BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NOHELY MEDINA,	:	
Claimant,	:	File No. 20007881.01
vs.	:	
ROTARY ANN HOMES, INC.,	:	ARBITRATION DECISION
Employer,	:	
and	:	
IOWA LONG TERM CARE RISK MANAGEMENT ASSOCIATION,	:	
Insurance Carrier, Defendants.	:	Head Note Nos.: 1108, 1803

STATEMENT OF THE CASE

The claimant, Nohely Medina, filed a petition for arbitration seeking workers' compensation benefits from Rotary Ann Homes, Inc., employer, and Iowa Long Term Care Risk Management Association, insurance carrier. The claimant was represented by Emily Schott. The defendants were represented by Alison Stewart.

The matter came on for hearing on September 29, 2021, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via Court Call videoconferencing system. The record in the case consists of Joint Exhibits 1 through 6; Claimant's Exhibits 1 through 7; and Defense Exhibits A through E. The claimant testified at hearing. Amy Pedersen served as the official reporter for the proceedings. The matter was fully submitted on November 16, 2021 after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained an injury which arose out of and in the course of employment on April 26, 2020.

2. The defendants dispute the alleged injury is a cause of any temporary or permanent disability, although it is stipulated the defendants have paid a week of benefits.

3. The claimant is seeking additional temporary disability benefits from May 4, 2020, through June 18, 2020.

4. Whether the claimant is entitled to any permanency benefits and if so, what is the nature and extent of such permanent disability. The commencement date of payments is also disputed.

5. The weekly rate of compensation is disputed.

6. The claimant seeks payment for an Iowa Code section 85.39 independent medical examination (IME).

7. Claimant seeks alternate medical care.

8. Whether claimant is entitled to costs.

STIPULATIONS

Through the hearing report, the parties stipulated to the following. These stipulations have been accepted and are binding on the parties:

1. The parties had an employer-employee relationship.

2. Past medical expenses are not in dispute.

3. The defendants have not asserted any affirmative defenses.

4. Defendants have paid one week of compensation.

FINDINGS OF FACT

Claimant Nohely Medina was 31 years old as of the date of hearing. She testified live and under oath at the video hearing. She is a highly credible witness. She appeared professional. She is articulate and a good communicator. Her answers to questions were straightforward and responsive. She was an excellent historian, and her testimony was consistent with other portions of the record. There was nothing about her demeanor which caused me any concern for her truthfulness.

Ms. Medina testified that she is married at the time of her alleged injury with four children. She resides with her family in Renwick, Iowa. She contends this entitles her to 6 exemptions for weekly rate calculation purposes. The defendants contend she is only entitled to 5 exemptions based upon her testimony that, in 2020, her parents claimed one of her children as a dependent.

Ms. Medina testified she did not graduate from high school or obtain a high school equivalency. She has taken courses in phlebotomy and nursing since leaving high school. She does have three separate certificates: certified medical assistant (CMA), certified nursing assistant (CNA) and phlebotomy.

During her adult work history, Ms. Medina primarily worked a series of short-term and somewhat physically demanding jobs. (Claimant's Exhibit 2, pages 24-25) Ms. Medina was also raising children during this time. Her work history is varied and interesting. She first worked for Rotary Ann Homes, Inc., (hereafter, "Rotary") in April 2018. She became reemployed with Rotary as a CNA in April 20, 2020. (Transcript, page 18) She testified that she was hired to work 32 to 40 hours per week at the hourly rate of $13.50.

Ms. Medina had some back issues prior to starting at Rotary. At hearing, she testified in some detail about her condition prior to her alleged work injury. "I've always had back pain - - nothing severe, nothing that would restrict me from working." (Tr., p. 22) She testified that the pain she experienced previously was not as severe, never prevented her from working and never resulted in any medical restriction. (Tr., p. 23) There are treatment notes in the record from South Valley Primary Care dating back to September 2010, which documented a motor vehicle accident resulting in some low back pain. (Jt. Ex. 1, p. 3) In 2018 and 2019, she underwent some chiropractic care for sacroiliac joint sprain. (Jt. Ex. 2) She also had some documented treatment through her family clinic in 2019.

Based upon the record of evidence it appears that Ms. Medina's prior low back condition was intermittent and not severe. There is no evidence in this record of any permanent impairment prior to the alleged work injury. When she was hired by Rotary, she underwent a preemployment physical which revealed nothing in relation to her back. (Tr., p. 20)

On April 26, 2020, after starting work for Rotary on April 20, 2020, Ms. Medina testified that she sustained a work injury.

> At the time of the injury I was transferring a resident from her wheelchair to the toilet, and after she was done I was trying to transfer her, but I felt her weight just not helping at all, so I tried calling for help but nobody was able to help, just because everybody was busy with a two-assist.
>
> So she did mention she trusted me, so I tried my best. I picked her up, turned her around, set her on her wheelchair, but I heard a pop. . . .

(Tr., p. 21) She was able to continue working but she continued to feel pain in her back the following day. (Tr., p. 22) It was localized in her lower right back. (Tr., p. 22)

Ms. Medina first saw a physician for this on April 29, 2020. Dustin Smith, M.D., documented the following:

> She was assisting a resident with transfers at Rotary nursing home. She heard a pop in her back and had pain.
>
> She was seen for back pain a few months ago and took meds and saw the chiropractor and essentially recovered.
>
> She said the last time was diffuse low back pain.
>
> This time is more localized in the right low back. She is using a back brace with little help
>
> No help with Tylenol.
>
> She has pain with walking. She is unable to lift.
>
> No real bowel or bladder problems. Painful to sit.
>
> No sciatica but some pain into the right buttock.

(Jt. Ex. 3, p. 25)

Ms. Medina testified that the defendants authorized this care. (Tr., p. 25) Dr. Smith recommended physical therapy and chiropractic care. He assigned a 10-pound lifting restriction. (Jt. Ex. 3, p. 28) Ms. Medina returned to work on April 30, 2020 and worked under those restrictions. She returned to Dr. Smith on May 4, 2020, and the restrictions were increased to include no prolonged standing, stooping or bending and not pushing more than 20 pounds. (Jt. Ex. 3, p. 31) Ms. Medina started physical therapy on May 6, 2020. (Jt. Ex. 5) Her symptoms worsened on May 13, and she was unable to work. Dr. Smith took her off work for two days. (Jt. Ex. 3, p. 34) Between the alleged work injury and June 22, 2020, Dr. Smith ended up taking Ms. Medina off work for a total of 12 days. (Jt. Ex. 3, pp. 35, 39, 52, 58) On May 20, 2020, Dr. Smith ordered an MRI because she was not improving with physical therapy and chiropractic care. The MRI revealed Ms. Medina had congenitally short pedicles, disc bulge at L4-5 and bilateral degenerative facets with severe central canal narrowing. (Jt. Ex. 4, p. 65)

Following the MRI, Dr. Smith referred Ms. Medina to Trevor Schmitz, M.D., at Iowa Ortho. On July 9, 2020, Dr. Schmitz diagnosed intervertebral disc disorders with myelopathy, lumbar facet arthropathy. (Jt. Ex. 6, p. 73) He reviewed the MRI and counseled Ms. Medina. He recommended surgery. I find this evaluation was undoubtedly an evaluation of permanency as defined in Iowa Code section 85.39.

In a July 29, 2020, letter to the insurance carrier, Dr. Schmitz opined that the diagnosis was "lumbar stenosis at L4-L5 secondary to a disc bulge/herniation with central stenosis" and opined this condition was "at a minimum aggravated by her

employment and the incident on April 26, 2020, when she was lifting a resident off a toilet." (Jt. Ex. 6, p. 75) He confirmed his surgical recommendation at that time as well. After conferring with defense counsel, however, Dr. Schmitz changed his opinion in October 2020. (Jt. Ex. 6, p. 78) There is no real explanation in the record for his sudden change of opinion. I do not find his opinions credible.

Ms. Medina's treatment ended after Dr. Schmitz's opinion. She has received no additional treatment of any kind since her July evaluation. She was evaluated by Mark Taylor, M.D., at her attorney's request in June 2021. Dr. Taylor reviewed appropriate medical records, took clinical history, and examined Ms. Medina. At that time, Ms. Medina still complained of similar symptoms. (Cl. Ex. 1, p. 8) He diagnosed stenosis of the lumbar spine and the disc bulge/herniation. He opined that Ms. Medina's alleged April 26, 2020, work injury was a substantial contributing factor to this condition. (Cl. Ex. 1, p. 12) He had the correct medical history and fully understood Ms. Medina's preexisting condition. He recommended surgical referral and assigned an 8 percent whole body rating pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, along with a 20-pound lifting restriction. (Cl. Ex. 1, pp. 12-13)

In response, defendants had Ms. Medina examined by Charles Mooney, M.D. He opined that her condition was unrelated to any April 26, 2020, work injury. Rather her condition, he opined, was related to her preexisting condition. (Def. Ex. A, p. 14) He did acknowledge that Ms. Medina experienced an "escalation" of her symptoms but opined that those symptoms were merely a temporary aggravation of her preexisting condition. (Def. Ex. A, p. 14) He did not seem to acknowledge the diagnosis of disc bulge or herniation in his expert report. Dr. Mooney seemed to mistakenly believe that Ms. Medina was symptomatic at the time of her alleged work injury; there is no evidence for this proposition in the record.

At the time of hearing, Ms. Medina testified she continues to experience back pain from her injury. It is a sharp pain on the right side which radiates into her right side. She testified she has difficulty sitting, particularly in a car. She has difficulty performing various activities of daily living.

CONCLUSIONS OF LAW

The first question submitted is the correct rate of compensation. There are actually two disputed issues: the average wages and the number of exemptions.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

Under section 85.36(7), the gross weekly earnings of an employee who has worked for the employer for less than the full 13 calendar weeks immediately preceding the injury are determined by looking at the earnings of other similarly situated employees employed over that full period, but if earnings of similar employees cannot be determined, by averaging the employee's weekly earnings computed for the number of weeks that the employee has been in the employ of the employer.

In calculating the rate of compensation, the injured worker's marital status and number of dependents entitled to be claimed are necessary. "The weekly benefit amount payable to any employee for any one week shall be upon the basis of eighty percent of the employee's weekly spendable earnings, . . ." Iowa Code section 85.37 (2021) Weekly spendable earnings is defined as the amount remaining after payroll taxes are deducted from gross weekly earnings. Iowa Code section 85.61(9).

Iowa Code section 85.61(6) defines payroll taxes:

> "Payroll taxes" means an amount, determined by tables adopted by the workers' compensation commissioner pursuant to chapter 17A, equal to the sum of the following:
> a. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

Iowa Code section 85.61(6).

The agency "has long held that actual exemptions claimed on the income tax return controls. . . . A claimant is typically limited to those exemptions claimed on his tax returns." Kayser v. Farmers Cooperative Society, File No. 5034699 (Arb. March 13, 2012) *citing* DeRaad v. Fred's Plumbing & Heating, File No. 1134532 (App. January 16, 2002) *and* Webber v. West Side Transport, File No. 1278549 (App. December 20, 2002). In essence, the agency recognizes a presumption that the claimant is entitled to the number of exemptions which were actually claimed on their tax returns. The party seeking to overcome that presumption must present sufficient evidence at hearing to rebut the presumption.

Having reviewed all of the evidence in the record, I find that since the claimant only began work on April 20, 2020, there is no evidence of her average wages prior to the injury. I further find that there is no credible evidence of the wages of a comparable employee. Ms. Medina testified that she was hired as a part-time CNA and expected to work roughly 32 to 40 hours per week. I find that her average wages should be calculated on the basis of a 32-hour work week at $13.50 per hour. I find that this calculation best reflects the wages she would have earned, had she worked a full

quarter leading up to the alleged work injury. Therefore, I find the claimant's average weekly wages were $432.00 per week. I find that she was married with 5 exemptions. Ms. Medina did not rebut the presumption of 5 exemptions as set forth in her 2020 taxes. Consequently, I conclude that her appropriate rate of compensation is $311.41.

The next issue is whether Ms. Medina sustained an injury which arose out of and in the course of her employment on April 26, 2020.

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.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

I find that Ms. Medina did, in fact, sustain an injury which arose out of and in the course of her employment on April 26, 2020. This is based upon her credible testimony and the consistent, contemporaneous medical documentation of the injury.

The next issue is whether the work injury is a cause of any temporary or permanent disability.

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

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

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been a viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

The expert opinions in this record are conflicting. I reject the opinions of Dr. Schmitz and Dr. Mooney. Dr. Schmitz reversed his opinion on medical causation with really no viable explanation. Dr. Mooney apparently mistakenly believed that Ms. Medina was symptomatic immediately prior to her work injury. Dr. Mooney also failed to acknowledge Ms. Medina's bulging or herniated disc. Dr. Taylor has provided the most credible medical causation opinion in the record.

The next issue is whether claimant is entitled to any temporary disability benefits.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

I find claimant is entitled to 12 days of healing period benefits when she was taken off work by her authorized treating physician between her date of injury and June 22, 2020. (Cl. Ex. 3, p. 32)

The next issue is permanent partial disability.

Because Ms. Medina's disability is located in her low back, I find the claimant's disability must be evaluated under Iowa Code section 85.34(2)(v) (2019). Her permanency, therefore, is assessed by evaluating her loss of earning capacity. The defendants argue that claimant is highly skilled as evidenced by her actual earnings following her termination. Defendants contend for this reason, claimant has no industrial disability.

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 Ry. 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 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 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).

The refusal of defendant-employer to return claimant to work in any capacity is, by itself, significant evidence of a lack of employability. Pierson v. O'Bryan Brothers, File No. 951206 (App. January 20, 1995). Meeks v. Firestone Tire & Rubber Co., File No. 876894, (App. January 22, 1993); See also, 10-84 Larson's Workers' Compensation Law, section 84.01; Sunbeam Corp. v. Bates, 271 Ark. 609 S.W.2d 102 (1980); Army & Air Force Exchange Service v. Neuman, 278 F. Supp. 865 (W.D. La. 1967); Leonardo v. Uncas Manufacturing Co., 77 R.I. 245, 75 A.2d 188 (1950). An

employer who chooses to preclude an injured worker's re-entry into its workforce likely demonstrates by its own action that the worker has incurred a substantial loss of earning capacity. As has previously been explained in numerous decisions of this agency, if the employer in whose employ the disability occurred is unwilling to accommodate the disability, there is no reason to expect some other employer to have more incentive to do so. Estes v. Exide Technologies, File No. 5013809 (App. December 12, 2006).

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.

I find Ms. Medina has sustained permanent impairment and restrictions as assigned by Dr. Taylor. Ms. Medina was terminated in July 2020 because of her work restrictions. (Tr., p. 37; Cl. Ex. 7, p. 46) As such, her disability shall be calculated by assessing her loss of earning capacity. Fortunately Ms. Medina has secured higher paying employment in human resources. She is bilingual and an excellent communicator. She presents professionally and has secured higher-paying employment in spite of her lack of a high school diploma or equivalent. She is, nevertheless, significantly restricted from her past employment. In particular, she is not a good candidate to return to the medical field because of her low back condition. The best evidence of this is the fact that the defendant-employer assessed that it had no work within her abilities. Utilizing all of the appropriate elements of industrial disability, I find she has sustained a 20 percent loss of earning capacity as a result of her work injury. I conclude this entitles her to 100 weeks of compensation commencing on July 9, 2020.

The next issue is alternate medical care.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess

medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

I find Ms. Medina is entitled to alternate care as directed by her primary care physician.

The next issue is IME and case expenses.

The next issue is claimant's entitlement to an independent medical examination under Iowa Code section 85.39.

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

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** 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. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the

> party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

I find Ms. Medina is entitled to the IME expenses in the amount of $3,262.50 set forth in Claimant's Exhibit 6, page 44-45. I find Ms. Medina is entitled to case expenses in the amount of $139.52.

ORDER

THEREFORE IT IS ORDERED

All benefits shall be paid at the rate of three hundred eleven and 41/100 ($311.41) per week.

Defendants shall pay the twelve (12) days of healing period benefits between the date of injury and June 22, 2020.

Defendants shall pay the claimant one hundred (100) weeks of permanent partial disability benefits commencing July 9, 2020.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall be given credit for the one (1) week previously paid.

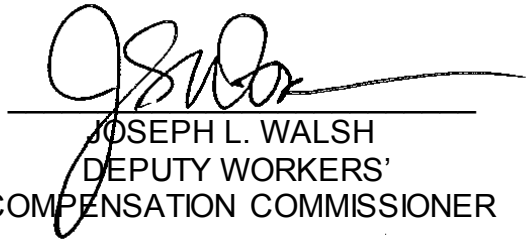
Future medical care shall be directed by claimant's treating physician.

Defendants shall reimburse claimant for the IME of Dr. Taylor as set forth in Claimant's Exhibit 6, pages 44-45, in the amount of three thousand two hundred sixty-two and 50/100 dollars ($3,262.50).

Defendants shall reimburse case expenses as set forth in Claimant's Exhibit 6, in the amount of one hundred thirty-nine and 52/100 dollars ($139.52).

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

Signed and filed this __5th___ day of April, 2022.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary Nelson (via WCES)

Emily Schott Hood (via WCES)

Alison Stewart (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.