

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCA BEYER,

Claimant,

vs.

RR DONNELLEY & SONS CO.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,Insurance Carrier,
Defendants.

File No. 20009249.01

ARBITRATION DECISION

Head Notes: 1108.50, 1402.20, 1402.40,
1802, 1803, 2502, 2907

STATEMENT OF THE CASE

Rebecca Beyer, claimant, filed a petition in arbitration seeking workers' compensation benefits from RR Donnelley and Sons Company, employer and Indemnity Insurance Company of North America, insurance carrier, as defendants. Hearing was held on March 4, 2022. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the declaration of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via Internet-based video. Accordingly, this case proceeded to a live video hearing via CourtCall and Zoom with all parties and the court reporter appearing remotely.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of 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. Pursuant to the parties' request the record was left open for the parties to reach an agreement on any credit defendants are entitled to under Iowa Code section 85.38(2). (Hearing Report, numbered paragraph 9) In the post-hearing briefs, neither party contends the credit issue needs to be addressed by the undersigned. The parties are now bound by their stipulations.

Frank Hackenmiller, Rebecca Beyer, and Matthew Mason all testified live at trial. The evidentiary record also includes joint exhibits JE1-JE17 and defendants' exhibits A-K. On the eve of the hearing defendants filed supplemental joint exhibits 18-23 and

defendants' exhibits A-H. It should be noted at the hearing claimant objected to all of these exhibits as untimely. Because the exhibits were served on claimant's counsel within a few business hours of the start of the hearing, claimant's counsel had not been able to thoroughly review the exhibits and prepare specific objections. The undersigned gave claimant's counsel until March 21, 2022 to file written objections. The written objections were timely filed. Before the undersigned issued the written ruling on the objections, the attorneys in this case advised they had reached an agreement regarding the admission of exhibits and claimant was withdrawing his objections as long as the two prior sets of defense "Joint Exhibits" and defense exhibits filed on March 3, 2022 and March 14, 2022 were not admitted into evidence.

The parties submitted post-hearing briefs on May 9, 2022, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury to her left shoulder that arose out of and in the course of her employment on April 23, 2018.
2. Whether claimant sustained a sequela injury to her right shoulder as a result of the April 23, 2018 injury.
3. If so, the nature and extent of permanent disability claimant sustained as the result of the injury.
4. Whether claimant sustained temporary disability as the result of the injury.
5. The number of exemptions claimant is entitled to claim for purposes of determining the weekly workers' compensation rate.
6. Claimant's entitlement to medical benefits under Iowa Code section 85.27.
7. Assessment of costs.

FINDINGS OF FACT

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

The claimant, Ms. Rebecca Beyer, is 44 years old and resides in Riceville, Iowa. I find her testimony to be straightforward, simple, and credible. Her testimony was generally consistent with other portions of the evidentiary record. She was a relatively good historian. Ms. Beyer appeared credible and honest.

At the time of the alleged injury, Ms. Beyer, worked for RR Donnelley and Sons Company ("RR Donnelley") as a collator operator. RR Donnelley makes business forms. Ms. Beyer worked the third shift from 11:00 p.m. to 7:00 a.m. She was paid

\$20.50 per hour plus \$1.15 shift differential, for a total of \$21.65 per hour. Her duties included feeding printed paper into a collator machine. Ms. Beyer testified that her injury occurred on April 23, 2018, around 11:30 p.m. when she was working on collator 14 using a chain hoist to remove a 28-inch head out of the machine. Ms. Beyer was pulling on the chain hand-over-hand when she felt sharp, sudden pain in her left shoulder. During her shift she reported the injury to Frank Hackenmiller. He completed an incident report. They discussed the possibility of Ms. Beyer going to a doctor. According to Ms. Beyer, Mr. Hackenmiller advised that he preferred that she not go because they had gone 700-plus days without a lost-time injury. Ms. Beyer continued working but only used her right hand. Ms. Beyer is right-handed. (Transcript pp. 55, 72, 124; JE 1)

Approximately two weeks later, around May 8th, Ms. Beyer was using a chain hoist when she had pain in her left shoulder again. She told Mr. Hackenmiller about the pain and insisted that she be allowed to see a doctor. He did not complete another incident report because he said it was the same injury. (Tr. p. 73)

On May 10, 2018, Ms. Beyer saw Mark J. Haganman, D.O. at the Osage Clinic for left shoulder pain. Ms. Beyer stated two and a half weeks before this appointment she was using a chain hoist to change a 28-inch head on a machine when she felt pain in her left shoulder. Her symptoms waxed and waned over the next two weeks. Then two nights prior to this visit while again using a chain hoist she had immediate onset of pain in her left shoulder. The doctor's impression was left subacromial bursitis, work compensation. Dr. Haganman stated, "I do not believe that she has internal derangement nor is the mechanism of her injury consistent with internal derangement." (JE2, p. 5) He offered her a subacromial injection which she declined. He did not assign any work restrictions. Ms. Beyer was to return in 2 weeks if her symptoms were not resolving. Id.

Ms. Beyer's left shoulder improved but then around May 23, 2018, she was putting a 50-pound shaft into her machine when the pain in her left shoulder returned, and she was unable to use her arm again. Ms. Beyer saw Dr. Haganman on May 25, 2018. His impression was left shoulder strain. He restricted her to 25 pounds or less of lifting. He recommended physical therapy. She was to return in one month. (JE2, pp.8-9; Tr. p. 73)

Ms. Beyer continued to follow-up with Dr. Haganman for her left shoulder. She underwent an MRI of her left shoulder on July 16, 2018. The MRI indicated supraspinatus tendinosis without evidence for full thickness tear, mild subacromial deltoid bursal fluid, mildly thickened middle glenohumeral ligament and no signs for labral tear. Following the MRI, the impression of Julie A. Potter, ARNP from the Osage Clinic, was left shoulder tendinosis, work compensation injury. Ms. Beyer underwent injections into her left shoulder, additional therapy, and prescription medications. (JE2, pp. 14-22)

Ms. Beyer went to 6 sessions of physical therapy at Mitchell County Regional Health Center starting May 30, 2018. The therapy notes indicate she felt that her mobility within the left shoulder improved. She reached 3 of her 7 goals before all 6 of

her authorized visits were used. She was not authorized to continue her therapy, so she was discharged on July 17, 2018. (JE2, pp. 10-13; Def. Ex. C, pp. 18-20)

Ms. Beyer returned to Julie A. Potter, ARNP on March 19, 2019, with left shoulder pain secondary to her work injury. Her symptoms flared up over a week ago after being assigned to work on the "jogger" machine at work. She had constant ache in the left shoulder and increased pain with movement, especially above her head. She was provided a left shoulder bursal injection. The assessment was left shoulder bursitis. She was to avoid any heavy activity and return to physical therapy exercises. The medical provider emphasized the importance of continuing strengthening exercise. She was to return in one month. On March 27, 2019, Ms. Beyer was released to return to regular work schedule without restrictions. (JE2, pp. 25-26; Def. Ex. C, p. 27)

Although Ms. Beyer's left shoulder never got 100 percent better, it did improve between April 2018 and August 2019. She had received injections and was also leery about using her left shoulder. Ms. Beyer believes that her right shoulder began hurting because she was using her left shoulder sparingly. She only used her right arm to pull on the chain hoist. Her right shoulder began hurting gradually over time. On August 23, 2019, she was at her family doctor, Holly Voigt, PA for other reasons and discussed her shoulders. Ms. Voigt is in the same clinic as Dr. Haganman. Ms. Beyer reported that she performs a lot of repetitive movements at work and flips boxes in the same direction every day which she believes is triggering her right shoulder pain. Ms. Beyer requested injections into her shoulders. However, Ms. Voigt told her she could only have one injection into one shoulder. Because her right shoulder was more painful than her left, Ms. Beyer opted to receive an injection into her right shoulder. (Tr. pp. 75-77; JE2, pp. 27-28)

On October 14, 2019, Ms. Voigt authored a missive to Richard Rattay, M.D. advising that Ms. Beyer's right shoulder symptoms persisted despite the August injection. Ms. Voigt offered Ms. Beyer physical therapy or further evaluation with Dr. Rattay; she opted to see Dr. Rattay. (JE2, p. 29)

Dr. Rattay saw Ms. Beyer on October 17, 2019, for her right shoulder. Ms. Beyer reported that at work she does a lot of flipping of cartons of paper. Recently she was flipping 80 cartons, weighing approximately 25 pounds each. She had also been "jogging" stacks of paper over 600 sheets thick. She had to grab and move the stacks of paper at the lower chest level repeatedly. She had a 2-to-3-year history of occasional pain in her right shoulder. Over the last 3 months her pain had been more constant. Her right shoulder pain starts in her neck. She has had trouble with her left shoulder since April 2018. Dr. Rattay's impression for the right shoulder was pain, unspecified chronicity. He felt that she may or may not have tearing of the rotator cuff, but even if there was no definitive tear, he believed the severity of her impingement syndrome would likely require arthroscopic surgery. He ordered imaging. Since April 2018, Ms. Beyer also had trouble with her left shoulder due to a work injury. She had injections in the left shoulder, formal therapy, and an MRI, but was still symptomatic. (JE3, pp. 38-41)

Ms. Beyer returned to Dr. Rattay on October 31, 2019 to go over the results of her right shoulder MRI. The MRI showed a full thickness tear of the supraspinatus partial width. There was tendinopathy and undersurface tearing of the supraspinatus and glenoid labral wear and tear. Also, there was glenohumeral wear, biceps wear, prominent anterolateral acromion and acromioclavicular joint arthrosis. Dr. Rattay's impression was right shoulder rotator cuff tear and other impingement pathology as well as acromioclavicular joint arthrosis. Dr. Rattay recommended right shoulder arthroscopic subacromial decompression, distal clavicular resection, labral biceps and glenohumeral rotator cuff wear and tear debridement, and treatment as indicated with probable rotator cuff tear repair. (JE3, pp. 42-44; Def. Ex. A, pp. 1-2)

The last day Ms. Beyer worked at RR Donnelley was November 7, 2019, when she went off work for surgery. On November 11, 2019, Dr. Rattay performed right shoulder arthroscopic subacromial decompression, distal clavicle resection, labral and glenohumeral wear and tear debridement and thermal treatment, followed by rotator cuff tear repair. (Tr. p. 104; JE3, pp. 45-47)

Ms. Beyer followed up with Dr. Rattay's office after surgery. Unfortunately, approximately two months after surgery she developed adhesive capsulitis. Ms. Beyer opted to proceed with surgical manipulation which was performed on January 17, 2020. (JE3, pp. 48-55)

Ms. Beyer continued to see Dr. Rattay. On February 20, 2020, she reported she was improving but still had pain and limitation in her right shoulder. She was not back to work yet. Ms. Beyer stated, "that at work they are 'in a big pissing match and they said that if they had something for her they would call her by this Friday.'" (JE3, p. 57) Dr. Rattay noted that at the last appointment he restricted her to no lifting over 5 pounds below the shoulder and no activity at or above the shoulder. Dr. Rattay did not think she could return to work yet and gave her a note stating no work until further notice. Ms. Beyer indicated that if Dr. Rattay gave her continued restrictions her employer would likely not follow them. Dr. Rattay said this was not a workers' compensation claim so he was just keeping her off work. He recommended an MRI of her right shoulder to see if there was a re-tear. (JE3, pp. 23-25)

Ms. Beyer returned to Dr. Rattay on March 11, 2020. The new MRI did not show any new abnormalities. Dr. Rattay recommended formal and home therapy. He released her to return to work as of March 13, 2020, with no shoulder level or higher work and no jogging work and no lifting over 40 pounds. (JE3, pp. 26-28)

By April 21, 2020, Dr. Rattay felt she had plateaued. He noted there were some issues with formal therapy over the past 6 weeks. He contacted the therapist. They did not feel that further attempts at therapy would be productive, but they were willing to try if Ms. Beyer was willing. Ms. Beyer opted to be placed at maximum medical improvement (MMI) with no further formal therapy and permanent work restrictions. She was concerned the restrictions would mean she would be moved to a lower paying job. (JE3, pp. 29-31)

On May 27, 2020, Dr. Rattay authored a missive in response to claimant's counsel's request for an impairment rating. Dr. Rattay reiterated that Ms. Beyer

reached MMI for her right shoulder on April 21, 2020. He noted her permanent restrictions of no shoulder level or higher lifting or activity on the right side. He felt she would likely need a corticosteroid injection at the right shoulder a few times a year, but he did not see the need for future surgical treatment for her shoulder. For her right shoulder he assigned 14 percent impairment of the upper extremity pursuant to the AMA Guides. (JE5, p. 87)

On June 2, 2020, Ms. Beyer saw Dr. Haganman with a 2-year history of left shoulder pain. She had previously undergone injection therapy and wanted to have it again. Dr. Haganman's assessment was shoulder pain and evidence of tendinosis, tendonopathy and subdeltoid bursitis by MRI. Dr. Haganman provided her with an injection for her left shoulder. She was to return as needed. (JE2, p. 35)

On June 12, 2020, Dr. Rattay authored a second missive to claimant's counsel. He noted that there were some items missing in his impairment rating from May 27, 2020. Dr. Rattay assigned additional impairment for loss of limited extension or adduction and additional disability for undergoing distal clavicle resection. The revised total impairment of the right upper extremity under The Guides was 24 percent of the right upper extremity. (JE6, pp. 88-89)

Also on June 12, 2020, Dr. Rattay restricted her to no shoulder level or higher lifting activity on the right and rare use of vibratory tools. No follow-up was recommended. (JE3, p. 32)

Ms. Beyer saw Ms. Voigt for her right shoulder on August 26, 2020. Ms. Beyer felt the injection she received in March 2020 had worn off and was now interested in another injection. She was laid off and had not been working. Ms. Voigt gave her another injection into her right shoulder. (JE2, p. 36)

On October 8, 2020, Dr. Rattay signed "IRCP 1.508(3) Supplemental Medical Conclusion of Richard E. Rattay, M.D. Concerning Rebecca J. Beyer." Dr. Rattay stated that he first saw Ms. Beyer on October 17, 2019, for her right shoulder. It was his understanding that her job required her to perform medium to heavy repetitive work above her shoulders and away from her body. At the time Ms. Beyer injured her left shoulder in April 2018 she primarily used her right arm for work due to pain in her left arm. He felt that her complaints were consistent with what he found on physical exam and by history. (JE7) Dr. Rattay stated:

I conclude, on a more likely than not basis, that Rebecca's cumulative repetitive work at RR Donnelley using primarily her right arm while compensating for pain and limitations in her left arm substantially accelerated the process or directly caused the impingement and tear in her right shoulder making necessary the surgery I performed on November 11, 2019, to repair Rebecca's right shoulder.

(JE7, p. 90)

Ms. Beyer saw Dr. Rattay on November 25, 2020, for an evaluation of both shoulders. This was the first time Dr. Rattay saw her for her left shoulder. He last saw

her 7 months ago for her right shoulder and placed her at MMI at that time. Ms. Beyer began having problems with her left shoulder in April 2018 when she pulled a hoist at work. Her right shoulder began to hurt in 2019 when she overused her right arm and shoulder due to her left arm not being well. She has constant pain in both shoulders that has gotten progressively worse. Ms. Beyer has not returned to work since November 7, 2019. Dr. Rattay noted that she underwent right arthroscopic rotator cuff tear repair on November 11, 2019, followed by manipulation on January 17, 2020. She never regained full motion or relief of her pain on the right side and has progressively worsened on the left. Dr. Rattay recommended an MRI of both shoulders. He advised that there was potential for some of her pain and problems to be permanent and she may need permanent restrictions on both sides. (JE3, pp. 66-69)

On December 30, 2020, Ms. Beyer returned to review the MRIs with Dr. Rattay. After reviewing the MRIs, Dr. Rattay's impression was that Ms. Beyer had some residual impingement type pain at the right shoulder and has impingement syndrome and acromioclavicular joint pain on the left as well as superior labral tearing. Dr. Rattay stated, "I discussed that based on her history, her examination and her imaging, I think that activity at work contributed to and aggravated her shoulder problems." (JE3, p. 72) Ms. Beyer opted for corticosteroid injections in both shoulders. He discussed arthroscopy as an option on the left. Dr. Rattay instructed her to work as tolerated and return to him as needed. (JE3, pp. 70-72)

There is a letter to defense counsel from Dr. Rattay¹ at the Mason City Clinic dated February 11, 2021. He opined that Ms. Beyer's shoulder problem and his treatment of her right shoulder was confined to the shoulder. (JE8; Def. Ex. A, pp. 3-5)

On April 28, 2021, Ms. Beyer returned to Dr. Rattay for follow-up of both shoulders. She reported that she received approximately 4 to 6 weeks of good relief from the December 2020 injections, but then the pain slowly returned. Ms. Beyer wanted and Dr. Rattay provided repeat injections in both shoulders. No follow-up was needed. (JE3, pp. 73-76)

On July 29, 2021, Ms. Beyer returned to Dr. Rattay. She reported continued pain in both shoulders and was hoping for repeat corticosteroid injections. However, Ms. Beyer was on Eliquis for a condition not related to her work, and Dr. Rattay recommended she wait at least 2 weeks until after she is off that before she has more injections. Dr. Rattay then addressed the issue of permanent functional impairment. For Ms. Beyer's left shoulder, Dr. Rattay utilized the AMA Guides and assigned 15 percent impairment of the left upper extremity. (JE3, pp. 77-79)

On September 8, 2021, Ms. Beyer began working full-time at Regional Health Services of Howard County as a receptionist. At the time of hearing, she was still employed at Regional Health Services as a financial registration clerk for third shift.

¹ The letter does not indicate its author. The index to the joint exhibits states it is a letter from Dr. Rattay. Based on the content of the letter it is logical that he is the author. No party argues that the index to the joint exhibits is incorrect.

She has also added security officer to her title. Her hourly rate is \$15.32, plus \$1.50 for shift differential for a total of \$16.82 per hour. (JE10, pp. 116-117)

Ms. Beyer returned to Dr. Rattay on November 9, 2021, with continued pain in both shoulders, right greater than left. She was working at a hospital in Cresco at a registration desk. Her work chair seems to sink down through the day and bothers her shoulders. Dr. Rattay's impression was recurrent pain in both shoulders. Ms. Beyer opted for repeat injections in both shoulders. She was to return as needed. (JE3, pp. 80-83)

The first issue to be addressed is whether Ms. Beyer sustained a work-related injury to her left shoulder. I find Ms. Beyer credibly testified that she injured her left shoulder at work while using a chain hoist on April 23, 2018. She reported the injury to her supervisor who completed an incident investigation report. I also find Ms. Beyer reinjured her left shoulder on May 8, 2018, while using a hoist. RR Donnelley sent Ms. Beyer to see Dr. Haganman. Ms. Beyer was instructed that she did not need to complete another incident investigation report because it was all part of the same injury. I further find Ms. Beyer reinjured her left shoulder on May 23, 2018, while lifting a shaft at work. Ms. Beyer was sent back to Dr. Haganman who prescribed physical therapy and restrictions. Dr. Haganman noted Ms. Beyer's left shoulder treatment was for her workmans' compensation injury. Ms. Beyer also treated for her left shoulder with Dr. Rattay. Dr. Rattay assigned her permanent partial disability of her left upper extremity as the result of her left shoulder injury. (Tr. pp. 55, 61, 73; JE1, p. 2; JE2, pp. 5, 8-9; JE3, p. 79) Based on this evidence, I find Ms. Beyer sustained an injury to her left shoulder which arose out of and in the course of her employment with RR Donnelley on April 23, 2018.

Ms. Beyer contends she sustained permanent disability as the result of her left shoulder injury. Dr. Haganman and Dr. Rattay were the primary treatment providers for her left shoulder. Dr. Rattay provided his opinion regarding permanent impairment of Ms. Beyer's left shoulder. He stated:

Using the American Medical Association Guide to Evaluation and Permanent Impairment [*sic*], Fifth Edition, permanent partial disability of her left upper extremity due to left shoulder injury, using page 476, figure 16-40 her disability for loss of flexion and extension at the left shoulder is 3 degree loss forward flexion, 2 degree loss for extension. Using page 477, figure 16-43 her permanent partial disability loss for abduction is 2% and adduction is 1%. Using page 479, figure 16-46 her permanent partial disability loss for external rotation is 1% and internal rotation 1%. Using page 484 and 492, table 16-11 and 16-15 her permanent partial disability for mild weakness is 5%. Using the combined values chart, page 604 her permanent partial disability of her left upper extremity related to her shoulder injury is 15%.

(JE3, p. 79)

Dr. Rattay is the only physician in this case to render an impairment rating for the left shoulder injury. I find that his rating is based on the Guides to the Evaluation of

Permanent Impairment published by the American Medical Association. Thus, I find Ms. Beyer sustained 15 percent impairment of her left upper extremity as the result of the April 23, 2018 work injury.

We now turn to whether Ms. Beyer's right shoulder injury also arose out of and in the course of her employment. Ms. Beyer contends that her right shoulder was injured as the result of her April 23, 2018, left shoulder injury. She credibly testified that she was using her left shoulder sparingly. She did not perform any of her heavy work with her left shoulder. For example, she did not pull the chain hoist with her left arm; she only used her right arm. Over time her right shoulder started hurting and progressively got worse and worse. (Tr. p. 76; JE15, p. 169)

I find the opinions of Dr. Rattay to be persuasive in this case. He provided treatment for both of Ms. Beyer's shoulders. He felt Ms. Beyer's complaints were consistent with his findings on examination and by history. Dr. Rattay stated:

I conclude, on a more likely than not basis, that Rebecca's cumulative repetitive work at RR Donnelley using primarily her right arm while compensating for pain and limitations in her left arm substantially accelerated the process or directly caused the impingement and tear in her right shoulder making necessary the surgery I performed on November 11, 2019, to repair Rebecca's right shoulder.

(JE7, p. 90)

Based on this evidence, I find that Ms. Beyer's sustained a sequela injury to her right shoulder as a result of the April 23, 2018 injury.

Ms. Beyer contends she sustained permanent disability as the result of her right shoulder injury. Dr. Rattay has offered his opinion regarding Ms. Beyer's impairment for her right shoulder. On May 27, 2020, Dr. Rattay stated:

All of my opinions are made to within a reasonable degree of certainty. Her permanent partial disability rating is based on the American Medical Association Guide to Permanent Impairments, Fifth Edition. Using page 476 and page 479, figures 16-40, 16-43, and 16-46, her rating is 14% right upper extremity disability. She had a 5% disability for loss of forward flexion, 3% for loss of abduction, 4% for loss of internal rotation, and 2% for loss of extremal rotation. Using the combined values chart on page 604, the rating still remains at 14%.

(JE5, p. 87)

On June 12, 2020, Dr. Rattay revised his opinion regarding her permanent impairment due to the right shoulder injury. He noted that in his May 27, 2020, rating he neglected to include the loss for limited extension or adduction. Additionally, there was additional impairment for undergoing distal clavicle resection. Dr. Rattay cited the specific portions that he relied on in the Guides and ultimately concluded that Ms. Beyer sustained 24 percent impairment of the right upper extremity due to the April 23, 2018, work injury. (JE6, pp. 88-89) Dr. Rattay provided treatment for Ms. Beyer's right

shoulder injury. I find his opinions to be well-reasoned and persuasive. Thus, I find Ms. Beyer sustained 24 percent impairment of the right upper extremity due to the April 23, 2018, work injury. I also find that as the result of the work injury Ms. Beyer has permanent restrictions of no shoulder level or higher lifting activity on the right. Her right arm is also restricted to rare use of vibratory tools which means no more than 30 minutes in an 8-hour day. (JE3, p. 65)

The last day Ms. Beyer worked at RR Donnelley was November 7, 2019, just before she underwent surgery for her right shoulder. As noted above, Dr. Rattay released Ms. Beyer to return to work as of March 13, 2020, with no shoulder level or higher work and no jogging work and no lifting over 40 pounds. (JE3, pp. 59-61) Ms. Beyer provided her restrictions to the HR Director Matt Mason at RR Donnelley. He requested the restrictions be on a different form. Ms. Beyer obtained a different form which stated she could go back to work on March 13, 2020. However, she did not return to work because Mr. Mason said he had to see what work was available and get back to her. Ms. Beyer was eventually told that due to COVID and business being slow they did not have any work for her, but they would call her when they had work. Mr. Mason never called to offer her work. If Ms. Beyer was physically capable, she would like to return to her job at RR Donnelley because the pay was good, and she liked the satisfaction she received from performing her work. Approximately one year ago, Ms. Beyer first saw an advertisement for her collator job at RR Donnelley. She has continued to see the advertisement for the job. She saw the advertisement the day before the arbitration hearing. (Tr. pp. 83-84) According to defendants' answers to interrogatories, they are unable to accommodate her restrictions. (Tr. pp. 49-51, 80-81, 98; JE14, p. 151) Defendants' answers to interrogatories state, "Rebecca Beyer is still an employee with RRD. Given her medical restrictions for her right shoulder the Company is unable to accommodate said restrictions at this time." (JE14, p. 151)

Mr. Mason testified that he may have had some email communication from Ms. Beyer regarding her restrictions, but he could not recall them offhand. He also could not recall if he had received a copy of Ms. Beyer's permanent restrictions as set forth by Dr. Rattay in June 2020. However, he did not have any reason to dispute that he received them. He admitted that he never called Ms. Beyer back to advise her that there was work for her within her restrictions. He also admitted that Ms. Beyer did call or email him to inquire whether they had work for her. Although she has not worked at RR Donnelley since November 2019, Mr. Mason testified that she is still an employee. He was unaware of any other company employees that have been off for nearly four years and had not been terminated. (Tr. pp. 50-51, 136-137, 141)

I find that Ms. Beyer provided her permanent restrictions to RR Donnelley and asked if they had work available. I further find that defendants have not offered her any work and that they are unable to accommodate the permanent restrictions that she has as the result of the work injury.

According to Ms. Beyer, she began looking for alternate employment in December 2019 when Dr. Rattay recommended that she find non-repetitive work and she began to sense that RR Donnelley was not going to return her to work. She worked with Iowa Vocational Rehabilitation to try to find a job. Ms. Beyer set forth her job

search in her answers to interrogatories. She applied for a variety of positions including 911 dispatcher, office manager, administrative specialist, receptionist, contact tracer, patient service representative, property manager, warehouse coordinator, and others. Ms. Beyer applied for over 60 jobs. Often she did not receive a response to her job applications. When she did obtain a job interview, once her shoulder injuries came up, she would not receive a job offer. (Tr. pp. 93-95; JE9, pp. 107-108)

At the time of hearing, Ms. Beyer was employed at Regional Health Services of Howard County. She began working there on September 8, 2021, as a financial registration clerk in the emergency room. She registers patients for the emergency room and different areas of the hospital. Her starting pay was \$14.14 per hour. Since she was hired, she moved to the third shift, and she has added security officer to her title. She is now earning \$15.32 per hour, plus shift differential of \$1.50 per hour for a total hourly wage of \$16.82. She works 40 hours per week. At the time of her injury, Ms. Beyer was earning \$20.50 per hour plus \$1.15 shift differential, for a total hourly wage of \$21.65. While Ms. Beyer worked at RR Donnelley she received at least a \$0.50 raise every six months. On average, Ms. Beyer worked six hours of overtime each week. Her shoulders bother her at her current job. She is very conscientious about how she sits and how long she has her arms extended. She takes breaks due to her pain. She still gets injections every three to four months to keep her pain at a tolerable level. (JE10, p. 117; JE14, pp. 149-150; Tr. p. 95)

Ms. Beyer graduated from Osage High School and described herself as a B student. She attended the University of Northern Iowa for one year and then transferred to Hawkeye Community College. She obtained an Associates in Arts degree in photography in 1998. She also took classes from North Iowa Area Community College in Mason City from 1999 through 2003. She eventually transferred to Buena Vista College where she earned a bachelor's degree in elementary education in December 2004. However, she did not student teach and has not been able to use her elementary education degree. She also earned a certificate from At-Home Professions in medical transcription in May 2005. (Tr. pp. 66-68; JE9, pp. 101-102)

Ms. Beyer's employment history is set forth in her answers to interrogatories. Prior to working for RR Donnelley she worked in the food service industry as a dishwasher, cook, waitress, pizza maker, and cashier. Her employment history also includes work as a patient service secretary, receptionist, and medical transcriptionist in the medical field. She has experience as a client transaction technician for Principal. She worked for a temporary service in packaging. Ms. Beyer testified because of her work injury she believes she could not return to the work she previously performed in the food industry. She feels she would not be able to do the reaching, carrying, and holding everything out and away from her body would cause her pain. She believes that her work injury also precludes her from photography work. She recently attempted to take her son's senior pictures and it took her several days because of the pain in her shoulders. Ms. Beyer believes, depending on what the work consisted of, she potentially could return to secretarial work. However, she does not believe she could type for an extended period if it required her to have her hands out and away from her body for an extended period. She feels she could type for short stints, but not for long

periods of time as is required for transcription. Ms. Beyer does not believe she could return to her prior factory-type work because she would not be able to handle the overhead work or the extended away-from-your-body lifting. (JE9, pp. 104-105; Tr. pp. 91-93)

I find that Ms. Beyer has sustained a significant loss of future earning capacity as a result of the work injury. Unfortunately, she has permanent restrictions that preclude her from returning to the work she performed at the time of the injury. Additionally, her restrictions preclude her from many of her prior jobs. She has lost access to a significant portion of her pre-injury employment opportunities. Considering Ms. Beyer's age, proximity to retirement, educational background, employment history, ability to retrain, motivation to seek work, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that she has sustained a 40 percent loss of future earning capacity as a result of her work injury with the defendant employer.

The hearing report states Ms. Beyer is seeking temporary benefits from November 7, 2019 through September 8, 2021. However, in claimant's post-hearing brief the time period is amended to November 7, 2019 to April 21, 2020. Because Ms. Beyer sustained permanent impairment from the work injury, these would be healing period benefits. There is no dispute that Ms. Beyer was off work during this period of time; the dispute centers around whether she is entitled to benefits for this period of time. Dr. Rattay restricted Ms. Beyer from work beginning November 7, 2019 and placed her at MMI as of April 21, 2020. During this time, RR Donnelley did not offer Ms. Beyer any work. Thus, I find Ms. Beyer has demonstrated entitlement to healing period benefits from November 7, 2019 through April 20, 2020. (Tr. p. 104; JE3, pp. 62-64)

There is a dispute surrounding the number of exemptions Ms. Beyer is entitled to claim for rate purposes. Ms. Beyer contends she should be able to claim all four of her children as dependents. On the date of the injury Ms. Beyer had four dependent children, but she only claimed one on her tax return in 2018. Pursuant to the divorce decree, Ms. Beyer is allowed to claim one child as a dependent and her ex-husband is allowed to claim the other three children as dependents. Ms. Beyer testified in 2018 the kids spent close to 50 percent of the time with her and 50 percent with her ex-husband. In 2018 Ms. Beyer paid child support to her ex-husband for all of the kids. (Tr. pp. 65-66)

Defendants contend Ms. Beyer is only entitled to one exemption for rate purposes. Defendants argue that although Ms. Beyer claims joint custody of her children, she admitted that the children primarily live with her ex-husband, particularly during the school year. (Tr. p. 101) Defendants also point out that her tax returns for 2018 and 2019 show that Ms. Beyer only claimed exemption for one child on both tax returns. (Def. Ex. K, pp. 101-102). I find Ms. Beyer claimed one child as an exemption on her tax return for the year of the injury. I further find she is entitled to claim two exemptions, herself and one child, as exemptions for rate purposes.

Next, claimant is seeking payment of past medical expenses as set forth in joint exhibit 13. A review of the medical bills demonstrates the expenses were incurred for

treatment related to Ms. Beyer's shoulders. I found that Ms. Beyer sustained injuries to her right and left shoulders as the result of the work injury. Ms. Beyer testified the medical bills contained in this exhibit are related to the treatment she received for her shoulders as the result of the April 23, 2018 work injury. (Tr. p. 98) I find defendants are responsible for the medical expenses set forth in joint exhibit 13.

Finally, claimant is seeking an assessment of costs as set forth in joint exhibit 16. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. I find that claimant was generally successful in her case; therefore, I exercise my discretion and find an assessment of costs is appropriate. 876 IAC 4.33

First, claimant is seeking the filing fee in the amount of \$103.00. I find this is an appropriate cost under subsection 7.

Second, claimant is seeking return receipt fees totaling \$13.80. I find this is an appropriate cost under subsection 3.

Third, she seeks the cost of Dr. Rattay's impairment rating in the amount of \$500.00. The invoice indicates the service was for a special report MMI/Impairment rating and medical record review. (JE16, p. 183) Pursuant to Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), I find only the charges related to drafting of a report to avoid the necessity of trial testimony are legitimately taxed as costs. I cannot decipher, and I am not willing to speculate, on the charges specifically attributed to the vocational expert's drafting of a report. Thus, I cannot find this is an appropriate cost.

Fourth, claimant seeks the cost of the court reporting fee in the amount of \$139.40 for her deposition. The transcript of her deposition is in evidence. I find this is an appropriate cost under subsection 1.

Thus, defendants are taxed costs totaling \$256.20.

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

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

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012).

Based on the above findings of fact, I conclude claimant has demonstrated by a preponderance of the evidence that she sustained an injury to her left shoulder which arose out of and in the course of her employment on April 23, 2018. I further conclude claimant sustained a sequela injury to her right shoulder as a result of the April 23, 2018 injury.

Based on the above findings of fact, I conclude that claimant sustained permanent disability to her right and left shoulder as the result of the April 23, 2018 work injury. This agency has held that sustaining two injuries as the result of a single incident entitles claimant to be compensated under Iowa Code section 85.34(2)(v). Carmer v. Nordstrom, Inc., File No. 1656062.01 (App. December 29, 2021).

The Iowa Code provides:

In all cases of permanent partial disability other than those described or referred to in paragraphs "a" through "u", the compensation shall be paid

during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

Iowa Code section 85.34(2)(v).

Ms. Beyer did not return to work with the same employer; therefore, this is a situation in which claimant's permanent disability should be compensated with the industrial disability analysis.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Based on the above findings of fact, I conclude claimant sustained a significant loss of future earning capacity as a result of the work injury. She has permanent restrictions that preclude her from returning to the work she performed for the defendant employer. Additionally, her restrictions preclude her from many of her prior jobs. She has lost access to a significant portion of her pre-injury employment opportunities. Considering the industrial disability factors set forth by the Iowa Supreme Court, I conclude that she has sustained a 40 percent loss of future earning capacity as a result of her work injury with the defendant employer. As such, Ms. Beyer has demonstrated entitlement to 200 weeks of permanent partial disability benefits commencing at the end of her healing period.

Claimant contends she sustained temporary disability as the result of her work injury. Iowa Code section 85.34 provides:

If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Iowa Code section 85.34(1).

Claimant has demonstrated that she sustained permanent partial disability as the result of her work injury. Therefore, any temporary disability benefits would be categorized as healing period benefits. Dr. Rattay restricted Ms. Beyer from work beginning November 7, 2019 and placed her at MMI as of April 21, 2020. Defendants did not offer Ms. Beyer any work during this timeframe. Thus, I conclude Ms. Beyer has demonstrated entitlement to healing period benefits. Defendants shall pay healing period benefits at the applicable weekly workers' compensation rate from November 7, 2019 through April 20, 2020. Thus, claimant's permanent partial disability benefits shall commence on April 21, 2020.

There is a dispute about the number of exemptions claimant is entitled to for the purposes of determining her weekly workers' compensation rate. Under Iowa law, a claimant's compensation rate is equivalent to 80 percent of the employee's weekly spendable earnings. Total weekly compensation for any employee shall not exceed 80 percent per week of the employee's weekly spendable earnings. Iowa Code section 85.37. Spendable weekly earnings is defined as that amount remaining after payroll taxes are deducted from gross weekly earnings. Iowa Code section 85.61(9). Payroll

taxes is defined as an amount, determined by tables adopted by the workers' compensation commissioner pursuant to chapter 17A, equal to the sum of an amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code, and its relevant regulations, chapter 422, and its rules and the Social Security Act of 1935 as amended, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured. Iowa Code section 85.61(6)(a), (b) and (c). See Deraad v. Fred's Plumbing & Heating, No. File No: 1134532, 2002 WL 32125759, at *4 (Jan. 16, 2002).

The agency has long established precedent that the actual exemptions claimed on the income tax return controls when determining how many exemptions a claimant is entitled to claim for purposes of the weekly compensation rate. Webber v. West Side Transport, Inc., 1278549 (App. December 20, 2002); DeRaad v. Fred's Plumbing and Heating, No. 1134532 (App. January 16, 2002), Rhoades v. Torgerson Construction Co., No. 1012085 (App. January 31, 1995), Keeling v. Cedar Rapids Community Schools, No. 891809 (App. February 26, 1993).

Based on the above findings of fact, I conclude Ms. Beyer is single and entitled to claim two exemptions for rate purposes. Ms. Beyer's stipulated gross weekly earnings are \$875.76. Because Ms. Beyer was single with two exemptions at the time of the injury, the appropriate weekly workers' compensation rate is five hundred forty-three and 79/100 dollars (\$543.79).

Next, claimant is seeking payment of past medical expenses as set forth in joint exhibit 13. Under Iowa law, the employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

A review of the medical bills demonstrates the expenses were incurred for treatment related to Ms. Beyer's shoulders. I concluded that Ms. Beyer sustained injuries to her right and left shoulders as the result of the work injury. Ms. Beyer testified the medical bills contained in this exhibit are related to the treatment she received for her shoulders as the result of the April 23, 2018 work injury. (Tr. p. 98) I conclude defendants are responsible for the medical expenses set forth in joint exhibit 13. Additionally, the employer shall furnish future reasonable and necessary medical treatment that is causally connected to the April 23, 2018 work injury.

The final issue is an assessment of costs. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. I find that claimant was generally successful in her case; therefore, I exercise my

discretion and find as assessment of costs is appropriate. 876 IAC 4.33. Defendants are assessed costs as set forth above.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the rate of five hundred forty-three and 79/100 dollars (\$543.79).

Defendants shall pay 23.571 weeks of healing period benefits from November 7, 2019 through April 20, 2020.

Defendants shall pay 200 weeks of permanent partial disability benefits commencing on April 21, 2020.

Defendants shall be entitled to credit for all weekly benefits paid to date.

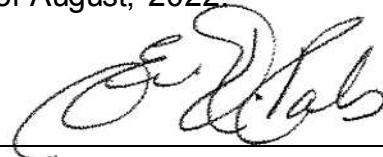
Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall pay the medical providers, reimburse claimant, reimburse all third-party payers, or otherwise satisfy and hold claimant harmless for medical expenses as set forth in joint exhibit 13.

Defendants shall reimburse claimant's costs in the amount of two-hundred fifty-six and 20/100 dollars (\$256.20).

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

Signed and filed this 16th day of August, 2022.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Fitzsimmons (via WCES)

Stephen Spencer (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.