

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VICTORIA TRUJILLO,	:	
	:	File No. 19700625.01
Claimant,	:	
	:	
vs.	:	ARBITRATION
	:	
JOHN DEERE DAVENPORT WORKS,	:	DECISION
	:	
Employer,	:	
Self-Insured	:	Head Note Nos.: 1800; 1803, 1803.1;
Defendant.	:	2200; 2500; 2700.

STATEMENT OF THE CASE

The claimant, Victoria Trujillo, filed a petition for arbitration seeking workers' compensation benefits from John Deere Davenport Works ("John Deere"). M. Leanne Tyler appeared on behalf of the claimant. Troy Howell appeared on behalf of the defendant.

The matter came on for hearing on November 18, 2020, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. An order issued on March 13, 2020, and updated June 1, 2020, August 14, 2020, and October 12, 2020, by the Iowa Workers' Compensation Commissioner, In the Matter of Coronavirus/COVID-19 Impact on Hearings (Available online at: <https://www.iowaworkcomp.gov/order-coronavirus-covid-19> (last viewed December 29, 2020)) amended the hearing assignment order in each case before the Commissioner scheduled for an in-person regular proceeding hearing between March 18, 2020, and March 19, 2021. The amendment makes it so that such hearings will be held by Internet-based video using CourtCall. The parties appeared electronically, and the hearing proceeded without significant difficulties. The matter was fully submitted on January 5, 2021, after briefing by the parties.

The record in this case consists of Joint Exhibits 1-6, Claimant Exhibits 1-6 and Defendants' Exhibits A-F. Testimony under oath was also taken from the claimant, Victoria Trujillo. Heidi Krafka was appointed the official reporter and custodian of the notes of the proceeding.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.
2. The claimant sustained an injury to her right shoulder arising out of, and in the course of, employment, on September 18, 2018.
3. That the alleged injury is a cause of temporary disability during a period of recovery.
4. That the alleged injury is a cause of permanent disability.
5. That the disability is a scheduled member disability to the right shoulder.
6. That the commencement date for permanent partial disability benefits, if any are awarded, is June 27, 2019.
7. That the claimant's gross earnings were \$893.04 per week. That the claimant was single, and entitled to one exemption. Based upon the foregoing, the parties believe that the appropriate weekly compensation rate is \$557.30.
8. That prior to hearing, the claimant was paid 20 weeks of compensation at the rate of \$557.30 per week.
9. That the costs listed in Claimant's Exhibit 4 have been paid.

Any entitlement to temporary disability and/or healing period benefits is no longer in dispute. Medical benefits are no longer in dispute. The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained a neck injury, which arose out of and in the course of employment on September 18, 2018.
2. The extent of permanent disability, if any is awarded.
3. Whether the disability is an industrial disability.
4. Whether the claimant is entitled to a reimbursement for mileage, and if so, the amount.
5. Whether the claimant is entitled to a reimbursement for certain costs, and if so, the amount.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Victoria Trujillo, the claimant, was 45 years old at the time of the hearing. (Testimony). She resides in Colona, Illinois. (Testimony). She has one daughter, but does not claim her on her taxes. (Testimony). Ms. Trujillo graduated from United Township High School in East Moline, Illinois, in 1993. (Testimony). She took some general classes from Black Hawk Community College. (Testimony). Of note, medically, Ms. Trujillo is an insulin-dependent diabetic. (Testimony).

At the time of the work injury, Ms. Trujillo worked for John Deere. (Testimony). She began working for John Deere on December 4, 2017. (Testimony). Prior to her injury, she worked as an assembler at the John Deere Davenport Works. (Testimony). As an assembler, she worked on the production line, working various jobs. (Testimony). She audited equipment and assembled equipment. (Testimony). She also did maintenance work. (Testimony). She lifted between 36 and 42 pounds prior to her work injury. (Testimony). She worked third shift, and earned \$18.27 per hour at the time of the injury. (Testimony; DE E:21). During a period in early 2020, John Deere laid off Ms. Trujillo, as there was not enough work. (Testimony).

Ms. Trujillo works for PDC in Illinois. (Testimony). PDC appears to be associated with John Deere. (Testimony; Defendant's Exhibit D). She began employment with PDC in April of 2020. (Testimony). She works in the wood shop department as a general laborer, earning \$20.11 per hour. (Testimony; DE E:21). She repairs crates or makes brand new crates at PDC. (Testimony). She lifts between 30 and 70 pounds intermittently. (Testimony).

Immediately prior to working for John Deere, from December of 2014 to November of 2017, Ms. Trujillo worked for Shaw Electric in a shipping and returns warehouse. (CE 6:15). From November of 2008 to December of 2013, Ms. Trujillo worked for Dell as a medical claims processor. (CE 6:15). From June of 2003 to October of 2008, Ms. Trujillo worked for John Deere Health Care as a medical claims processor. (CE 6:16).

On September 18, 2018, at about 4:00 a.m., Ms. Trujillo performed maintenance on a grader at the end of the line. (Testimony). She put a piece of metal guard on the bottom. (Testimony). She laid on a creeper, and put the metal plate on her stomach to go underneath the machine. (Testimony). As she turned right, she picked up the plate and turned back. (Testimony). When she turned back, she felt her shoulder pop and shooting pain in her shoulder. (Testimony). She described the pain as "sharp, pinchy pain." (JE 1:1). She had no pain anywhere else in her body. (DE D). She immediately reported the injury to her acting supervisor. (Testimony).

At about 4:09 a.m., Ms. Trujillo reported to "OHS" at John Deere with her supervisor. (JE 1:90). She complained to Melissa Olson, R.N., of right shoulder pain, and detailed the incident leading to her pain. (JE 1:90). Ms. Trujillo continued to have full range of motion, but noted pain. (JE 1:90). Ms. Olson found swelling at the shoulder joint upon physical examination. (JE 1:90). Ms. Olson applied ice to Ms. Trujillo's shoulder. (JE 1:90). Ms. Olson requested that Ms. Trujillo return later in the morning to visit with Mary Huesmann, N.P. (JE 1:90).

About three hours later, Ms. Trujillo returned to "OHS" to visit Ms. Huesmann for her right shoulder complaints. (JE 1:89-90). Ms. Trujillo reported pain over the right trapezius, and also radiating down her right upper arm. (JE 1:89). Ms. Huesmann provided a restriction of no lifting, pushing, or pulling over 5 pounds with Ms. Trujillo's right upper extremity. (JE 1:90). Ms. Huesmann also recommended no work over shoulder height for Ms. Trujillo. (JE 1:90). Ms. Huesmann counseled Ms. Trujillo to ice her right shoulder in 15 minute intervals. (JE 1:90). Ms. Trujillo reported back to "OHS" during the evening of September 18, 2018, requesting 20 minutes of icing to her left shoulder. (JE 1:89).

On September 19, 2018, Ms. Trujillo again iced her shoulder at "OHS." (JE 1:89). Ms. Trujillo was due to visit Christine Deignan, M.D. for additional examination of her right shoulder. (JE 1:88-89). Unfortunately, there was an accident on this date that delayed Ms. Trujillo's reporting for work. (JE 1:88-89). Dr. Deignan approved a prescription for 800 mg of ibuprofen based upon Ms. Trujillo's description of her symptoms. (JE 1:88-89). Ms. Trujillo reported to "OHS" later in the evening on September 19, 2018, for icing of her right shoulder. (JE 1:88).

Ms. Trujillo followed up with "OHS" on September 20, 2018, for continued icing and complained of throbbing pain in her right shoulder area. (JE 1:88). Ms. Huesmann examined her and continued her previously assigned work restrictions. (JE 1:88). Ms. Huesmann also ordered an MRI arthrogram of the right shoulder. (JE 1:88). Ms. Huesmann visited Ms. Trujillo's work station and observed another employee performing the same task that Ms. Trujillo performed when she was injured. (JE 1:87). Ms. Huesmann opined that an employee performing this task abducted their arm to about 90 degrees, which resulted in a "position of elevated risk for right shoulder injury." (JE 1:87). Ms. Huesmann finally opined, "[i]t is reasonable the above described activity caused a right shoulder injury." (JE 1:87). During the intervening five days, Ms. Trujillo reported to "OHS" on several occasions for icing of her right shoulder. (JE 1:87).

On September 25, 2018, Ms. Huesmann again examined Ms. Trujillo for her right shoulder complaints. (JE 1:86-87). Ms. Trujillo noted feeling "the same" as previous examinations, and that she continued to experience moderate to severe pain in her right shoulder. (JE 1:86). Ms. Huesmann declined to change any previously imposed work restrictions. (JE 1:86). Ms. Huesmann noted that Ms. Trujillo had an MRI scheduled for October 4, 2018. (JE 1:87).

On October 4, 2018, Ms. Trujillo visited Metro MRI Center – Bettendorf, for an MR arthrogram of her right upper extremity. (JE 2:92-93). George Patramanis, M.D. interpreted the MRI results. (JE 2:92-93). Dr. Patramanis noted that Ms. Trujillo's right shoulder showed mild acromioclavicular joint degenerative change with hypertrophy, an intact rotator cuff, and an anterior/superior labral (SLAP) tear. (JE 2:92-93). The doctor noted that the SLAP tear extended to the biceps labral insertion. (JE 2:92).

Through October 8, 2018, Ms. Trujillo periodically followed up with "OHS" for icing of her right shoulder. (JE 1:85-86).

Ms. Huesmann re-examined Ms. Trujillo on October 8, 2018, and reviewed the results of the October 4, 2018, MRI. (JE 1:85). Ms. Trujillo noted that she maintained her work restrictions. (JE 1:85). The MRI showed an anterior/superior labral/SLAP tear. (JE 1:85). Ms. Huesmann referred Ms. Trujillo to Dr. Hoffman for an appointment on October 9, 2018. (JE1:85).

In the interim, Ms. Trujillo returned to "OHS" on several occasions for additional icing. (JE 1:84-85).

On October 9, 2018, Ms. Trujillo visited John Hoffman, M.D. for the first time. (JE 3:94-96). Dr. Hoffman is a board certified orthopedic surgeon. (DE B:5). Ms. Trujillo experienced constant pain in her right shoulder. (JE 3:94). Pain began after a work injury two weeks prior. (JE 3:94). Ms. Trujillo reported that the pain radiated to the right side of her posterior neck and down her lateral right arm. (JE 3:94). Ms. Trujillo reported limited range of motion, pain with lifting, and weakness. (JE 3:94). Upon physical examination, Dr. Hoffman found tenderness to the right acromioclavicular joint, anterior acromion, and biceps tendon. (JE 3:95). Ms. Trujillo's range of motion exam to her right shoulder was painful and her right upper extremity range of motion was limited. (JE 3:95). Dr. Hoffman noted that Ms. Trujillo had a SLAP tear, as seen on the MRI. (JE 3:95). Dr. Hoffman provided work restrictions as follows: 10 pounds lifting to waist level, 5 pounds lifting to chest level, and no use of her right shoulder for two weeks. (JE 3:95). Dr. Hoffman provided a glenohumeral injection to the right shoulder. (JE 3:95). Dr. Hoffman also issued an order for physical therapy. (JE 3:97).

Caitlyn Windsor, R.N., noted on October 9, 2018, that Ms. Trujillo returned from her appointment with Dr. Hoffman with modified work restrictions. (JE 1:84).

On October 10, 2018, Ms. Trujillo had a physical therapy evaluation with Elizabeth Miller, D.P.T., C.H.T., based upon the order of Dr. Hoffman. (JE 5:131-132). Ms. Miller found pain, decreased strength, decreased range of motion, and impaired functional use of her right shoulder. (JE 5:131). Ms. Miller indicated that the focus was on shoulder range of motion. (JE 5:131). Ms. Miller provided Ms. Trujillo with an evaluation, a home exercise plan for shoulder range of motion, stretching, and manual therapy for shoulder range of motion. (JE 5:131).

Ms. Trujillo returned to physical therapy at Orthopaedic Specialists on October 11, 2018. (JE 5:133). Ms. Miller performed additional therapy, and noted that the claimant felt much better after her injection. (JE 5:133). The claimant continued working on shoulder stretches and exercises at home. (JE 5:133).

On October 12, 2018, Ms. Trujillo returned for physical therapy at Orthopaedic Specialists with Ms. Miller. (JE 5:134). The claimant performed manual therapy, and indicated a continued increase in pain or a burning feeling with certain movements. (JE 5:134).

The claimant returned to Ms. Miller for physical therapy on October 15, 2018. (JE 5:135). Ms. Trujillo reported constant pain of 8 out of 10 in her right shoulder. (JE 5:135). She no longer felt any relief from the cortisone injection. (JE 5:135).

Ms. Trujillo returned to Dr. Hoffman's office on October 16, 2018, for continued complaints of throbbing pain to her right shoulder. (JE 3:98-99). The pain ceased radiating after the injection. (JE 3:98). Her pain continued to be 7 out of 10, but for one week after the injection, she had a 90 percent improvement in her pain. (JE 3:98). Ms. Trujillo continued to demonstrate reduced range of motion in her right shoulder due to pain. (JE 3:99). Dr. Hoffman's diagnosis was still a superior glenoid labrum lesion of the right shoulder. (JE 3:99). Dr. Hoffman eased her work restrictions to lifting 30 pounds to waist level, lifting 15 pounds to chest level, and a 5 pound overhead use of the right shoulder. (JE 3:99). Dr. Hoffman authorized additional physical therapy and requested that Ms. Trujillo return in four weeks. (JE 3:99-100).

Ms. Trujillo had another session of physical therapy on October 16, 2018. (JE 5:136). She rated her shoulder pain 7 out of 10. (JE 5:136). The goal of therapy continued to be to reduce shoulder pain and improve function. (JE 5:136).

On October 16, 2018, Ms. Windsor noted Ms. Trujillo's new restrictions from Orthopaedic Specialists. (JE 1:83).

The claimant returned to therapy with Ms. Miller on October 19, 2018. (JE 5:137). She reported constant pain worsening by the end of the evening. (JE 5:137).

On October 22, 2018, Ms. Trujillo reported no change in her shoulder pain at her therapy appointment. (JE 5:138). She continued to report pain of 7 to 8 out of 10. (JE 5:138). Ms. Trujillo reported a desire to have surgery to fix the tear in her shoulder, and improve her pain. (JE 5:138).

The claimant had an additional therapy session on October 24, 2018. (JE 5:139). She reported increased soreness from activity at work. (JE 5:139). Ms. Trujillo noted that she received temporary relief from "IFC treatment" in therapy. (JE 5:139).

On October 26, 2018, Ms. Trujillo reported for continued physical therapy. (JE 5:140). She indicated that her pain did not improve. (JE 5:140). Her pain increased with use and movement of her arm. (JE 5:140).

Ms. Trujillo returned to Dr. Hoffman's office on October 30, 2018. (JE 3:101-102). She reported no changes since her last visit, and complained that her throbbing pain continued. (JE 3:101). Ms. Trujillo's right shoulder continued to be tender to palpation. (JE 3:101). Additionally, her range of motion continued to be limited by pain. (JE 3:101). Dr. Hoffman opined that Ms. Trujillo failed conservative care for her right shoulder. (JE 3:102). Dr. Hoffman recommended an arthroscopic surgery to the right shoulder to repair the SLAP tear. (JE 3:102). Ms. Trujillo agreed, and surgery was scheduled. (JE 3:102).

On November 8, 2018, Ms. Trujillo reported to Mississippi Valley Surgery Center. (JE 3:103-104). Dr. Hoffman performed an arthroscopic surgery on Ms. Trujillo's right shoulder. (JE 3:103). Dr. Hoffman performed an anterior and posterior debridement of the superior labrum, a biceps tenodesis, and a shoulder decompression. (JE 3:103). Postoperatively, Dr. Hoffman diagnosed Ms. Trujillo with a type II anterior and posterior lesion of the superior labrum, a type I anterior and posterior tear of the superior glenoid labrum, biceps tendinosis, and shoulder impingement syndrome. (JE 3:103).

In November, after her surgery, Michelle Shepherd, R.N., assisted Ms. Trujillo with dressing changes. (JE 1:82).

On November 13, 2018, Ms. Trujillo commenced physical therapy with Michelle Whiteside, P.T. (JE 1:80-81). Ms. Trujillo complained of occasional finger numbness. (JE 1:80-81). She felt a pop after removing her immobilizer to shower, but did not have a sudden increase in pain. (JE 1:80). Ms. Trujillo continued with physical therapy through November and December of 2018. (JE 1:71-80).

Ms. Trujillo returned to Dr. Hoffman's office on November 20, 2018, for a post-surgical follow-up. (JE 3:105). Ms. Trujillo continued to report pain of 7 out of 10. (JE 3:105). She reported doing well in physical therapy. (JE 3:105). Dr. Hoffman recommended that Ms. Trujillo remain in her immobilizer and continue with passive range of motion therapy. (JE 3:105). Dr. Hoffman allowed her to return to work with no use the upper extremity. (JE 3:105).

On December 13, 2018, Ms. Trujillo visited Dr. Hoffman for a post-surgical visit. (JE 3:106). Ms. Trujillo indicated that her pain was 5 out of 10. (JE 3:106). Dr. Hoffman indicated that she remained in her arm sling. (JE 3:106). Ms. Trujillo told Dr. Hoffman that she continued to progress well with physical therapy. (JE 3:106). Dr. Hoffman allowed her to return to work with a restriction of lifting 5 pounds to waist level, no lifting to her chest level, and no overhead use of the right shoulder for six weeks. (JE 3:106).

On January 7, 2019, Dr. Deignan examined Ms. Trujillo. (JE 1:71). Dr. Deignan noted that Ms. Trujillo continued to recover from her right shoulder surgery. (JE 1:71). Ms. Trujillo complained that her pain was 4 out of 10. (JE 1:71). Dr. Deignan found well-healed surgical incisions, and noted that Ms. Trujillo gradually increased her work

hours within her restrictions. (JE 1:71). Dr. Deignan's plan for Ms. Trujillo was to advance to eight hours of work with no use of the right arm. (JE 1:71).

Ms. Trujillo followed up with Dr. Hoffman on January 24, 2019. (JE 3:107). Ms. Trujillo continued to rate her pain 5 out of 10. (JE 3:107). Ms. Trujillo reported that her physical therapy was progressing well. (JE 3:107). Dr. Hoffman found minimal pain on examination. (JE 3:107). Dr. Hoffman changed Ms. Trujillo's work restrictions to include lifting of 25 pounds to the waist, lifting of 15 pounds to the chest, and lifting 10 pounds overhead. (JE 3:107). Dr. Hoffman requested that Ms. Trujillo return in four weeks. (JE 3:107).

Ms. Trujillo's therapy continued through January of 2019. (JE 1:64-71). As of January 25, 2019, Ms. Whiteside noted that Ms. Trujillo continued to progress as expected. (JE 1:65).

Ms. Huesmann examined Ms. Trujillo again on January 29, 2019, as a follow-up of Ms. Trujillo's right shoulder surgery. (JE 1:64). Ms. Trujillo reported that she was doing well overall. (JE 1:64). Ms. Huesmann noted that Ms. Trujillo could return to work within Dr. Hoffman's advanced restrictions. (JE 1:64).

On February 28, 2019, Ms. Trujillo returned to Dr. Hoffman for a re-examination of her right shoulder. (JE 3:108-109). Ms. Trujillo reported that her physical therapy continued to go well. (JE 3:108). Ms. Trujillo reported moderate pain, for which she took Ibuprofen. (JE 3:108). Ms. Trujillo indicated that she followed her restrictions with some difficulty due to the pain. (JE 3:108). Upon physical examination, Dr. Hoffman found Ms. Trujillo's right shoulder to have restricted range of motion due to pain. (JE 3:109). Dr. Hoffman recommended that Ms. Trujillo continue to work on range of motion and strength in physical therapy. (JE 3:109). Dr. Hoffman provided new restrictions for Ms. Trujillo, which were lifting up to 30 pounds to the waist, lifting up to 20 pounds to the chest, and lifting up to 10 pounds overhead. (JE 3:109). Dr. Hoffman prescribed meloxicam. (JE 3:109). Dr. Hoffman also ordered additional physical therapy. (JE 3:110).

Ms. Trujillo continued therapy with Ms. Whiteside through February, March and April of 2019. (JE 1:31-62).

On March 28, 2019, Ms. Trujillo returned to Dr. Hoffman's office for continued follow up of her right shoulder. (JE 3:111-112). She reported that her physical therapy continued to progress well. (JE 3:111). Ms. Trujillo disclosed to Dr. Hoffman that her diabetes caused her to take longer to heal. (JE 3:111). Dr. Hoffman noted that Ms. Trujillo recently had a setback in that she picked up a foam dodgeball and threw it. (JE 3:111). Since throwing the dodgeball, her shoulder remained irritated. (JE 3:111). Dr. Hoffman noted a continued deficit with Ms. Trujillo's range of motion in her right shoulder. (JE 3:112). Dr. Hoffman concluded that Ms. Trujillo did not reinjure her shoulder by throwing the dodgeball. (JE 3:112). Dr. Hoffman recommended a repeat cortisone injection, which Ms. Trujillo declined due to her diabetes. (JE 3:112). Dr.

Hoffman did not change Ms. Trujillo's work restrictions. (JE 3:112). He requested that Ms. Trujillo return in four weeks, at which time, Dr. Hoffman anticipated a release to full duty without restrictions. (JE 3:112). Finally, Dr. Hoffman provided another order for continued physical therapy. (JE 3:113).

In early April, Ms. Trujillo continued to complain of pain in her shoulder, causing her to wake at night. (JE 1:46). Ms. Trujillo visited Dr. Deignan again on April 15, 2019. (JE 1:37-38). Ms. Trujillo felt that she was back to where she started with pain in her right shoulder. (JE 1:38). Her restrictions included no lifting, pushing, or pulling over 20 pounds, no work above shoulder height, occasional firm grasping with her right hand. (JE 1:38). Dr. Deignan noted that physical therapy recommended that Ms. Trujillo visit Matt DeWild for "ART" treatment. (JE 1:38).

Dr. Hoffman examined Ms. Trujillo again on April 25, 2019. (JE 3:114-115). The claimant reported continued aching to the anterior aspect of her shoulder. (JE 3:114). Occasionally, Ms. Trujillo had radiating pain, numbness, and tingling down her right upper extremity. (JE 3:114). Physical therapy, abduction, flexion, extension, and external rotation aggravated Ms. Trujillo's shoulder pain. (JE 3:114). Active and passive range of motion of Ms. Trujillo's right shoulder were restricted due to pain. (JE 3:115). Dr. Hoffman provided new work restrictions, to include lifting up to 40 pounds to the waist, lifting up to 30 pounds to the chest, and lifting up to 20 pounds overhead. (JE 3:115). Dr. Hoffman allowed the claimant to operate a forklift. (JE 3:115). Dr. Hoffman requested that the claimant return in four weeks. (JE 3:115).

On April 30, 2019, Ms. Huesmann examined Ms. Trujillo for her continued right shoulder complaints. (JE 1:32). Ms. Trujillo reported that she continued daily icing of the right shoulder. (JE 1:32). Her restrictions included lifting 40 pounds to the waist, lifting 30 pounds to the chest, and occasionally lifting 20 pounds overhead with her right upper extremity. (JE 1:32). She also may drive a fork truck. (JE 1:32).

Ms. Trujillo continued therapy for her shoulder with Ms. Whiteside from May through June of 2019. (JE 1:3-31). On May 7, 2019, Ms. Whiteside noted that Ms. Trujillo began regressing on, or about, March 24, 2019, when Ms. Trujillo strained her shoulder at home throwing a dodgeball. (JE 1:28). Once massage therapy began in mid-April, Ms. Trujillo began to show improvement. (JE 1:28).

The claimant returned to Dr. Hoffman's office on May 28, 2019. (JE 3:116-117). Ms. Trujillo reported doing well with minimal pain. (JE 3:116). She rated her pain 0 out of 10. (JE 3:116). She reported rare aggravation of pain. (JE 3:116). She utilized Tramadol and heat to alleviate her pain, when it occurred. (JE 3:116). Dr. Hoffman allowed Ms. Trujillo to return to work with no restrictions, and requested that she return to his office in four weeks. (JE 3:117). Dr. Hoffman issued an additional order for four more weeks of physical therapy. (JE 3:119). Upon return in four weeks, Dr. Hoffman opined that Ms. Trujillo should reach maximum medical improvement ("MMI"). (JE 3:117).

On June 3, 2019, Ms. Trujillo visited with Ms. Huesmann regarding her right shoulder injury. (JE 1:15). Ms. Trujillo reported that she felt ready to advance some activity. (JE 1:15). Ms. Huesmann allowed Ms. Trujillo to return to regular duty work for two hours that week, and then maintain restrictions. (JE 1:15).

On June 27, 2019, Ms. Trujillo followed up with Dr. Hoffman. (JE 3:120-121). Ms. Trujillo reported a mild ache to the anterior aspect of her right shoulder. (JE 3:120). She reported occasional numbness and tingling to the right hand and into all of her fingers while lying on her right side. (JE 3:120). Reaching behind her body, extension, and reaching across her body aggravated her pain. (JE 3:120). Rest, ice, and physical therapy exercises relieve her pain. (JE 3:120). Dr. Hoffman opined that the claimant was doing well. (JE 3:121). She worked full duty and that went well. (JE 3:121). Dr. Hoffman placed Ms. Trujillo at MMI. (JE 3:121).

By June 27, 2019, Ms. Trujillo's records from John Deere "OHS" indicated that she was released to regular duty work and deemed to have reached MMI according to Dr. Hoffman. (JE 1:4). Ms. Trujillo stated that she felt she could perform regular duty work without difficulty. (JE 1:4). On June 27, 2019, Ms. Whiteside discharged Ms. Trujillo from physical therapy. (JE 1:3-4).

Matt DeWild, R.N., L.M.T., C.Ht., C.H.I., of Integrated Functional Health, issued a letter on June 27, 2019. (JE 6:141). Mr. DeWild indicated that he treated Ms. Trujillo for a right shoulder injury from April 16, 2019, to June 26, 2019. (JE 6:141). Mr. DeWild provided massage, active release, and "targeted therapeutic stretching." (JE 6:141). Mr. DeWild noted that Ms. Trujillo complained of an increase in pain following an increase in weight with physical therapy. (JE 6:141). This resolved, and Ms. Trujillo "made good progress." (JE 6:141). Ms. Trujillo reported little to no exacerbation of pain while her duties at work increased. (JE 6:141).

John Deere issued a return to work notice indicating that Ms. Trujillo could return to work full duty on July 1, 2019. (JE 1:91).

On July 11, 2019, Dr. Hoffman issued a letter including an impairment rating for Ms. Trujillo. (DE A:1). Dr. Hoffman noted that Ms. Trujillo progressed well with treatment, and that she achieved MMI on June 27, 2019. (DE A:1). Dr. Hoffman assessed the claimant with a 5 percent permanent impairment rating to the right upper extremity. (DE A:1).

On January 13, 2020, Ms. Trujillo reported to Dr. Deignan for an examination of Ms. Trujillo's back and neck. (JE 1:2). Ms. Trujillo claimed that her injury occurred in physical therapy just prior to being sent to a functional specialist. (JE 1:2). Ms. Trujillo recalled that she began working on increased range of motion, and then over the weekend of March 23-24, 2019, she threw a dodgeball at her daughter's birthday party. (JE 1:2). By Monday, she reported increased pain over her upper back. (JE 1:2). Ms. Trujillo denied ever having numbness or tingling in her arms. (JE 1:2). Ms. Trujillo circled the upper back on her right side for the initial location of the pain. (JE 1:2). Ms.

Trujillo told Dr. Deignan that she no longer experienced pain in those areas. (JE 1:2). Dr. Deignan opined that Ms. Trujillo's history and physical were not consistent with a neck or back injury. (JE 1:2).

Dr. Hoffman signed the equivalent of a "check the box" letter on February 13, 2020. (DE B:2-3). The letter purports to summarize a conversation between Dr. Hoffman and defendants' counsel. (DE B:2). Dr. Hoffman agreed that Ms. Trujillo had a SLAP tear to her right shoulder, on which he performed a surgery in November of 2018. (DE B:2). Ms. Trujillo never reported any back or neck injury to Dr. Hoffman. (DE B:3). Mr. Hoffman agreed that he only treated Ms. Trujillo's right shoulder, and that the right shoulder injury did not extend into Ms. Trujillo's neck or back. (DE B:2).

On August 12, 2020, Richard Kreiter, M.D. of Orthopedic Care examined Ms. Trujillo for purposes of conducting an IME. (CE 1:1-3). Dr. Kreiter is a board certified orthopedic surgeon. (CE. 3-7). Dr. Kreiter reviewed Ms. Trujillo's medical history in his report. (CE 1:2-3). Dr. Kreiter opined that Ms. Trujillo had an asymptomatic shoulder until her work injury. (CE 1:1). The work incident caused increased force to the anterior portion of Ms. Trujillo's shoulder including the labrum, biceps tendon, and AC joint. (CE 1:1). Dr. Kreiter's impressions were: 1. Adhesive capsulitis of the right shoulder, postop labral debridement, biceps tenodesis with mild anterior instability, AC joint degenerative changes with chronic intermittent pain; 2. Right carpal tunnel syndrome; and, 3. Diabetes. (CE 1:3). Dr. Kreiter issued an impairment rating based upon his examination of the claimant. (CE 1:1). Dr. Kreiter found limited range of motion and occult anterior shoulder instability resulting from the labral tears, debridement, biceps tenodesis, and aggravation of the AC joint. (CE 1:1). Dr. Kreiter assigned impairment ratings as follows:

Flexion – 140 degrees – 3 percent upper extremity impairment

Abduction – 110 degrees – 3 percent upper extremity impairment

External rotation – 30 degrees – 1 percent upper extremity impairment

Internal rotation – 60 degrees – 2 percent upper extremity impairment

(CE 1:1).

Based upon these ratings and measurements, Dr. Kreiter assigned a 9 percent upper extremity impairment rating for decreased range of motion. (CE 1:1). For shoulder instability, Dr. Kreiter assigned a 6 percent upper extremity impairment rating. (CE 1:1). Based upon Ms. Trujillo's AC joint issues, Dr. Kreiter assigned a 5 percent upper extremity impairment rating. (CE 1:1). While combining all of the impairment ratings, Dr. Kreiter assigned an 18 percent upper extremity impairment rating. (CE 1:1). Dr. Kreiter opined that this equaled an 11 percent whole person impairment. (CE 1:1). Of note, Dr. Kreiter admitted at his deposition that some of his rating included an "estimate". (DE F:30-31). Dr. Kreiter noted that Ms. Trujillo needed to limit throwing

motion with her right arm. (CE 1:1). To reduce stress on her arms, Dr. Kreiter recommended that the claimant lift with her arms close to her side rather than away from her body. (CE 1:1). She should only occasionally work overhead with her right side. (CE 1:1). Dr. Kreiter recommended conservative treatment with mild analgesics and anti-inflammatories. (CE 1:1). Dr. Kreiter did not recommend any additional cortisone injections. (CE 1:1).

At her deposition, Ms. Trujillo testified that she had no issues with her neck or back. (DE D). Any pain that occurred in her back went away. (DE D).

Currently, Ms. Trujillo noted pain and numbness in her right hand. (Testimony). She reported that she could lift her right arm “almost all the way, but not all the way.” (Testimony). She also testified that she could not lift her right arm as well as she used to. (Testimony). She has difficulty dressing herself, and putting on bras correctly. (Testimony). She can no longer perform any overhead home maintenance, such as cleaning ceiling fans or windows. (Testimony). She can no longer shoot a basketball, and no longer coaches basketball. (Testimony). If she did any work over the head for an extensive amount of time, she experienced neck and back pain. (Testimony).

CONCLUSIONS OF LAW

Whether Claimant Sustained a Neck Injury

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.904(3).

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, that 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). 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. Id. 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 that an injury occurs “in the course of employment” when:

. . . it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's

departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979). Whether a claimant's injury arises out of the claimant's employment is a "mixed question of law and fact." Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007).

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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. V. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 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). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

In this case, the claimant has presented no evidence of a neck injury arising out of and in the course of her employment. The entirety of the evidence presented for medical treatment sought by the claimant pertained to her right shoulder. The claimant testified that she had no ongoing complaints of pain to her neck. Considering that no evidence has been presented as to a neck complaint, I find that the claimant failed to prove by a preponderance of the evidence that she sustained a neck injury arising out of, and in the course of her employment.

Scheduled Member v. Industrial Disability

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code

85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is “limited to the loss of the physiological capacity of the body or body part.” Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. MacIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.1d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

In 2017, the legislature made significant changes to Iowa Code Chapter 85. Among these changes, the legislature included Iowa Code section 85.34(2)(n), making the “shoulder” a scheduled member. The main dispute regarding permanency in this case is whether the claimant’s disability is to her “shoulder” under Iowa Code section 85.34(2)(n), or an unscheduled disability under Iowa Code Section 85.34(2)(v).

In September of 2020, the Commissioner filed two appeal decisions addressing the 2017 addition of Iowa Code section 85.34(2)(n). The first such case was Deng v. Farmland Foods, File No. 5061883 (App. September 29, 2020). The Commissioner held in Deng that Iowa Code 85.34(2)(n) was ambiguous as to the definition of the shoulder. The Commissioner examined the intent of the legislature and determined:

I recognize the well-established standard that workers’ compensation statutes are to be liberally construed in favor of the worker, as their primary purposes is to benefit the worker. See Des Moines Area Reg’l Transit Auth. v. Young, 867 N.W.2d 839, 842 (Iowa 2015)(citations omitted); Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 257 (Iowa 2010)(“We apply the workers’ compensation statute broadly and liberally in keeping with its humanitarian objective. . . .”); Griffin Pipe Prods. Co. v. Guarino, 663 N.W.2d 862, 865 (Iowa 2003)(“[T]he primary purpose of chapter 85 is to benefit the worker and so we interpret this law liberally in favor of the employee.”). This liberal construction, however, cannot be performed in a vacuum. As discussed above, several of the principles of statutory construction indicate the legislature did not intend to limit the definition of “shoulder” under section 85.34(2)(n) to the glenohumeral joint. For these reasons, I conclude “shoulder” under section 85.34(2)(n) is not limited to the glenohumeral joint.

Claimant’s injury in this case was to the infraspinatus muscle. As discussed, the infraspinatus is part of the rotator cuff, and the rotator cuff’s

main function is to stabilize the ball-and-socket joint. As noted by both Dr. Bansal and Dr. Bolda, the rotator cuff is generally proximal to the joint. However, because the rotator cuff is essential to the function of the glenohumeral joint, it seems arbitrary to exclude it from the definition of “shoulder” under section 85.34(2)(n) simply because it “originates on the scapula, which is proximal to the glenohumeral joint for the most part.” (Def. Ex. A, [Depo. Tr., 27]). In other words, being proximal to the joint should not render the muscle automatically distinct.

Given the entwinement of the glenohumeral joint and the muscles that make up the rotator cuff, including the infraspinatus, and the importance of the rotator cuff to the function of the joint, I find the muscles that make up the rotator cuff are included within the definition of “shoulder” under section 85.34(2)(n). Thus, I find claimant’s injury to her infraspinatus should be compensated as a shoulder under section 85.34(2)(n). The deputy commissioner’s determination that claimant’s infraspinatus injury is a whole body injury that should be compensated industrially under section 85.34(2)(v) is therefore respectfully reversed.

Deng at 10-11.

A second case, Chavez v. MS Technology, LLC, File No. 5066270 (App. September 30, 2020), applied the logic of Deng to another shoulder case. The Commissioner affirmed his holding in Deng, and further noted:

...[C]laimant’s subacromial decompression was performed to remove scar tissue and fraying between the supraspinatus and the underside of the acromion. As discussed above, the acromion forms part of the socket and helps protect the glenoid cavity, and as such, I found it is closely interconnected with the glenohumeral joint in both location and function. And as discussed in Deng, I found the supraspinatus – a muscle that forms the rotator cuff – to be similarly entwined with the glenohumeral joint. Thus, claimant’s subacromial decompression impacted two anatomical parts that are essential to the functioning of the glenohumeral joint; in fact, the procedure was actually performed to improve function of the joint. As such, I find any disability resulting from her subacromial decompression should be compensated as a shoulder under section 85.34(2)(n).

I therefore find none of claimant’s injuries are compensable as unscheduled, whole body injuries under section 85.34(2)(v). The deputy commissioner’s finding that claimant sustained an injury to her body as a whole is therefore respectfully reversed.

Chavez at 6.

In Chavez, the claimant suffered injuries to her supraspinatus, infraspinatus, and subscapularis muscles. Id. at 3. She also suffered a tear to the biceps tendon and labrum as discovered during an arthroscopic surgery. Id. She had a surgical repair of her rotator cuff, along with “extensive debridement of the labrum, biceps tendon, and subacromial space with biceps tenotomy, subacromial decompression.” Id.

As noted in other cases post Deng and Chavez, the key holdings of those cases include:

1. The definition of a “shoulder” is ambiguous in Section 85.34(2)(n). Deng at 4.
2. There is no “ordinary” meaning of the word shoulder. Deng at 5.
3. The appropriate way to interpret the statute is to examine the legislative history. Deng at 5.
4. The legislature did not intend to limit the definition of a “shoulder” to the glenohumeral joint. Rather, the legislature intended to include the entwinement of the glenohumeral joint and the muscles that make up the rotator cuff. Deng at 11.

See e.g. Retterath v. John Deere Waterloo Works, File No. 5067003 (Arb. Dec. 22, 2020).

In this case, an MRI of Ms. Trujillo’s shoulder on October 4, 2018, showed mild AC joint degenerative change with hypertrophy, and an anterior/superior labral tear, also known as a SLAP tear. The SLAP tear extended to the biceps tendon insertion. Dr. Hoffman confirmed this on October 9, 2018. On November 8, 2018, Dr. Hoffman performed an anterior and posterior debridement of the superior labrum, biceps tenodesis, and a shoulder decompression. Dr. Hoffman’s postoperative diagnoses were: type II anterior and posterior lesion of the superior labrum, type I anterior and posterior tear of the superior glenoid labrum, biceps tendinosis, and shoulder impingement syndrome. Finally, Dr. Kreiter noted that a work incident caused increased force to Ms. Trujillo’s shoulder including her labrum, biceps tendon, and AC joint. Considering the holdings in Deng and Chavez, and the injury to Ms. Trujillo’s labrum and AC joint, I find that Ms. Trujillo sustained an injury to her shoulder. Therefore, Iowa Code 85.34(2)(n) applies, and Ms. Trujillo’s permanent disability should be considered as a scheduled member and not as an industrial disability.

Extent of Permanent Disability

Where an injury is limited to a scheduled member, the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

Iowa Courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code 85.34(2)(a)-(u), this agency must only consider the functional

loss of the particular scheduled member involved, and not the other factors which constitute an “industrial disability.” Iowa Supreme Court decisions over the years have repeatedly cited favorably language in a 66-year old case, Soukup v. Shores Co., 222 Iowa 272, 277, 268 N.W. 598, 601 (1936), which states:

The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries ... and that, regardless of the education or qualifications or nature of the particular individual, or of his inability ... to engage in employment ... the compensation payable ... is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong’s Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Iowa Code 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). “Loss of use of a member is equivalent to “loss” of the member. Moses v. National Union C.M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code 85.34(2)(w), the workers’ compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

Because the injury is to a scheduled member, claimant is not entitled to an evaluation of disability based upon loss of earning capacity. Only the functional loss can be awarded.

The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 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 Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

In this matter, Dr. Hoffman provided an impairment rating of 5 percent to the right upper extremity. Dr. Kreiter provided an impairment rating of 18 percent to the right shoulder.

Dr. Hoffman was the claimant's treating physician. Additionally, Dr. Hoffman performed the surgery to Ms. Trujillo's right shoulder. While the claimant notes that Dr. Hoffman was selected by the defendants, he still operated as a treating physician. Dr. Hoffman is a board certified orthopedic surgeon. Claimant's chosen expert, Dr. Kreiter, testified at deposition that Dr. Hoffman is a qualified surgeon and that Dr. Kreiter had no issues with Dr. Hoffman's impairment rating. Dr. Hoffman provided a well-reasoned impairment rating.

Dr. Kreiter testified at his deposition that he founded the clinic, Orthopaedic Specialists, where Dr. Hoffman worked at the time of Ms. Trujillo's treatment. (DE F). Dr. Kreiter also recruited Dr. Hoffman to work in the Quad Cities area. (DE F). Dr. Kreiter worked at Orthopaedic Specialists from 1984 to 2000. (DE F). I am concerned that Dr. Kreiter used some estimations in arriving at his impairment rating regarding shoulder instability. (DE F). This admission damaged his credibility in my review of this particular matter.

Considering the evidence in the record, I find Dr. Hoffman's impairment rating more persuasive. While Dr. Kreiter has a lengthy record as an orthopedic surgeon, he noted no disagreement with Dr. Hoffman's rating. He also indicated that Dr. Hoffman was a well-qualified surgeon, and that he recruited and hired Dr. Hoffman to Orthopaedic Specialists. Finally, as the treating physician, Dr. Hoffman is in the best position in this case to opine as to Ms. Trujillo's impairment rating. I find that the claimant suffered a 5 percent functional impairment to her right shoulder. The claimant is entitled to 5 percent of 400 weeks, or 20 weeks of compensation commencing on June 27, 2019.

Reimbursement of Medical Expenses

Claimant alleges mileage owed in the amount of \$501.70 for treatment with Metro MRI, Orthopaedic Specialists, and her IME with Dr. Kreiter as detailed in Claimant's Exhibit 5. The defendants allege that the proper mileage amount is \$369.16 based upon mileage from the claimant's address to the medical appointments in question.

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. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet

Service, Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellan v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodard State Hospital-School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company, No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury). See also Bass v. Vieth Construction Corp., File No 5044430 (App. May 27, 2016) (claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v. Trinity Health, File No. 5063498 (Arb. December 28, 2018) (claimant failed to recover on unsupported medical bills).

In this case, the claimant provides no explanation as to why her mileage is greater than that alleged by the defendants. The question is whether the amount is reasonable and necessary. The mileage incurred was for treatment with authorized providers, and for an IME. Therefore, the necessity of the mileage is not at issue. The issue is whether the amount of mileage claimed is reasonable. Taking the shortest route is reasonable.

The undersigned, utilizing the addresses provided in Claimant's Exhibit 5, calculated the mileage using Google Maps. I find that the mileage from the claimant's home address, provided in Claimant's Exhibit 5, and the various providers noted therein is as follows:

Metro MRI – 30.6 round trip miles

Orthopaedic Specialists – 31.8 round trip miles

Dr. Kreiter – 32.0 round trip miles

Ms. Trujillo requests mileage for one visit to Metro MRI, 19 visits to Orthopaedic Specialists, and one visit to Dr. Kreiter. This amounts to 666.8 miles based upon the above distances. Considering the rates noted in Claimant's Exhibit 5, I find that the defendant shall reimburse the claimant three hundred sixty-four and 36/100 dollars (\$364.36) for outstanding mileage payments.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 4:8-9. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33 provides:

[c]osts 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, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

The administrative rule expressly allows for taxation of costs for the filing fee of one-hundred dollars (\$100.00). In my discretion, I decline to award costs in this matter.

ORDER

THEREFORE, IT IS ORDERED:

The defendant is to pay unto the claimant twenty (20) weeks of permanent partial disability benefits at the rate of five hundred fifty-seven and 30/100 dollars (\$557.30) per week from the commencement date of June 27, 2019. Considering the credit to which the defendant is entitled, as stipulated, the claimant is owed nothing further for permanent partial disability benefits.

The defendant shall reimburse the claimant three hundred sixty-four and 36/100 dollars (\$364.36) for outstanding mileage payments.

The parties shall bear their own costs.

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

Defendant is entitled to a credit of 20 (twenty) weeks of compensation at the rate of five hundred fifty-seven and 30/100 dollars (\$557.30) per week, as stipulated by the parties.

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

Signed and filed this 17th day of March, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Troy Howell (via WCES)

Mary Leanne Tyler (via WCES)