

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEPHANIE MARTINSON,

Claimant,

vs.

THE LAW OFFICES OF TIMOTHY L.
LAPOINTE,

Employer,

and

AUTO-OWNERS INS. CO.,

Insurance Carrier,
Defendants.

File No. 20700217.01

ARBITRATION DECISION

Headnotes: 1108.20, 1402.30,
1402.40, 2204

Claimant Stephanie Martinson filed a petition in arbitration on March 4, 2020, alleging she sustained a mental health injury while working for Defendant The Law Offices of Timothy LaPointe ("LaPointe Law"). LaPointe Law, and its insurer, Defendant Auto-Owners Insurance Company ("Auto-Owners"), filed an answer on March 23, 2020, denying Martinson sustained a work injury.

An arbitration hearing was held *via* CourtCall video conference on May 25, 2021. Attorney Mathew Sahag represented Martinson. Martinson appeared and testified. Attorney Brian Scieszinski represented LaPointe Law and Auto-Owners. Timothy LaPointe appeared and testified on behalf of LaPointe Law and Auto-Owners.

Prior to the hearing Defendants filed objections to Martinson's proposed Exhibit 1, a report from Dr. Patra, Martinson's expert, and Exhibit 2, a wage record. Defendants averred Martinson failed to timely serve the exhibits and she had failed to respond to discovery requests. Martinson responded, stating she filed the exhibits in WCES, the electronic filing system. Documents have been filed in WCES since July 2019. On August 30, 2019, Workers' Compensation Commissioner Joseph Cortese, II, issued Order RE Proposed Exhibit, which provides "[i]t is therefore ordered that when a party files proposed exhibits in WCES, . . . the party shall contemporaneously serve all other parties in the contested case with a copy of the proposed exhibits through regular mail or personal delivery as set forth in 876 Iowa Administrative Code 4.13" <https://www.iowaworkcomp.gov/pdfs?page=3>. Failure to comply with an order of the Workers' Compensation Commissioner may result in sanctions, including exclusion of exhibits or other evidence. 876 Iowa Admin. Code 4.36.

On May 20, 2021, I issued a ruling, noting filing exhibits in WCES is not service of the exhibits, but also noting Martinson timely served a copy of Dr. Patra's report on Defendants and the proposed wage record is from LaPointe Law's office. I also noted Defendants did not file a motion to compel prior to hearing. Martinson agreed Defendants could obtain a rebuttal report. I granted Defendants the opportunity to obtain a rebuttal report at hearing. Defendants renewed their objections at hearing, which I overruled. Martinson agreed to provide Dr. Patra's testing results to Defendants for review by Dr. Gutnik, the defense expert.

At hearing Joint Exhibits ("JE") 1 through 2, and Exhibits 1-2 and A through H were admitted into the record. The record was held open until August 25, 2021, for Martinson to submit Dr. Patra's testing results to Defendants, for the receipt of a rebuttal report from Defendants, and for the filing of post-hearing briefs. I ruled if Martinson did not produce the testing results from Dr. Patra, Dr. Patra's report, Exhibit 1, would be excluded. The record left open deadline was extended multiple times, with the final extension to December 15, 2021.

Throughout this proceeding, Martinson refused to attend an independent medical examination with Defendants' expert, Dr. Gutnik. Dr. Patra also produced his report five months after examining Martinson, and after the independent medical examination with Dr. Gutnik was scheduled. Martinson never agreed to attend an independent medical examination with Dr. Gutnik. As noted above, Martinson also failed to properly serve her exhibits on Defendants in violation of Commissioner Cortese's August 30, 2019 Order. I found in the interests of fairness and justice Dr. Patra's report should be admitted into evidence and Defendants should be able to submit a rebuttal report from Dr. Gutnik in response to Dr. Patra's report. Joint Exhibit 3, a record from Ruter dated February 8, 2021, and Defendants' Exhibit I, a rebuttal report from Dr. Gutnik, were received and admitted into the record on December 14, 2021. The parties did not file briefs on December 15, 2021. I extended the record left open deadline to January 10, 2022. The parties filed their briefs on January 10, 2022, and the record was closed.

The parties submitted a Hearing Report, listing stipulations and issues to be decided. The Hearing Report was approved following the hearing. LaPointe Law and Auto-Owners waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between LaPointe Law and Martinson at the time of the alleged injury.
2. Temporary benefits are no longer in dispute.
3. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
4. The commencement date for permanent partial disability benefits, if any are awarded, is February 22, 2021.
5. At the time of the alleged injury, Martinson's gross earnings were \$653.81 per week and she was married.

6. Medical benefits are no longer in dispute.

ISSUES

1. Did Martinson sustain an injury, which arose out of and in the course of her employment with LaPointe Law on January 9, 2019?
2. Is the alleged injury a cause of temporary disability during a period of recovery?
3. Is the alleged injury a cause of permanent disability?
4. Has Martinson established legal and medical causation for her alleged mental-mental claim?
5. Does the Division lack subject matter jurisdiction under Ottumwa Housing and the doctrine of federal preemption/exclusive jurisdiction?
6. Did Martinson forfeit her right to benefits due to a refusal to attend a requested Iowa Code section 85.39 examination?
7. Whether Claimant's refusal to attend a requested Iowa Code section 85.39 examination is a violation of Defendants' due process rights and right to a fair hearing.
8. How many exemptions did Martinson have at the time of the alleged injury?
9. What is the rate?
10. What is the extent of disability?

FINDINGS OF FACT

Martinson is married and has a daughter who is 13. (Tr., p. 16) She has a stepson from a previous relationship who was born in November 2000, and a son who was born in April 2000 from a previous relationship. (Tr., pp. 16-17) Martinson dropped out of high school during her senior year and later earned a GED. (Tr., p. 14) From 2003 to 2005, Martinson attended Hamilton College and she received an Associate of Applied Science degree in paralegal studies. (Tr., p. 14)

After completing her degree in paralegal studies, Martinson worked as a legal assistant or paralegal for the Buchanan Law Firm, Russ Schroeder and Tom Jolas for several years. (Tr., pp. 17-21) Martinson testified she did not have any problems performing her job duties when she worked for the Buchanan Law Firm, Russ Schroeder, and Tom Jolas. (Tr., pp. 17-21) Martinson testified she was not responsible for managing the financial records, information technology, or personal matters for her previous employers. (Tr., p. 22) Martinson reported she earned and took leave when she worked for Buchanan Law Firm, Russ Schroeder and Tom Jolas and when she was away from work her employers did not contact her. (Tr., p. 23)

In 2010 Martinson accepted a position with LaPointe Law, working 30 hours per week. (Tr., pp. 22, 24) Martinson testified she worked as a backup for his legal assistant and she was responsible for typing letters and pleadings, answering the telephone, and greeting clients. (Tr., p. 24) When the full-time legal assistant was absent Martinson would work up to 40 hours per week. (Tr., p. 25)

Martinson reported when she was working for LaPointe Law she also worked part-time for another attorney. (Tr., p. 24) Martinson testified in 2014, LaPointe learned she was working for another attorney and he told her that either she needed to work for him or for the other attorney. (Tr., pp. 24-25) Martinson decided to stay with LaPointe Law and relayed she received more hours. (Tr., p. 25) Martinson reported her job duties did not change after her hours increased. (Tr., pp. 25-26)

Martinson testified on November 11, 2015, the other legal assistant for LaPointe Law walked out. (Tr., p. 26) Martinson reported,

we were starting to get more busy, I guess, and it was getting to where we needed more relief, and we needed more input from and stuff, and there was just a lot of factors in this. She had brought up a memo and asking him to kind of help us out, you know; and I think she included some things with, like, what stress, stress articles and stuff like that.

And he had come back from, I forgot where he was at the time, but – and we had both gotten an e-mail from him saying that we, he was disappointed because we didn't get much done as far as, you know, filing and stuff like that, and he wanted me to work more hours. He wanted me to work overtime. He said he'd pay me for overtime.

Kelly was salaried at the time and he wanted her to work. He said he would discuss a bonus for her later on if she was working the overtime; and she got into it with him, and then she just, she walked out. She said she was done.

(Tr., pp. 26-27)

Martinson testified after the other legal assistant left LaPointe asked her to assume the office manager duties and to handle the financial records. (Tr., p. 27) Martinson reported she started paying the bills, billing clients, managing the trust account, and handling the computer problems. (Tr., pp. 27-29, 33, 35) Martinson used QuickBooks to manage the accounts and she printed invoices that LaPointe looked over. (Tr., p. 28) Martinson relayed she balanced the trust account and firm account and transferred funds to make sure the trust account always had a zero balance and she corresponded with the accountant for LaPointe Law. (Tr., p. 30) Martinson reported she never received any training on the financial aspects she was responsible for and that she asked LaPointe for help, but he did not provide her with any help because he said he could not afford to. (Tr., pp. 31-33) Martinson also completed LaPointe's annual licensing paperwork. (Tr., p. 31)

Martinson reported that in addition to her office manager work, LaPointe had her work on workers' compensation cases and told her that she "caught on fast on how to do those." (Tr., p. 35) Martinson stated she calculated the rates and compiled the documents for the cases. (Tr., p. 35) LaPointe also had her work on his personal injury cases and assist with wills and power of attorney matters. (Tr., p. 35) Martinson completed medical bill summaries, medical records summaries, scheduled independent medical examinations, prepared pleadings and demand letters, and ensured the physicians had each claimant's records. (Tr., p. 35)

Martinson also assisted LaPointe with personal matters. (Tr., p. 36) LaPointe was on the board of his homeowners association. (Tr., p. 36) Martinson relayed LaPointe had her type up the shareholders certificates and send the letters "a couple of times." (Tr., p. 36) Martinson testified LaPointe also asked her to perform background checks on a few people he dated and to help him with his divorce. (Tr., p. 36)

Martinson testified after she assumed the office manager duties LaPointe hired another legal assistant who only lasted one day, and then he hired Jennifer as a legal assistant. Martinson reported after one year Jennifer moved three hours away and she stopped working in the office. (Tr., p. 37) Martinson stated Jennifer was responsible for estates and would enter time on a spreadsheet Martinson would review and input into QuickBooks. (Tr., p. 38) Jennifer did not assist with the information technology issues. (Tr., p. 38) Martinson reported after Jennifer started working remotely Jennifer would call Martinson when she was off work and Martinson would have to go in to get Jennifer's computer working. (Tr., p. 38)

Martinson testified she and Jennifer did not have similar caseloads and reported she worked on cases that "were more sensitive," and Jennifer worked on estate and conservatorship cases. (Tr., p. 39)

LaPointe Law is located in a building with other offices. (Tr., pp. 40-41) When the lease on the copier came up, a secretary from another office told Martinson she was not going to handle the copier anymore, so Martinson had to look into getting a new copier for lease. (Tr., p. 41) Martinson prepared a spreadsheet for the copier, which she billed to each office. (Tr., p. 41)

LaPointe later hired Martinson's sister-in-law to work two hours a day. (Tr., pp. 41-42) After a period of time Martinson's sister-in-law started working four hours on Friday. (Tr., p. 42)

Martinson testified after she assumed the additional tasks in the office she repeatedly told [LaPointe] I was overwhelmed, I'm starting to get overwhelmed. I told him that I – there was plenty of times I've asked him for somebody physically in the office to help with because I would have to do the filing, and I'd have to do all of that, and that's stuff that Jennifer obviously couldn't do working remotely, and I just, I asked him for help a lot.

(Tr., p. 42) Martinson reported LaPointe would respond by telling her do the best she could because he had two full-time legal assistants, he could not afford another legal assistant, and he was the only attorney in town with so many legal assistants. (Tr., pp. 42-43)

Martinson testified she would prepare files for settlement conferences and hearings. (Tr., p. 43) During the tenure with the office she worked on a criminal trial and a personal injury trial where she went to court with LaPointe. (Tr., p. 43)

Martinson relayed when LaPointe started giving some of her cases to Jennifer she had to train Jennifer on how to handle the cases. (Tr., p. 43) Martinson reported Jennifer would constantly ask her questions on cases and ask her to do research because she did not know where to find answers for her cases.” (Tr., pp. 43-44)

In December 2018, Martinson was on vacation 10 days because she had been unable to use her vacation before the end of the year. (Tr., p. 45) Martinson normally took a week off in June to go to Okoboji, but in 2018 she was receiving calls from Jennifer about office matters when she was on vacation and so she came back to work early. (Tr., p. 45)

Martinson testified she was supposed to come back to the office on January 3, 2019, but she had lost her voice and she told LaPointe she would work if he really needed her to, but she could not answer the telephone and Jennifer was not scheduled to work that day. (Tr., p. 46)

Martinson relayed she did not come into the office until Monday, January 7, 2019. (Tr., pp. 46-47) Martinson reported when she came into work,

I had looked at my desk and it was a mess. I mean, I started working. I knew that I had to do the financials because it was the beginning of the month. We were getting, had gotten billed from the other office for the rent, and I had to bill them for the copier usage and everything, so I was working on that. I had a bunch of e-mails from being off, and I was just trying to go through those; and looking at my basket that was full on what I had in there that needed to be done.

Tim, when I came in, he had met, he was meeting with somebody, and then he left; and then I received e-mails, him asking me if I paid this bill and paid that bill; and at the time we didn't have the funds in the account, and so I wasn't really sure what I needed to pay. He hadn't, you know, informed me of what I needed to do and how I was supposed to get the money to pay those, and, so, I, I don't really – that day was kind of busy for me just because I was so – I was at my breaking point, I think. I felt like I couldn't - - . . .

(Tr., pp. 47-48) Martinson reported,

[a]nyways, I was just really, I felt really overwhelmed and looking at everything, and then with all the e-mails I was getting and trying to get caught up; and then he was asking me if I had this or I had that; and I just,

I was so overwhelmed that I just, I kind of shut down. I worked until about 7:00 that night, and I went home.

(Tr., p. 48)

Martinson testified after work she argued with her husband and he gave her an ultimatum that if she did not quit their relationship would be over. (Tr., pp. 48-49) Martinson reported her husband wanted her to quit because he could see how stressed she was, he knew what his sister had told him, and she was taking out her stress on their children. (Tr., p. 49) Martinson relayed she often cried, she was emotional, she had outbursts of anger, and she would come home and not do anything because she did not want to do anything around the house. (Tr., p. 49) Martinson reported that before she assumed the office manager duties in 2015 she had occasional arguments with her husband, but not like she did after she started the office manager duties. (Tr., p. 49)

Martinson testified after the argument with her husband she had had some drinks and took some anxiety medication that had been prescribed for her because she wanted to “shut down” her brain. (Tr., p. 50) Martinson did not return to work the next day. (Tr., p. 51) Martinson testified her sister prepared a text message for her that she sent to LaPointe stating she had some things to explain to him later and he responded she could take sick leave. (Tr., p. 51)

On January 9, 2019, Martinson went into LaPointe Law. (Tr., p. 53; Ex. H, Depo. Tr., p. 28) Martinson reported LaPointe handed her a severance agreement and asked her to sign it. (Tr., p. 53) Martinson testified,

I was very upset, and I didn't understand why. He said it was because he needed to get work done, that he needed to process cases. My understanding of the person that he had hired had no legal background whatsoever. So I was very confused by that. If I wasn't able to work, I didn't understand how that person could, so I didn't know why he was actually firing me.

(Tr., p. 53) Martinson did not return to work for LaPointe Law after January 9, 2019. (Tr., p. 56)

In late January 2019, Martinson applied for a full-time paralegal position with the Department of Human Services Child Support Recovery Unit. (Tr., p. 58) She commenced her employment with the Child Support Recovery Unit on April 22, 2019. (Tr., p. 58)

Martinson testified she first sought medical treatment from her personal physician in 2018 and her physician referred her to a therapist, Holly Ruter, LISW. (Tr., p. 54) The record does not contain any treatment records before August 26, 2019, a date when Martinson attended an appointment with Ruter. (JE 1, p. 1)

When asked about the things she discussed with Ruter, Martinson relayed “[m]ostly work, and then the problems that were caused in the home with my husband and with my kids and stuff. My kids had started acting out. I think it was in – I believe it

was in retaliation because I wasn't there as much as Dad was; but he also had, he had a job that he worked later." (Tr., pp. 54-55)

During the August 26, 2019 appointment, Ruter documented, Martinson was feeling very stressed, she had a bad weekend with her boyfriend, and she believed they were "constantly fighting about things, especially parenting." (JE 1, p. 1) Ruter wrote she told Martinson some things are not worth fighting about and that they identified some of their arguments are typical for families and parents. (JE 1, p. 1)

Martinson returned to Ruter on September 11, 2019, reporting she had a "really rough week" because her uncle was in an accident and she had to make medical decisions because he was not married. (JE 1, p. 2) Martinson reported she had arguments with her family and she did not believe her boyfriend was supporting her. (JE 1, p. 2) Ruter documented she told Martinson she should focus on more positive things and take care of herself. (JE 1, p. 2)

During a follow-up appointment on September 23, 2019, Martinson reported she was feeling really stressed because she was handling her uncle's estate, there was a lot of discord in her family, and she did not believe her boyfriend was supporting her. (JE 1, p. 3) When she returned to Ruter on October 7, 2019, Martinson reported she was "doing ok," and that her family had "backed down with things on her uncle's estate," but reported she was angry because her boyfriend was not interested in getting married. (JE 1, p. 4)

On November 4, 2019, Martinson attended a session with Ruter, reporting she was "doing ok," but she was worried about her daughter because her daughter was having behavioral problems at school and home. (JE 1, p. 5) When she returned on November 18, 2019, Martinson reported she was getting married, she was less excited than she believed she should be because she worried he would back out. (JE 1, p. 6) Ruter documented she discussed all the things Martinson has to be thankful for, Martinson acknowledged she focuses on the negatives instead of the positives, and they discussed Martinson's frustrations with her uncle's estate and the problems it caused with her family. (JE 1, p. 6)

Martinson returned to Ruter on December 2, 2019, stating she was frustrated with marriage issues with her boyfriend and questioned his motives and that she was worried about her daughter. (JE 1, p. 7) During an appointment on December 17, 2019, Martinson reported she had a huge scare with her sister, but she was doing better and that she was involved in a huge argument with her boyfriend. (JE 1, p. 8)

On December 30, 2019, Martinson and her boyfriend attended a session with Ruter. (JE 1, p. 9) Martinson and her boyfriend reported things were better between them recently, noting they had issues and fights over the years. (JE 1, p. 9) She also reported she was "doing ok with things," and that she and her boyfriend had gotten into a few smaller arguments, but nothing major during an appointment on January 13, 2020. (JE 1, p. 10)

During an appointment on January 27, 2020, Martinson reported she and her boyfriend had booked a trip to Las Vegas to get married. (JE 1, p. 11) When she

returned to Ruter on February 24, 2020, Martinson relayed she had questioned her husband's intent until the moment they were on the way to the chapel and that she had questioned their relationship a year ago due to his lack of desire to get married. (JE 1, p. 12)

On April 6, 2020, Martinson returned to Ruter, reporting she was "doing ok with things." (JE 1, p. 13) Martinson reported she had helped her sons move the past weekend and she was upset because her son asked her to call or text before coming over. (JE 1, p. 13) Martinson stated she and her husband had not been fighting much, but she wished he would wear his wedding ring. (JE 1, p. 13)

Martinson attended an appointment with Ruter on April 20, 2020, reporting she was frustrated in her life and felt isolated and stressed with having to do schoolwork with her daughter. (JE 1, p. 14) Ruter documented she encouraged Martinson to not push herself to work and teach her child, and to find time for herself in relaxing and enjoyable ways. (JE 1, p. 14)

On May 13, 2020, Martinson attended an appointment with Brittany Splittgerber, M.D., a surgeon with Mason City Clinic, regarding a benign breast lipoma. (JE 2) Martinson also complained of gallbladder pain. (JE 2) Dr. Splittgerber diagnosed Martinson with biliary dyskinesia and a breast mass, and discussed surgical removal of the gallbladder and a referral to a gastroenterologist. (JE 2)

Martinson attended a follow-up appointment with Ruter on June 1, 2020, reporting her sister's father had passed away over the weekend and she had a rough weekend. (JE 1, p. 15) Martinson reported he was like a father to her and his death "brought up things with her own biological father who started writing hurtful things on her social media." (JE 1, p. 15) Martinson relayed she wished her father would step up and be a dad and that she felt like closing doors to him meant it was her fault. (JE 1, p. 15)

On February 8, 2021, Martinson attending an appointment with Ruter. (JE 3) Ruter documented Martinson was "doing ok with things right now," noting she and her husband had been fighting over some things. (JE 3, p. 1) Ruter noted Martinson had received a scare when she received a call from her daughter's school reporting her daughter was absent. (JE 3, p. 1) Martinson informed Ruter the school found her daughter, who had tried to skip class, and that Ruter discussed the stress of having an "almost teenage daughter," and her pending civil suit and what she hoped to accomplish from it. (JE 3, p. 1)

Counsel for LaPointe Law and Auto-Owners scheduled an independent medical examination for Martinson with Bruce Gutnik, M.D., a psychiatrist on March 1, 2021, in Omaha, Nebraska, and included mileage and \$75.00 for a hotel the night before the appointment. (Ex. C, p. 1) Martinson refused to attend the independent medical examination, so Dr. Gutnik performed a records review report. (Ex. A) Dr. Gutnik opined Martinson did not have a physical or psychological medically diagnosable condition related to her employment at LaPointe Law, and further opined:

[i]n my opinion, with a reasonable degree of medical certainty, Ms. Martinson has a history of postpartum depression and has stress related

anxiety based on her stresses related to her uncle being killed in a motorcycle accident and her having to handle his estate, her daughter having behavioral problems at home and at school, and Ms. Martinson being married. Further, she was upset because her husband refused to wear his wedding ring. Her sister's father died and he was like a father to her. Finally, she indicates that she felt overworked by Mr. LaPointe. Ms. Martinson was able to keep up with work for Mr. LaPointe, and I therefore doubt that this "extra work" was the cause of her stress. Rather, her stress came from the above noted issues.

(Ex. A, pp. 5-6) Dr. Gutnik further opined that there was no time after her alleged date of injury of March 12, 2018, that Martinson was unable medically to return to substantially similar employment to that which she was engaged in and that she was not sustained any permanent impairment, noting she is currently employed doing a similar job. (Ex. A, p. 6)

On December 3, 2020, Kunal Patra, M.D., a psychiatrist, performed an independent medical examination for Martinson, but he did not issue his report until April 9, 2021. (Ex. 1) Dr. Patra's report cites to records that were not produced by the parties at hearing. (Ex. 1, pp. 2-6) Dr. Patra noted Martinson had a history of past physical and sexual abuse as a child and that she was sent away to Beloit Home when she was 10 for the sexual trauma. (Ex. 1, pp. 12-13)

Dr. Patra did not perform full neuropsychological testing. He noted he administered the Patient Health Questionnaire-9, Generalized Anxiety Disorder-7, Structured Interview of Reported Symptoms, and the Personality Assessment Inventory. (Ex. 1, p. 14) Dr. Patra noted the Patient Health Questionnaire-9 asked Martinson to rate her mood and symptoms over the last two weeks of her employment with LaPointe Law, and that her score of 20 suggested severe clinical depression during her employment at the law office. (Ex. 1, pp. 14-15) Dr. Patra noted on the Generalized Anxiety Disorder-7, Martinson was asked to rate her anxiety and related symptoms over the last two weeks of her employment with LaPointe Law, and that she "scored 19 on the GAD-7 suggesting severe generalized anxiety during her employment at the law office." (Ex. 1, p. 15)

Dr. Patra stated on the Structured Interview of Reported Symptoms, Martinson did not have an elevated score on the primary scales, her score on the "SIRS-2 Profile revealed that she scored in the Genuine Response range on Primary Scales of RS, SC, IA, BL, SU, SEL, SEV, and RO." (Ex. 1, pp. 15-16) With respect to the Personality Assessment Inventory, he found the number of uncompleted items fell within acceptable limits. (Ex. 1, p. 16) He found "[t]he PAI clinical profile reveals no marked elevations that should be considered to indicate the presence of clinical psychopathology." (Ex. 1, p. 17)

Dr. Patra opined based on the available psychiatric records, her evaluation, her husband's collateral information, and "their responses on the PHQ-9 and GAD-7, it is my opinion based upon a reasonable degree of medical and psychiatric certainty that Ms. Martinson's psychiatric diagnoses from the work injury sustained during her

employment” with LaPointe Law are major depressive disorder, recurrent episode, moderate to severe intensity, and generalized anxiety disorder. (Ex. 1, p. 17) Dr. Patra found her psychiatric records, which were not produced at hearing, revealed she suffered significant stress at work while working for LaPointe Law. (Ex. 1, p. 17) Dr. Patra noted Martinson reported she was stressed by the heavy workload, not receiving help from others, her boss’s unpredictable behavior, not being able to get away from work on vacation because her boss was calling and texting her, her coworker was favored over her, she worked long hours, and she spent time in the office on Friday afternoons often by herself with everyone gone, she was late to her children’s functions, and she had disagreements with her husband over work-family life balance. (Ex. 1, pp. 17-18)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) (“AMA Guides”), Dr. Patra assigned Martinson a class 2 on activities of daily living, social functioning, concentration, persistence and pace, and adaptation to competitive dynamic work environment for her major depressive disorder, noting a class 1 is no impairment and a class 2 is an impairment level compatible with most useful functioning. (Ex. 1, p. 23) With respect to her generalized anxiety disorder, Dr. Patra assigned Martinson a class 2 on activities of daily living, and class three on social functioning, concentration, persistence, and pace, and competitive and dynamic work environment. (Ex. 1, p. 23) Dr. Patra concluded her impairment level for her conditions would fall between a mild level and a moderate level and he assigned her a 30 percent whole person impairment. (Ex. 1, p. 23) Dr. Patra recommended Martinson not return to LaPointe Law and that she avoid working in private law offices or practices because of a “substantial risk of aggravation of her underlying depressive disorder and generalized anxiety disorder.” (Ex. 1, p. 24) Dr. Patra recommended ongoing psychotherapy with Ruter. (Ex. 1, p. 25)

Dr. Gutnik prepared a rebuttal report on December 9, 2021, after having the opportunity to review Dr. Patra’s report. (Ex. 1) Dr. Gutnik opined as follows:

Dr. Patra’s evaluation refers to excess stress at work but does not specifically list excess stresses. Ms. Martinson does refer to her boss questioning her integrity and wanted to check her time cards. On June 19, 2018 Dr. Patra notes Ms. Martinson had stress from work, parenting, relationships and having to work alone at times. She was also upset when the boss became upset that she took time off to take care of her daughter. She recently lost her job and changed jobs which caused new symptoms. In October, 2017, she was reportedly overwhelmed with work responsibilities and argued with her boss regarding long work hours. Her boss refused to let her bring her daughter to work. She had to train another woman to help with her work load. On January 9, 2019 Mr. LaPointe brought a severance agreement to her. Dr. Patra opined that Ms. Martinson suffered from Major Depressive Disorder Recurrent and Generalized Anxiety Disorder caused by her workload and the environment at work. He noted that she had reached MMI and had a 30% permanent partial impairment rating in his opinion.

My records review noted that from July 29, 2019 through June 1, 2020, Mr. [sic] Martinson had 21 psychotherapy visits for Anxiety Disorder and Major Depressive Disorder Recurrent. There were some records that indicated that she needed to be in control. She had been fighting with her boyfriend. A close uncle who had been like a father to her was killed in a motorcycle accident and she had to handle his estate. Her daughter had behavioral problems at school and at home. During that time period Ms. Martinson got married. In addition, a left breast mass was found. Ms. Martinson noted that she had an increased work load as others left the office and that her boss would frequently change directives to her. She and her husband argued about parenting and he did not validate her. Despite all of these stresses, she feels that the stresses at work caused her “nervous breakdown”.

I respectfully disagree with Dr. Patra’s conclusions. Ms. Martinson endured physical and sexual traumas as a child. She had a history of post partum depression and stress related anxiety following the death of her uncle. She had to handle his estate. In addition, she was stressed by getting married, behavioral problems of her daughter and feeling that she was being overworked. In my opinion, with a reasonable degree of medical certainty, she was always able to return to work at a similar job and indeed, she was employed at a similar job at the time of my records review. I therefore found that there was no permanent injury of a mental health condition caused by stresses at her employment at the Law Offices of Timothy LaPointe. Given Ms. Martinson’s stresses noted above, I felt that any “extra work” that she did for Mr. LaPointe did not cause her stress. I opined that after her date of alleged injury of March 12, 2018, she was able medically and psychiatrically to return to a substantially similar employment at any time.

In my opinion, with a reasonable degree of medical certainty, Ms. Martinson had multiple non-work related stresses that caused her reported anxiety and depression. I would not assign any permanent partial impairment rating to Ms. Martinson. Indeed she got another similar job. I would not support any medical diagnosis related to her employment. Rather, it appears that a number of stressors were present and Ms. Martinson has chosen work as the cause of her anxiety and depression to the exclusion of multiple other non-work stressors that were present.

(Ex. I, pp. 1-2)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves the issues of arising out of and in the course of employment, legal and medical causation, extent of disability, forfeiture of benefits, and the correct rate. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers’ compensation cases. 2017 Iowa Acts chapter 23 (amending

Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. This case involves an injury occurring after July 1, 2017, therefore, the provisions of the new statute involving extent of disability and forfeiture of benefits under Iowa Code sections 85.34 and 85.39 apply to this case.

The calculation of interest is governed by Deciga-Sanchez v. Tyson Foods, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable 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 injury, plus two percent. Again, given this case concerns an injury occurring after July 1, 2017, the new provision on interest applies to this case.

II. Mental-Mental Injury

Martinson alleges she sustained a mental injury without an accompanying physical injury caused by her work with LaPointe Law or a mental-mental injury. LaPointe Law and Auto-Owners aver Martinson has failed to prove factual and legal causation.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, 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). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats Co. 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. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, 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., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

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 v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). 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).

It is well established in workers’ compensation that “if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or ‘lighted up’ by an injury which arose out of and in the course of employment resulting in a disability is found to exist,” the claimant is entitled to compensation. Iowa Dep’t of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

[a] disease which under any rational work is likely to progress so as to finally disable an employee does not become a “personal injury” under our Workmen’s Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

After proving medical causation, an employee must also establish legal causation. Dunlavey v. Economic Fire & Cas. Co., 526 N.W.2d 845, 855 (1995). The Iowa Supreme Court has held, to establish legal causation for a nontraumatic mental injury in the absence of a physical injury, an employee must establish “the mental injury ‘was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs,’ regardless of their employer.” Id. “When a claim is based on a manifest happening of a sudden traumatic strain, the legal-causation test is met irrespective of the absence of similar stress on other employees.” Brown v. Quik Trip Corp., 641 N.W.2d 725, 729 (Iowa 2002). Martinson presented no evidence of a sudden traumatic event like a shooting, murder, bank robbery, or physical threat in this case, therefore, Martinson must establish the alleged mental injury was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by other employees in the same or similar jobs.

Two expert witnesses provided opinions, Dr. Patra and Dr. Gutnik. Dr. Patra examined Martinson personally. Dr. Gutnik did not examine Martinson personally due to her refusal to attend the independent medical examination. Dr. Patra diagnosed

Martinson with major depressive disorder, recurrent episode, moderate to severe intensity, and generalized anxiety disorder caused by her employment with LaPointe Law. Dr. Gutnik opined she did not sustain a mental health condition caused by her employment with LaPointe Law.

As discussed by Dr. Gutnik in his report, the medical records following her termination show Martinson was experiencing stress with her husband and daughter, with the death of a close uncle, due to a left breast mass, and due to an increased workload. Martinson did not produce any medical records of treatment she received for a mental health condition during her employment with LaPointe Law supporting her work with LaPointe Law caused a temporary or permanent mental health impairment. Based on the foregoing, I do not find Dr. Patra's opinion persuasive.

I also find Martinson has failed to establish legal causation. Martinson alleges the workplace at LaPointe Law was stressful. She did not call any witnesses at hearing to testify regarding the working conditions at LaPointe Law. Martinson did not produce any evidence that her working conditions at LaPointe Law differed from other law offices. Moreover, she did not produce any medical records regarding treatment she received while working for LaPointe Law supporting unusual stress in the workplace. As noted above, the medical records she produced document personal stresses she was experiencing with her family members after her employment with LaPointe Law ended. These findings are consistent with Dr. Gutnik's findings and conclusions. I find Martinson has failed to establish both factual and legal causation in this case. Based on this finding, the remaining issues in this case are moot.

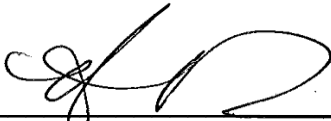
ORDER

IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing.

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

Signed and filed this 7th day of February, 2022.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Matthew Sahag (via WCES)

Matthew Phillips (via WCES)

David Scieszinski (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.