BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NANCY MILBRANDT, Claimant, vs. R.R. DONNELLY, Employer, and ACE AMERICAN INSURANCE, Insurance Carrier, Defendants.	: : : : : : : : : : : : : : :	File No. 20009756.01 A P P E A L D E C I S I O N Head Notes: 1402.20; 1402.30; 1402.40; 1402.60; 1403.10; 1802; 1802; 2501; 2502; 2907; 3302

Claimant Nancy Milbrandt appeals from an arbitration decision filed on August 29, 2022. Defendants R.R. Donnelly, employer, and its insurer, Ace American Insurance, respond to the appeal. The case was heard on April 12, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on May 20, 2022.

In the arbitration decision, the deputy commissioner found the compromise settlement claimant entered into with the Second Injury Fund of Iowa (the Fund) deprives the Division of Workers' Compensation of jurisdiction over claimant's claim against defendants, and the deputy commissioner dismissed claimant's petition.

On appeal, claimant asserts the deputy commissioner erred in finding claimant's compromise settlement with the Fund deprives the agency of jurisdiction over claimant's claim against defendants. Claimant asserts her bilateral carpal tunnel syndrome arose out of and in the course of her employment with defendant-employer. Claimant asserts she is entitled to healing period benefits and permanent partial disability benefits. Claimant asserts defendants should be responsible for her medical expenses, for the cost of the independent medical examination ("IME") of claimant performed by Farid Manshadi, M.D., and for claimant's hearing costs.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the arbitration decision filed on August 29, 2022, is reversed with my substituted analysis.

FINDINGS OF FACT

Claimant lives in Osage, Iowa with her husband. (Hearing Transcript p. 20; Exhibit 2, p. 12) Claimant is left-hand dominant. (Tr. p. 25) At the time of the hearing claimant was 59 years old. (Tr. p. 20)

Claimant graduated from Osage High School in 1981. (Ex. 1, p. 2; Ex. 2, p. 13; Tr. p. 21) Claimant obtained a travel agent certificate from Hamilton Business School in 1991, and she earned an associate's degree in business from NIACC in 1992. (Exs. 1, p. 2; 2, p. 14) Claimant has experience working as a receptionist, as a scheduler, and as a unit clerk in addition to her work for defendant-employer. (Ex. 1, p. 4)

Claimant first worked for defendant-employer for two or three years starting in 1992. (Ex. 2, p. 13) Defendant-employer rehired claimant in 2014. (Tr. pp. 21, 37)

Upon her return to defendant-employer, claimant worked in packaging and handling for approximately six months. (Tr. p. 21-22) Claimant picked up half ream stacks of paper, placed them on a jogger machine to make the stack even and straight, ran them through a conveyor belt, and picked up the stack and put each stack in a box. (Tr. pp. 22-23, 25) Claimant then worked as an image operator for approximately two to three years. (Tr. p. 35-38)

In approximately 2019, claimant started working in the imprinting department, which contains three stages or jobs. (Tr. pp. 23-24, 34) Claimant would work for eight hours in a given stage for a day. (Tr. p. 24) All of the stages required claimant to handle paper using her hands. (Tr. p. 24)

Claimant testified that beginning in October 2019, she started experiencing numbness, tingling, and pain in her bilateral arms that would wake her up at night. (Tr. p. 25; Ex. 2, p. 17) Claimant stated she experienced pain when holding onto the paper at work. (Tr. p. 25)

In November 2019, claimant reported her symptoms to her supervisor and to human resources. (Tr. p. 26; Ex. 2, p. 17) Defendant-employer told claimant to see her family physician. (Tr. p. 26) Claimant went to see her family physician and he referred claimant to Richard Rattay, M.D., an orthopedic surgeon. (Tr. p. 26-27)

On February 13, 2020, claimant attended an appointment with Dr. Rattay, complaining of numbness and tingling in both of her hands. (Ex. 3, p. 22) Dr. Rattay

examined claimant, listed an impression of bilateral carpal tunnel syndrome, noting electromyography from January 6, 2020, showed "bilateral mild carpal tunnel syndrome." (Ex. 3, p. 24) Dr. Rattay recommended bracing and taking nonsteroidal anti-inflammatory drugs for at least one month, and he released claimant to full duty. (Exs. 3, p. 24; A, p. 1)

Claimant testified Dr. Rattay told her he believed her problems were caused by the repetitive nature of her work. (Tr. p. 30) Claimant denied engaging in repetitive activities when she was at home or outside of work. (Tr. p. 30) Claimant denied engaging in repetitive activities before working for defendant-employer. (Tr. pp. 30-31)

On March 27, 2020, Benjamin Paulson, M.D., an orthopedic surgeon conducted an independent medical examination (IME) of claimant for defendants. (Ex. B) Dr. Paulson examined claimant and reviewed her medical records. (Id.) On physical exam, Dr. Paulson documented claimant had normal upper extremity strength bilaterally, her active and passive range of motion for both wrists was normal and pain free, and her right hand wrist had normal range of motion and strength. (Ex. B, pp. 4-5) Dr. Paulson further documented:

Neurovascular UE *	Neuro Tests – Phalen's Right: Positive, Left: Positive. Median nerve compression: Right Positive, Tinel's positive, Left: Positive, Tinel's positive.
Neurovascular UE Normal	Description – Normal. Sensation – Ulnar nerve, wrist: Right: Normal, Left: Normal. Ulnar nerve elbow: Right: Normal, Left: Normal. Median nerve: Right: Normal, Left: Normal. Radial sensory nerve: Right, Normal, Left: Normal.

(Ex. B, p. 5)

Dr. Paulson assessed claimant with bilateral carpal tunnel syndrome. (Id.) Dr. Paulson documented claimant remained symptomatic after wearing braces, complaining of frequent numbness, tingling, and pain that wakes her up at nighttime. (Id.) Dr. Paulson recommended corticosteroid injections or possible surgical carpal tunnel releases. (Ex. B, p. 6) With respect to causation, Dr. Paulson opined,

> certainly carpal tunnel syndrome is multifactorial in nature. The patient is noted to be otherwise fairly healthy. In general, though, I do agree with the findings by John Kruzich in his reported dated March 11, 2020. I believe most likely Ms. Milbrandt's carpal tunnel syndrome is

> idiopathic in nature and most likely would have developed independently of her work or work activities with RR Donnelly.

(Ex. B, p. 6)

With respect to permanency and whether claimalnt had reached maximum medical improvement, Dr. Paulson opined:

> Due to the fact that I would not consider her carpal tunnel primarily due to her work and most likely not materially aggravated by work, I would not consider her carpal tunnel work-related and, therefore, she does not need any treatment or impairment due to her work activities. This would also be a 0% impairment for both the right and the left upper extremities due to any work injury.

(Ex. B, p. 6)

On September 9, 2020, claimant attended a follow-up appointment with Dr. Rattay. (Ex. 3, pp. 26-27) Dr. Rattay noted claimant had been using wrist bracing and taking nonsteroidal anti-inflammatory drugs on a regular basis for several months without improvement and reported her symptoms were actually worse. (Ex. 3, p. 26) Dr. Rattay noted claimant wanted to wait to find out if workers' compensation would pay for her treatment. (Ex. 3, p. 25) Dr. Rattay listed an impression of bilateral carpal tunnel syndrome which is becoming moderate to severe and worse on the left side, and right trigger thumb. (Id.) Dr. Rattay documented:

> There is a letter in her chart from February 13, 2020, in which I discussed by [*sic*] opinions regarding her problems at that time. It was and still is my opinion that she has carpal tunnel syndrome that is work-related. Unfortunately, she has worsened and is to the point where she may have permanent damage now with the constant numbness and tingling she has had for 2 months, and the weakness.

(Ex. 3, p. 26)

Dr. Rattay recommended a left carpal tunnel release followed by a right carpal tunnel release. (Ex. 3, p. 25)

On October 21, 2020, Dr. Rattay drafted a letter, stating, in part:

> I last saw the patient on September 9, 2020. At that time, I had discussed that I felt that her bilateral carpal tunnel syndrome was work related. I reviewed her work activities at RR Donnelley on that date, and in the past as well. Her job involved working at a paper factory where she does a lot of boxing, jogging of paper, and tape-rolling repetitively throughout an 8 to 10 hour day.

> I also had issued another letter dated February 13, 2020, in which I discussed my opinions regarding her problems at that time. It was, and still is, my opinion that she has carpal tunnel syndrome bilaterally that is work-related.
>
> I discussed in my September 9, 2020, office note that the patient's symptoms have worsened without surgical treatment to the point where she likely has some permanent damage now with constant numbness and tingling.
>
> Again, it is my opinion that the repetitive work duties that she performed at RR Donnelley are a substantially contributing factor to her bilateral carpal tunnel syndrome.

(Ex. 4, p. 36)

Claimant underwent a right carpal tunnel release, a right trigger thumb release, and a left carpal tunnel release on December 16, 2020. (Ex. 3, pp. 28-30) Dr. Rattay listed postoperative diagnoses of bilateral carpal tunnel syndrome and right trigger thumb. (Ex. 3, p. 28)

Claimant returned to Dr. Rattay on December 30, 2020, reporting she was feeling great and noting her numbness, tingling, and pain had completely resolved. (Ex. 3, p. 31) Claimant requested to return to work on January 4, 2021. (Ex. 3, p. 32) Dr. Rattay documented she could progress to normal activity as tolerated. (Ex. 3, p. 32)

Claimant returned to her normal job duties on January 8, 2021, without restrictions. (Tr. pp. 28, 44) Claimant testified things went fairly well. (Tr. p. 29) She wore braces for three or four weeks when she returned to work and gradually reduced the time she wore the braces until she did not need to wear them at work. (Id.)

On June 1, 2021, defendants provided Dr. Paulson with a copy of claimant's deposition and requested his opinion. (Ex. B, p. 7) Dr. Paulson responded the next day stating he did not believe claimant's work contributed to her developing carpal tunnel syndrome, noting "[h]er testimony enforces my belief that her work did not cause or aggravate her carpal tunnel due to the fact that she was not doing work very repetitively . . . She also is noted not to do any work with vibration. (Ex. B, p. 9)

During her deposition, claimant stated Dr. Paulson only spent ten minutes with claimant. (Ex. B, p. 9) Dr. Paulson responded, "I cannot comment on only spending 10 minutes or not with the claimant but diagnosing carpal tunnel syndrome is relatively straightforward and a typical diagnosis of carpal tunnel syndrome does take less than 10 minutes," stating he did a full exam. (Ex. B, p. 9)

On June 23, 2021, claimant attended a follow-up appointment with Dr. Rattay. (Ex. 3, p. 33) Claimant stated she had significant improvement and she returned to full

duty, but she still had occasional numbness and tingling in both hands and she felt a little weaker. (Ex. 3, p. 33) Dr. Rattay examined claimant, noted she underwent surgery for bilateral carpal tunnel syndrome, but still had residual mild median nerve deficit bilaterally and she also had mild cubital tunnel syndrome at both elbows. (Ex. 3, p. 34) Dr. Rattay documented "I do feel that these conditions are work related (cubital and carpal tunnel syndrome bilaterally)." (Ex. 3, p. 35)

Dr. Rattay sent claimant's counsel a letter on July 5, 2021, reporting claimant recently underwent bilateral carpal tunnel release and right trigger thumb release on December 16, 2020. (Ex. A, p. 2) Dr. Rattay noted that two weeks later she returned to his office and "had made great improvement and had no dysfunction," noting he released her to return to full duty work on January 4, 2021. (Ex. A, p. 2) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Rattay assigned claimant a zero percent permanent impairment rating noting she reached maximum medical improvement and had been released to full duty without restrictions on January 4, 2021. (Ex. A, p. 2) Dr. Rattay did not anticipate she would need additional care. (Id.) Dr. Rattay did not list any range of motion findings or the results of any testing he performed in reaching his conclusions. (Ex. A)

On December 1, 2021, Farid Manshadi, M.D., conducted an independent medical examination (IME) for claimant and issued his report on December 27, 2021. (Ex. 5, p. 39) Dr. Manshadi examined claimant and reviewed her medical records. (Id.) Dr. Manshadi opined claimant developed carpal tunnel syndrome as a result of her work duties noting she performed repetitious activities with her hands and wrists. (Ex. 5, p. 40)

Using Tables 16-10, 16-11, and 16-15 of the AMA Guides, Dr. Manshadi opined:

> For the right upper extremity, under Table 16-11 Ms. Milbrandt falls under Grade 4 and I assign twenty-five percent motor deficit. Under Table 16-15, the maximum median nerve motor deficit below the mid-forearm is at 10, and as such, I assign three (3) percent impairment of the right upper extremity.
>
> In regard to the left upper extremity, for the sensory she falls under Grade 3 and as such, I assign fifty percent sensory deficit. Then under Table 16-15 the maximum sensory deficit for the median nerve below the mid-forearm is at thirty-nine. As such, I assign twenty (20) percent impairment of the left upper extremity for sensory.
>
> For the left median motor, Ms. Milbrandt falls under Grade 4 and I assign twenty-five (25) percent motor deficit. The maximum motor deficit for the median nerve below the mid-forearm is at 10 and as such, I assign another three (3) percent impairment of the left upper extremity.

> Then, using the Combined Values Chart, Page 604, the total impairment would be twenty-two (22) percent of the left upper extremity.
>
> Ms. Milbrandt also has reduced range of motion of the left wrist. As such, I assign another two (2) percent impairment of the left upper extremity. The grand total impairment for the left upper extremity using the Combined Values Chart would be at twenty-four (24) percent.

(Ex. 5, p. 41)

Dr. Manshadi recommended permanent restrictions for claimant's bilateral arms of avoiding any activity which requires repetitious gripping with either hand, to avoid repetitious flexion or extension of the wrists, and to avoid use of vibratory tools. (Id.)

On January 11, 2022, Dr. Manshadi sent a letter to claimant's counsel regarding his prior IME report dated December 27, 2021. (Ex. 5, p. 38) Dr. Manshadi assigned claimant three percent impairment for the right upper extremity or two percent body as a whole, and 22 percent for the left upper extremity or 14 percent body as a whole. (Ex: 5, p. 38) Using the Combined Values Chart at Page 604, Dr. Manshadi assigned 16 percent whole person impairment. (Ex. 5, p. 38)

Claimant testified her right hand and wrist were better at the time of the hearing, but she still experiences some tingling and numbness in the middle of the night. (Tr. p. 29) Claimant stated her left hand and wrist are worse than her right hand and wrist with more tingling and numbness. (Tr. p. 29) Claimant reported she has trouble sleeping three times per week. (Tr. p. 32) Her left hand aches a little more when it is cold outside. (Tr. pp. 32-33)

Claimant testified she has more pain depending on what station she is working at on a given day. (Tr. p. 29) Claimant stated she has more pain when she scans the front and back of sheets of paper because she flips her wrists and holds onto the paper tightly with her hands. (Tr. p. 30)

On March 23, 2022, the Iowa Workers' Compensation Commissioner approved a compromise settlement between claimant and the Fund. (Ex. C; Tr. p. 48) The compromise settlement lists a first date of injury to the left foot on October 30, 2015, and a second date of injury to the right and left arms and hands on November 26, 2019. (Ex. C) In exchange for a full release and discharge of the Fund, the Fund agreed to pay claimant $5,000.00. (Id.) The parties agreed, "in settlement of this claim with the Second Injury Fund, Plaintiff does not in any way compromise or waive Plaintiff's entitlement to benefits against the Employer and its insurer, File No. 20009756.01 pending before the Iowa Workers' Compensation Court." (Ex. C, p. 14)

On March 24, 2022, Dr. Paulson conducted a second IME for defendants, noting claimant received significant improvement of her symptoms, but still has occasional

numbness and tingling she experience some days, but not every day, and some nights, but not every night. (Ex. E, p. 20) Dr. Paulson opined:

> With my measurements during today's visit, March 24, 2022, and using the [AMA Guides], her impairment rating is as follows. I note that the patient has grossly normal strength, which is 5/5, as well as it is noted on her nerve conduction study that was done preoperatively on January 16, 2020. It is noted that she has a normal EMG, which is the motor nerve response and the muscle in response to stimulation. Again, the fact that she has a normal EMG and grossly normal strength, I would not give her any impairment due to loss of strength.
>
> She does, though, have close to normal, but not completely normal, 2-point sensation at 5 mm in all digits, and she does report occasional numbness and tingling, but this is not every day. Using the section on carpal tunnel syndrome on page 495, I put her in category 2 since she has near normal sensation on today's visit and good strength. I do not think category 1 is appropriate due to the fact that the patient does not have motor deficits and I do not think category 3 is appropriate due to the fact that the patient does not quite have normal 2-point sensation and did have some nerve conduction study findings on her preoperative nerve conduction study. Therefore, category 2 would be appropriate, and I would estimate that she would have, at most, 4% impairment of both the right upper extremity and the left upper extremity due to her residual carpal tunnel syndrome.
>
> With regard to her range of motion, she is somewhat more stiff with the left wrist and the right wrist. Using Figure 16-28 on page 467, she is getting 55 degrees of flexion of the left wrist, which is a 1% impairment, and 50 degrees of extension, which is a 2% impairment, which totals 3% of the left upper extremity due to loss of flexion and extension. With radial deviation, she is getting 20 degrees, and with ulnar deviation, she is getting 25 degrees, and this is a 1% impairment for loss of ulnar deviation according to Figure 16-31 on page 469. She is getting 85 degrees of supination and 80 degrees of pronation, and this is normal according to Figure 16-37 on page 474. Therefore, she gets a total 4% impairment of the left upper extremity due to loss of range of motion. With regard to the right upper extremity, she has normal range of motion except for some slight loss of extension. She is getting 50 degrees of extension, which is a 2% impairment, again according to Figure 16-28 on page 467.
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> Combining the 4% loss of range of motion with the 4% residual carpal tunnel syndrome of the left upper extremity, totals 8% of the left

> upper extremity, and combining 4% for carpal tunnel syndrome with a 2% for loss of range of motion, totals a 6% impairment of the right upper extremity. Therefore, the patient's final impairment is 8% of the left upper extremity and 6% of the right upper extremity.

(Ex. E, pp. 20-21)

Under the Combined Values Chart of the AMA Guides at Page 604, the total whole person impairment is 14 percent.

I. Jurisdiction

Claimant asserts the deputy commissioner erred in finding the separate compromise settlement claimant entered with the Fund deprives the Division of Workers' Compensation of jurisdiction over her claim involving defendant-employer and defendant-insurance carrier.

This case concerns an injury from 2019. Iowa Code section 85.35 (2019) governs settlements. There are several types of settlement, including an agreement for settlement, a compromise settlement, a combination of an agreement for settlement and a compromise settlement, a contingent settlement. Iowa Code § 85.35(2)-(5). This dispute involves a compromise settlement.

The statute provides, in part,

> 1. The parties to a contested case or persons who are involved in a dispute which could culminate in a contested case may enter into a settlement of any claim arising under this chapter or chapter 85A, 85B, or 86, providing for the disposition of the claim. The settlement shall be in writing . . . and submitted to the workers' compensation commissioner for approval. . . .
>
> 9. Approval of a settlement by the workers' compensation commissioner is binding on the parties and shall not be construed as an original proceeding. Notwithstanding any provisions of this chapter and chapters 85A, 85B, 86, and 87, an approved compromise settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 85B, 86, and 87 regarding the subject matter of the compromise and a payment made pursuant to a compromise settlement agreement shall not be construed as the payment of weekly compensation.

The statute was amended again in 2022 with the addition of new subsection 7A involving prosthetic devices. 2022 Acts, ch. 1128 § 3. Paragraph 9 was renumbered as paragraph 10, as a result of the change, but the text of the paragraph was not modified. Iowa Code § 85.35 (2022).

In 2005, the Iowa Legislature amended Iowa Code section 85.35 in response to the decision of United Fire & Cas. Co. v. St. Paul Fire and Marine Ins. Co., 677 N.W.2d 755 (Iowa 2004) ("United Fire").

In United Fire, the claimant sustained two work injuries to her low back in 1995 and 1998 while working for different employers. St. Paul was the insurance carrier for the 1995 injury and United Fire was the insurance carrier for the 1998 injury. Claimant filed a petition against her first employer and St. Paul seeking workers' compensation benefits. There was a dispute as to whether the 1995 injury or the 1998 injury was responsible for claimant's ongoing problems.

St. Paul filed an application for an order under Iowa Code section 85.21 to pursue United Fire for indemnification or contribution, alleging claimant's industrial disability or a majority of her medical expenses were due to 1998 injury. A deputy commissioner approved the order.

Instead of filing an action under Iowa Code section 85.21 against United Fire, St. Paul pursued a settlement with the claimant. The agreement listed the dispute as whether the alleged injury arose out of and in the course of claimant's employment with the second employer and stated the agreement covered the 1995 injury date. The agreement also contained a clause stating the parties understood St. Paul and the employer would be pursuing an action against United Fire and the second employer for payment of benefits arising from the 1998 injury date. The workers' compensation commissioner approved the settlement on October 6, 1999.

On November 4, 1999, St. Paul filed a contested case action against United Fire pursuant to Iowa Code section 85.21, seeking indemnification from United Fire for the entire amount it paid to the claimant under the compromise special case settlement. The agency found the compromise special case settlement did not constitute a final bar to St. Paul's right to indemnification or contribution under Iowa Code section 85.21 and ordered United Fire to reimburse St. Paul for the entire amount of the settlement.

United Fire appealed. The Iowa Supreme Court held, "under the plain language of section 85.35, the compromise special case settlement 'constitute[s] a final bar to any further rights arising under' chapter 85, including St. Paul's right to indemnification or contribution under section 85.21(3)." The court found the approval of the compromise special case settlement terminated the workers' compensation commissioner's jurisdiction over any claims arising out of a properly approved compromise special case settlement.

Before United Fire, Iowa Code section 85.35 contained broad settlement language and did not identify different types of agreements. Iowa Code § 85.35 (2003). The statute provided, in part,

> Approval by the workers' compensation commissioner shall be binding on the parties and shall not be construed as an original proceeding. Notwithstanding any provisions of this chapter and chapters 85A, 85B, 86, and 87, an approved settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 85B, 86 and 87. Such payment shall not be construed as the payment of weekly compensation.

Id. § 85.35(8) (2003)

In the earlier case of Bankers Standard Ins. Co. v. Stanley, 661 N.W.2d 178 (Iowa 2003) the Iowa Supreme Court noted the broad language of the statutory bar to further rights under Iowa Code chapter 85. Stanley was injured in an automobile accident while working. He later entered into a special case compromise settlement with his employer and the defendant insurance company resolving his workers' compensation claim. Stanley then filed a third-party action against the driver. Bankers Standard brought an action for indemnification under Iowa Code section 85.22(1). Both parties moved for summary judgment. The district court granted summary judgment in favor of Bankers Standard, finding the intent of the settlement agreement was to protect Bankers Standard from further claims by Stanley and not to protect Stanley from any claim by Bankers Standard for indemnification and that the final bar language was only intended to protect employers and insurance carriers from further litigation. The Iowa Supreme Court disagreed, noting the language of Iowa Code section 85.35 "contains no limitation on the 'final bar to any further rights' other than the bar applies only to those rights arising under chapters 85, 85A, 85B, 86, and 87," and found the settlement barred the employer's and insurance carrier's statutory right to indemnification.

In 2005, during the next legislative session following the United Fire decision, the Iowa Legislature amended the statute and added a qualifier to the final bar to claims "regarding the subject matter of the compromise." Id. § 85.35(8) (2005 Supp.); 2005 Acts, ch. 168 § 10.

In this case, the deputy commissioner found the compromise settlement between claimant and the Fund is a final bar to further rights under Iowa Code chapter 85 and deprives the agency of jurisdiction to re-litigate the same condition against defendant-employer, relying on the case of Ahn v. Key City Tranport, Inc., 2015 WL 5927330, File No. 5042640 (Iowa Workers' Comp. Comm'n Oct. 8, 2015).

In Ahn, the claimant sustained an injury to his left leg in 2004 or 2005. He sustained an injury to his left eye in October 2010. Claimant filed a petition against defendant-employer for the left eye injury and the Fund for the combined disability of the left eye injury and a left leg injury from 2009, File Number 5038569. Claimant entered into an agreement for settlement under Iowa Code section 85.35(2) with the defendant-employer for the left eye claim and a compromise settlement with the Fund under Iowa

Code section 85.35(3) with the Fund for the combined disability of the left leg and left eye injury. After settling with the Fund in File Number 5038569, claimant filed a new petition on January 17, 2013, alleging he sustained a work-related injury to his left leg on August 31, 2010, File Number 5042640.

In File Number 5042640, defendants argued the claimant's claim was time barred and that the compromise settlement between claimant and the Fund deprived the agency of jurisdiction to re-litigate his left leg claim in File Number 5042640. The agency agreed the claim was time barred and the petition should be dismissed. Alternatively, the agency also found the case should be dismissed for lack of jurisdiction under United Fire. The opinion does not discuss the amendments to Iowa Code section 85.35 in 2005. I find the holding in Ahn concerning the agency's jurisdiction should be overruled and that the deputy commissioner's decision in this case should be reversed.

Defendants assert the issue in this case involves the agency's "subject matter jurisdiction." The Iowa courts distinguish between jurisdiction of the case and subject matter jurisdiction. Ney v. Ney, 891 N.W.2d 446, 453 (Iowa 2017) (citing Schaefer v. Putnam, 841 N.W.2d 68, 80 (Iowa 2013); Alliant Energy-Interstate Power & Light Co. v. Duckett, 732 N.W.2d 869, 874 (Iowa 2007)). In Ney, the court noted:

> Subject matter jurisdiction is "the authority of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court's attention." Schaefer, 841 N.W.2d at 80 n.13 (quoting Christie v. Rolscreen Co., 448 N.W.2d 447, 450 (Iowa 1989)). Jurisdiction of the case refers to a court's "authority to hear the particular case." Christie, 448 N.W.2d at 450.
>
> This distinction is important because although a statute cannot deprive a court of its constitutionally granted subject matter jurisdiction, it can affect the jurisdiction of the case by prescribing specific parameters of the court's authority to rule on particular types of matters. See Max 100 L.C. v. Iowa Realty Co., 621 N.W.2d 178, 181 (Iowa 2001) ("[T]he legislature may impose a duty to grant an injunction by specifying conditions [under which an injunction must be granted] in a statute. When this is done, the conditions specified in the statute supersede the traditional equitable requirements." (Citation omitted)); see also Mensch v. Netty, 408 N.W.2d 383, 386 (Iowa 1987) ("[C]ourts of equity are bound by statutes and follow the law in absence of fraud or mistake.") Further, while parties cannot waive the absence of subject matter jurisdiction, a defect in the court's jurisdiction of the case can be obviated by consent, waiver, or estoppel. In re Marriage of Seyler, 559 N.W.2d 7, 10 n.3 (Iowa

1997) (citing State v. Mendicino, 509 N.W.2d 481, 482-83 (Iowa 1993), which overruled cases to the contrary).

Id. at 453-354.

The distinction between subject matter jurisdiction and jurisdiction of the case is significant because a judgment entered by a court without subject matter jurisdiction is void and subject to collateral attack, whereas a judgment entered by a court without jurisdiction over the case is voidable, rather than void. Schaefer, 841 N.W.2d at 83 n.13. If a party waives the court's authority to hear a particular case the judgment is not subject to collateral attack. Id. (quoting Klinge v. Bentien, 725 N.W.2d 13, 16 (Iowa 2006)).

By enacting Iowa Code chapter 85, the legislature removed the district court's general, original jurisdiction to hear claims involving the rights and remedies of injured employees against employers for industrial injuries and placed such claims within the exclusive jurisdictional purview of the workers' compensation commissioner. Heartland Express, Inc. v. Gardner, 675 N.W.2d 259, 262 (Iowa 2003) (citing Shirley v. Pothast, 508 N.W.2d 712, 715 (Iowa 1993)). Thus, the legislature has vested subject matter jurisdiction over workers' compensation claims in the workers' compensation commissioner, "subject to any further circumscription by the legislature." Id. An example of such a circumscription is found in Iowa Code section 85.71, which governs the commissioner's subject matter jurisdiction over claims involving injuries sustained outside of Iowa. Id. (citing Heartland Express, Inc. v. Terry, 631 N.W.2d 260, 265 (Iowa 2001)). Contrary to defendants' contention, the issue in this case is one of jurisdiction of the case, not subject matter jurisdiction.

Claimant first argues the plain language of the statute provides the settlement is only binding as to the parties thereto. Claimant's argument raises an issue of statutory interpretation.

The goal of statutory interpretation is "to determine and effectuate the legislature's intent." Rameriz-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing United Fire & Cas. Co. v. St. Paul Fire Marine Ins. Co, 677 N.W.2d 755, 759 (Iowa 2004)). The court begins with the wording of the statute. Myria Holdings, Inc. v. Iowa Dep't of Rev., 892 N.W.2d 343, 349 (Iowa 2017). When determining legislative intent, the court looks at the express language of the statute, and "not what the legislature might have said." Id. (citing Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008)). If the express language is ambiguous the court looks to the legislative intent behind the statute. Sanford v. Fillenwarth, 863 N.W.2d 286, 289 (Iowa 2015) (citing Kay-Decker v. Iowa State Bd. of Tax Review, 857 N.W.2d 216, 223 (Iowa 2014)). A statute is ambiguous when reasonable persons could disagree as to the statute's meaning. Rameriz-Trujillo, 878 N.W.2d at 769 (citing Holstein Elect. v. Breyfogle, 756 N.W.2d 812, 815 (Iowa 2008)). An ambiguity may arise when the

meaning of particular words is uncertain or when considering the statute's provisions in context. Id.

The amendment to Iowa Code section 85.35 in 2005 did not modify the sentence "[a]pproval of the settlement by the workers' compensation commissioner is binding on the parties and shall not be construed as an original proceeding." The language is a mirror image of the language present in the statute at the time the Iowa Supreme Court decided United Fire. In the United Fire decision, the court did not discuss the meaning of the term "parties" but refers to St. Paul as a party throughout the decision. St. Paul was a party to the settlement with the claimant, just as claimant in this case was a party or participant in the settlement with the Fund. Defendants are strangers to the compromise settlement and were not parties to the compromise settlement. Irrespective of the binding effect on the parties, the 2005 amendments to Iowa Code section 85.35 limit the bar of a compromise agreement.

Claimant argues the deputy commissioner erred in finding the date of injury and conditions she seeks compensation for against defendants were the subject matter of the compromise settlement. The 2005 amendments to Iowa Code section 85.35 limit the final bar to further rights under Iowa Code chapter 85 to claims "regarding the subject matter of the compromise."

The Second Injury Compensation Act, found at Iowa Code sections 85.63 through 85.69, governs entitlement to claims against the Fund. The Second Injury Compensation Act requires a claimant to establish: (1) the claimant sustained a permanent disability to a hand, arm, foot, leg, or eye, a first qualifying injury; (2) the claimant subsequently sustained a permanent disability to another hand, arm, foot, leg, or eye, through a work-related injury, a second qualifying injury; and (3) the claimant has sustained permanent disability resulting from the first and second qualifying injuries exceeding the compensable value of the "previously lost member." Gregory v. Second Injury Fund of Iowa, 777 N.W.2d 395, 398-99 (Iowa 2010).

The compromise settlement in this case provides, "[t]he subject and nature of the dispute is the applicability of the Second Injury Compensation Act." (Ex. C) In this case claimant seeks healing period and permanent partial disability benefits under Iowa Code section 85.34, reimbursement for medical bills and medical mileage under Iowa Code section 85.27, and to recover costs under Iowa Code section 86.40 from defendant-employer and defendant insurance carrier.

A claim brought by a claimant against the Fund is distinct from a claim brought by a claimant against an employer and an insurance carrier, just as a claim for contribution and indemnification by an employer and insurance carrier against another employer and insurance carrier is distinct from a claim brought by a claimant against an employer and an insurance carrier. To hold otherwise would render the language of the amendment to the statute restricting the bar to matters "regarding the subject matter of the

compromise" superfluous and is contrary to the intent of the legislature. See Little v. Davis, 974 N.W.2d 70 (Iowa 2022) (noting the courts read legislation in a manner to avoid reading portions of the statute meaningless or superfluous). Such an interpretation would lead to absurd results and would discourage parties from settling claims prior to hearing. I find the compromise settlement between claimant and the Fund does not deprive the agency of jurisdiction over claimant's claim against defendants.

II. Arising Out of and in the Course of Employment

To receive workers' compensation benefits, an injured claimant must prove, by a preponderance of the evidence, the claimant's injuries arose out of and in the course of the claimant's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). 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. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

> it 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., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. 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 v. Smith-Doyle Contractors, 569 N.W.2d 154,156 (Iowa Ct. App. 1997). 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 Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Three physicians provided causation opinions in this case, Dr. Rattay, a treating orthopedic surgeon who performed surgery on claimant, Dr. Paulson, an orthopedic surgeon who performed an IME for defendants, and Dr. Manshadi, a physiatrist who performed an IME for claimant. I find the opinion of Dr. Rattay, as supported by the opinion of Dr. Manshadi to be the most persuasive.

Dr. Paulson conducted his first IME for defendants on March 27, 2020. (Ex. B) Dr. Paulson documented claimant had normal upper extremity strength bilaterally, her active and passive range of motion for both wrists was normal and pain free, and her right hand and wrist had normal range of motion and strength. (Ex. B, pp. 4-5) Dr. Paulson performed testing which revealed positive Phalen's on the right and left, positive median nerve compression on the right, and positive Tinel's on the right and left. (Ex. B, p. 5) With respect to causation, Dr. Paulson opined,

> certainly carpal tunnel syndrome is multifactorial in nature. The patient is noted to be otherwise fairly healthy. In general, though, I do agree with the findings by John Kruzich in his reported dated March 11, 2020. I believe most likely Ms. Milbrandt's carpal tunnel syndrome is idiopathic in nature and most likely would have developed independently of her work or work activities with RR Donnelly.

(Ex. B, p. 6)

Dr. Paulson does not explain how he determined claimant's condition is idiopathic in his report.

After reviewing claimant's deposition, Dr. Paulson provided a supplemental report on June 2, 2021, stating he did not believe claimant's work contributed to her developing carpal tunnel syndrome, noting "[h]er testimony enforces my belief that her work did not cause or aggravate her carpal tunnel due to the fact that she was not doing work very repetitively. . . She also is noted not to do any work with vibration." (Ex. B, p. 9) Dr. Paulson does not explain his conclusion.

Dr. Rattay treated claimant and performed surgery on her. (Ex. 3) During an appointment on September 9, 2020, he noted claimant had been using a wrist brace and taking nonsteroidal anti-inflammatory drugs on a regular basis for several months without improvement and reporting her symptoms were actually worse. (Ex. 3, p. 26) Dr. Rattay noted:

> There is a letter in her chart from February 13, 2020, in which I discussed by [*sic*] opinions regarding her problems at that time. It was and still is my opinion that she has carpal tunnel syndrome that is work-related. Unfortunately, she has worsened and is to the point where she may have permanent damage now with the constant numbness and tingling she has had for 2 months, and the weakness.

(Ex. 3, p. 26)

On October 21, 2020, Dr. Rattay drafted a letter, stating, in part:

> I last saw the patient on September 9, 2020. At that time, I had discussed that I felt that her bilateral carpal tunnel syndrome was work related. I reviewed her work activities at RR Donnelley on that date, and in the past as well. Her job involved working at a paper factory where she does a lot of boxing, jogging of paper, and tape-rolling repetitively throughout an 8 to 10 hour day.
>
> I also had issued another letter dated February 13, 2020, in which I discussed my opinions regarding her problems at that time. It was, and still is, my opinion that she has carpal tunnel syndrome bilaterally that is work-related.
>
> I discussed in my September 9, 2020, office note that the patient's symptoms have worsened without surgical treatment to the point where she likely has some permanent damage now with constant numbness and tingling.

> Again, it is my opinion that the repetitive work duties that she performed at RR Donnelley are a substantially contributing factor to her bilateral carpal tunnel syndrome.

(Ex. 4, p. 36)

Dr. Rattay explained his causation finding in relation to claimant's work duties. Dr. Manshadi also opined claimant developed carpal tunnel syndrome as a result of her work duties noting she performed repetitious activities with her hands and wrists. (Ex. 5, p. 40)

Dr. Rattay's opinion is supported by the record. Claimant commenced employment with defendant-employer in 2014. Claimant stated her work for defendant-employer required her to handle paper using her hands for eight hours at a time. (Tr. p. 24)

Claimant testified that beginning in October 2019, she started experiencing numbness, tingling, and pain in her bilateral arms that would wake her up at night. (Tr. p. 25; Ex. 2, p. 17) Claimant reported she experienced pain when holding onto the paper at work. (Tr. p. 25) She reported her symptoms to defendant-employer and defendant-employer told her to see her regular family physician, who referred claimant to Dr. Rattay. (Tr. pp. 26-27; Ex. 2, p. 17)

There is no evidence claimant complained of symptoms in her bilateral upper extremities before she worked for defendant-employer. At hearing claimant denied engaging in repetitive activities when she was at home outside of work. (Tr. p. 30) Claimant denied engaging in repetitive activities before working for defendant-employer. (Tr. pp. 30-31) Defendants presented no evidence to the contrary. I find claimant has met her burden of proof to establish she developed carpal tunnel syndrome arising out of and in the course of her employment with defendant-employer as alleged.

III. Permanent Partial Disability Benefits

Iowa Code section 85.34(2) governs compensation for permanent partial disabilities. The law distinguishes between scheduled and unscheduled disabilities. The Division of Workers Compensation evaluates disability using two methods, functional and industrial. Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983). The loss of both arms or both hands caused by a single accident is compensated by multiplying the percentage of functional impairment determined using the AMA Guides by 500 weeks, unless the employee is permanently and totally disabled. Iowa Code § 85.34(2)(s), (x). There is no allegation claimant is permanently and totally disabled.

Three physicians have given impairment ratings in this case, Dr. Rattay, Dr. Manshadi, and Dr. Paulson. I find the opinion of Dr. Paulson most persuasive regarding the extent of permanent impairment.

On July 5, 2021, Dr. Rattay assigned claimant zero permanent impairment, noting claimant reached maximum medical improvement and was released to full duty without restrictions on January 4, 2021. (Ex. A, p. 2) Following an IME, Dr. Manshadi assigned claimant three percent impairment for the right upper extremity or two percent body as a whole, and 22 percent for the left upper extremity or 14 percent body as a whole. (Ex. 5, p. 38) Using the Combined Values Chart at Page 604, Dr. Manshadi assigned 16 percent whole person impairment. (Ex. 5, p. 38) Following a second IME on March 24, 2022, Dr. Paulson assigned claimant six percent impairment for the right upper extremity and eight percent impairment for the left upper extremity. (Ex. E, p. 21) Under the Combined Values Chart of the AMA Guides at Page 604, the total whole person impairment is 14 percent.

I find Dr. Paulson's opinion on extent of permanent impairment most convincing. Dr. Paulson and Dr. Rattay have superior training as orthopedic surgeons to Dr. Manshadi, a physiatrist. While Dr. Rattay treated claimant and performed surgery on her bilateral arms, he did not list any range of motion findings or the results of any testing he performed in reaching his conclusions. (Ex. A) Dr. Paulson most recently examined claimant and he provided detailed findings supporting his conclusions and differing opinions from Dr. Manshadi. For these reasons I find Dr. Paulson's opinion regarding the extent of claimant's permanent impairment most persuasive. Adopting Dr. Paulson's impairment rating, claimant is entitled to 70 weeks of permanent partial disability benefits, at the stipulated weekly rate of $433.82, commencing on July 5, 2021, the date Dr. Rattay issued his impairment rating. Iowa Code § 85.34(2) (noting commencement of permanent partial disability benefits begins "when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined" under the AMA Guides).

IV. Healing Period Benefits

On the hearing report, claimant did not request temporary or healing period benefits. At hearing claimant stated she was requesting temporary total or healing period benefits from December 16, 2020, through January 3, 2021. (Tr. p. 8) In her post-hearing brief, claimant alleged she is entitled to temporary total disability benefits from December 16, 2020, when she had surgery, through January 4, 2021. The hearing report order that was entered does not reflect claimant was requesting temporary total or healing period benefits. (Hearing Report Order) I find that at hearing, claimant raised the issue of whether she is entitled to receive temporary total or healing period benefits from December 16, 2020, through January 4, 2021.

Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Dunlap, 824 N.W.2d at 556. If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57. As analyzed above, I found claimant has established she sustained a permanent impairment caused by the work injury. Therefore, any temporary benefits claimant is entitled to in this matter are healing period benefits.

Iowa Code section 85.34(1), provides, in part,

> If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

The record in this case reflects claimant was off work for bilateral carpal tunnel surgery from December 16, 2020, through January 4, 2021. Claimant is entitled to healing period benefits for that period.

V. Medical Bills and Mileage

Claimant seeks to recover out-of-pocket medical bills totaling $8,077.57 and $434.16 in medical mileage. (Exs. 6, 8)

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the

employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

Defendants denied liability for claimant's condition and she sought treatment on her own. On de novo review, I find the treatment claimant received was causally related to the injury and it was reasonable and beneficial to claimant. Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 206; Brewer-Strong v. HNI Corp. 913 N.W.2d 235 (Iowa 2018). As such, defendants are responsible for the causally related medical bills, including claimant's out-of-pocket expenses and medical mileage.

VI. IME

On appeal claimant asserts she is entitled to recover the cost of Dr. Manshadi's IME. On the hearing report, claimant did not request to recover the cost of Dr. Manshadi's IME under Iowa Code section 85.39. (Hearing Report Order) Claimant did not request to recover the cost of the IME at hearing. Claimant did not request to recover the cost of the IME under Iowa Code section 85.39 in her post-hearing brief. Claimant did request to recover costs in Exhibit 7. The cost of the IME is broken down in Exhibit 7.

This agency relies on hearing reports to determine the issues to be decided by the presiding deputy commissioners. I find claimant waived her argument that she is entitled to recover the cost of Dr. Manshadi's IME by signing the hearing report and by failing to raise the issue with the deputy commissioner during the hearing. Bos v. Climate Eng'rs, 2016 WL 1178116, File No. 5044761 (App. Dec. March 22, 2016) (finding claimant waived the issue by agreeing there was a dispute as to whether claimant was permanently and totally disabled on the hearing report and failing to raise the issue of defendants' response to request for admission regarding the issue until he filed his post-hearing brief) (citing to McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 186-87 (Iowa 1980) (concluding claimant's attorney failed to preserve error on foundation objection by failing to object when the deposition was offered into evidence before the deputy, and by failing to afford "his adversary [with the opportunity] to remedy the alleged defect"); Hawkeye Wood Shavings v. Parrish, No. 08-1708, 2009 WL 3337613, at *4 (Iowa Ct. App. 2009) (concluding the defendants waived the issue of whether they were entitled to a credit for benefits already paid for the September 2000 injury because on the hearing report signed by the defendants, the defendants

stipulated "0 weeks" of credit); Burtnett v. Webster City Custom Meats, Inc., No. 05-1265, 2007 WL 254722, at *3-4 (Iowa Ct. App. Jan. 31, 2007) (concluding the deputy commissioner did not commit an abuse of discretion by refusing the claimant's request to change dates in the joint hearing report, and noting the agency's approach requiring claimants to list dates prior to hearing in a hearing report "is more than reasonable").

VII. Costs

Claimant seeks to recover the $103.00 filing fee, $68.60 for medical records, and $88.15 for the cost of a deposition transcript, the $500.00 cost of Dr. Rattay's letter, and the $1,200.00 cost of Dr. Manshadi's report. (Ex. 7)

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(86), 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, (8) costs of persons reviewing health service disputes.

876 Iowa Administrative Code 4.33, expressly allows for the recovery of the filing fee, the cost of two doctors' reports, and for the cost of the deposition transcript. The rule does not allow for the recovery of the cost of obtaining medical records. I find defendants should reimburse claimant $103.00 for the filing fee, $88.15 for the cost of the deposition transcript, $500.00 for the cost of Dr. Rattay's letter, and $1,200.00 for the cost of Dr. Manshadi's IME report for a total of $1,891.15 in costs.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on August 29, 2022, is reversed with my substituted analysis.

Defendants shall pay claimant healing period benefits from December 16, 2020, through January 4, 2021, at the stipulated weekly rate of $433.82.

Defendants shall pay claimant 70 weeks of permanent partial disability benefits at the stipulated weekly rate of $433.82, commencing on July 5, 2021.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants are responsible for all casually connected medical bills and shall reimburse claimant for out-of-pocket medical bills totaling eight thousand seventy-seven and 57/100 dollars ($8,077.57) and for medical mileage totaling four hundred thirty-four and 16/100 dollars ($434.16), as set forth in Exhibits 6 and 8.

Pursuant to rule 876 IAC 4.33, defendants shall pay claimant's costs of the arbitration proceeding in the amount of one thousand eight hundred ninety-one and 15/100 dollars ($1,891.15), and defendants shall pay the costs of the appeal including the cost of the hearing transcript.

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

Signed and filed on this 17th day of February, 2023.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Paul Demro (via WCES)

Benjamin Roth (via WCES)

Stephen Spencer (via WCES)

Tyler Smith (via WCES)

Christopher Spencer (via WCES)