BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CRYSTAL HANSEN, Claimant, vs. ALLENDANSEED COMPANY, Employer, and WESTERN AGRICULTURAL INS. CO., Insurance Carrier, Defendants.	File No. 5052893.02 REVIEW-REOPENING DECISION Head Note Nos.: 2905, 2500, 2502, 1108

STATEMENT OF THE CASE

Claimant, Crystal Hansen, has filed a review-reopening petition seeking workers' compensation benefits against Allendan Seed Company, employer, and Western Agricultural Insurance Company, insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of Coronavirus/COVID-19 Impact on Hearings, the hearing was held via Zoom on October 14, 2022, and considered fully submitted upon the simultaneous filing of briefs on November 11, 2022.

The record consists of Joint Exhibits 1-5, Claimant's Exhibits 1-5, Defendants' Exhibits A-I, and the testimony of the claimant.

ISSUES

1. Whether there has been a substantial change in circumstances or condition that was not anticipated at the time of the original arbitration hearing for a reassessment of the extent of the claimant's permanent partial disability, and if so, the extent of industrial disability.
2. Whether or not the claimant is entitled to healing period disability benefits.
3. Whether the claimant is entitled to reimbursement of medical expenses.
4. Whether claimant is entitled to reimbursement of IME under Iowa Code section 85.39;
5. Whether claimant is entitled to alternate care;
6. Costs.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into stipulations. Those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

Prior to the hearing, the claimant was paid 165 weeks of compensation at the rate of $202.80 per week. There is no change in her benefit rate.

FINDING OF FACTS

The crux of this suit is whether claimant has sustained a change in her circumstances warranting a review-reopening of the February 17, 2017, decision awarding claimant 33 percent industrial loss. Claimant asserts her existing condition has worsened since the December 9, 2016, hearing, and that she had sustained a sequelae injury arising out of the original workers compensation injury of September 16, 2014. She further asserts she has suffered material change in her economic conditions.

The factual findings made in the February 17, 2017, decision are incorporated herein.

At the time of the December 9, 2016, hearing, claimant asserted she was permanently and totally disabled as a result of her work injuries. The undersigned found that claimant was not able to return to her work at Allendan Seed Company due to the defendants being unable to accommodate her restrictions nor provide her with an alternate position. Heavy manual labor positions were foreclosed to claimant because of physical limitations; however, claimant could do medium demand labor. (Ex B:4) Claimant's independent medical examiner, Robin Sassman, M.D., found that claimant sustained a 3 percent upper extremity impairment due to loss of flexion and loss of internal rotation. (Ex A:2)

It was found that she sustained a 33 percent industrial loss. There was no appeal.

On September 22, 2016, claimant was seen by Allen J. Eckhoff, M.D., for "continuing right shoulder pain." (JE 1:1) Claimant described the pain as a constant ache that was tolerable but that any movement worsened the pain. (Id.) At the time claimant was taking Cyclobenzaprine 10 mg, 1 tablet at night and Gralise 600 mg three tablets once a day. (Id.) On October 16, 2017, Dr. Eckhoff ceased the Cyclobenzaprine due to claimant's reports of sleepiness and switched claimant to Baclofen 10 mg po TID for muscle spasms. (Id.)

In the February 17, 2017, decision, it was ordered that claimant be allowed to seek additional care. On February 14, 2017, claimant was seen by James Nepola, M.D., at University of Iowa Hospitals and Clinics (UIHC). (JE 4:31) Claimant presented with

"arm pain, arm weakness, muscle weakness, joint pain and joint stiffness." (Id. at p. 32) On examination, she had right range of motion as follows:

active elevation of 160 degrees
active extension 50 degrees
active abduction 150 degrees
external rotation 100
internal rotation T6

He found her to have multidirectional instability on the right. The left was normal with full motion and strength as was the cervical spine. (JE 4:33) However, he determined that she had bilateral instability and posterior instability and inferior instability and expected discomfort with range of motion. (JE 4:35)

He found that she had a genetic predisposition that was exceeded by her activity on the job. (Id.) Surgery would not help her but instead, she needed physical therapy to stabilize and strengthen the shoulder. (JE 4:34) Her shoulder would not be normal but could be stabilized.

Claimant was seen again at Dr. Eckhoff's pain clinic on July 10, 2018, for follow up of her right shoulder pain and a medication check. (Id.) She was taking Baclofen 10 mg TID as needed. (JE 1:7) Her condition did not appear to be different than she presented at the September 22, 2016, visit. Her pain was tolerable and she had good and bad days. (JE 1:7) She relayed to Dr. Eckhoff that she had a five-pound lifting restriction. In the examination portion, claimant did not demonstrate more than 90 degrees of active range of motion but her passive range of motion was 170 degrees. (Id.) Dr. Eckhoff felt she was at maximum medical improvement (MMI) and recommended that she return for more physical therapy to improve function. (Id.)

On August 1, 2018, claimant was seen at physical therapy for right shoulder pain. (JE 2:20) She stated her pain was present in both shoulders and that it was aching, acute, tender and worsening. (Id.) The medical records document that the symptoms started three months ago. (Id.) On examination, she had decreased abduction of both shoulders and overall somatic dysfunction. (Id. at 21) She had right shoulder pronation, left shoulder tenderness at the trapezius, and left sided hip dysfunction. (Id.)

On August 8, 2018, physical therapy visit, it was noted that the imaging of claimant's shoulder showed no structural damage but that she did present with multi directional instability of the right shoulder contributing to the chronic pain in the right shoulder. She also had impaired posture, range of motion, and strength due to this issue. (JE 3:28)

On March 28, 2019, claimant was seen by Dr. Eckhoff with conditions largely the same as she presented on September 16, 2022, and the July 10, 2018, visit. (JE 1:9) She had right shoulder pain that worsened with activity. (JE 1:9) She shared she was unable to find employment due to her five-pound lifting restriction. (Id.) Dr. Eckhoff

referred claimant for an EMG. (Id.) The EMG was normal but because claimant continued to endorse right shoulder pain with intermittent pain down her right arm and numbness into three fingers, Dr. Eckhoff added Diclofenac 50 mg to her prescription regimen. (JE 1:11; 4:45)

On March 11, 2020, claimant returned to Dr. Eckhoff for a general medication checkup. (JE 1:13) She continued to have right shoulder pain but said that her condition was greatly improved by the medications. (Id.) "She is stable and happy with her pain control at this time." Dr. Eckhoff documented. (Id.) He continued her on Gralise, Baclofen and Diclofenac as she was reaching 70 percent of overall relief with this prescription regimen. (Id.)

During the follow up visit of December 3, 2020, claimant reported right sided neck pain and numbness into the right hand, pinky, ring and middle fingers. (JE 1:14) Dr. Eckhoff referred claimant for a surgical consult at UIHC.

On March 25, 2021, claimant was seen by Dr. Eckhoff reporting of left elbow pain for the first time. (JE 1:16) Claimant believed the pain might be associated with overuse and described the pain as stabbing, shooting, spasming, throbbing, and aching. (Id.) She had tenderness over the medial epicondyle and Dr. Eckhoff believed she had left ulnar inflammation or irritation and recommended she seek out an orthopaedic opinion. (JE 1:16)

In her May 2022 deposition, claimant stated that "overuse" was explained "to" her. (DE F:23) When asked who "they" was she said it was Dr. Kruse. (DE F: 25) Her overuse was explained as follows:

> My elbow was having issues due to, I guess, overuse, is the way they explained it to me. Because when I go to pull stuff out of the washing machine, being short like I am, you've got two options. You have to find a stepstool or you jump and reach your arm down there and grab it out. Well, it hurts to do that with my right shoulder, so I'd been doing it with my left.
>
> I always carry the laundry baskets on my left side of my body now instead of on my right. I also tend to use the left side of my body more towards sweeping the floors, running vacuum cleaners, anything at home that needs to be done, because the pain in the right.

(DE F:24-25)

On June 23, 2021, she was seen for the left lateral elbow pain by Lindsey Caldwell, M.D. (JE 4:37) She had tenderness to palpation along the triceps insertion and just posterior to the lateral epicondyle and medial epicondyle. Sensibility was slightly decreased along the ulnar border of the hand and small finger. (JE 4:38) She had full range of motion. Dr. Caldwell diagnosed claimant with left medial and lateral

epicondylitis with contributing ulnar nerve irritation at the elbow. (Id.) Claimant was referred to physical therapy and to a sports tendinopathy clinic. (Id.)

On August 2, 2021, claimant was seen by Ryan Kruse, M.D., who noted that the four weeks of physical therapy was not helpful for the left elbow. He performed a diagnostic ultrasound that revealed mild common extensor tendinosis and moderate elbow joint effusion. (JE 4:40) He also performed a radiocapitellar joint injection. (Id.) Post treatment notes indicate that the injection worsened claimant's pain. She also wanted Dr. Kruse to know that she had been kayaking on July 31, 2021, prior to her medical visit.

At the November 16, 2021, medication checkup, claimant reported right sided shoulder pain and left elbow pain. (JE 1:18) She maintained Gralise and Baclofen helped to control her pain and provide mild relief. It appears that she inquired about marijuana because Dr. Eckhoff wrote "I discussed that work comp likely not cover medical cannabis and that she would have to pay for it herself." (JE 1:18) She did not want to pay out of pocket. Dr. Eckhoff started her on a compounding cream and noted that her cervical MRI was unremarkable. (JE 1:19) He placed her at MMI. (Id.)

Claimant sought out physical therapy at Athletico Physical Therapy. See Ex. I. At her first physical therapy appointment, claimant advised her elbow was in pain as a result of cleaning out her house and moving boxes around. (Id. at 27) Claimant in total attended 25 physical therapy sessions. Throughout her care, claimant reported various activities that exacerbated her condition including lifting heavy groceries (Id. at 28), casting a fishing rod (Id. at 30), pulling weeds (Id. at 32), working new job at childcare facility (Id. at 34), lifting bags of charcoal (Id. at 36) and doing pushups (Id. at 38) Still, her elbow condition improved with time. At her October 5, 2021, physical therapy appointment, claimant advised that she had no exacerbated elbow pain and that she had obtained maximum treatment with physical therapy. (Id. at 41) Just over a month later on November 16, 2021, Dr. Eckhoff agreed stating claimant had reached MMI as to her left elbow. (JE 1:18-19)

Following the appointment with Dr. Eckhoff in November 2021, defendant denied responsibility for further care. Claimant then sought care on her own, including treatment at Athletico Physical Therapy. (Ex. I)

Dr. Kuhnlein, claimant's IME physician, found that claimant was not at maximum medical improvement for her left elbow condition on August 2, 2021.

Ms. Hansen was evaluated by John Kuhnlein, D.O, an occupational health physician, on July 21, 2022. (CE 1) Dr. Kuhnlein opined that claimant suffered from a congenital condition known as hyperlaxity in the shoulders and that the hyperlaxity meant she would develop symptoms with less stressor exposure than other individuals. (CE 1:8) He concluded that it was more likely than not that her current right shoulder symptoms were related to the September 16, 2014, injury and that the left medial and lateral epicondylitis developed from overuse related to compensating for her right

shoulder and thus sequela to the September 16, 2014, injury. (CE 1:8) However, he also documented that claimant believed her right shoulder symptoms are about the same intensity, same location, and same pattern since the hearing several years ago. (CE 1:4) At hearing, claimant denied saying this to Dr. Kuhnlein and suggested that Dr. Kuhnlein misunderstood her subjective oral history. (Hr. Tr. at 35-36) He wrote: Ms. Hansen does not believe that her restrictions have changed since 2016. She does not describe any significant differences in function since the arbitration hearing. (Id.) (emphasis added). This statement is consistent with her deposition testimony

> So is it fair to say then that your right shoulder generally is about the same as it was in 2016 at the time of the hearing?
>
> I would say so, yeah.

(DE F:40)

Dr. Kuhnlein noted that claimant did not have any changes in the treatment for her right shoulder following the hearing other than to change claimant's medication to baclofen (which was done due to the previous medication, Flexeril, causing sleepiness). (CE 2:3) Dr. Kuhnlein records claimant's left shoulder injury etiology as follows:

> Ms. Hansen says that she suddenly developed left elbow pain several years ago, although she is unsure exactly when. She says that she went to catch something that was going to drop because of her right shoulder problem, developing left elbow pain in the anconeus area. She states that she told Dr. Eckhoff about this. The records indicate that on March 25, 2021, Dr. Eckhoff noted that she complained about left elbow pain with numbness and tingling radiating along the outside of the forearm into the hand. He felt she might have left ulnar nerve entrapment at the elbow, making an orthopedic referral.

(CE 1:3)

He recorded that in addition to the left elbow pain, she reported the gradual onset of right elbow pain about two months prior to the July 21, 2022, examination as a result of grabbing laundry. (CE 1:4) At the appointment with Dr. Kuhnlein, she described her pain as not significant enough to seek medical care. (Id.)

On examination, she had reduced range of motion in her right shoulder in the areas of flexion, extension, abduction and slight reduction in external rotation. (CE 1:6) She complained of posterior and scapular pain in the right biceps, right elbow pain, left elbow pain, mild medial right epicondylar and left medial capitellar tenderness and mild tenderness in the left medial epicondylar area. (CE 1:7)

For future care, Dr. Kuhnlein recommended that she continue to see Dr. Eckhoff. (CE 1:8) Dr. Kuhnlein set her date of MMI at or about February 14, 2017, for the

shoulder and August 2, 2021, for the elbow. (CE 1:8) Dr. Kuhnlein's section on impairment is confusing.

> Turning to Figures 16-40, 16-43, and 16-46, and when comparing the right to the unaffected left shoulder, there is a total of 5% left upper extremity impairment for deficits in range of motion. Turning to Table 16-35, page 510, there is a 1% right upper extremity impairment for the motor deficits.
>
> Turning to the Combined Values Chart on page 604, when these values are combined (5% ×1%), this is a 6% right upper extremity impairment. Turning to Table 16-3, page 439, this would convert to a 4% whole person impairment.
>
> Turning to Section 16.7d, page 507, no impairment would be assigned for the epicondylitis. No sensory deficits were noted consistent with an ulnar nerve distribution, so no impairment would be assigned for ulnar neuritis.

(CE 1:9)

The left shoulder is described as unaffected and thus when Dr. Kuhnlein goes on to say that there is a total of 5 percent left upper extremity impairment for deficits in range of motion, he must mean a 5 percent right upper extremity impairment as his test results show only deficits in range of motion on the right. (CE 1:6) In the subsequent paragraph, he combines two values for the motor deficits and the range of motion deficits to give a combined 6 percent *right* upper extremity impairment. (emphasis added) This is significant because Dr. Kuhnlein provides no impairment rating for the left elbow.

No restrictions are recommended.

Defendants obtained the opinions of Dr. Eckhoff and Dr. Caldwell regarding the left elbow causation issue. Neither doctor would opine to a reasonable degree of medical certainty that the left elbow symptoms were related to the claimant's right shoulder injury. (Ex C:6-7, Ex D:9)

Both doctors agreed that if claimant were to have developed issues with her left elbow due to overuse stemming from the right shoulder injury, claimant should have developed symptoms within six months after her initial right shoulder injury that occurred in 2014 as opposed to 6 years later in March 2021. (Ex C:7; Ex. D:9). Dr. Caldwell agreed to a statement that:

> The fact that Crystal Hansen did not report left elbow pain until almost 6.5 years after the September 2014 work injury to her right shoulder, as opposed to soon after the injury, supports the conclusion that Ms. Hansen's left elbow pain is NOT causally related to her September 2014 right shoulder injury.

(Ex C:7) Dr. Eckhoff signed off on a similar statement. (Ex D:9)

> Given the time-lapse and specifically that Crystal Hansen did not report left elbow pain until March 2021, nearly 6.5 years after the initial right shoulder injury, you have a difficult time associating her left elbow pain with the work injury to her right shoulder in September 2014. In other words, you CANNOT state with a reasonable degree of medical certainty that Ms. Hansen's recent reports of left elbow pain are causally related to her September 2014 shoulder injury.

(Ex D:9)

At hearing, claimant acknowledged that she only has elbow pain a few times a week as she learned to avoid behaviors that would aggravate it and that she is not aware of ever having any work or activity restrictions pertaining to her left elbow. (Hr. Tr. at 50-51) Claimant also testified in her May 17, 2022, deposition that her elbow pain is occasional and is alleviated by home exercises and medications. (DE F:55)

At her deposition in May 2022, she mistakenly identified her lifting restrictions at 15 to 20 pounds. (DE F: 11) She is a mother of five and as the caregiver for those children and therefore must undertake some tasks such as laundry, dishes, sweeping, household chores. (DE F:10) Claimant's current employment is a dog walker.

Claimant requests reimbursement for the filing fee, medical records, and Dr. Kuhnlein's IME of $4,242.50 as a cost.

She reported she applied for a total of six different jobs in the approximate six years since the initial hearing. (Hr. Tr. at 42-43) She applied at Kum & Go, Dollar General, Hy-Vee, and Fareway but their lifting requirements of 45 pounds exceeded her restrictions. (DE F:34-35) At Hy-Vee, she was turned away because the kitchen job required a college education. (Id.)

Claimant was hired by a daycare, Hundred Acre Woods, where she worked until sustaining an injury while lifting a child and dislocating her right shoulder. (Ex. 19-21) She then obtained employment as a dog walker/caregiver for a dog training facility where she has continued to work up until present. While at the dog training facility, she explained she is able to work within her restrictions and modified the leashes so that they are attached to her waist. (Hr. Tr. at 25) She earns around $10.00 per hour and works 24 hours per week.

CONCLUSIONS OF LAW

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 R. App. P. 6.904(3)(e).

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

The 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).

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. Rather, claimant's condition must have worsened or deteriorated in a manner not contemplated at the time of the initial award or settlement before an award on review-reopening is appropriate. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (1957). A failure of a condition to improve to the extent anticipated originally may also constitute a change of condition. Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24 (Iowa App. 1978).

Causation is the purview of experts. This decision reviews the expert opinions and selects the one best supported by the evidence. In this case, the opinions that are most reliable and consistent with claimant's course of treatment, onset of symptoms, and claimant's own behavior are that of Dr. Caldwell and Dr. Eckhoff. Dr. Caldwell was

a medical provider chosen by claimant and Dr. Eckhoff is one that she has continued to see since the 2014 injury for pain management.

First, claimant's right shoulder has not changed since the December 2016 hearing. She testified that the shoulder is unchanged in symptoms. She stated this to Dr. Kuhnlein. It is evident in her medical records. While claimant does have a change in prescriptions from Cyclobenzaprine to Baclofen, this is due to complaints of sleepiness on Cyclobenzaprine rather than a worsening of condition. On March 28, 2019, Dr. Eckhoff did add Diclofenac to her prescription regimen. However, no doctor changed claimant's restrictions including Dr. Kuhnlein although he did find claimant's right shoulder to have greater range of motion deficits than in her examination of 2016 with Dr. Sassman.

The evidence supporting that a change in circumstances warrants a review-reopening, include increased range of motion deficits measured by Dr. Kuhnlein and the added prescription of Diclofenac. A mere difference in percentage of disability is not enough to warrant a review-reopening. On the other, claimant herself testified that her shoulder is unchanged in symptomatology. She stated this in her deposition. She reported it to her chosen independent medical examiner, Dr. Kuhnlein. "She believes her right shoulder symptoms are about the same intensity, same location and same pattern since the hearing several years ago." (CE 1:4) No doctor, including Dr. Kuhnlein, has imposed new restrictions. Dr. Eckhoff also documented unchanging right arm symptoms.

Thus the greater weight of the evidence supports a finding that the condition of claimant's right shoulder has not worsened or deteriorated in a manner not contemplated at the time of the December 2016 hearing.

Claimant also asserts she has sustained a new sequela injury to her left elbow from overuse of the left side due to her right shoulder injury. The claimant's theory rests primarily on a temporal connection. The claimant's left elbow did not hurt prior to her injury in 2014 but did after her injury. However, the elapsed time is significant. She was injured in 2014 with what she describes as a totally disabling injury but her left elbow overuse symptoms did not develop until 2021, over six years later.

Claimant is unsure of the cause of the left elbow injury. To Dr. Eckhoff she stated that it was due to overuse. At her deposition, she said that Dr. Kruse told her that it was overuse; however, there are no mentions of that in her medical records with Dr. Kruse and she did not appear to have a consultation with Dr. Kruse in the spring of 2021. Claimant sought out care with Dr. Kruse on August 2, 2021, at the referral of Dr. Caldwell. (See JE 4:39) When claimant developed her left elbow pain, her care provider was Dr. Eckhoff.

Claimant reported to Dr. Kuhnlein that she developed left elbow pain after she dropped something due to right shoulder pain and that she caught it with her left hand. That is more of a traumatic incident than an overuse symptoms. In her physical therapy

records, she reports elbow pain arising from lifting heavier grocery items, casting a fishing rod, work at a new childcare place, and lifting charcoal. At hearing and at deposition, she described reaching into a washing machine with her left arm instead of the right and using her left arm to hold laundry baskets and do more household chores. Admittedly, many of these incidents, if not all, fall into the category of "use" of the left arm.

However, the significant time lapse between the initial injury and the alleged overuse symptoms give more credence to the opinions of Dr. Eckhoff and Dr. Caldwell who did not find the left elbow symptomatology to be connected to the original right shoulder injury of 2014. Dr. Kuhnlein's opinion that did tie the two together also did not provide any impairment due to the epicondylitis or ulnar neuritis.

While claimant did use her left arm for household chores, she also engaged in leisure activities such as kayaking. It is difficult to pinpoint the etiology of the left elbow pains and based on the opinions of Dr. Eckhoff and Dr. Caldwell along with the lengthy time lapse and various activities claimant engaged in during the period between 2014 and 2021, it is found that claimant did not carry her burden to prove that the left elbow was sequelae to the original 2014 right shoulder injury.

Claimant also asserts that she has suffered an economic change. At the 2016 hearing, claimant asserted she was completely and totally disabled. The undersigned adopted the work restrictions imposed by the functional capacity evaluation which placed claimant in the medium physical demand category. The restrictions were similar to those imposed by the claimant's expert, Dr. Sassman. While it is true that claimant did not have employment but for a brief stint as a day care provider and presently as a dog walker, claimant only applied for a handful of jobs—maybe as many as six. She presented to these prospective employers that she had lifting restrictions. It is not clear what lifting restrictions she shared with the prospective employers. She twice told Dr. Eckhoff that she had a five-pound lifting restriction and she testified in the 2016 hearing that she could not lift things like a gallon of milk on the right. Her work restrictions in 2016 were a 30-pound lifting restriction and those restrictions remain unchanged at the 2022 hearing. Claimant evinced little motivation to return to work at the 2016 hearing and that remains the same in the present hearing. Six applications, possible misapplication of work restrictions, and two attempted jobs in six years are not signs of an individual motivated to return to work. Claimant does undertake physical hobbies such as kayaking and fishing which do not appear to be consistent with her self-professed disabled condition.

Even if the medication change was sufficient to warrant a review-reopening, her work restrictions remain unchanged. Dr. Kuhnlein assigned no new restrictions and neither have any of claimant's other medical providers. Dr. Kuhnlein provided no impairment rating for the left elbow. His only impairment rating was dedicated to the right shoulder. Claimant's work history, or lack thereof, is the same in 2022 as it was in December 2016. The FCE recommendations still apply. Thus, claimant has not shown an increase in disability since the December 2016 hearing.

Claimant is not entitled to additional healing period 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, Iowa App 312 N.W.2d 60 (1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Part of the stipulations of the December 2016 hearing was that claimant was at MMI as of March 9, 2016, as that was the agreed upon date for the commencement of permanent partial disability benefits. Permanent partial disability benefits begin when claimant has returned to work, medically capable of returning to similar employment or claimant has reached MMI. Claimant neither returned to work nor was she able to return to employment substantially similar to the work she had performed prior to her injury of 2014. Therefore, claimant had reached MMI as of March 9, 2016.

Healing period can be intermittent or interrupted but there is no medical testimony to support this. Claimant's treatment with Dr. Eckhoff has been primarily medical management. Claimant sees Dr. Eckhoff approximately once every six months. The post December 2016 care she has received is primarily palliative. Claimant's belief regarding the efficacy of physical therapy varied from no help, worsening the condition, to alleviating the pain. Dr. Eckhoff wrote in his medical notes that claimant had achieved MMI on November 16, 2021. (JE 1:19) Dr. Kuhnlein placed claimant at MMI as of February 14, 2017, the date upon which claimant saw Dr. Nepola and that she had reached MMI on or about August 2, 2021, for the left elbow. (CE 1:9)

It is the burden and duty of the claimant to prove the elements by a preponderance of the evidence and there is no medical testimony that claimant transitioned from her MMI to a healing period because of the right shoulder injury.

The record does not support a finding that claimant had a worsening condition that warranted additional healing period benefits.

Claimant seeks alternate care. Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and

> the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

It is unclear what alternate care she is seeking. Alternate care claims require a party seeking alternate care to prove that the care provided by the employer is not reasonable to meet the medical needs of the injured worker. Claimant still sees Dr. Eckhoff every six months for medication management. There is no evidence that claimant is unhappy with this and would like additional or different care. There is no written rejection of the care being proffered.

Claimant has not met the elements of an alternate care claim.

Claimant seeks reimbursement of the physical therapy appointments and appointments with UIHC. Unauthorized medical care is subject to the standards set forth by the Iowa Supreme Court in Bell Bros v. Gwinn. An employer can be ordered to pay for unauthorized care received by the employee only if the employee "prove[s] 'by a preponderance of the evidence that such care was reasonable and beneficial' under the totality of the circumstances," with "beneficial" defined as "provid[ing] a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193 204 (Iowa 2010)

To the extent that she needs ongoing care for her shoulder injury, such as treatment with Dr. Eckhoff, claimant is entitled to that as she has a shoulder injury arising out of a work incident in 2014. Claimant seeks out of pocket expenses related to the shoulder appointments at the University of Iowa. Those visits are the February 14, 2017, visit with Dr. Nepola, the June 23, 2021, visit with Dr. Caldwell and the August 2, 2021, visit with Dr. Kruse. While the outcome of these visits did not change the trajectory of claimant's course of healing, the visit with Dr. Nepola was expressly ordered by the February 14, 2017, injury. During that visit, claimant was diagnosed with multidirectional instability as a result of a genetic condition that pre-disposed claimant to injury in her right shoulder. The visit to Dr. Caldwell and Dr. Kruse are related to the left elbow.

The left elbow has been found to not be related to the work injury and thus the causation link between the claimant's medical bills and the work injury has not been established. Defendants shall pay the medical bills associated with Dr. Nepola's visit in February 2017. The other UIHC visits are related to the left elbow and are not awarded.

Claimant seeks reimbursement of costs including the filing fee, medical records and the reimbursement of Dr. Kuhnlein's IME.

Iowa Code section 85.39 is the sole method for reimbursement of an exam by a physician of the employee's choice. If an injured worker seeks reimbursement for

an IME, the provisions established by the legislature, under Iowa Code section 85.39, must be followed. Only the costs associated with preparation of the written report of a claimant's IME can be reimbursed as a cost at hearing under rule 876 IAC 4.33. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846-847 (Iowa 2015).

Dr. Kuhnlein's IME fees do not qualify for reimbursement under Iowa Code section 85.39. The only reimbursable costs that can be potentially assessed would be for the preparation of a written report by Dr. Kuhnlein.

There is no itemized billing for Dr. Kuhnlein and it is unknown what portion of the $4,242.50 bill is for the written report and what portion was for the examination. Therefore, the costs of Dr. Kuhnlein are not awarded. Claimant shall also remain responsible for the costs of the filing fee and medical records as she did not prevail in this matter.

ORDER

THEREFORE IT IS ORDERED

Defendants shall reimburse or pay directly the fees of Dr. Nepola related to the February 17, 2017, medical visit.

On all other issues, claimant shall take nothing.

Each party shall pay their own costs incurred prior to hearing. Defendants shall be responsible for the hearing transcript cost.

Signed and filed this 26th day of January, 2023.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Robert Gainer (via WCES)

James Russell (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.