2013 visit, Dr. Lewis stated further treatment was not required, but he was still awaiting evaluation by a neurosurgeon whether or not Krystal was a surgical candidate. (Ex. 6-148) Claimant on her own resumed treatment with Dr. Lewis in 2015 as will be discussed later in these Findings.

In response to the recommendations of all of the physiatrists, defendants finally sent Krystal to John Piper, M.D., a neurosurgeon. He evaluated Krystal on November 27, 2013. Dr. Piper stated that she may have mild neuropathies in her left wrist an elbow and recommended EMG/NCV testing at defendants' expense. He did not believe neck surgery would help her headaches and neck pain. He added that any further surgery would address her prior degenerative neck condition which he stated is not work related. He recommended flexion-extension films to determine the need for surgery, but this would have to be at her own expense. (Ex. 8-165:166)

Krystal returned to Dr. Piper on January 15, 2014, Dr. Piper reports the flexion-extension films show a slight degenerative spondylolisthesis along with her long-standing degenerative changes at C5-6 and C6-7. He added that the EMG/NCV testing did not reveal any peripheral neuropathy. He advised against any surgery at that time and said close observation would be best. He also did not recommend a neck surgery. Dr. Piper then told Krystal to return in 3-4 months for further testing and evaluation. The doctor reiterated that he felt her neck condition developed over a number of years and was not related to her work at Simpson. (Ex. 8-169) He did not discuss the possibility of an aggravation of her prior condition.

On May 14, 2014, Dr. Piper saw Krystal for a third and final time. He reports that Krystal was upset about the fact that workers' compensation is covering her peripheral nerve issues, but not her neck. Dr. Piper admitted that since he cannot be positive as to the source of her neck pain, but he did offer more conservative care. Krystal apparently told him she no longer wanted to treat with him, so he recommended further care by an occupational medicine doctor. The doctor refused a possible referral for manipulations due to her neck condition. (Ex. 8-173)

Krystal testified that she did not have confidence in Dr. Piper's treatment because he treated her with disrespect. He would not allow her to complete sentences and their conversations were intense and non-productive.

On June 5, 2014, Dr. Rondinelli re-examined Krystal. He diagnosed her with: 1. Degenerative spondylosis of the cervical spine; 2. Possible left arm entrapment neuropathy; and 3. myofascial pain syndrome. Once again, he did not feel she had reached MMI, recommended the same treatments he discussed in his office from the previous year, but believed she was at or near MMI. He also reiterated his causation views stating as follows:

In terms of causation, her work association in my opinion is, at most, a temporary exacerbation of symptoms as there is no objective verifiable pathology consistent with trauma to implicate work injury and I am unable to demonstrate permanency in relation to same.

(Ex. 5-053)

On June 24, 2014, Dr. Rondinelli wrote to the carrier to further clarify his opinions. (Ex. 5, pp. 54a-b) He reports Krystal has multifactorial musculoskeletal pain with pre-existing underlying degenerative spondylosis at multiple levels. Krystal also has early entrapment neuropathy of her median and ulnar nerves on the left wrist and arm, which has not been verified with electro diagnostic testing. She has improved after leaving Simpson, but symptoms return when she performs similar activity. She has been cleared by Dr. Piper from any surgical option. He reports blood testing has revealed a possible condition called polymyalgia rheumatic which can cause or contribute to neck and upper limb pain. He then places her at MMI if she has completed her psychological counseling. He stated that any further treatment would not be work related. (Ex. 5-54a) He added as follows:

I find no ratable basis for an impairment in this case as her symptoms are likely a manifestation of previously underlying musculoskeletal conditions which may have been temporarily [sic] exacerbated by work-related activity, but are not within medical probability casually associated with specific work-related trauma.

(Ex. 5-54b)

With reference to work activity restrictions, the doctor stated that he would not restrict work activity because she had no impairment, but he would recommend she seek help from a state vocational counselor and find alternative employment in keeping with her own perspective on work tolerance. (Id.)

Sam Graham, Ph.D., a clinical psychologist, treated Krystal between July 23, 2014, and October 8, 2014. He worked with Krystal on behavioral approaches to assist with pain and stress management as suggested by Dr. Rondinelli. His diagnoses are (AXIS I) pain disorder associated with both psychological factors and a general medical condition and adjustment disorder with depressed mood; AXIS II deferred; and S/P work-related injury with hand, wrist, shoulder and neck pain. He opined that her mood condition appears to have been aggravated by the stress of the pain and other factors. (Ex. 9-177-180) Krystal testified that this treatment was somewhat helpful at reducing pain during the session but did not result in lasting benefit.

On October 14, 2014, Dr. Rondinelli saw Krystal for the last time. The doctor essentially re-states the same findings and opinions in his June office note. However, he added a diagnosis of premorbid depression and anxiety which is contributing to Krystal's physical distress in light of Dr. Graham's evaluation. He also stated that any further medications would not be for a work related condition. (Ex. 5-57) The doctor did not explain why he ended any further treatment of Krystal's early bilateral nerve entrapments found work related by Dr. Piper. He predicted that the likelihood of additional diagnostic testing revealing any treatable etiology is minimal. (Id.) This also appears inconsistent with Dr. Piper's views.

At the suggestion of Dr. Graham and Dr. Piper, Krystal sought help from Iowa Vocational Rehabilitation Services. Following a screening evaluation, Lindsay Walker, M.S., C.R.C., from that agency sent Krystal a letter dated October 29, 2014 stating she was found eligible for their services. However, due to their increasing caseloads and service costs, she was only placed on the "most significantly disabled" waiting list. (Ex. 16-261)

After defendant ended further treatment based on Dr. Rondinelli's views, Krystal began treating with Lawrence Rettenmaier M.D. Dr. Rettenmaier diagnosed Krystal with:

1. Fibromyalgia/chronic pain, which I view as dominant problems.
2. Background osteoarthritis.
3. Mechanical musculoskeletal complaints, neck pain, some radicular sounding complaints.
4. Insomnia issues.
5. Anxiety/depressive issues, chronic pain issues.
-
7. Mechanical back pain without radicular complaints

(Ex. 12-232)

Dr. Rettenmaier re-initiated Krystal physical therapy and referred her to Mark Spellman, D.O., a pain management specialist, to address chronic neck and arm complaints. (Ex. 12-232:33)

On February 4, 2015, Krystal started treating with Dr. Spellman. His diagnoses relevant to her workers' compensation claim include:

1. Cervical degenerative disk disease;
2. Cervical pain, chronic;
3. Cervical radiculitis;
4. Cervical spondylosis, chronic;
5. Cervical spinal stenosis, chronic;
6. Fibromyalgia.

(Ex. 10-183:84)

The doctor noted ongoing medications of diclofenac sodium (Volren) for osteoarthritis; Cymbalta and Clonazepam for her mental conditions; cyclobenzaprine, a muscle relaxant she has been taking since it was prescribed by Dr. Holgers in early 2012 and tramadol, for pain relief. Tramadol is now considered a narcotic by the FDA.

On February 18, 2015, Krystal received a cervical epidural steroid injection (ESI). (Ex. 10-186) Krystal testified that the ESI did not help the pain in her neck, but she had considerable improvement in the pain that went down her arms. Dr. Spellman's office note of July 10, 2015 states that claimant described good results (60 percent better) from the ESI and she requested another one. Dr. Spellman then gave her another ESI at that time. (Ex. 10-188:191)

Krystal testified that she also resumed care with Dr. Lewis for osteopathic manipulations to address neck and shoulder pain. The medical evidence shows a visit with Dr. Lewis on June 16, 2015. He reports that Krystal's condition is largely the same as when he last saw her in November 2013. Krystal told the doctor that the physical therapy she is receiving on Dr. Rettenmaier orders was helping her. The doctor then provided Krystal with his usual osteopathic manipulation therapy.

After her termination, Krystal said she remained off work for a period of time. Her mother had passed in January 2014, and she was shaken by having been terminated by Simpson. Krystal said her symptoms did settle down to some degree, she never returned to her baseline physical condition prior to her November 23, 2011, symptom onset.

Krystal testified that she resumed looking for suitable work in September or October 2014. She even applied with Simpson, but was not successful in finding work until March 2, 2015 when she was hired by Mid-American Energy as an administrative assistant. She states her current work duties resemble those at Simpson, except that she does less computer work. She asked for accommodation for her physical conditions, and an ergonomic study was done. She then received accommodations such as an adjustable desk allowing her to sit or stand as needed, an ergonomic keyboard, a headset for using the phone and limited paperwork. (Ex. 22-302:308) Despite these accommodations, Krystal said she is not sure how long she will last in this job because her symptoms are starting to resume.

On May 1, 2015, at the request of Krystal's counsel, she was examined by Sunil Bansal, M.D., an occupational medicine physician. In this extensive report dated June 25, 2015, Dr. Bansal found significant losses in range of motion, tenderness to palpation over the cervical paraspinal musculature, three palpable trigger points measuring from .5 to 1.1 centimeters, and spasms over the right trapezius and left cervical paraspinal musculature. (Ex. 11-213) He concludes from his examination of Krystal and a review of the medical records and reports, that Krystal suffered a cumulative injury to her hands, arms, shoulder, shoulder blades and neck from her computer work at Simpson, stating that repetitive keyboarding and mouse use overloaded the neck, shoulder, arm and hand muscles and joints. This is a condition

termed "computer overuse syndrome." He said a wealth of medical literature supports the association between computer use and the development of her symptoms, citing several published medical articles in his report. (Ex. 11-215:216) Dr. Bansal views the injury as a single process and explained that various injury dates are simply stages in this cumulative trauma injury process. The 2011 date was when symptoms began to require medical treatment. The 2013 date was when her injuries first caused her to miss work. The 2014 date was her last day of work at Simpson. (Ex. 11-214)

Dr. Bansal further opined that the fall on April 3, 2012 was a separate permanent injury. (Ex. 11-218) He also notes the views of Dr. Graham and causally relates Krystal's current depression and anxiety symptoms to the cumulative trauma injury. Dr. Bansal found her injury to be permanent and Krystal reached MMI on March 23, 2015, her last appointment with Dr. Rettenmaier. (Ex. 11-217) It was at this point that the third round of physical therapy and the epidural steroid injections were not expected to resolve her symptoms, but rather to help her cope with the symptoms. (Ex. 12-232:33) He states that the improvement she obtained from her ESIs confirmed that Krystal suffered an aggravation of her underlying cervical spondylosis. Dr. Bansal assigned a 7 percent whole person permanent impairment under the AMA Guides and imposed permanent restrictions on no lifting over 15 pounds occasionally and avoidance of work or activities requiring repeated neck motion or placing her neck in a posturally flexed position for more than 15 minutes. (Ex. 11-219)

Using the restrictions recommended by Dr. Bansal, Carma Mitchell, M.S., a vocational consultant, opined on July 2, 2015 that Krystal lost access to the full range of heavy, medium, and light work, which represents an 88.3 percent loss of access to the labor market. In her last position at Simpson and her current position at Mid-American required accommodations to perform her duties. (Ex. 13-237)

Ultimate Causation and Disability Findings

I find that claimant suffered a permanent injury from her repetitive duties at Simpson. The injury consists of neuropathies in the bilateral upper extremities (left greater than right); an aggravation of a prior neck and both shoulders (left greater than right); an aggravation of depression/anxiety conditions; and aggravation of a headache condition. I find the views of Drs. Lewis and Bansal to be the most convincing. Dr. Lewis had by far the most clinical experience with Krystal having treated her since late 2012. The views of Drs. Piper and Rondinelli are confusing in that they state the underlying problems are unrelated to her work at Simpson due to prior existing degenerative conditions in the shoulder and neck. However, claimant is not claiming that the underlying conditions are work related, she is asserting a work related aggravation injury of those prior conditions. Dr. Piper did not discuss an aggravation issue. Dr. Rondinelli did suggest an aggravation injury, but states it is only temporary at most. He also explains that he could not relate her symptoms to a specific trauma injury at Simpson. This suggests neither Dr. Piper or Dr. Rondinelli are aware that Iowa law has been compensating cumulative trauma or gradual injuries for the last 30 years.

Both Dr. Piper and Dr. Rondinelli also appear to opine that the start of her increased problems and inability to work without significant pain requiring constant medical management since November 23, 2011 is meaningless and that somehow these increased problems were not caused by a permanent injury in 2011, but a spontaneous natural degenerative process which only by co-incidence occurred at the same time as the injury. Such a view is illogical. Dr. Bansal's view as to computer overuse syndrome appears consistent with the experience of this agency and as noted by him well supported by medical literature.

I find that all of these conditions and aggravation of conditions to be permanent, again based on the more convincing views of Dr. Lewis and Dr. Bansal.

I find that claimant is permanently restricted in her work activity as opined by Dr. Bansal. Dr. Lewis would clearly agree since he never lifted his similar restrictions and found Krystal recently to be unchanged since November 2013.

Given the views of the vocational expert, Mitchell, I find that claimant has lost access to almost 90 percent of the jobs available in the competitive labor market. Although she is still working, it is in an accommodated job. However, I find that she is still employable. Mitchell did not opine she has lost all access to the labor market. She has lost some actual income in that her current job pays \$34,000 annually, but she has similar benefits. I did not find her job search for suitable employment very extensive. Given her educational background and demeanor at hearing, I find Krystal can be retrained, even at the age of 52, into a more suitable type of employment, albeit at a more significant loss of earnings. Hopefully, Iowa vocational services will be able to help her. Defendants could have done more to provide her with vocational rehabilitation services.

Any of the alleged injury dates could be reasonably found to be this cumulative trauma's manifestation date. However, as noted by Krystal's counsel in her post hearing brief, the experts all have pretty much settled on the November 23, 2011 injury date. Therefore, I find that the injury date of Krystal's cumulative trauma injury to be November 23, 2011 when her symptoms worsened to the point she required medical treatment; treatment that has been continuous since that time.

I find that Krystal reached MMI on March 23, 2015 as opined by Dr. Bansal.

I find that Krystal has suffered a 60 percent loss of her earning capacity. Admittedly, she is only working in an accommodated job. However, she remains employed in the competitive labor market with these accommodations. Therefore, her skills remain marketable.

However, a loss of her current job and an inability to find other suitable work after a reasonable job search as a result of this work injury would be a significant change of condition warranting a review of this matter. The work restrictions found to be caused

by her work injury, appear to conflict with many of her current job duties. It is not surprising she is now experiencing recurrence of some of her symptoms.

I find her four days of absence from work to causally relate to her cumulative trauma work injury as opined by Dr. Lewis.

For rate purposes, I find Krystal was paid monthly at the time of her injury and her monthly income for November 2011 was \$2,842.60.

I find that requested expenses listed in Exhibit 26 to constitute reasonable and necessary treatment of the work injury, except for the fees of Dr. Bansal for the IME. However, this fee is reimbursable under Iowa Code section 85.39.

I find the IME by Dr. Bansal occurred after a disability evaluation by Dr. Rondinelli, an authorized provider by defendants and I find his fee of \$3,395.00 reasonable given the complicated nature of the medical issues in this case.

I find that continued care by her pain management doctor and Dr. Lewis is reasonable and necessary.

CONCLUSIONS OF LAW

I. When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W. 2d 368 (Iowa 1985).

In the case sub judice, I found that claimant carried the burden of proof and demonstrated by the greater weight of the evidence that she suffered a cumulative trauma injury on November 23, 2011.

II. 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).

A treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

The extent of claimant's entitlement to permanent disability benefits is determined by one of two methods. If it is found that the permanent physical impairment or loss of use is limited to a body member specifically listed in schedules set forth in one of the subsections of Iowa Code section 85.34(2)(a-t), the disability is considered a scheduled member disability and measured functionally. If it is found that the permanent physical impairment or loss of use is to the body as a whole, the disability is unscheduled and measured industrially under Iowa Code subsection 85.34(2)(u). Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Simbro v. DeLong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133; 106 N.W.2d 95, 98 (1960).

Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 593; 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man." Functional impairment is an element to be considered in determining industrial disability, which is the reduction of earning capacity. However, consideration must also be given to the injured worker's medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured worker's

qualifications intellectually, emotionally and physically; the worker's earnings before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted, Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

The parties agreed in the hearing report that if I found permanency in this case, compensation would be determined industrially as a permanent loss of use to the body as a whole. Consequently, this agency must measure claimant's loss of earning capacity as a result of this impairment.

For the reasons set forth in the Findings of Fact, I found that claimant suffered a 60 percent loss of her earning capacity as a result of the work injury. Such a finding entitles claimant to 300 weeks of permanent partial disability benefits as a matter of law under Iowa Code section 85.34(2)(u), which is 60 percent of 500 weeks, the maximum allowable number of weeks for an injury to the body as a whole in that subsection.

Claimant's entitlement to permanent partial disability also entitles her to weekly benefits for healing period under Iowa Code section 85.34 for his absence from work during a recovery period until claimant returns to work; until claimant is medically capable of returning to substantially similar work to the work he/she was performing at the time of injury; or, until it is indicated that significant improvement from the injury is not anticipated, whichever occurs first.

In this case, claimant was only off work four days due to her injury to receive ESIs. Given my finding of permanency, she is eligible for healing period benefits for this time off work. Iowa Code section 85.32. As she used accumulated sick or vacation pay, defendants would be able to take credit against an award of healing period benefits if claimant chooses to have her leave reinstated. However, she no longer works at Simpson and reinstatement of leave is not possible. Therefore, defendants will receive no credit for claimant's used her earned fringe benefit for the time off work. Terhark v. Hope Haven, Inc., File No. 5027246 (App. April 7, 2010). Evans v. Iowa Dept of Transportation, File No. 5046657 (Arb, March 25, 2015).

There is a dispute over claimant's gross weekly earnings at the time of her injury. Claimant used hours of work multiplied by her hourly rate to arrive at a monthly and yearly rate. Defendants used her actual monthly earnings for the previous year, except for limiting overtime pay to the hourly rate. Both calculations are incorrect. As claimant was paid monthly, Iowa Code section 85.36(4) applies. That provision simply provides that her monthly earnings during the month of injury is to be multiplied by 12 and then divided by 52. I found that during the month of November 2011 she was paid \$2,842.60. Multiplying this amount by 12 and dividing the product by 52 results in a gross average weekly pay of \$655.98. Given this weekly rate and the stipulated marital

status and entitlement to 2 exemptions, claimant's rate of weekly compensation is \$444.37 according to the Commissioner's published rate booklet for this date of injury.

III. Pursuant to Iowa Code section 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 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, pay the insurance provider who paid the expenses, or hold her otherwise harmless. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In the case at bar, I found the requested medical expenses listed in Exhibit 26 to be reasonable and necessary treatment of the work injury, except the bill from Dr. Bansal for his IME. The medical expenses will be awarded pursuant to Iowa Code section 85.27. I found continued care by Dr. Lewis and Dr. Spellman to be the best course forward in managing her work injury.

IV. Iowa Code section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Given my findings about the IME, claimant will be awarded this reimbursement.


Claimant seeks costs set forth in Exhibit 27. All except for the cost of medical reports are appropriate, but included in Exhibit 27 are the costs of two practitioner reports. As recently held by the Iowa Supreme Court, report costs under our administrative rule 876 IAC 4.33, reimbursable costs are only the costs of preparing the report, not for the cost of an examination or interview. Since the costs were not itemized, I am unable to determine the appropriateness of awarding the costs of the reports and cannot award these costs. Claimant may ask for a rehearing by providing a statement from the provider as to the costs of just the report preparation and I will award same. If defendants dispute the cost presented, they are welcome to file and support a resistance.

ORDER

1. Defendants shall pay to claimant three hundred (300) weeks of permanent partial disability benefits at a rate of four hundred forty-four and 37/100 dollars (\$444.37) per week from May 23, 2015, the end of her healing period.
2. Defendants shall pay to claimant healing period benefits for four dates at the weekly rate of four hundred forty-four and 37/100 dollars (\$444.37) per week.

3. Defendants shall pay the medical expenses listed in Exhibit 26. Defendants shall hold claimant harmless due to the payment of her medical bills related to her work injury by another insurance company.
4. Defendants shall pay accrued weekly benefits in a lump sum.
5. Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.
6. Defendants shall provide future care of her work injury by Drew Lewis, D.O. and Andrew Carpenter, D.O.
7. Defendants shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including those items listed in Exhibit 27, except for the costs of the two reports.
8. Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 9th day of October, 2015.


LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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