BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RHONDA K. STARR,

Claimant,

vs.

BEE LINE COMPANY,

Employer,

and

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,

Insurance Carrier,
Defendants.

File No. 5046190

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Rhonda Starr, claimant, filed a petition in arbitration seeking workers' compensation benefits from Bee Line Company (Bee Line) and its insurer Travelers Property Casualty Company of America, as a result of an alleged injury she sustained on December 7, 2012 that allegedly arose out of and in the course of her employment. This case was heard in Davenport Iowa, Iowa and fully submitted on November 5, 2014. The evidence in this case consists of the testimony of claimant, William Starr and Kerry Dobereiner and Claimant's Exhibits 1 through 9 and 11 and Defendants' Exhibits A through I.

ISSUES

1. Whether claimant sustained an injury on December 7, 2012 which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of permanent disability and, if so;

3. The extent of claimant's disability.

4. Whether claimant is an odd-lot employee and entitled to permanent total disability.

5. The commencement date of any permanent disability benefits.

6. Whether claimant is entitled to payment of medical expenses.

7. Payment for the independent medical examination (IME) performed by Richard Neiman, M.D.

8. Assessment of costs.

The defendants have stipulated that if a finding of causation is made that the claimant has permanent impairment, the defendants will pay the cost of the IME. (Transcript, page 8) The stipulations contained in the Hearing Report are accepted and incorporated into this decision as if fully set forth. The stipulated weekly rate of $409.73 is accepted. After the hearing claimant withdrew a claim for penalty benefits.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Rhonda Starr, claimant, was 49 years old at the time of the hearing. Claimant graduated from high school, but has not had any significant education prior to her alleged injury on December 7, 2012. At the time of the hearing, claimant was attending a community college with the goal of obtaining an associate's degree in management accounting. She expects to graduate in the fall of 2016. (Exhibit C, page 3) Claimant received assistance through the Iowa Department of Vocational Rehabilitation to attend this program. She has been informed that there should be positions available in her area when she graduates paying $15.00 to $17.00 per hour. (Ex. C, p.14) Claimant testified she is able to use typical office software programs such as Word and Excel. Before her employment with the Bee Line Company, claimant worked in fast food, retail, in a casino, as a certified nurse's aide, bartender/bar manager and lawn care. (Ex. A, p. 2; Ex. E, p. 6; Tr. p. 53) Claimant was not employed at the time of the hearing. Claimant worked in the lawn care business for approximately 15 years. Claimant's husband owned the lawn care business. Claimant quit work as a landscaper after she was diagnosed with Lupus. Claimant has also been told that she might have chronic arthritis, rather than Lupus. (Tr. p. 64) Claimant was told that exposure to sunlight would progress lupus. Claimant said other than Lupus, her health was good before December 7, 2012.

Claimant received chiropractic treatment before December 2012. Claimant described her treatment as occurring occasionally. (Tr. p. 25) The records show that between August of 2001 and September of 2012 claimant was seen by Allen Diercks, D.C., approximately 33 times. (Ex. D4, pp. 2 – 5)

Claimant experienced neck and shoulder pain in November 2008. (Ex. D2, pp. 5, 9) Claimant was told she had a pinched nerve in her neck, received physical therapy and returned to work without restrictions.

Claimant began her employment with Bee Line in October 2007 and was laid off on September 5, 2013. (Ex. E, p. 1)

Claimant testified that the two primary jobs she performed for Bee Line were material handler and assembler. The job description, assembler, requires employees to be able to lift, push or pull 50 pounds multiple times. (Ex. E, p. 12)

On Friday December 7, 2012, claimant was working as an assembler at Bee Line. Claimant was using a ball peen hammer to insert a spring pin. Claimant said she was using the heaver ball peen hammer, the 16 ounce hammer.[1] Claimant said that her upper back began to hurt when she took her break at 9:00 in the morning. (Tr. p. 36; Ex. C, p. 8) She reported her injury to her supervisor. (Tr. p. 37) Claimant contacted her chiropractor and saw him that day. (Tr. p. 38) Claimant returned to work the next Monday and was not able to complete her work.

Bee Line referred claimant to Genesis Occupational Health. Claimant had MRIs in February of 2013. Claimant was informed she had muscle strain and was given restrictions and a prescription. (Tr. p. 41) Claimant said that after her MRIs she did not receive any additional treatment from defendants. (Tr. p. 43) Claimant went to her family physician Dr. Thomas, who referred her to Myles Luszczyk, M.D. Claimant said the Dr. Luszczyk told her that surgery was a last resort and did not recommend surgery at this time; rather she should find work that was not so physical. (Tr. p. 44) Claimant said she was told by Richard Neimann, M.D., that surgery would be a last resort and that she should stop smoking and lose weight. (Tr. p. 44)

Claimant said that since her injury she has stopped hunting, four wheeling, carry laundry baskets and limited her lifting to 15 pounds. (Tr. p. 46)

On cross examination, claimant admitted that she used a hammer with her initials on it while at work. She also conceded that the only hammer with her initials on it was an 8 ounce ball peen hammer. (Tr. p. 50) Claimant told Genesis Occupational Health on December 11, 2012 she was using an eight ounce hammer at work when she was injured. (Ex. D1, p. 1) Claimant testified in her deposition that she did not deer hunt on December 3, 4, or 5, 2012 due to the cold. (Ex. C, p. 13) The temperature during those days varied between a low of 28 and high of 68. (Ex. G, p. 2) At the time of the hearing, no physician had recommended surgery and she had no scheduled appointments with a physician about her back. (Tr. p. 58) Claimant was taking no medicine for her spine.

William Starr, claimant's husband testified at the hearing. He said claimant was active before her injury and that changed after her injury. He said that claimant limits what she carries and has reduced her household chores and household maintenance. (Tr. pp. 78 – 80)

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[1] There is some confusion in the record as to whether the claimant's heavier hammer was 16 or 18 ounces. It appeared from the proffered exhibit 10 that the heavier hammer was 16 ounces. (Tr. p. 34)

Kerry Dobereiner, CFO and vice president of Bee Line testified. Ms. Dobereiner testified she was told by Steve Woodward, a vice president of operations that he examined the jobsite on the day of claimant's injury and determined that there was an 8 ounce hammer being used. (Tr. p. 86)

Claimant went to Dr. Diercks on December 7, 2012. The brief note of that visit stated claimant reported no specific onset. (Ex. 5, p. 1) Claimant retuned to Dr. Diercks on December 10 for another adjustment.

On December 11, 2012, claimant was examined by Cheryl Benson, PA-C, at Genesis Occupational Health. Claimant reports she noticed a pain in her neck at her break in the morning of December 7, 2012. She also reported numbing in her hands and arms. PA-C Benson's analysis was Cervicothoracic pain/strain overuse pattern. (Ex. 4, p.1; Ex. D1, pp. 1, 3) Claimant was placed on restricted duty. Claimant was provided physical therapy. On January 25, 2013, claimant reported a flair in her symptoms after lifting a 25 pound box in physical therapy. She was provided a 15-pound lifting limit at that time. (Ex. 4, p. 8) On February 8, 2013, Rick Garrels, M.D., recommended claimant have a MRI. (Ex. 4, p. 9) A MRI of the cervical spine showed.

> IMPRESSION: 1. Broad-based bulging disk at C5-C6 with asymmetric herniation/protrusion involving the disk in the right paracentral region abutting and deforming cord with narrowing of the right lateral recess, possibly irritating exiting nerve root.
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> 2. Central disk protrusion at C4-C5 abutting cord.
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> 3. Minimal disk bulging at C6-C7.

(Ex. 6, p. 2) A MRI of the thoracic spine showed,

> IMPRESSION:
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> 1. Large disk extrusion at T6-T7 extending into the left lateral recess resulting in nerve root compression.
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> 2. Small right paracentral disk protrusion at T7-T8 with a 2nd small disk protrusion at the T5-6 level.

(Ex. 6, p. 4)

On February 22, 2013, Dr. Garrels noted that the MRI showed multilevel disk disease. He said, "The patient's injury mechanism does not support those MRI findings. She described doing a small assembly type job putting spring pins into a part." (Ex. 4, p. 10) In response to a letter dated February 25, 2013 from the insurance carrier, Dr. Garrels sent an undated letter concerning the claimant's injury. Dr. Garrels was not able to relate the thoracic or cervical injury to a work injury. He was not able to relate the MRI findings to a work injury. He found the claimant at maximum medical

improvement (MMI) for her mild strain, which correlated with claimant's work exposure. (Ex. D1, pp. 11, 12) On April 16, 2013, Dr. Garrels wrote a letter and concluded that the claimant's condition was not work related and therefore the TENS unit and home traction unit she was using was not related to a work injury. (Ex. D1, p. 17) On August 26, 2014, Dr. Garrels wrote he agreed with Dr. Luszczyk's opinion the degenerative changes shown on the MRI are chronic and not related to the December 7, 2012 event. He also noted that claimant did not allege onset of symptoms during a work activity, but while on break. He reviewed claimant's job and did not believe that the job demands provided any primary risk factors for the neck. (Ex. D1, p. 17)

On April 15, 2013, claimant was seen by Mary Jo Russell, PA-C. Claimant reported she performed heavy lifting at work. Claimant said her job "contributed to her pain." (Ex. 7, p. 1) Claimant reported that she did not have a specific injury on December 7, 2012 but her pain started when she was on break. (Ex. 7, p. 1) PA-C Russel's impression was:

> IMPRESSION:
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> 1. Cervical pain with degenerative changes.
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> 2. Thoracic pain with degenerative changes.
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> 3. Possible carpal tunnel syndrome.

(Ex. 7, p. 3) On May 6, 2013, Myles Luszczyk, D.O., examined claimant. His assessment was,

> ASSESSMENT: The assessment at this point in time is a 47-year-old female with axial-based thoracic and cervical spine with disc herniations in the thoracic spine and stenosis in the cervical spine.

(Ex. 7, p. 6) Dr. Luszczyk recommended against surgery. He provided restrictions of light duty and no lifting of more than 15 pounds. (Ex. 7, p. 8) On August 13, 2013, he raised claimant's lifting restriction to 25 pounds. (Ex. 7, p. 9) On September 14, 2014 Dr. Luszczyk wrote,

> I do feel strongly that these treatment records are relevant with respect to the cause of Mrs. Starr's back complaints and do show that she was having issues with respect to her axial spine prior to the injury date on December 7, 2012. Again, I do reaffirm that I do not feel that Mrs. Starr's injuries were caused by the event on December 7, 2012. I do feel that these most likely were preexisting injuries with respect to the disk herniations that she was noted to have on her thoracic and cervical spine MRI's. I feel that this is more related to her medical history with respect to a history of lupus, as well as a chronic history of tobacco abuse. Although I do not feel that her disk herniations were caused by the injury that

> occurred on December 7, 2012, there is still possibility that her pain may have been exacerbated by the injury that occurred on December 7, 2012.

(Ex. D5, p. 5) On September 14, 2014, Dr. Luszczyk wrote that he did not believe the repetitive motion of using a ball peen hammer caused the claimant's disk herniation to the thoracic spine. He opined that claimant's Lupus and history of chronic smoking was a more likely reason for her disk herniation. Dr. Luszczyk wrote,

> I do feel, however, that Mrs. Starr did have a preexisting degenerative condition in the thoracic spine as well as the cervical spine, and certainly this action may have flared up her preexisting condition and exacerbated her pain. However, as stated before, I do not feel that this action was the root cause of why she developed these disk herniations.

(Ex. 9, p. 1)

Richard Neiman, M.D., performed and IME on May 14, 2014. Dr. Neiman wrote, "After review of extensive records and examination of Rhonda Starr, it is my opinion that the injury occurring on December 7, 2012, either aggravated a preexisting problem or caused the disk extrusion at multiple levels." (Ex. 8, p. 4) Dr. Neiman recommended restrictions of lifting of 10 to 15 pounds with occasional lifting of up to 30 pounds and that claimant should be able to change her position from sitting, standing and moving about. He believed claimant could perform light work. Dr. Neiman stated he disagreed with Dr. Luszczyk as to the cause of claimant's current symptoms. He stated "Again, although she may have had preexisting problems, it was not symptomatic until the time of injury, which occurred on December 7, 2012." (Ex. 8, p. 4) I accept Dr. Neiman's restrictions as claimant's current restrictions.

Claimant is limited to sedentary and some light work. I find claimant has a 40 percent loss of earning capacity.

CONCLUSIONS OF LAW

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

performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The parties dispute as to whether claimant neck and back injury arose out of her employment. They dispute whether the December 7, 2012 injury was a work related injury or was a condition personal to claimant.

The Iowa Supreme Court in Meyer v. IBP, Inc., 710 N.W. 2d 213, (Iowa 2006) set forth the requirements for a workers' compensation claim. The court held,

> Our workers' compensation statute provides coverage for "all personal injuries sustained by an employee arising out of and in the course of the employment." Iowa Code § 85.3(1); This statutory coverage formula gives rise to four basic requirements: (1) the claimant suffered a "personal injury," (2) the claimant and the respondent had an employer-employee relationship, (3) the injury arose out of the employment, and (4) the injury arose in the course of the employment. The failure of any one requirement results in a denial of a claim for benefits. Yet, all four elements are woven together by the common threads of injury and employment. The first two elements establish the existence of the injury within the ambit of the workers' compensation statute, and the third and fourth requirements work hand in hand to establish a connection between the injury and the work. [citations omitted]

Id. at 220

> As to the element of arising out of employment the court stated;
>
> On the other hand, the "arising out of" employment element has a different focus. It means there must be a "causal relationship between the employment and the injury." Although we have attached a causation label to this element from time to time, it has a special definition in workers' compensation law. The element requires that the injury be a natural incident of the work, meaning the injury must be a "'rational consequence of the hazard connected with the employment.'" In other words, the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of ... employment.'" See 1 Larson at 9-1 ("Injuries arising out of risks or

> conditions personal to the claimant do not arise out of the employment unless the employment contributes to the risk or aggravates the injury.").

Meyer at 222.

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

> When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion.

Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Claimant argues in her brief that defendants reported, in the First Report of Injury, that claimant injured her upper back while hammering pins. (Claimant's Brief p. 8) A First Report of Injury is only admissible to show that defendants had notice. Iowa Code section 86.11. No information contained in the First Report of Injury report may be used as evidence, except for notice. Arndt v. City of LeClaire, 728 N.W. 2d 389, 394 (Iowa 2007). Claimant's assertions in her brief concerning the information in the First Report of injury are not considered.

In this case there are three primary medical opinions in this case Drs. Luszczyk, Garrels and Neiman. All three opinions hold that claimant had long standing thoracic and cervical problems before December 7, 2012.

Dr. Luszczyk wrote in April 2014 that there was a low probability that the injury on December 7, 2012 related to what he saw on the MRI. In September of 2014 he stated that claimant's injuries were preexisting to the December 2012 injury and more related to Lupus and tobacco abuse. Dr. Luszczyk stated that it was a possibility that claimant's pain was exacerbated by the December 7, 2012 injury. A "possibility" does not meet the correct burden of proof for a claimant in a workers' compensation case. If standing alone, Dr. Luszczyk's opinion would not support a finding that claimant had an

injury that arose out of her employer, Bee Line. Dr. Luszczyk's September 2014 opinion was in response to a question from defendant's attorney concerning the use of an 18 ounce ball-peen hammer. (Ex. D5, p.3) He was not asked as to any other work activities that might aggravate her back/neck condition.

Claimant's injury was treated by Genesis Occupational Health as a work-related injury until Dr. Garrels issued an opinion sometime after February 25, 2013. In his letter he stated that claimant's job involved handling small parts to add a spring using a hammer. He said in this letter that there was no heavy lifting or abnormal positions. (Ex. D1, p. 11) While claimant was installing spring pins on December 7, 2012 she also worked on a cradle[2] before she worked on the spring pins. (Tr. p. 29) The job of assembler required her to lift push and pull 50 pounds. Claimant's job was more than inserting spring pins with an 8 or 16 ounce hammer. I do not find Dr. Garrels' opinion convincing concerning whether claimant has a work-related injury that manifested on December 7, 2012. Dr. Garrels does not adequately explain why claimant's back pain occurred and continued. He had a limited view of claimant's work as an assembler.

Dr. Neiman's report is the most thorough report by any physician in evidence. His reports review more of claimant's medical records than Dr. Luszczyk and Dr. Garrels. His finding that the injury occurring on December 7, 2012 had aggravated her condition is most consistent with the medical records and lay testimony. While claimant had some history of a pinched neck years before her December 2012 injury, it was not interfering with her work and she had no restrictions.

I find that claimant suffered a work injury on December 7, 2012. It was a result of her work with Bee Line. The claimant permanently aggravated and/or lighted-up her cervical and thoracic conditions as a result of her work at Bee Line. Claimant's injury was a result of her work activities.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure

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[2] According to claimant's testimony a cradle is, "A. It's a piece that goes around the tire of the semi. And then they stick a laser on the end of it and shoot it down the middle of the semi to see how straight it is. Q. So is this a piece of metal? A. Yes. It was pretty big." Tr. p. 27).

to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

While she has significant restrictions, claimant has failed to show that she cannot perform jobs in the competitive labor market. No vocational evidence was produced to support her odd-lot claim. Claimant did not provide convincing evidence that she could not obtain work. Claimant did not show that she did not have skills that she could use for employment in the competitive labor market.

Defendants have shown some inconsistencies in the claimant's testimony. Claimant was not using an 18 ounce hammer and probably using an 8 ounce hammer on December 7, 2012. Claimant's testimony that it was too cold to hunt does not match up well with the weather reports. That being said, the undisputed evidence does show that while at work on December 7, 2012 claimant experienced significant pain in her back. The pain manifested itself during her morning break. The record is also

undisputed that claimant had an underlying degenerative condition in her cervical and thoracic spine that existed before December 7, 2012.

Claimant has significant lifting restrictions. She has a high school education. She was attending community college at the time of the hearing. Claimant's age is not a positive factor in employment. She has not had any surgical intervention for her thoracic and cervical injuries. She cannot return to her prior position as assembler. She is unable to return to landscaping and some bartending jobs that would exceed her limitations. I found claimant has a 40 percent loss of earning capacity. I find claimant has a 40 percent industrial loss. This entitled claimant to 200 weeks of permanent partial disability benefits. I find the commencement date for permanent partial disability benefits is February 22, 2013, the day she was released to return to work by Dr. Garrels.

Defendants agreed at the hearing to pay for the IME expenses of Dr. Neiman if a finding of compensability was made in this case. As I have found, claimant had a permanent work injury on December 7, 2012, defendants shall pay the IME costs.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant is requesting payment for medical bills that were not paid by the defendant in the amount of $480.46 and the cost of the TENS unit. (Ex. 2, pp. 1 – 6) I find these medical expenses are related to her December 7, 2012 injury and shall be paid by defendants.

Defendants shall also provide ongoing medical care for claimant for her thoracic and cervical injury.

ORDER

Defendants shall pay claimant two hundred (200) weeks of permanent partial disability benefits commencing February 22, 2013 at the rate of four hundred nine and 73/100 dollars ($409.73) per week.

Defendants shall pay medical bills as set forth in this decision. Any expenses claimant paid out of pocket shall be reimbursed directly to her.

Defendants shall provide ongoing medical care to the claimant for her work injury.

Defendants shall pay the IME costs in this case.

All past due amounts shall be paid in a lump sum with interest as provided by law.

Defendants shall pay costs as set forth in 876 IAC 4.33.

Defendants shall file subsequent reports of injury (SROI) as required by this agency.

Signed and filed this 21st day of April, 2015.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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