

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TONYA CLARK,

Claimant,

vs.

ARCONIC, INC.,

Employer,

and

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

File No. 5061553.01

A P P E A L

D E C I S I O N

Head Notes: 1108.2; 1402.20; 1402.40;
1803; 2204; 2501; 2907

Defendants Arconic, Inc., employer, and its insurer, Indemnity Insurance Company of North America, appeal from an arbitration decision filed on November 15, 2021. Claimant Tonya Clark responds to the appeal. The case was heard on March 19, 2021, and it was considered fully submitted in front of the deputy workers' compensation commissioner on April 12, 2021.

In the arbitration decision, the deputy commissioner found claimant met her burden of proof to establish she sustained post-traumatic stress disorder ("PTSD") as a result of the stipulated January 12, 2018, work injury. The deputy commissioner found claimant was earning more at the time of the arbitration hearing than she earned at the time of the work injury and found claimant sustained a functional loss of 100 percent, entitling claimant to 500 weeks of permanent partial disability benefits at the stipulated weekly rate of \$721.84, commencing on January 13, 2018. The deputy commissioner found claimant is entitled to future medical care for her PTSD. The deputy commissioner found claimant is entitled to reimbursement from defendants for the cost of the filing fee, the cost of the service fee, the cost of the first report from Tracey Thomas, Ph.D., for the period of March 17, 2020, through May 11, 2020, and the cost of the hearing transcript.

Defendants assert on appeal that the deputy commissioner erred in finding claimant proved she sustained permanent PTSD caused by the work injury. Defendants assert the deputy commissioner erred in finding claimant sustained a functional loss of 100 percent, and defendants assert the commissioner should

reconcile any potential conflict between Iowa Code section 85.34(2)(x) and Chapter 14 of the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001). Defendants assert the deputy commissioner erred in finding January 13, 2018, is the commencement date for permanent partial disability benefits. Defendants assert the deputy commissioner erred in finding claimant is entitled to future mental health care. Defendants assert the deputy commissioner erred in awarding claimant costs.

On appeal, claimant agrees the deputy commissioner erred in finding January 13, 2018, is the commencement date for permanent partial disability benefits, and claimant asserts the remainder of the arbitration decision should be affirmed.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the arbitration decision filed on November 15, 2021, is affirmed in part, modified in part, and reversed in part, with the following additional and substituted analysis.

I affirm the deputy commissioner's finding that claimant proved she sustained permanent PTSD caused by the work injury. I affirm the deputy commissioner's finding that claimant is entitled to future causally connected mental health care. I affirm the deputy commissioner's finding that claimant is entitled to reimbursement from defendants for the cost of the filing fee, and cost of the service fee.

With the following additional analysis:

- (1) I modify in part, and I reverse in part, the deputy commissioner's finding that claimant is entitled to reimbursement from defendants for the cost of the first report from Dr. Thomas for the period of March 17, 2020, through May 11, 2020.
- (2) I reverse the deputy commissioner's finding that claimant is entitled to recover the cost of the hearing transcript.
- (3) I modify in part, and I reverse in part, the deputy commissioner's functional loss determination.
- (4) I reverse the deputy commissioner's finding that the commencement date for permanent partial disability benefits is January 13, 2018.

I. Extent of Functional Loss

The parties agree claimant's earnings increased following the January 12, 2018, work injury. A mental health impairment is an impairment of the body as a whole. Woods v. Accident Fund Ins. Co. of Am., 2018 WL 636083, File No. 5057998 (Iowa Workers' Comp. Comm'n. Jan. 17, 2018). Before 2017, impairments of the body as a whole were compensated industrially.

In 2017, the legislature modified Iowa Code section 85.34(2)(v) requiring an employee who returns to work and receives the same or greater salary, wages, or earnings than the employee received at the time of the injury to be compensated based on the employee's functional loss only and not for loss of earning capacity or the employee's industrial loss. The legislature also modified the provisions governing functional loss determinations, as follows:

. . . when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code § 85.34(2)(x).

In April 2008, the Iowa Workers' Compensation Commissioner adopted the AMA Guides 5th Edition ("AMA Guides") for determining extent of loss or percentage of impairment for permanent partial disabilities not involving a determination of reduction in an employee's earning capacity. 876 IAC 2.4; Iowa Admin. Code Supp. r. 2.4 (April 28, 2008). It is presumed the legislature was aware of existing decisions and the agency's rules adopting the AMA Guides when it modified the statute to require compensation based on functional loss when an employee returns to work and receives the same or greater salary, wages, or earnings than the employee received at the time of the injury. Roberts Dairy v. Billick, 861 N.W.2d 814, 821 (Iowa 2015); Simbo v. Delong's Sportswear, 332 N.S.2d 886, 889 (Iowa 1983); Beier Glass Co. v. Brundige, 329 N.W.2d 280, 285 (Iowa 1983); Lever Bros. v. Erbe, 249 Iowa 454, 87 N.W.2d 469, 474 (1959).

The deputy commissioner found that because Iowa Code section 85.34(2)(x) demands she use no agency expertise in determining loss or percentage of impairment when determining functional disability, Dr. Thomas's disability rating of a 100 percent impairment must be adopted because C. Scott Jennisch, M.D., did not offer a permanent impairment rating. I respectfully disagree with the deputy commissioner's findings with the following substituted findings and analysis.

Chapter 14 of the AMA Guides addresses mental and behavioral disorders, and discusses the principles of assessment, diagnosis and impairment, and the method for evaluating psychiatric impairment. As discussed by Dr. Jennisch in his report, Chapter 14 directs the examiner not to assign numeric percentages to estimate mental impairment, as follows,

Unlike cases with some organ systems, there are no precise measures of impairment in mental disorders. The use of percentages implies a certainty that does not exist. Percentages are likely to be used inflexibly by adjudicators, who then are less likely to take into account the many factors that influence mental and behavioral impairment. In addition, the authors are unaware of data that show the reliability of the impairment percentages. After considering this difficult matter, the Committee on Disability and Rehabilitation of the American Psychiatric Association advised *Guides* contributors against the use of percentages in the chapter on mental and behavioral disorders of the fourth edition, and that remains the opinion of the authors of the present chapter.

No available empirical evidence supports any method for assigning a percentage of impairment of the whole person; however, the following approach may be useful in estimating the extent of mental impairments. Not everyone who has a mental or behavioral disorder is limited in the ability to perform activities of daily living; however, there are individuals with less than chronic, but still unremitting, impairments who are severely limited in some areas of functioning.

Translating specific impairments directly and precisely into functional limitations is a complex and poorly understood process. Current research finds little relationship between such psychiatric signs and symptoms as those identified during a mental status examination and the ability to perform competitive work. However, four main categories exist that assess many areas of function: (1) the ability to perform activities of daily living; (2) social functioning; (3) concentration, persistence and pace; and (4) deterioration or decompensation in work or worklike settings. Independence, appropriateness, and effectiveness of activities should also be considered.

Id. at 361.

Instead of assigning a numeric permanent impairment rating, the AMA Guides direct the examiner to assess and record the extent of function in the areas of activities of daily living, social functioning, concentration, and adaptation. After assessing and recording the extent of function, the AMA Guides then direct the examiner to assign each area a class of impairment, from Class 1, no impairment, to Class 5, an extreme impairment precluding useful functioning. Id. at 363.

This method of analysis differs from the other chapters of the AMA Guides, where the examiner assigns an impairment rating for the specific body part or parts. See Chapter 3, The Cardiovascular System: Heart and Aorta; Chapter 4, The Cardiovascular System: Systemic and Pulmonary Arteries; Chapter 5, The Respiratory System; Chapter 6, The Digestive System; Chapter 7, The Urinary and Reproductive Systems; Chapter 8, The Skin; Chapter 9, The Hematopoietic System; Chapter 10, The Endocrine System; Chapter 11, Ear Nose, Throat, and Related Structures; Chapter 12, The Visual System; Chapter 13, The Central and Peripheral Nervous System; Chapter 15, The Spine; Chapter 16, The Upper Extremities; and Chapter 17, The Lower Extremities. Chapter 18, Pain, also directs the examiner to use a different method. Under the AMA Guides, the examiner may assign a numeric impairment rating for the parts of the body, with the exception of mental health injuries.

The issue of how to determine functional loss for a work-related mental health injury raises an issue of statutory interpretation. In Iowa, the primary purpose of the workers' compensation statutes is to benefit the injured worker. Denison Mun. Util. v. Iowa Workers' Comp. Comm'n, 857 N.W.2d 230, 234-235 (Iowa 2014). The courts liberally construe the workers' compensation statutes in favor of the injured worker. Id.

The goal of statutory interpretation is "to determine and effectuate the legislature's intent." Rameriz-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing United Fire & Cas. Co. v. St. Paul Fire Marine Ins. Co., 677 N.W.2d 755, 759 (Iowa 2004)). The court begins with the wording of the statute. Myria Holdings, Inc. v. Iowa Dep't of Rev., 892 N.W.2d 343, 349 (Iowa 2017). When determining legislative intent, the court looks at the express language of the statute, and "not what the legislature might have said." Id. (citing Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008)). If the express language is ambiguous the court looks to the legislative intent behind the statute. Sanford v. Fillenwarth, 863 N.W.2d 286, 289 (Iowa 2015) (citing Kay-Decker v. Iowa State Bd. of Tax Review, 857 N.W.2d 216, 223 (Iowa 2014)). A statute is ambiguous when reasonable persons could disagree as to the statute's meaning. Rameriz-Trujillo, 878 N.W.2d at 769 (citing Holstein Elect. v. Brefogle, 756 N.W.2d 812, 815 (Iowa 2008)). An ambiguity may arise when the meaning of particular words is uncertain or when considering the statute's provisions in context. Id.

When the legislature has not defined a term in a statute, the court considers the term in the context in which it appears and applies the ordinary and common meaning to the term. Id. (citing Rojas v. Pine Ridge Farms, L.L.C., 779 N.W.2d 223, 235 (Iowa 2010)). Courts determine the ordinary meaning of a term by examining precedent, similar statutes, the dictionary, and common usage. Sanford, 863 N.W.2d at 289.

Iowa Code section 85.34(2)(x) requires the extent of loss of permanent impairment for a "functional disability" to be determined "solely" by using the version of the AMA Guides adopted by the commissioner. The statute also prohibits the use of lay testimony or agency expertise in determining "functional disability." The statute does

not contain any express language providing the determination of extent of loss for a functional disability must be made by a physician or other medical provider.

As discussed above, the AMA Guides allows an examiner to provide an impairment rating for all body parts other than for mental and behavioral disorders. There is no express wording in the statute that the legislature intended to treat mental and behavioral disorders differently from other parts of the body. Reading the statute to allow for the recovery of functional loss for an injury to a toe and not for a mental or behavioral disorder because the AMA Guides proscribe the assigning of a numeric impairment leads to an absurd, illogical, and unjust result.

On appeal, defendants reference a Montana Supreme Court case involving a similar, but not a mirror image, statute. S.L.H. v. State Comp. Mut. Ins. Fund, 303 Mont. 364, 15 P.3d 948 (2000). S.L.H., a female bartender, was kidnapped from her bartending job, beaten and raped. She later developed PTSD and major depressive disorder and sought workers' compensation benefits.

The Montana statute that set forth a procedure for determining an impairment rating for use in calculating an injured worker's disability award, provided:

- (1) An impairment rating:
 - (a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;
 - (b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and
 - (c) must be expressed as a percentage of the whole person.

Id. at 370, 15 P.3d at 953.

The trial court in S.L.H. required the expert evaluators to provide an impairment rating for the mental injury, finding the statute required the evaluator to express the evaluation of impairment as a percentage. One of the experts refused because the AMA Guides proscribed the use of percentages to express mental impairments. The other expert provided the requested rating, which the court adopted. The Montana Supreme Court found the court erred when it required the experts to translate their evaluations into percentages, noting the 3rd and 4th Editions of the AMA Guides advised practitioners against the use of percentages for mental impairments.

In reaching its conclusion, the Montana Supreme Court found the statute did not contain express language stating who must translate the impairment evaluation into a percentage, and the Montana Supreme Court found that the trial court's interpretation asked the experts to do the impossible by expressing the mental impairments as a

percentage, while the AMA Guides proscribed the use of percentages to express mental impairments. The Montana Supreme Court noted:

When more than one interpretation is possible, in order to promote justice, we will reject an interpretation that leads to an unreasonable result in favor of another that will produce a reasonable result. An alternative reading of the statute that leads to a more reasonable result and also abides by its grammatical structure is that the percentage required by subsection (c) is independent of subsection (a) and can be expressed by the workers' compensation judge, rather than only by the impairment evaluator. The statute allows the judge to translate into a percentage the evaluator's medical determination of impairment.

Under this alternative interpretation, the judge himself, in S.L.H.'s case, could have translated Dr. Evans' evaluation of a mild-to-moderate mental impairment into a percentage in order to comply with the statute. This would have avoided the absurd result caused by interpreting the statute as the court did and would have furthered the legislative intent of compensating workers for physical injuries suffered on the job.

Id. at 372, 954.

The statute in this case requires the use of the AMA Guides in determining functional loss. Dr. Jennisch properly noted the AMA Guides direct the examiner to not assign a permanent impairment rating, but rather to assess and record the extent of the individual's functioning.

The AMA Guides direct the examiner to assess and record the extent of function for activities of daily living, social functioning, concentration, and adaptation. After assessing and recording the extent of function, the AMA Guides direct the examiner to assign a class of impairment, from Class 1, no impairment, to Class 5, an extreme impairment precluding useful functioning. Id. at 363. The categories recommended as "anchors for the categories of the scale," are:

1. None means no impairment is noted in the function.
2. Mild implies that any discerned impairment is compatible with most useful functioning.
3. Moderate means that the identified impairments are compatible with some, but not all, useful functioning.
4. Marked is a level of impairment that significantly impedes useful functioning. Taken alone, a marked impairment would not completely preclude functioning, but together with marked limitation in another class, it might limit useful functioning.
5. Extreme means that the impairment or limitation is not compatible with useful function. Extreme impairment in carrying out activities of

daily living implies complete dependency on another person for care. In the sphere of social functioning, extreme impairment implies that the individual engages in no meaningful social contact, as with a person who is in a withdrawn, catatonic state. An extreme limitation in concentration, persistence, and pace means that the individual cannot attend to a conversation or any productive task; this might be seen in a person who is in an acute confusional state or a person with a complete loss of short-term memory.

A person who cannot tolerate any change at all in routines or in the environment, or one who cannot function and who decompensates when schedules change in an otherwise structured environment, has an extreme limitation of adaptive functioning and an extreme psychiatric impairment. Such an individual might, for example, experience a psychotic episode if a meal is not served on time or might have a panic attack if left without a companion in any situation.

Id.

When assessing the severity of impairment, the AMA Guides direct the examiner to examine: (1) the effects of treatment; (2) the effects of structured settings; (3) the variability of mental disorders; (4) an assessment of workplace function; and (5) the effects of common mental and behavioral conditions. Id. at 364-365. In assessing workplace function, the AMA Guides recommend the examiner use the multidimensional description of residual functional capacity used in the Social Security regulations, as follows:

1. *Understanding and memory* relate to the individual's ability to remember procedures related to work; to understand and remember short, simple instructions; and to understand and remember detailed instructions.
2. *Sustained concentration and persistence* relate to the individual's ability to carry out short, simple instructions; carry out detailed instructions; maintain attention and concentration for extended periods of time; perform activities within a given schedule; maintain regular attendance and be punctual within customary tolerances; sustain an ordinary routine without special supervision; work with or near others without being distracted; make simple work-related decisions; complete a normal workday and workweek without interruptions from psychologically based symptoms; and perform at a consistent pace without an unreasonable number of and unreasonably long rest periods.

3. *Social interaction* involves the individual's ability to interact appropriately with the general public; ask simple questions or request assistance; accept instructions and respond appropriately to criticism from supervisors; get along with coworkers and peers without distracting them or exhibiting behavioral extremes; maintain socially appropriate behavior; and adhere to basic standards of neatness and cleanliness.
4. *Adaptation* is the ability to respond appropriately to changes in the work setting; to be aware of normal hazards and take appropriate precautions; to use public transportation and travel to and within unfamiliar places; to set realistic goals; and to make plans independently of others.

Id. at 365.

The AMA Guides note:

[i]n the ordinary individual, extreme impairment in only one area or marked limitation in two or more spheres would be likely to preclude the performance of any complex task, such as one involving recreation or work, without special support or assistance, such as that provided in a sheltered environment.

An individual impaired to a moderate degree in all four categories of functioning would be limited in the ability to carry out many, but not all, complex tasks. Mild to moderate limitations reduce overall performance but do not preclude some performance. Table 14-2 links specific impairments to potential associated disabilities.

Translating these guidelines for rating individual impairment on ordinal scales into a method for assigning percentage of impairments, as if valid estimates could be made on precisely measured interval scales, cannot be done reliably. One cannot be certain that the difference in impairment between a rating of mild and moderate is of the same magnitude as the difference between moderate and marked. Furthermore, a moderate impairment does not imply a 50% limitation in useful functioning, and an estimate of moderate impairment in all four categories does not imply a 50% impairment of the whole person.

Id. at 364.

Dr. Thomas and Dr. Jennisch assessed and recorded their observations of claimant's functioning and assigned a class of impairment for each category. While I disagree, as the deputy did, with Dr. Jennisch's finding of secondary gain, I find Dr.

Jennisch's assessment of claimant's functioning most consistent with the record evidence.

Chapter 14 of the AMA Guides states activities of daily living include self-care, personal hygiene, communication, ambulation, travel, sexual function and sleep. Id. at 361. These activities are evaluated by looking at the individual's independence, appropriateness, effectiveness and sustainability. The examiner must "define the extent to which the individual is capable of initiating and participating in these activities independent of supervision or direction."

Dr. Thomas concluded claimant had a Class 3 or a moderate impairment for activities of daily living. (Ex. 1b, p. 21) Dr. Thomas found claimant had problems with self-care because she reported "at times less desire to take care of herself, for example, getting her hair done." Dr. Thomas further found claimant had "significant anxiety when leaving the house and when in an automobile," which caused her to isolate, which "exacerbates the problem of self-care, as she is less willing and able to leave home to meet" her needs. Dr. Thomas concluded claimant's sleep is impaired by nightmares, which interrupt her sleep and her anxiety causes her difficulty obtaining sufficient restful sleep.

In contrast, Dr. Jennisch found claimant described mild levels of impairment that are compatible with most useful functioning. While claimant did not report any significant issues completing her activities of daily living, he noted claimant reported she had the urge to not complete some activities of daily living. (Ex. Q, p. 219) Dr. Jennisch also noted Gentil-Archer, the treating provider, had consistently documented improvement in claimant's sleep and resolution of her nightmares with the use of prazosin and during his exam, claimant was unable to quantify the frequency of her nightmares. (Ex. Q, p. 219)

Claimant has continued to work full-time for defendant-employer since the work injury. Prior to claimant's injury, her adult son had an unfortunate accident causing him to sustain a brain injury when he was hit in the head by a bullet. (Tr., pp. 36, 63-64, 68) Claimant is her son's paid care provider through the State of Iowa. (Tr., pp. 36-37, 84-85, 89-90) She assists her son with his activities of daily living, including laundry, food preparation, dusting, washing dishes, making his bed, transporting him to therapy and doctor's appointments, and picking up his medication 20 to 25 hours per week. (Tr., pp. 36-37, 85-89) The record evidence does not support claimant's PTSD has impacted her ability to care for her son. Claimant's continued ability to assist her son with his activities of daily living is inconsistent with Dr. Thomas's finding. I find the evidence supports Dr. Jennisch's finding that claimant has sustained a mild level of impairment in activities of daily living.

The AMA Guides state social functioning refers to an individual's ability to interact appropriately and communicate effectively with other individuals, including "family members, friends, neighbors, grocery clerks, landlords, or bus drivers. Impaired

social functioning may be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, social isolation, or similar events or characteristics.” Id. at 362. An individual’s strength in social functioning may be documented by the individual’s ability to initiate social contact and interact and participate in group activities. Id. The examiner also considers cooperative behavior, awareness of others’ sensitivities, consideration for others, and social maturity. Id. In the work setting, social functioning may involve responding to supervisors, being part of a team, and interaction with the public. Id.

Dr. Thomas found claimant had a Class 4 or marked impairment for social functioning. (Ex. 1b, p. 22) In reaching her conclusion, Dr. Thomas noted claimant is suspicious of others, she is more angry and irritable with others, and struggles with not feeling a part of the team. Dr. Thomas further found that outside of work claimant shows a marked impairment because she largely socially isolates herself and spends a significant amount of her time in her bedroom and has quit engaging in the majority of the social activities she used to engage in before the work injury, including spending time with her grandchildren and hosting family gatherings.

Dr. Jennisch found claimant’s activity indicates a range of mild impairment based on some workplace communications issues claimant described to him on exam and by her supervisors, but Dr. Jennisch found no evidence of impairment in other areas of functioning or lashing out causing employment issues. (Ex. Q, p. 220)

The record evidence supports claimant regularly spends time with her children and grandchildren. (Tr., pp. 68-71) Claimant sees her daughter three to four times a week on average. (Tr., pp. 68-69) She also provides care for her adult son 20 to 25 hours per week. Claimant served as a union steward before the accident and she continued to serve as a union steward at the time of the hearing. (Tr., pp. 79-80) As a union steward, claimant represents employees in disciplinary meetings and notice meetings to ensure the defendant-employer is adhering to policies and procedures and she provides advice to the employees. (Tr., pp. 80-82) Claimant estimated that since the January 12, 2018, incident, she has attended roughly eight notice or disciplinary meetings as a union steward. (Tr., pp. 80-82) Since her work injury employees working for defendant-employer have continued to request claimant’s assistance with disciplinary matters. (Tr., pp. 83-84) The union leaders have not been critical of claimant’s work as a union steward since the work injury. (Tr., p. 84) Claimant’s involvement with her family and the union is not consistent with Dr. Thomas’s finding claimant has a marked impairment in social functioning. I find the evidence supports Dr. Jennisch’s finding claimant has sustained a mild impairment in social functioning.

The AMA Guides recognize concentration, persistence and pace are needed to perform many activities of daily living, including task completion. Id. The term “task completion” refers to an individual’s ability to sustain focused attention long enough to timely complete tasks commonly found in activities of daily living or in a work setting. Id. Deficiencies are best found from observations in worklike settings. Id. The examiner

may evaluate concentration and mental status by having the individual perform such tasks as subtracting numbers serially from 100, by using psychological tests of intelligence or memory, with strengths and weaknesses described in terms of frequency of errors, time it takes to complete the task, and the extent the individual requires assistance to complete the task. Id.

Dr. Thomas again found claimant had a Class 4 or marked impairment for concentration, persistence and pace in the work setting because she frequently loses focus due to her PTSD-related symptoms. (Ex. 1b, p. 22) Dr. Thomas found claimant has to take frequent breaks to compose herself and frequently requires others to slow down the pace of their work to reduce her anxiety and to compose herself and her symptoms cause issues outside of work, including anxiety while driving. (Ex. 1b, p. 22) Dr. Jennisch again disagreed, noting claimant works a full-time job and also provides care for her son. (Ex. Q, p. 220) The record does not support claimant has had any performance issues at work regarding the pace of her work. Her supervisors have not informed her she has had any work performance issues. (Tr., p. 78, 79)

Dr. Thomas found claimant had a Class 5 or extreme impairment for deterioration or decomposition in work or work-like settings. (Ex. 1b, p. 22) The AMA Guides state, "[d]eterioration or decompensation in complex or work settings refers to an individual's repeated failure to adapt to stressful circumstances." Id. The individual may decompensate as evidenced by withdrawal from a situation or by experiencing an exacerbation of the signs and symptoms of a mental disorder. Id. "Stresses common to the work environment include attendance, making decisions, scheduling, completing tasks, and interacting with supervisors and peers." Id. The AMA Guides define stress in reference to the reasonable person standard. Id. Dr. Thomas found claimant frequently decompensates and is unable to perform her duties at work. (Ex. 1b, pp. 22-23) While claimant expresses symptoms throughout her records, there is no evidence her job is in jeopardy based on performance issues. And as noted above, she has been able to maintain full-time employment for defendant-employer while caring for her adult son 20 to 25 hours per week.

The AMA Guides note that with a typical individual an extreme impairment in one area or a marked limitation in two or more areas "would likely preclude the performance of any complex task, such as one involving recreation or work, without special support or assistance, such as that provided in a sheltered environment." Id. at 364. Claimant has maintained full-time employment with defendant-employer since the work injury. She has also continued to provide her son with assistance with his activities of daily living 20 to 25 hours per week. Claimant has continued to serve as a union steward assisting employees of defendant-employer with disciplinary proceedings, providing them with advice and counsel. These findings are not consistent with an individual who needs to work in a sheltered environment, or with an individual having an extreme impairment in one area or a marked limitation in two or more areas, as found by Dr. Thomas. Nor do these finding indicate claimant is an individual with a moderate degree of impairment in all four categories who is limited in the ability to carry out many, but not

all complex tasks. Id. Using the criteria set forth in the AMA Guides, the evidence is consistent with Dr. Jennisch's findings that claimant has mild limitations in functioning. Id. Therefore, considering the record as a whole, I find claimant has sustained 30 percent functional loss as a result of the work injury.

II. Commencement Date

The deputy commissioner found the commencement date for permanent partial disability benefits is January 13, 2018, the day after the work injury. The parties all agree this is not the proper commencement date. Under the statute, "[c]ompensation for permanent partial disability shall begin when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined" using the AMA Guides. Iowa Code § 85.34(2). Dr. Brooke initially found claimant reached maximum medical improvement on August 28, 2018. (JE 11, p. 160) Dr. Jennisch disagreed with Dr. Brooke's finding and claimant continued to receive treatment. (Ex. J, p. 184) Dr. Thomas issued her impairment rating on May 11, 2020. (Exs. 1a, 1b) I find claimant is entitled to receive 150 weeks of permanent partial disability benefits at the stipulated weekly rate of \$721.84, commencing on May 11, 2020.

III. Costs

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 Iowa Administrative Code 4.33, provides costs may be taxed by the deputy workers' compensation commissioner for: (1) the attendance of a certificated shorthand reporter for hearings and depositions; (2) transcription costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses; (5) the cost of doctors' and practitioner's deposition testimony; (6) the reasonable cost of obtaining no more than two doctors' or practitioners' reports; (7) filing fees; and (8) the cost of persons reviewing health service disputes.

Defendants contend the deputy commissioner erred in ordering defendants to reimburse claimant for the cost of the hearing transcript and for the first report of Dr. Thomas for the period of March 17, 2020, through May 11, 2020, and generally for awarding any costs.

I affirm the deputy commissioner's finding claimant is entitled to recover the cost of the filing fee and the cost of service.

I reverse the deputy commissioner's finding claimant is entitled to reimbursement from defendants for the cost of the hearing transcript. Defendants' counsel filed the transcript on April 12, 2021. There is no proof claimant paid for the cost of the hearing transcript. Claimant did not request reimbursement for the cost of the hearing transcript.

I modify, in part, and reverse, in part, the deputy commissioner's finding claimant is entitled to reimbursement from defendants for the first report of Dr. Thomas for the period of March 17, 2020, through May 11, 2020. The deputy commissioner did not find claimant was entitled to recover the cost of Dr. Thomas's examination under Iowa Code section 85.39, but rather awarded claimant the cost of Dr. Thomas's first report for the period of March 17, 2020, through May 11, 2020, without identifying what costs were to be reimbursed.

Dr. Thomas's bill is itemized. It contains charges for phone consults, record reviews, a review of the AMA Guides, discussions, interviews, mileage, testing scoring, and report preparation. The rule only allows for the recovery of the report. The itemized bill supports the cost of Dr. Thomas's report that was issued on May 11, 2020, was \$5,200.00. Defendants have not established the cost of the report is unreasonable. Defendants shall reimburse claimant for the \$5,200.00 cost of Dr. Thomas' May 11, 2020, report.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 15, 2021, is affirmed in part, modified in part, and reversed in part, with the above-stated additional and substituted analysis.

Defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits at the stipulated weekly rate of seven hundred twenty-one and 84/100 dollars (\$721.84), commencing on May 11, 2020.

Defendants shall receive credit for all 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.

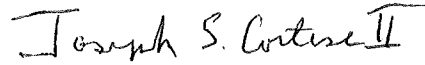
Defendants are responsible for all future causally connected mental health care.

Pursuant to rule 876 IAC 4.33(2), defendants shall reimburse claimant one hundred and 00/100 dollars (\$100.00) for the cost of the filing fee, twenty-six and 94/100 dollars (\$26.94) for the cost of service, and five thousand two hundred and 00/100 dollars (\$5,200.00) for the cost of Dr. Thomas' report.

Pursuant to rule 876 IAC 4.33(2), the parties shall split the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 28th day of June, 2022.



JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Earl Payson (via WCES)

Daniel Bernstein (via WCES)

Troy Howell (via WCES)