

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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SENADA OSMIC,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,  
Self-Insured,  
Defendant.

File No. 5048542

ARBITRATION

DECISION

Head Note Nos.: 1800, 1803

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STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Senada Osmic, filed her original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on March 25, 2014. Claimant alleged she sustained a work-related injury on April 18, 2012. (Original notice and petition)

Tyson Fresh Meats, Inc. is self-insured for purposes of workers' compensation. Defendant filed its answer on April 7, 2014. The company admitted the occurrence of the work injury. A first report of injury was filed on March 28, 2014.

The hearing administrator scheduled the case for hearing on April 9, 2015 at 3:00 p.m. The hearing took place in Waterloo, Iowa at the Iowa Department of Workforce Development. The undersigned appointed Ms. Amy Pedersen as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on her own behalf. Ms. Mary Jones, R.N., Director of Health Services at Tyson, testified on behalf of defendant.

The parties offered exhibits. Claimant offered exhibits marked 1 through 7. Defendant offered exhibits marked A through J. All proffered exhibits were admitted as evidence in the case. Post-hearing briefs were filed on May 11, 2015. The case was deemed fully submitted on that date.

### STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury.
2. Claimant sustained an injury on April 18, 2012, which arose out of and in the course of her employment;
3. Temporary benefits are no longer at issue;
4. The weekly benefit rate for which benefits should be paid is \$430.59 per week;
5. Defendant has waived any affirmative defenses it may have had available; and
6. The parties are able to stipulate to the costs allowed by law.

### ISSUES

The issues presented are:

1. Whether claimant is entitled to permanent partial disability benefits;
2. If so, the extent of permanent disability benefits to which claimant is entitled;
3. Whether claimant is entitled to certain medical expenses pursuant to Iowa Code section 85.27; and
4. To whom the costs of the litigation should be assessed.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This deputy, after listening to the testimony of claimant and the other witness at hearing, after judging the credibility of both, and after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

Claimant is a 40-year-old married mother of two minor children. Currently, she resides in Waterloo, Iowa. Claimant holds a current license to drive a motor vehicle in

Iowa. She attended school through the eighth grade. Claimant speaks English, but she indicated she has trouble with spelling when she writes.

Claimant and her husband immigrated to the United States from Bosnia in February 2000. First they lived in Arizona where claimant studied English for three to four months. Then claimant worked as a housekeeper in a large hotel. After a year, claimant and her family moved to the Waterloo area. Initially, claimant worked in a day care facility. She worked for approximately two years there. Claimant enjoyed working with babies and toddlers. She left the position because the wages were very low.

On July 1, 2003, claimant commenced employment with Tyson. She was hired to work on the second shift where she was assigned to carve meat with a straight knife. Claimant remained on that job for one year. Next, she cut neck bones with a whizzer knife. The job lasted two years.

During the end of 2005, claimant bid into the "SPC AUDITOR/PC MONITOR" position, also commonly referred to as the sterilizer monitor job. The job analysis summary is detailed in Exhibit I at page 102. The job does not require any bending, lifting, pushing, pulling, reaching, and only minimal grasping. The job does require climbing, standing, walking and some sitting. Claimant is required to enter data into a computer and to perform other clerical duties. She is totally satisfied with the position she holds. At the time of the hearing, claimant was earning \$13.85 per hour.

The parties stipulated claimant sustained her work injury when she was climbing stairs. She fell onto her left side. An injury report was completed. (Exhibit A, page 1)

Robert Gordon, M.D., of MOHA, On-Site Physician Services, examined claimant on May 8, 2012. The physician diagnosed claimant with:

**DIAGNOSTIC IMPRESSION:**

1. Status post fall on 4/18/12.
2. History of left upper extremity contusions due to fall. She is doing well in this regard, and I will place her at MMI with regards to her left upper extremity.
3. Multiple contusions of left lower extremity with majority of complaints of the left lateral hip, lateral knee (fibular head), anterior tibial region, lateral ankle region due to fall.

(Ex. B, p. 3)

Dr. Gordon ordered MRI testing of the lumbar spine and the left hip. The results of the spinal MRI were:

**IMPRESSION:** Mild disc desiccation at L4-L5. Asymmetric left sided disc bulge with small radial tear. No herniation at L4-L5. Exam is otherwise unremarkable.

(Ex. 3, p. 1)

The MRI test results for the left hip were:

**IMPRESSION:** Negative MRI of the left hip. No evidence for labral tear, fracture or femoroacetabular impingement.

(Ex. 3, p. 2)

Claimant underwent electrodiagnostic studies on June 12, 2012. There was no radiculopathy. (Ex. B, p. 15)

Tyson referred claimant to Thomas S. Gorsche, M.D., an orthopedist. Dr. Gorsche diagnosed claimant with:

Impression:

#1 possible trochanteric bursitis of the LEFT hip

#2 L4-L5 asymmetric left-sided disc bulge with small radial tear. Not a surgical candidate, has failed epidural injections. Negative nerve conduction studies.

Plan:

I would recommend we try a diagnostic/therapeutic injection into the LEFT hip greater trochanter. This was done under sterile prep with 1 cc of 0.5% Marcaine and 80 mg of Depo-Medrol. I will see her again in 3 weeks. She may continue to do regular duty work.

(Ex. C, pp. 53-54)

Dr. Gorsche referred claimant to Frank Hawkins, M.D., a physician at Allen Hospital Pain Clinic. Dr. Hawkins conducted a physical examination of claimant. The pain specialist diagnosed claimant with:

**IMPRESSION:** Lumbar facet arthropathy. Left trochanteric bursitis. Low back pain. Left lumbar radicular complaints.

(Ex. 7, p. 2) Dr. Hawkins performed several injections at the L3-4, L4-5, and L5-S1 facets. (Ex. 7, pp. 6,7) The injections provided temporary pain relief.

Claimant also received three epidural steroid injections into the spine. (Ex. 7, pp. 9-14) On August 7, 2014, claimant had a left sacroiliac joint injection because of left sacroiliitis. (Ex. 7, p. 15)

Defendant sent claimant for a neurosurgical examination with Chad Abernathy, M.D. The examination occurred on November 26, 2012. The neurosurgeon opined:

**NEURODIAGNOSTIC INVESTIGATIONS:** MRI of the lumbosacral spine demonstrates mild degenerative changes consistent with age without significant neural compromise. The neural elements are well decompressed in these studies.

**IMPRESSION/RECOMMENDATIONS:** Ms. Senada Osmic clinically presents with chronic low back and left hip pain following a fall at work. I do not recommend an aggressive neurosurgical stance due to a paucity of clinical and radiographic findings. I favor further conservative treatment in this setting. Her neural elements are well decompressed in her studies and her neurologic function is intact. A component of her pain seems to originate in the hip joint. Therefore, I recommended to her that she undergo an orthopedic assessment. I also made this recommendation to her case manager. I advised the patient to contact me should she develop any new neurologic symptoms or signs in the future and I would be happy to see her in additional consultation.

(Ex. F, p. 60)

Claimant sought care on her own from Farid F. Manshadi, M.D. He examined claimant on November 27, 2012. The physiatrist found:

Left leg was slightly shorter than the right leg. Patrick's sign was positive on the left, negative on the right. She had tenderness over the left SI joint. She also has tenderness over the left lateral thigh and hip region. Gait was slightly antalgic on the left side.

**IMPRESSION:**

LBP with LLE radicular symptoms

L-sided hip and thigh pain

Reduced sensation L thigh

Left SI joint dysfunction

L leg shorter than R leg

(Ex. 2, p. 1) Dr. Manshadi recommended rehabilitation, ice massage, and physical therapy. Claimant saw Dr. Manshadi on one occasion only. Defendant has denied liability for the cost of the examination pursuant to Iowa Code section 85.27.

On April 17, 2013, claimant presented to David E. Hatfield, M.D., an orthopedic surgeon in Des Moines. Dr. Hatfield conducted a physical examination and reviewed a number of medical records. The orthopedic surgeon opined the MRI of the lumbar spine showed minimal disc protrusion at L4-5 with no central canal compression and no neural compression. He favored conservative non-operative treatment. Dr. Hatfield declined to provide any opinions on work restrictions, permanent impairment ratings or dates for maximum medical improvement. (Ex. D, pp. 56-57)

On August 22, 2013, Dr. Gordon released claimant from his care without any work restrictions. (Ex. B, p. 34) The doctor did not rate claimant as having any permanent impairment rating.

Claimant exercised her right to an independent medical examination pursuant to Iowa Code section 85.39. Claimant presented to Sunil Bansal, M.D., M.P.H., on September 27, 2013. Dr. Bansal reviewed medical records and conducted a physical examination. He diagnosed claimant with: "L4-L5 asymmetric left-sided disc bulge and annular tear." (Ex. 1, p. 11) Dr. Bansal opined claimant had a permanent condition, and claimant reached maximum medical improvement on April 17, 2013. (Ex. 1, p. 11) The evaluating physician provided the following permanent impairment rating:

**IMPAIRMENT RATING:**

**BACK HERNIATED DISC:**

**Referring to Table 15-3, Ms. Osmic's impairment can be classified as having elements fitting into DRE Lumbar Category III. She fits the criteria as having loss of ROM, an L4-L5 disc bulge and annular tear with clinically relevant radiculopathy. She has loss of relevant sensation, strength, and reflexes. She has continued pain. Therefore, she is assigned an 11% BAW impairment.**

(Ex. 1, p. 12)

Dr. Bansal also imposed permanent work restrictions. (Ex. 1, pp. 12-13) The restrictions were:

I would place a restriction of no lifting greater than 20 pounds occasionally, 5 pounds frequently. Doing more causes her considerable pain and would place additional stress on the lumbar spine.

No frequent bending, squatting, climbing, twisting, pushing or pulling to avoid further damage to the back and keep pain levels in check. These activities cause her undue discomfort.

Sit/Stand/Walk as tolerated. Being in one position for too long causes her discomfort. Specifically, avoid sitting for more than 30 minutes, no standing for more than 20 minutes, and no walking more than 60 minutes at a time.

(Ex. 1, pp. 12, 13)

There is objective evidence to establish claimant has a bulging disk on her spine at L4-L5. Prior to her work injury, claimant was asymptomatic. From the onset of her work injury, claimant complained continuously of low back and hip pain. She was consistent in her reports to the various medical providers. Claimant testified credibly about what she was capable of performing and what activities she was no longer able to tolerate because of her back and hip pain. No medical provider questioned the veracity of claimant's reported complaints. No medical provider testified claimant's condition was temporary in nature, although several physicians declined to provide any impairment ratings or to assign permanent restrictions.

This deputy is convinced by Dr. Bansal's opinion. Claimant falls under the AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition, DRE Category III impairment of 5 percent to 8 percent. Claimant did have examination findings compatible with her specific injury, as well as claimant's consistent radicular complaints. That is all that is required for an impairment rating in the 5 percent to 8 percent range. Claimant has met her burden of proof. She has sustained a permanent injury to the body as a whole.

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 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.

Claimant has been able to perform her job since the date of the work injury. The Job analysis summary is well within the restrictions imposed by Dr. Bansal. Claimant testified she is able to perform her job without any formal accommodations from Tyson. No physician has advised her to look for other work. Claimant has learned how to vary her tasks so she is not placing undue strain on her back and hip. She alternates sitting, standing, and walking. She does not need to lift anything heavier than a clipboard, paper and a pen. Claimant operates a computer and performs other clerical functions. She inputs data in English, not in her native tongue.

It is true English is not claimant's first language but she testified at her hearing without the assistance of an interpreter. The deputy did not have any problems communicating with claimant. Claimant did not graduate from high school but it is easy to see she is an intelligent woman with a responsible job within the plant. She has a job which requires her to use analytical skills, and she has successfully performed the job for ten years. Claimant testified she enjoys her job and does not want to bid out of the position. She received a .25 per hour raise in 2014. She is earning more money now than she earned on the date of the work injury.

Therefore, in light of all of the factors affecting industrial disability, it is the determination of the undersigned; claimant is entitled to a permanent partial disability in the amount of 6 percent. Defendant shall pay 30 weeks of benefits from the date of the work injury on April 18, 2012, and the benefits shall be paid at the stipulated weekly benefit rate of \$430.59 per week.

In arbitration proceedings, interest accrues on unpaid permanent disability benefits from the onset of permanent disability. Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979); Benson v. Good Samaritan Ctr., File No. 765734 (Ruling on Rehearing, October 18, 1989).

The next issue for resolution is the matter of medical benefits pursuant to Iowa Code section 85.27. 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 one medical bill. She presented herself to Dr. Manshadi for a second opinion. The one-time examination occurred on November 27, 2012. Claimant did not seek permission from defendant to obtain an examination from Dr. Manshadi. Defendant has the right to direct the care of the injured worker. Claimant was already receiving reasonable and necessary treatment from other medical providers at the time she was examined by Dr. Manshadi. Defendant is not liable for Dr. Manshadi's medical bill in the amount of \$280.00.



It is the determination of the undersigned; defendant shall pay unto claimant the following costs:

Filing fee \$100.00

Total \$100.00

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay unto claimant thirty (30) weeks of permanent partial disability benefits commencing from April 18, 2012 and payable at the stipulated weekly benefit rate of four hundred thirty and 59/100 dollars (\$430.59) per week.

Accrued benefits shall be paid in a lump sum with interest as provided by law.

Defendant shall take credit for all benefits paid prior to the filing of this decision.

Costs in the amount of one hundred and 00/100 dollars (\$100.00) are assessed to defendant.

Defendant shall file all reports as required by this division.

Signed and filed this 13<sup>th</sup> day of August, 2015.



MICHELLE A. MCGOVERN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies To:

Adnan Mahmutagic  
Attorney at Law  
PO Box 178  
Waterloo, IA 50704  
[adnan@beecherlaw.com](mailto:adnan@beecherlaw.com)

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Brian L. Yung  
Attorney at Law  
4280 Sergeant Rd., Ste. 290  
Sioux City, IA 51106  
[yung@klasslaw.com](mailto:yung@klasslaw.com)

MAM/sam

**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.