BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KIMBERLY SALLIS, Claimant, vs. NPC INTERNATIONAL, INC. d/b/a PIZZA HUT, Employer, and OLD REPULIC INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 5056245 ARBITRATION DECISION Head Note Nos.: 1402.30, 1402.40, 1403.10

FILED
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WORKERS COMPENSATION

Claimant Kimberly Sallis filed a petition in arbitration on March 14, 2016, alleging she sustained injuries to her head, eyes, back, left leg, and left foot while working for the defendant NPC International, Inc., d/b/a Pizza Hut ("Pizza Hut"), on March 2, 2015. Pizza Hut and its insurer, the defendant, Old Republic Insurance Company ("Old Republic") filed an answer on March 23, 2016.

An arbitration hearing was held on March 20, 2017, at the Iowa Workforce Center in Waterloo, Iowa. Attorney John Pieters represented Sallis. Sallis appeared and testified. Attorney Nicholas Pellegrin represented Pizza Hut and Old Republic. Joint Exhibits ("JE") 1 through 7, Exhibits 1 through 7, and A through O were admitted. The record was left open through April 14, 2017, for the receipt of Exhibit 5 and post-hearing briefs. Exhibit 5 and the post-hearing briefs were received. At that time the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided. Pizza Hut and Old Republic raised the affirmative defense that care was not authorized, but waived all other affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Sallis and Pizza Hut at the time of the alleged injury.

2. Sallis sustained an injury on March 2, 2015, which arose out of and in the course of her employment with Pizza Hut.

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

4. Temporary benefits are no longer in dispute.

5. The commencement date for permanent partial disability benefits, if any are awarded, is May 19, 2015.

6. At the time of the alleged injury Sallis's gross earnings were below the applicable state minimum, she was single and entitled to one exemption, and the parties believe the weekly rate to be $185.49.

7. Prior to the hearing Sallis was paid six weeks of temporary total disability benefits, at the rate of $218.53 per week, and five weeks of temporary total disability compensation at the rate of $655.59 per week.

ISSUES

1. What is the nature of the injury?

2. Is the alleged injury a cause of permanent disability?

3. If the alleged injury is a cause of permanent disability, what is the extent of disability?

4. Is Sallis entitled to payment of medical expenses?

5. Did Sallis receive an overpayment of $2,548.74 in temporary benefits?

FINDINGS OF FACT

Sallis lives in Waterloo, Iowa. (Transcript, page 10) Sallis attended school through the eleventh grade and she was an average student. (Exhibit 1, page 1; Tr., p. 11) Sallis has experience working as a babysitter and in the food industry. (Exs. 1, p. 2; I, p. 31) Sallis is a smoker, and she is mother of an adult child. (JE 11, p. 169; Tr., p. 11) At the time of the hearing she was forty-three. (Tr., p. 11)

Pizza Hut hired Sallis as a delivery driver in November 2014. (Ex. D, p. 9) Sallis had not worked in a long time. (Tr., p. 17)

On her Pizza Hut application Sallis reported she last worked at One Stop Action in the summer of 2012. (Ex. D, p. 10) Sallis also documented on her application she received a CNA degree or certificate from Hawkeye Community College. (Ex. D, p. 9) That information is false. Hawkeye Community College issued a letter on February 3, 2017, reporting Sallis never took any credit classes from Hawkeye Community College. (Ex. G, p. 17) On her application and in her answers to interrogatories Sallis also documented that she received a GED from Hawkeye Community College. (Exs. 1, p. 1; D, p. 9; I, p. 26) That information is also false. An official transcript dated February 6, 2017, from Hawkeye Community College documents Sallis was enrolled in "Pre-GED" courses. (Ex. G, p. 18) Hawkeye Community College could not locate a high school equivalency diploma record for Sallis. (Ex. G, p. 19) Hawkeye Community College records document Sallis was approved to attend a CNA course in 2014. (Ex. H, p. 22)

While working for Pizza Hut Sallis delivered pizzas, and in between calls she folded boxes, swept, and assisted in the kitchen with washing dishes and dipping wings. (Tr., p. 17) Sallis earned minimum wage. (Tr., p. 17)

Sallis testified on March 2, 2015, she delivered a pizza to a residence, and as she turned to leave

> I slipped a little, I bumped my head, but I gained my balance back, enough to walk a little bit, I start sliding. As I took, like, two steps, I slid. And as I hit the top step, my feet went up in the air and I came down on my head. I know I reached out for the rail and just kept sliding. I had the bag, the receipt, the pen, and the rail up like this. And I slid all the way out to the sidewalk.

(Tr., p. 20) Sallis reported that after she fell her whole body was hurting, more so on her right side, and particularly her left ankle and her head. (Tr., pp. 24-25)

Sallis returned to work after her fall, reported a work injury to her manager, Mr. Bradley, finished her shift making five delivery runs, and went home for the evening. (Tr., pp. 25-26; Ex. E) Sallis testified she worked at her normal pace after the incident that evening. (Tr., p. 57)

On March 4, 2015, Sallis went to Allen Memorial Hospital and reported she fell at work the evening of March 2, 2015, and hit the left side of her head, left shoulder, left rib cage, left outer leg, and left ankle. (JE 1, p. 21) Sallis noted her pain was worse in her left clavicle, left shoulder, and left ankle. (JE 1, p. 21) Sallis received cervical and head computerized tomography scans, an ankle x-ray, and a lumbosacral spine x-ray which showed no acute injuries, fractures, or dislocations. (JE 1, pp. 22-27) The reviewing

radiologist noted Sallis had a stable grade three anterolisthesis of L5 on S1. (JE 1, p. 26)

On March 10, 2015, Sallis attended an appointment with Allen Occupational Health Services, complaining of back pain radiating into her thigh, rib pain, left ankle pain, and pain in her left fingers and toes. (JE 5, pp. 75-79) Dorothy Lawse, M.D., an emergency medicine physician, examined Sallis, noted her imaging did not reveal any fractures, diagnosed her with lower back pain, a left ankle sprain, and morbid obesity, ordered Sallis to perform back exercises, to move her ankle with partial weight-bearing, and prescribed Vicodin. (JE 5, p. 79) Dr. Lawse ordered an ankle air splint, and imposed restrictions of no lifting, no prolonged standing, walking, or sitting, no climbing, and no industrial driving. (JE 5, p. 78)

Sallis has a history of low back pain radiating down her left leg, spondylolisthesis, moderate degenerative disc disease at S1-S2, shoulder pain, and ankle swelling and tenderness in her calves dating back to June 2001. (JE 1, pp. 1-5; JE 2 p. 44-46) On December 26, 2001, Sallis received treatment at Covenant Medical Center, and reported she was involved in a motor vehicle accident in 1994, she experienced back pain following the accident, and her pain had become worse over the last two years. (JE 2, p. 44) The attending physician assessed Sallis with chronic back pain. (JE 2, p. 45)

Imaging from May 2013 revealed Sallis had a grade three spondylolisthesis at L5-S1, with spinal canal and bilateral neural foraminal stenosis. (JE 1, p. 12) Sallis also reported problems with headaches in 2013. (JE 1, p. 18)

Sallis returned to Dr. Lawse on March 13, 2015, complaining her whole body was hurting, including her neck, head, left side, right shoulder blade, and left ankle. (JE 5, p. 80) Sallis was wearing a splint on her left ankle. (JE 5, p. 80) Dr. Lawse diagnosed Sallis with a left ankle sprain with pain, generalized pain to her back, and morbid obesity. (JE 5, p. 82) Dr. Lawse administered a Toradol injection, prescribed Flexeril in addition to Vicodin, noted Sallis needs to be up and walking and performing back exercises, and continued her restrictions. (JE 5, pp. 82-83)

On March 24, 2015, attended a follow-up appointment with Allen Occupational Health with John Luke, M.D., an occupational medicine physician, complaining of head, neck, shoulder, stomach, chest, low back, left leg, and left ankle and foot pain. (JE 5, p. 85) Dr. Luke diagnosed Sallis with "left sided contusions/strains in a highly demonstrative, emotional & symptom magnifying patient." (JE 5, p. 86) Dr. Luke prescribed ibuprofen, Flexeril, and Omeprazole, ordered physical therapy to evaluate and treat Sallis, and continued her restrictions. (JE 5, pp. 84, 88)

Sallis returned to Dr. Luke on April 1, 2015, complaining of headaches, vision changes in her right eye, left foot pain, back pain, left neck pain, and dizziness. (JE 5, p. 89) Dr. Luke ordered magnetic resonance imaging of her left ankle, a head

computerized tomography scan, physical therapy, and continued her restrictions. (JE 5, pp. 91-93)

On April 8, 2015, Sallis attended a follow-up appointment with Dr. Luke. (JE 5, pp. 95-96) Dr. Luke noted he doubted Sallis's vision complaints were due to the fall and he advised her to seek vision care through her primary care provider. (JE 5, p. 96)

Sallis attended an appointment on April 13, 2015, with Peter Rhee, M.D. at the Wolfe Eye Clinic, complaining of blurry and decreased vision in her left eye for a couple of weeks since she fell and hit her head on the cement at work. (JE 7, p. 127) Dr. Rhee listed an impression of papilledema, and ordered magnetic resonance imaging and a neuro consultation. (JE 7, p. 128)

During her appointment with Dr. Luke on April 23, 2015, Sallis complained of blurry vision, back pain, neck pain, and left foot pain. (JE 5, p. 97) Pursuant to an inquiry from the nurse case manager for the defendants, Dr. Luke sent a letter on April 28, 2015, reporting:

> As you know, I saw Ms. Kim Sallis last on 23Apr15 for her ongoing complaints of L-S back, posterior neck and left foot/ankle pain. We are slowly but successfully addressing the back and neck pain complaints with physical and aquatic therapy and oral medications.
>
> MRI of the left foot was undertaken due to lack of progress in the discomfort of Ms. Sallis' left foot. That MRI, dated 7 Apr 15, raises the possibility of a tear of the peroneus longus tendon. In response to this possibility, I would like for Ms. Sallis to see an orthopedic surgeon in consultation for direction in terms of treatment of this tendon and surrounding muscle abnormality.

(JE 5, p. 101)

Sallis attended an appointment with Sangeeta Shah, M.D., a neurologist, on April 28, 2015, complaining of throbbing, pounding headaches behind her eyes, and frontal area. (JE 9, p. 143) Dr. Shah noted that she had been examined by an ophthalmologist who found severe papilledema in both eyes. (JE 9, p. 143) Sallis reported she fell in early March 2015, she was taken to the hospital, and a computerized tomography scan was normal. (JE 9, p. 143) Dr. Shah assessed Sallis with pseudotumor cerebri, and bilateral severe papilledema, and prescribed Diamox. (JE 9, p. 146)

On May 5, 2015, Sallis attended an appointment with Thomas Gorsche, M.D., an orthopedic surgeon. (JE 8, p. 135) Dr. Gorsche reviewed Sallis's medical records and examined her. (JE 8, p. 135) Dr. Gorsche listed an impression of:

> Left foot pain, unknown etiology. There is no orthopedic condition here. I wonder if her pain in general could be related to her pseudotumor cerebri. Certainly it caused neurological changes in her eyesight. She has had physical therapy. I have nothing else to offer her. If she only had the foot injury, she could certainly do sit-down work but it may be that her other condition is causing these generalized body aches.

(JE 8, p. 136)

During her appointments with Dr. Luke on May 6, 2015 and May 19, 2015, Sallis continued to complain of pain in her back neck, and left ankle. (JE 5, pp. 102-06) Pursuant to a request from the nurse case manager for the defendants, Dr. Luke sent a letter on May 22, 2015, opining:

> As you may remember, Ms. Sallis suffered a fall during her work on 4Mar15 that resulted in rather flamboyant complaints of left sided pain from neck to shoulder, chest wall, hip and leg, ankle and foot. However no objective pathology has been found through numerous physical examinations, xrays, MRIs and CT that explain her subjective pain complaints. She has undergone a course of numerous analgesics and muscle relaxants by mouth, and multiple courses of physical and aquatic therapies in an attempt to assist her to work through her perceived or real pain issues and return to normal activity. During this past two months of therapies for presumed muscle strains and contusions from her fall a non-Workers Comp neurologic condition was discovered for which Ms. Sallis continues to receive care through private providers. After review of medical records and a telephone conversation with the primary provider I am satisfied that this condition is not related to her pain complaints, nor caused by her work incurred fall.
>
> Ms. Sallis continues to claim pain throughout her body, though improved, and difficulty with weight bearing in her left foot though orthopedics consultation resulted in a comment of no injury or disease present. As you are likely aware, isolated pain complaints are not ratable for partial permanent impairment according to the AMA's "Guides to Permanent Impairment, Ed. 5." Therefore Ms. Sallis has a zero percent partial permanent impairment resulting from her fall of 4Mar15 at work. She may return to work without restrictions related to her fall. However, she should continue her care referenced above with her private providers, and may receive activity restrictions there as appropriate. However, as I suggested to her at our last encounter on 19May15 it will be very important for her quality of life to walk, move, and increase her activity level without the crutches she seems to think she must have and use. At this time all avenues of therapy to assist her have been exhausted and I still cannot offer a physiologic explanation of her pain complaints.

(JE 5, pp. 107-08; Ex. 6, pp. 20-21) On May 26, 2015, Gallagher Basset Services, Inc. sent a letter to Sallis informing her it had received a medical report from Dr. Luke opining she had not sustained a permanent disability and his report indicated she had a zero percent impairment. (Ex. 6, p. 19)

On June 11, 2015, Sallis returned to Dr. Rhee complaining of blurry vision. (JE p. 129) Dr. Rhee listed an impression of papilledema in both eyes. (JE 7, p. 130)

On March 18, 2016, Sallis attended an appointment with Matthew Thurtell, M.D., a neuro-ophthalmologist at the University of Iowa Hospitals and Clinics ("UIHC"). (JE 10, p. 159) Dr. Thurtell examined Sallis, ordered magnetic resonance imaging, a computerized tomography scan, and assessed her with idiopathic intracranial hypertension, bilateral visual field constrictions, left optic atrophy, and bilateral vision loss. (JE 10, pp. 163-68) Dr. Thurtell opined, "I do not think this is in any way related to her fall with head trauma on the basis of her imaging not showing any abnormalities that would indicate a cause for her increased intracranial pressure (i.e., no skull fracture, intracranial hemorrhage, cerebral edema, or cerebral venous sinus thrombosis)." (JE 10, p. 165)

Sallis returned to Dr. Luke on March 22, 2016, complaining of pain in multiple parts of her body. (JE 5, p. 109) Sallis was taking Flexeril. (JE 5, p. 109) Dr. Luke examined Sallis and diagnosed her with pain complaints in multiple areas of the body with an unclear etiology. (JE 5, p. 11)

On June 1, 2016, Dr. Shah responded to a form letter from counsel for Pizza Hut and Old Republic noting he evaluated Sallis on four separate occasions and wrote he had not seen her from July 14, 2015 until May 19, 2016. (JE 9, p. 155) Dr. Shah agreed he diagnosed Sallis with pseudotumor cerebri, Sallis's pseudotumor cerebri is the cause of her optic neuritis problems, interocular pressure problems, bilateral vision/eye problems, and papilledema problems, he does "<u>not</u> believe the pseudotumor cerebri (and corresponding problems) was the result of a traumatic etiology (such as Ms. Sallis' March 2, 2015 fall) because there was no evidence of hemorrhaging, the MRI of Ms. Sallis' brain was negative, and evaluation showed no evidence of venous blood clotting," and he believes "Sallis' pseudotumor cerebri (and corresponding problems) is due to Ms. Sallis' personal weight problems." (JE 9, pp. 156-57) Dr. Shah acknowledged Sallis may have some residual difficulty with her vision in her left eye, but opined he does not believe the March 2, 2015 incident caused, materially aggravated/accelerated or lit up Ms. Sallis's pseudotumor cerebri and corresponding problems, or was a substantial contributing factor to her pseudotumor cerebri, causing the need for any medical treatment, time off work, restrictions, or permanent impairment. (JE 9, p. 157)

On June 3, 2016, Dr. Gorsche responded to a form letter from counsel for Pizza Hut and Old Republic agreeing he found no objective medical evidence that substantiates Ms. Sallis's subjective left (or right) foot/ankle complaints, agreeing he

does "not believe Ms. Sallis has any diagnosable orthopedic condition of the left (or right) foot/ankle," and agreeing he does "not believe Ms. Sallis has sustained any permanent impairment of her left (or right) foot/ankle." (JE 8, pp. 138-39)

On July 1, 2016, Dr. Rhee issued an opinion stating,

> Because head trauma is a recognized potential cause of increased intracranial pressure, and based upon the patient's reported symptom chronology as well as her exam findings, I feel that her head injury could have either caused or play a role in causing her papilledema observed on examination. It is not possible to say with certainty if it was the sole cause as most causes of papilledema seen in the outpatient setting are idiopathic, and I had not seen Ms. Sallis prior to her reported injury.

(JE 7, p. 132(a); Ex. 4, p. 11) Sallis's attorney sent a follow-up letter to Dr. Rhee, asking him if Ms. Sallis's head trauma on March 2, 2015 "probably caused or materially aggravated her papilledema." (JE 7, pp. 133-34) Dr. Rhee checked, "no." (JE 7, p. 134)

On August 9, 2016, Richard Neiman, M.D., a neurologist, examined Sallis for purposes of an independent medical examination, and issued a letter to Sallis's attorney. (JE 11, pp. 169-71) Dr. Neiman documented Sallis had "[n]o previous problem of the lumbar or cervical spine," and noted, "I have no difficulty as far as the cervical and lumbar spine being related, I am not sure about the vision losses. Pseudotumor cerebri, in my opinion, not traumatically related." (JE 11, pp. 170-71)

After reviewing magnetic resonance imaging, computerized tomography scans, and x-rays, Dr. Neiman provided an opinion on August 23, 2016, concluding there was no relationship between Sallis's pseudotumor and vision loss related to the fall that occurred on March 2, 2015. (Ex. 4, p. 12; JE 11, p. 172) Dr. Neiman further opined:

> She obviously had pre-existing spondylolisthesis at the L5-S1 level, grade 3. However, since the accident, she has had increasing pain as far as the lumbar spine and pain about her neck. Her CT scan of the cervical spine was normal, but does not preclude the possibility of a disk herniation. MRI scan of the cervical spine would be advised. As far as permanency, she continues to have tightness as far as her neck. Assuming she does not have cervical disk disease, she will qualify for Table 15-7 in the American Medical Association Guides to Permanent Impairment, 5th Edition. Section II, intervertebral disk or other soft tissue lesions, Section B, unoperated on, with medically documented injury, pain and rigidity associated with none to minimal degenerative changes on structural test, level of impairment would be 4% impairment of the whole person. She has flexion forward at 45 degrees would give her a 0.5% impairment using Table 15-12, extension at 35 degrees would give her 3% level of

> impairment. Using Table 15-13, lateral bending at 50 degrees right and left no additional level of impairment can be given. Using Table 15-14, rotation to the right at 60 would be 1%, rotation left at 60 degrees would be another 1%. Using Table 15-18, no evidence of any unilateral spinal nerve root impairment. Therefore, level of impairment regarding the 0.5% up to 1% would be a total level of impairment of 10% impairment of the whole person. As far as restrictions, should avoid extensive flexion, extension, and lateral flexion of the cervical spine. No other restrictions.
>
> Regarding the lower back, she had pre-existing degenerative changes. It is hard to assess how much relates to pre-existing limitations due to the fact that she has had this spondylolisthesis, grade 3, at L5-S1. Using DRE Category II would give him a level of impairment between 5% and 8% of the whole person, would be the higher level of 8% would be appropriate. As far as limitations, should avoid excessive flexion, extension, and lateral flexion of the lumbar spine. She does have grade 3 spondylolisthesis. Ideally, I want you to get an MRI scan of the lumbar spine to see what is transpiring. Certainly, it can aggravate her pre-existing spondylolisthesis. Using the Combined Values Table, 10 plus 8 would give her level of impairment of 17% impairment of the whole person. This accurately reflects her current level of impairment of 17% impairment of the whole person. This accurately reflects her current level of impairment related to the fall occurred while delivering pizza.

(Ex. 4, pp. 12-13; JE 172-73)

Pizza Hut and Old Republic sent Dr. Luke additional medical records and requested his opinion regarding Sallis's work injury in September 2016. (JE 5, pp. 112-16) Dr. Luke responded to a form letter from the defendants, agreeing no objective testing explained Sallis's subjective complaints. (JE 5, p. 113) Dr. Luke wrote he had not imposed any restrictions or found an impairment due to the March 2, 2015 incident, but noted Sallis may have restrictions from her private doctor for non-work-related health issues. (JE 5, p. 113) Dr. Luke agreed Sallis reached maximum medical improvement "for her back/neck problems (and related complaints/symptoms) relative to the March 2, 2015 incident as of May 19, 2015." (JE 5, p. 114) Dr. Luke also agreed he believed "Ms. Sallis' numerous and objectively inconsistent continued subjective pain complaints to be related to fibromyalgia and/or other psychosocial stress related to the incarceration of her significant other, which [he does <u>not</u> believe] would be related to the March 2, 2015 incident and/or her former employment with Pizza Hut" and that at most, the March 2, 2015 incident "simply [caused] a <u>temporary</u> aggravation of Ms. Sallis' personal underlying non-work-related back/neck (and related complaints/symptoms) conditions/problems." (JE 5, p. 114) Dr. Luke further agreed he would defer to the opinions of Dr. Gorsche regarding Sallis's ankle complaints and Drs. Shah and Thurtell regarding her pseudotumor cerebri and corresponding problems. (JE 5, p. 115)

Sallis testified that at the time of the hearing she was still experiencing headaches, muscle spasms in her back, daily low back pain, clicking in her neck, and ankle swelling extending to her knees lasting one day, three or four times per month. (Tr., pp. 41-45) Sallis relayed when she sweeps and vacuums she experiences back spasms, she has difficulty sleeping, and she has difficulty getting up from a resting position. (Tr., pp. 45-46) Sallis acknowledged she is only receiving treatment for her pseudotumor cerebri, and she has not received any recent treatment for her cervical or lumbar spine. (Tr., pp. 60-61)

At the time of the hearing Sallis had not worked for several years. She reported she did believe she could work at Pizza Hut, but she could not return to her former employment with Huckleberry's because the position required lifting with bussing tables, and she would have difficulty standing for a full shift. (Tr., pp. 47-48) Sallis testified she planned to complete training as a CNA, but she is now precluded from working as a CNA because, "[w]ell, for one, I just feel like nobody's going to hire me being a CNA with a bad back, nobody's going to hire no CNA with a bum eye, and nobody wants a phlebotomist with a bum eye trying to draw they blood. So I guess my career that part of it, my life is ruined." (Tr., p. 46)

CONCLUSIONS OF LAW

I. CREDIBILITY

A. Crimes of Dishonesty

During the hearing Pizza Hut and Old Republic challenged Sallis's credibility, presenting evidence of past crimes of dishonesty, set forth in Exhibit L. Exhibit L documents Sallis has two convictions for theft in the fifth degree, serious misdemeanors, from March 20, 1995 and September 26, 1994, a felony forgery conviction from September 26, 1996, and a conviction for theft in the fourth degree, an aggravated misdemeanor, from October 1, 2002. (Ex. L, pp. 39, 43-48) Theft is a crime of dishonesty. State v. Dudley, 856 N.W.2d 668, 680-81 (Iowa 2014); State v. Harrison, 800 N.W.2d 46, 51 (Iowa 2011); Iowa R. Evid. P. 5.609. Iowa Rule of Evidence 5.609(b) limits impeachment to ten years from the later of the date of conviction or the date of release from confinement. Griffin v. Pate, 884 N.W.2d 182, 197 (Iowa 2016). No evidence was presented as whether Sallis was incarcerated for the above offenses, and if so, when she was released. All of the convictions occurred more than ten years ago. Sallis's convictions are not considered in assessing her credibility.

B. Credibility Generally

Pizza Hut and Old Republic also challenged Sallis's credibility generally. When assessing witness credibility, the trier of fact "may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of

the facts, and the witness's interest in the [matter]." State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). During the hearing I did not find Sallis to be a credible witness.

Sallis is a poor historian. While I did not observe Sallis engage in any furtive movements, and her eye contact was appropriate, Sallis provided false statements to Pizza Hut on her application concerning her education, claiming she had earned a GED, and a CNA certificate. (Ex. D, p. 9) Sallis also falsely claimed she earned a GED and CNA certificate in her answers to interrogatories. (Exs. 1, p. 1; D, p. 9; I, p. 26) Sallis also posted inconsistent statements regarding her training on Facebook. At hearing Sallis testified she had not completed her GED. (Tr., p. 13)

Sallis also provided inconsistent statements regarding her preexisting conditions. During her deposition counsel for Sallis asked "[d]id you have any back or neck problems prior to the March, 2015, incident?" (Ex. 7, p. 47) Sallis responded, "[n]o." (Ex. 7, p. 47) This is inconsistent with Sallis's medical records. (JE1, JE2) During her deposition Sallis acknowledged she was involved in a motor vehicle accident with a semi-tractor in 1994, and used crutches and a neck brace of a period of time. (Ex. 7, p. 48) At hearing Sallis later acknowledged she had ongoing problems following the 1994 accident. (Tr., p. 70)

II. NATURE OF THE INJURY

Sallis avers she sustained injuries to her head, eyes, back, left leg, and left foot while working for Pizza Hut on March 2, 2015. Pizza Hut admits Sallis sustained a work injury, but contends she did not sustain a permanent impairment.

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

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

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, "[i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

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 deputy commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic 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).

A. Head and Eyes

Sallis has been diagnosed with papilledema in both eyes, pseudotumor cerebri, optic neuritis, bilateral vision/eye problems, and idiopathic intracranial hypertension. (JE 9, p. 146, 156-57; 10, pp. 153, 163-68) Four physicians have provided opinions concerning the nature of Sallis's eye conditions, Dr. Rhee, an ophthalmologist with the Wolfe Clinic, Dr. Shah, a neurologist, Dr. Thurtell, a neuro-ophthalmologist with the UIHC, and Dr. Neiman, a neurologist.

Dr. Rhee initially opined that Sallis's head injury "could have either caused or play a role in causing her papilledema observed on examination. It is not possible to say with certainty if it was the sole cause as most causes of papilledema seen in the outpatient setting are idiopathic, and I had not seen Ms. Sallis prior to her reported injury." (JE 7, p. 132(a); Ex. 4, p. 11) Sallis's attorney sent Dr. Rhee a follow-up letter asking him if Sallis's head trauma "probably caused or materially aggravated her papilledema" and he checked, "no." (JE 7, p. 134)

Dr. Thurtell opined, "I do not think this is in any way related to her fall with head trauma on the basis of her imaging not showing any abnormalities that would indicate a cause for her increased intracranial pressure (i.e., no skull fracture, intracranial hemorrhage, cerebral edema, or cerebral venous sinus thrombosis)." (JE 10, p. 165) Dr. Shah agreed with Dr. Thurtell, and opined he did not believe Sallis's eye conditions were a result of the fall on March 2, 2015, because there was no evidence of hemorrhaging, the magnetic resonance imaging of her brain was negative, and evaluation showed no evidence of venous blood clotting. (JE 9, pp. 156-57) Dr. Shah further opined he does not believe the March 2, 2015, incident caused, materially aggravated, accelerated, or lit up Sallis's pseudotumor cerebri and corresponding problems, or was a substantial contributing factor to her pseudotumor cerebri, causing the need for any medical treatment, time off work, restrictions, or permanent impairment. (JE 9, p. 157)

In his preliminary opinion pursuant to a request for an independent medical examination, Dr. Neiman reported he was not sure about the vision loss, noting "[p]seudotumor cerebri, is in my opinion, not traumatically related." (JE 11, p. 171) After reviewing Sallis's magnetic resonance imaging, computerized tomography scans, and x-rays, Dr. Neiman opined there was no relationship between Sallis's pseudotumor cerebri and vision loss related to the March 2, 2015 fall. (Ex. 4, p. 12; JE 11, p. 172)

No physician has opined Sallis's alleged head injury on March 2, 2015, caused her bilateral eye conditions or any other impairment to her head. Sallis has not met her burden of proof that she sustained a permanent eye condition or head injury as a result of the March 2, 2015, work injury.

B. Left Foot, Ankle, and Hip

On May 5, 2015, Dr. Gorsche, an orthopedic surgeon, performed an independent medical examination of Sallis, diagnosed her with left foot pain of unknown etiology, and opined there was no orthopedic condition present, and stated he wondered if her pain could be related to her pseudotumor cerebri. (JE 8, p. 136) Dr. Gorsche later responded to a form letter from counsel for Pizza Hut and Old Republic agreeing he found no objective medical evidence substantiating Sallis's subjective left or right foot/ankle complaints, agreeing he does not believe she has any diagnosable orthopedic condition of the left or right ankle, and he does not believe she sustained any permanent impairment to her left or right foot or ankle. (JE 8, pp. 138-39) Dr. Luke deferred to Dr. Gorsche regarding Sallis's ankle complaints. (JE 5, p. 115) Sallis did not provide a contrary opinion at hearing. No opinion was provided concerning her alleged hip condition. Sallis has not met her burden of proof that she sustained a permanent impairment to her left or right ankle, foot, or hip as a result of the March 2, 2015, work injury.

C. Cervical Spine, Lumbar Spine, Shoulder, and Chest

Two physicians have provided opinions regarding Sallis's alleged impairments to her cervical spine and lumbar spine, Dr. Luke, the treating occupational medicine physician, and Dr. Neiman, a neurologist who performed an independent medical examination of Sallis. Dr. Luke opined Sallis has sustained a zero percent partial permanent impairment resulting from her fall on March 4, 2015. (JE 5, p. 107) Dr. Neiman found Sallis sustained a permanent impairment of ten percent to the whole person to her cervical spine, and eight percent to the whole person for her lumbar spine, for a combined seventeen percent impairment of the whole person. (Ex. 4, pp. 12-13; JE 172-73) I find the opinion of Dr. Luke, the treating physician more persuasive than the opinion of Dr. Neiman.

In his opinion letter Dr. Neiman noted he reviewed magnetic resonance imaging of Sallis's brain and orbit taken on April 13, 2015, which appeared to be normal, a head computerized tomography scan from March 4, 2015, which appeared to be normal, lumbar spine x-rays taken on March 4, 2015, indicating grade three spondylolisthesis at L5-S1. (JE 112, p. 172) Dr. Neiman did not provide a summary of Sallis's medical records, and the record does not support he was provided with Dr. Luke's treatment records, or any other treatment records. Dr. Neiman documented Sallis had "[n]o previous problem of the lumbar or cervical spine." (JE 11, p. 170) This is incorrect. Sallis testified at hearing she told Dr. Neiman that she did not have prior back and neck problems. (Tr., p. 83) Dr. Neiman's opinion is not based on a complete history. Sallis has a history of receiving treatment for her lumbar spine prior to March 2015. Dr. Neiman's opinion is also prefaced on the assumption Sallis does not have cervical disk disease, and is conclusory. I do not find his opinion persuasive.

No expert opinion has been provided supporting Sallis sustained a permanent impairment to her shoulders or chest as a result of the March 2, 2015 fall. I conclude Sallis has failed to meet her burden of proof that she sustained permanent injuries to her cervical spine, lumbar spine, shoulders, and chest as a result of the March 2, 2015 fall. Given I found Sallis failed to meet her burden of proof that she sustained a permanent impairment arising out of and in the course of her employment with Pizza Hut, it is not necessary to decide whether Sallis received an overpayment of temporary benefits.

II. MEDICAL EXPENSES

Sallis seeks to recover medical expenses set forth in Exhibit 5.[1] Pizza Hut and Old Republic aver the expenses are unauthorized and unrecoverable.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. 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 necessity therefore, 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). The Iowa Supreme Court has held an employer may be responsible for unauthorized care "upon proof by a preponderance of the evidence that such care was reasonable and beneficial," meaning "it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Gwinn, 779 N.W.2d at 206.

Medicare paid $319.65 to CVMS for computerized tomography scans of Sallis's cervical spine and head, and x-rays from March 4, 2015, leaving an outstanding balance of $113.65. (Ex. 5, pp. 1a-1b, 1d) Pizza Hut and Old Republic contend the

[1] Sallis submitted Exhibit 5 following the hearing. She did not number the individual pages of Exhibit 5, as required by this Agency. The undersigned numbered the pages of Exhibit 5, as pages 1a through 1y.

care was unauthorized. Sallis sustained a work injury on March 2, 2015, which resulted in a temporary disability. The treatment Sallis received is related to her work injury. Pizza Hut and Old Republic are responsible for the expenses. (Ex. 5, pp. 1a-1b, 1d)

Pizza Hut and Old Republic paid $15,134.84 for treatment Sallis received at Unity Point Health between March 4, 2015, and March 11, 2016. (Ex. 5, pp. 1a-1b) Sallis alleges Pizza Hut and Old Republic should reimburse her for her outstanding balance of $725.59. (Ex. 5, p. 1a) Sallis has provided no explanation for the charges in her summary. Sallis is not entitled to recover the $725.59 she seeks.

Sallis further contends she is entitled to recover $292.55 from Peoples Community Health Clinic from October 19, 2015 through February 18, 2016, and $3.02 from CVS Pharmacy. (Ex. 5, pp. 1a, 1c, 1w-1y) Sallis has not provided an explanation of the treatment she received. The treatment was received after Dr. Luke opined Sallis was not in need of additional treatment. (JE 5, pp. 107-08; Ex 6, pp. 20-21) Sallis has not established she is entitled to recover $292.55 for treatment she received from Peoples Community Health Clinic from October 19, 2015 through February 18, 2016, or the $3.02 from CVS Pharmacy.

ORDER

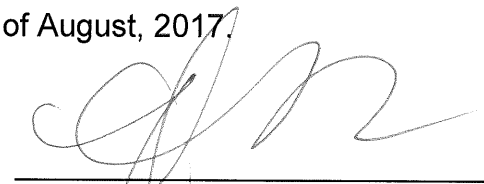
IT IS THEREFORE ORDERED, THAT:

Defendants are responsible for the cost of the CVMS imaging Sallis received on March 4, 2015, and shall pay the outstanding balance of one hundred thirteen and 65/00 dollars ($113.65).

Claimant shall take nothing additional in this proceeding.

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

Signed and filed this 16th day of August, 2017.



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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.