BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BETTY CLARK, Claimant, vs. SEDONA STAFFING, Employer, and ACE AMERICAN INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5054351 ARBITRATION DECISION Head Note Nos.: 1402.40, 1803, 1806, 2501, 2502, 2701, 2907, 3001

STATEMENT OF THE CASE

Betty Clark, claimant, filed a petition for arbitration against Sedona Staffing as the employer and Ace American Insurance Company as the insurance carrier. An in-person hearing occurred in Des Moines on August 3, 2018.

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

The evidentiary record includes Joint Exhibits 1 through 9, Claimant's Exhibits 1-3, as well as Defendants' Exhibits A through B. All exhibits were received without objection.

Claimant testified on her own behalf. No other witnesses testified live at the time of hearing. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. The case was deemed fully submitted upon the simultaneous filing of the post-hearing briefs by the parties on September 10, 2018.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's current and ongoing left wrist condition is causally related to the September 24, 2014 work injury.

2. The extent of claimant's entitlement to permanent partial disability benefits.

3. The applicable gross average weekly earnings prior to the injury date and the corresponding weekly worker's compensation rate.

4. Whether claimant is entitled to reimbursement, payment, or satisfaction of past outstanding medical expenses.

5. Whether claimant is entitled to the award of independent medical evaluation expenses.

6. Whether claimant is entitled to the award of past medical mileage.

7. Whether claimant is entitled to alternate medical care.

8. Whether defendants have proven entitlement to apportionment of a prior left wrist injury pursuant to Iowa Code section 85.34(7).

9. Whether costs should be assessed against any party and, if so, the extent to which costs should be assessed.

FINDINGS OF FACT

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

The parties stipulate that claimant, Betty Clark, sustained a left wrist injury as a result of her work activities on September 24, 2014. The parties stipulate that the September 24, 2014 work injury caused permanent disability. However, there is dispute about whether claimant's current left wrist condition is causally related to the work injury. (Hearing Report)

Ms. Clark described the date of her injury. She was working at Nordstroms on assignment from Sedona Staffing on September 24, 2014. She was working with sandals to be displayed in the store. She was removing plastic from the sandals so they could be displayed. She testified that the store typically kept a worker on this specific task for approximately two hours and then rotated them to another duty. However, claimant remained on this job duty for the entirety of her eight hour shift. (Claimant's testimony)

During the course of her work day on September 24, 2014, claimant felt a "pinch" in her left wrist while pulling hard on a piece of plastic to remove it from a sandal. She testified that her left wrist began hurting at approximately noon and she told her lead person. She described a burning or stinging sensation on the outside of her left wrist and testified that repetitive movements, pinching, grasping all made her symptoms worse. (Claimant's testimony)

Ms. Clark was initially treated by Erin J. Kennedy, M.D. (Joint Exhibit 2) She was placed on light duty. However, by October 27, 2014, she was released to return to work without restrictions. Dr. Kennedy told her to return if her symptoms worsened. (Joint Ex. 2, page 19) Claimant did return for further care in January 2015. An MRI was prescribed and performed on January 16, 2015. After the MRI, Dr. Kennedy referred claimant to an orthopaedic surgeon, Edwin Castenada, M.D. (Joint Ex. 2, p. 32)

However, prior to being evaluated by Dr. Castenada, claimant developed radial side left wrist pain and returned to Dr. Kennedy for further care on March 16, 2015. (Joint Ex. 2, pp. 30-31) Dr. Kennedy described these left wrist, radial side symptoms as being a "new onset" and notes that claimant had previously denied radial side symptoms in the left wrist. (Joint Ex. 2, p. 30) Dr. Kennedy opined that the radial side left wrist symptoms were "unrelated to this injury." (Joint Ex. 2, p. 31)

Dr. Castenada evaluated claimant on March 30, 2015. He diagnosed claimant with a TFCC tear, trigger finger, and potential inflammatory cysts in the lunate bone. (Joint Ex. 4, p. 40) Dr. Castenada also noted that there was also cysts and degeneration of the hamate and scaphoid bones. (Joint Ex. 4, p. 42)

On March 30, 2015, Dr. Castenada performed a cortisone injection for claimant's left middle trigger finger, which provided some symptomatic relief. On April 16, 2015, claimant returned for further care and Dr. Castenada performed cortisone injections into claimant's midcarpal joint and ulnocarpal joint spaces. (Joint Ex. 4, p. 42) Unfortunately, claimant developed adverse reactions to these injections. She contacted Dr. Castenada's office during non-office hours. The on-call nurse at Dr. Castenada's office advised claimant to go to the emergency room due to her reported symptoms. (Claimant's testimony; Joint Ex. 4, p. 45)

Shortly after midnight on April 17, 2015, claimant was admitted to the emergency room. She reported increased pain and swelling in her left wrist after Dr. Castenada's injection. She reported that it hurt to move her fingers or wrist and rated her pain as a 10 out of 10 on the pain scale. The emergency room physician provided claimant some pain medication and advised to elevate her left wrist. (Joint Ex. 5, p. 53)

Defendants contend that the emergency room visit was not authorized and should not be awarded. I find that Dr. Castenada was an authorized physician. I find that his office was not open and that he was not available to provide medical care at the time claimant developed left wrist symptoms after her injection. I find that it was reasonable for claimant to contact Dr. Castenada's office to obtain instructions and that

she was provided and followed reasonable medical advice to report to the emergency room due to her left wrist symptoms after her injections on April 16, 2015. I specifically find that claimant reported to the emergency room as a result of instructions from an authorized medical facility and that her condition was emergent given the level of pain she was experiencing.

Claimant returned for further evaluation with Dr. Castenada on June 8, 2015. Dr. Castenada continued to diagnose claimant with ulnar side symptoms of the left wrist. (Joint Ex. 4, p. 46) Ultimately, Dr. Castenada opined that claimant had ulnar impaction syndrome and recommended an ulnar osteotomy and shortening surgical procedure. (Joint Ex. 4, p. 47) Dr. Castenada opined that the claimant's left wrist condition was causally related to the work activities she performed at Sedona Staffing. (Joint Ex. 4, pp. 47-48)

Defendants requested and scheduled another orthopaedic evaluation of claimant's wrist. Specifically, Abdul Foad, M.D. evaluated claimant on June 16, 2015. (Joint Ex. 6) Dr. Foad opined that the ulnar shortening procedure was a reasonable surgical approach to claimant's treatment. However, Dr. Foad documented some pain behaviors exhibited by claimant during his evaluation that caused him some concerns. He suggested he likely would not perform surgical intervention with the pain behaviors present. Yet, Dr. Foad concurred with Dr. Castenada and opined that claimant's condition appears to be work related. (Joint Ex. 6, p. 57)

After review of Dr. Foad's report, Dr. Castenada recommended referral and evaluation at the University of Iowa Hospitals and Clinics. (Joint Ex. 4, p. 50) Such an evaluation never occurred. Instead, defendants declined authorization of the recommended surgical procedure, cancelled surgery the day before it was scheduled to occur, and sought yet another orthopaedic opinion. (Claimant's testimony)

This time, defendants selected Suleman M. Hussain, M.D. Dr. Hussain evaluated claimant on November 4, 2015. Dr. Hussain disagreed with the surgical recommendations made by Dr. Castenada. (Joint Ex. 7, p. 60) Instead, Dr. Hussain diagnosed claimant with symptoms in the flexor carpi radialis and first dorsal extensor compartment of the left wrist, neither of which is located on the ulnar side of the wrist. (Joint Ex. 7, p. 66) Dr. Hussain attempted injections for claimant's symptoms, which provided some temporary benefit but its efficacy was limited. (Joint Ex. 7, pp. 61-63) A series of injections were attempted, but failed to relieve claimant's symptoms. (Joint Ex. 7)

On July 12, 2016, Dr. Hussain took claimant to the operating room and performed a left first dorsal compartment released and a tenosynovectomy of the first dorsal compartment of the left wrist. (Joint Ex. 8, p. 95) On September 28, 2016, Dr. Hussain declared claimant to have achieved maximum medical improvement (MMI) and gave her a full duty work release. (Joint Ex. 7, p. 75) Dr. Hussain assigned claimant a two percent permanent impairment of the left upper extremity following his MMI declaration. (Joint Ex. 7, p. 77) In a January 19, 2018 report, Dr. Hussain appears to

modify his impairment rating to six percent of the left upper extremity. (Joint Ex. 7, p. 87)

Ms. Clark testified that she has ongoing tenderness on the inside of her left wrist, near her thumb. Dr. Hussain opines that the ongoing symptoms are due to arthritis in the carpal tunnel region, which is unrelated to the claimant's work injury. (Joint Ex. 7, p. 87)

Ms. Clark sought an independent medical evaluation, performed by Mark C. Taylor, M.D., on September 12, 2017. (Claimant's Ex. 1) Dr. Taylor diagnosed claimant with chronic left wrist arthralgia and possible ulnar impaction syndrome. He diagnosed DeQuarvain's tenosynovitis, resulting in the release procedure performed by Dr. Hussain. Dr. Taylor also diagnosed claimant with left long finger trigger finger. (Claimant's Ex. 1, p. 7)

Dr. Taylor noted that claimant had no prior left wrist pain or problems. He opined that claimant's "work activities represented a significant contributing factor to the symptoms, or aggravating a pre-existing condition." (Claimant's Ex. 1, p. 8) He further opined that claimant sustained a 13 percent permanent impairment of the left upper extremity as a result of the work injury at Sedona Staffing. (Claimant's Ex. 1, p. 8)

Dr. Taylor recommended a referral to Ericka Lawler, M.D., at the University of Iowa Hospitals and Clinics. (Claimant's Ex. 1, p. 9) Specifically, Dr. Taylor noted, "Dr. Castenada had recommended a completely different type of surgery than was later completed by Dr. Hussain." (Claimant's Ex. 1, p. 9)

Ms. Clark testified that she continues to have symptoms in the left wrist. Specifically, she testified that she has pain on the outside of her wrist two to three times per week, as well as pain into the small and ring fingers. These symptoms are consistent with the initially reported symptoms after the injury and those reported to Dr. Kennedy and Dr. Castenada throughout their treatment. Ms. Clark also testified that she has pain with light touch over her scar by the thumb and that she has numbness in the fingers of her left hand and that her left middle finger continues to "lock." (Claimant's testimony)

Claimant also testified that she has ongoing pain on the outside of her left wrist, which is now more frequent than prior to the date of injury. These symptoms increase with repetitive movement or lifting. She testified that she has significant symptoms and always uses a brace now when working. All of the symptoms reported by Ms. Clark were believable and should be addressed through further medical evaluation.

Considering the competing medical opinions, I ultimately accept Dr. Taylor's causation opinion in this case. Dr. Taylor provided a thorough explanation of the symptoms, medical history, explained the location of symptoms, treatment, and noted that some previously reported symptoms have not yet been definitively treated. To the

extent that Dr. Castenada, Dr. Kennedy and Dr. Foad offer similar causation opinions, I also accept those medical opinions.

I reject the medical opinions of Dr. Hussain. Dr. Hussain failed to adequately address the ulnar side symptoms reported by claimant from the beginning. Moreover, Dr. Hussain's opinions rely upon a diagnosis of pre-existing arthritis. However, claimant did not have ongoing pre-existing symptoms and it is apparent that her work injury materially aggravated her condition such that treatment, including the treatment offered by Dr. Hussain and treatments recommended by Dr. Castenada and Dr. Taylor are related to the work injury. I specifically find that claimant has proven by a preponderance of the evidence that her current and ongoing left wrist symptoms are causally related to the work injury.

I similarly find Dr. Taylor's permanent impairment rating to be most convincing. Dr. Taylor opines that claimant has a 13 percent permanent impairment of the left upper extremity. I find that claimant has a 13 percent permanent impairment of the left arm.

However, there is evidence that claimant has a 5 percent pre-existing permanent impairment of the left arm as a result of a prior carpal tunnel release. (Joint Ex. 9, p. 105) There is comment that a competing physician rendered a zero percent impairment as a result of the left carpal tunnel release, but a copy of that impairment rating is not in this evidentiary record. Therefore, I find the 5 percent impairment rating to be most convincing and applicable. I specifically find that defendants have established by a preponderance of the evidence that claimant had a pre-existing 5 percent permanent impairment of the left upper extremity.

It is not clear whether the 13 percent impairment rendered by Dr. Taylor is in addition to the prior 5 percent or includes the 5 percent impairment rating. Dr. Taylor makes no comment about the left sided pre-existing impairment in his report. It is assumed that Dr. Taylor rated claimant's current condition and that his impairment necessarily includes any lingering symptoms from the prior carpal tunnel release.

Ms. Clark seeks an award of past medical expenses. Defendants dispute several of those medical expenses. The first challenged medical expense is an emergency room charge of $224.00 for services on April 17, 2015. (Joint Ex. 1, p. 2) These charges arose out of the emergency room visit after claimant developed symptoms following an injection by Dr. Castenada. The medical treatment and charges for this emergency room evaluation are reasonable and necessary. (Hearing Report) Defendants contend that this charge was not authorized. I find that the treatment was rendered at the advice of an authorized medical provider's clinic and that the care was also emergent in nature.

The next charge challenged by defendants is $165.00 for a bone scan performed at Finley Hospital on December 4, 2015. (Joint Ex. 1, p. 2) This bone scan was performed at the recommendation of Dr. Hussain, an authorized medical provider. (Joint Ex. 3, p. 35) The parties stipulate that the charges and treatment are both

reasonable and necessary and I found the treatment to be causally connected to the work injury. Defendants did not establish that they notified claimant that it was not authorizing this care prior to December 4, 2015.

The next challenged medical charge is a prescription for Hydrocodone on February 5, 2016. (Joint Ex. 1, p. 2) The billing detail for this prescription does not reference a prescribing physician. (Joint Ex., 1, p. 5) Claimant was treating with Dr. Hussain by this date, but there is no mention in Dr. Hussain's medical records of prescribing Hydrocodone. Although I suspect this prescription was for treatment of claimant's left wrist symptoms, I cannot find that claimant proved this prescription charge was causally related to the work injury by a preponderance of the evidence.

There is also dispute about the rate at which claimant's weekly benefits should be paid. Claimant asserts that she had average gross weekly earning prior to the injury date totaling $283.96. Defendants contend that the claimant's average gross weekly earnings totaled $269.08.

Review of the parties' respective positions on this issue reveals the primary dispute is whether the wages for the week ending August 24, 2014 should be considered representative of claimants' typical earnings and included in the calculation of claimant's average gross weekly wages. On the week ending August 24, 2014, claimant worked only 7.73 hours. She contends this should be excluded and replaced by another week. Defendants contend this week is representative of claimant's typical earnings.

Review of the wage records demonstrates that claimant had significant fluctuation in her weekly hours worked. She includes weeks in which she worked 14.78 hours and 21.86 hours in a week, but contends that the 7.73 hour week should be excluded. At trial, claimant was asked on direct examination about the hours worked for week ending August 24, 2014. Claimant was asked if it was "normal" for her to work 7.73 hours in a week. Claimant explained that it was dependent upon whether it was a slow time for the employer. She explained that it was usual for her to work more than 7.73 hours but some weeks were less than 10 hours. Specifically, claimant testified as follows:

> Q: And do you notice the week ending on August 24 or 8/24?
>
> A: Yes.
>
> Q: That says you worked 7 hours that week?
>
> A: Yeah.
>
> Q: Was that normal?
>
> A: Yeah. It depends on if they – it was a slow time or not.

Q: Was it usual to be working more than that, though?

A: Yes

(Transcript, pp. 62-63)

I find that the preponderance of the evidence demonstrates that it was not uncommon for claimant to have significant variance in her work hours from week to week. Claimant explained; and it is accepted, that during slow times, she would work less than 10 hours per week. I find that the week ending August 24, 2014 is fairly representative of claimant's typical earnings because of the variability of her work hours and the predictability and expectation that some weeks she would work less than 10 hours in a week. Therefore, I find defendants' calculation of the gross average weekly wages to be accurate and specifically find that claimant's gross average weekly wages before the September 24, 2014 work injury were $269.08.

CONCLUSIONS OF LAW

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to

recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Having found Dr. Taylor's causation to be most convincing and having found that claimant proved her ongoing and current symptoms are causally related to the September 24, 2014 work injury, I conclude that claimant has proven that her ongoing and current condition is compensable.

The parties stipulate that the injury resulted in permanent disability and that the injury is limited to a scheduled member injury of the left arm. (Hearing Report) Having concluded that claimant proved her current condition is causally related, I consider all of the resulting permanent disability in rendering a permanent disability award. Again, having found Dr. Taylor's impairment rating to be most convincing, I found that claimant proved a 13 percent permanent impairment of the left upper extremity. This entitles claimant to an award of permanent disability benefits to the left arm. Iowa Code section 85.34(2)(m).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

The Iowa legislature has established a 250 week schedule for arm injuries. Iowa Code section 85.34(2)(m). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of her arm. Iowa Code section 85.34(2)(v); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969). Thirteen (13) percent of 250 weeks equals 32.5 weeks.

However, defendants also assert entitlement to apportionment, or an offset, for claimant's pre-existing permanent disability of the left arm. Iowa Code section 85.34(7)(a) provides:

> An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

Defendants also assert entitlement to a credit for apportionment of the prior 5 percent permanent disability of the left arm. The Iowa Supreme Court has adopted the full-responsibility rule. Under that rule, where there are successive work-related injuries, the employer liable for the current injury also is liable for the preexisting disability caused by any earlier work-related injury if the former disability when combined with the disability caused by the later injury produces a greater overall industrial disability. Venegas v. IBP, Inc., 638 N.W.2d 699 (Iowa 2002); Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 265 (Iowa 1995); Celotex Corp. v. Auten, 541 N.W.2d 252, 254 (Iowa 1995). The full-responsibility rule does not apply in cases of successive, scheduled member injuries, however. Floyd v. Quaker Oats, 646 N.W.2d 105 (Iowa 2002).

Having found Dr. Taylor's impairment to be unclear as to whether it includes only "new" impairment or combines and includes impairment from the prior left arm disability, I ultimately found that Dr. Taylor's impairment likely includes all ratable left arm impairment at the present time. Defendants have established a pre-existing 5 percent permanent disability of the left arm. Therefore, I conclude that defendants are entitled to apportionment, or an offset, pursuant to Iowa Code section 85.34(7)(a).

I conclude that claimant is entitled to a total of 13 permanent disability of the left arm. Iowa Code section 85.34(2)(m), (v). Defendants are entitled to apportion, or offset, 5 percent of this permanent disability as pre-existing. I conclude claimant is entitled to an award of 8 percent permanent disability of the left arm as a result of the September 24, 2014 work injury. Therefore, claimant is, therefore, entitled to an award of 20 weeks of permanent partial disability benefits against the employer. Iowa Code section 85.34(2)(m), (v); 85.34(7)(a).

There is a dispute between the parties about the proper weekly rate at which permanent disability benefits should be paid. Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Section 85.36(6).

In this case, I found that the disputed week ending August 24, 2014 was fairly representative or reflecting of claimant's customary earnings prior to the date of injury. Therefore, I found that the claimant's gross average weekly earnings prior to the injury date were $269.08.

The weekly benefit amount payable to an employee shall be based upon 80 percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to 66-2/3 percent of the statewide average weekly wage paid employees as determined by the Department of Workforce Development. Iowa Code section 85.37.

The weekly benefit amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. Typically, the rate tables are consulted to determine the applicable rate for a given marital status, exemptions, and wage rate. However, claimant's wage rate is low.

Iowa Code section 85.37 provides that the minimum weekly benefit rate for permanent partial disability benefits shall be "equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage." Thirty-five percent of the statewide average weekly wage on the date of injury was $275.00. (Iowa Workers' Compensation Manual, p. IV.) The corresponding weekly rate is $199.72.

Having accepted the parties' stipulations that claimant was married and entitled to two exemptions, and having found that claimant's average gross weekly wages were $269.08, I conclude that claimant qualifies for the minimum weekly rate and that the applicable weekly rate at which benefits should be paid is $199.72.

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).

Claimant submitted past disputed medical charges in Joint Exhibit 1. The initial disputed charge was an emergency room charge incurred on April 17, 2015. Defendants challenged the emergency room charge as unauthorized and noted a causation challenge to past medical expenses on the hearing report.

I found that the emergency room charge incurred on April 17, 2015 were the result of referral and recommendation of an authorized medical provider, Dr. Castenada's office. An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, I Iowa Industrial Commissioner Reports 207 (1981).

The emergency room charges were incurred at the recommendation of an on-call nurse during non-business hours for Dr. Castenada's clinic. I found that claimant called the authorized medical provider's clinic and obtained, then followed, advice from that clinic. I conclude that claimant has established that the emergency room charges were incurred at the recommendation of an authorized medical provider.

Regardless, even if a reviewing authority were to determine that the recommendation of a nurse at Dr. Castenada's office is not sufficient to make the referral or recommendation "authorized," I found that the visit to the emergency room was for emergent medical care. Given that the emergent services were found to have been rendered after midnight and involved 10 out of 10 pain thresholds, it is reasonable to conclude that the medical care rendered on April 17, 2015 was emergent care and that it should be compensated by the employer.

Iowa Code section 85.27(4) provides that an employer is not necessarily obligated to pay for emergency care, even if it arranges that care, if the treatment is for a non-work related condition. Implicit in this statutory language is that the employer is liable for providing and paying for emergency care that is causally related to the work injury. Claimant's care on April 17, 2015 was the result of a reaction to authorized medical care that was causally related to the work injury. Defendants are responsible for the April 17, 2015 emergency room charges totaling $224.00.

Defendants next contested a bone scan charge totaling $165.00. Having found that the bone scan was recommended and prescribed by Dr. Hussain, an authorized medical provider, I conclude that the charges are defendants' responsibility. Moreover, even if the bone scan was not specifically authorized by defendants, it was performed on referral of Dr. Hussain and, therefore, compensable.

Iowa Code section 85.27(4) provides, "If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization." Defendants failed to establish that they were no longer authorizing care through or at the recommendation of Dr. Hussain before the bone scan occurred. Having found the bone scan to be for treatment causally related to the work injury, I conclude that defendants are responsible for payment of the $165.00 bone scan charges.

Finally, defendants challenged a prescription charge for Hydrocodone. I found that claimant failed to establish that the prescription was through an authorized medical provider or causally related to the work injury. Therefore, I conclude claimant failed to prove the February 5, 2016 prescription from Walgreens for Hydrocodone is compensable.

The hearing report asserts a claim for reimbursement of past medical mileage. No summary is attached to the hearing report for medical mileage. No specific claims are asserted in the hearing exhibits. Claimant's post-hearing brief does not reference medical mileage as a claim. I conclude claimant has failed to establish a claim for past medical mileage on this evidentiary record.

Claimant asserts a claim for reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Certain pre-requisites must be established before the claimant is entitled to reimbursement of an independent medical evaluation. Among those are that the defendants obtained an impairment rating from a physician of their choosing prior to the claimant's evaluation occurring. Dr. Hussain was an authorized medical provider and clearly rendered an impairment rating prior to Dr. Taylor's evaluation.

Claimant must also establish that the independent medical evaluation charges are reasonable. Dr. Taylor specifically opines that his evaluation charges are reasonable. Defendants offered no contrary evidence.

Claimant concedes that a portion of Dr. Taylor's evaluation and report were to address a Second Injury Fund claim that settled prior to trial. Claimant concedes that defendants paid one-half of the IME charges, but asserts that the Second Injury Fund claims consumed far less than one-half of the evaluator's time and charges. Claimant contends that the employer should be responsible for $2,248.08 of Dr. Taylor's charges, less the $1,461.25 already paid by the employer. Claimant asserts that defendants should be ordered to pay an additional $786.83 toward the claimant's independent medical evaluation.

Defendants failed to address the independent medical evaluation claim in their post-hearing brief. Claimant's argument is convincing, reasonable, and accepted. I conclude that claimant has established, pursuant to Iowa Code section 85.39, that he is entitled to reimbursement of Dr. Taylor's independent medical evaluation charges, including an additional payment of $786.83.

Ms. Clark also seeks an award of alternate medical care. Specifically, claimant seeks an order directing defendants to authorize medical care through Ericka Lawler, M.D., at the University of Iowa Hospitals and Clinics. Defendants contend that no current or future medical care is causally related to the work injury and resist the award of any alternate medical care.

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 1975).

Once an employer denies liability for a condition, it cannot direct or control claimant's medical care. Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018); Bell Bros. Heating and Air Cond. v. Gwinn, 779 N.W.2d 193 (Iowa 2010); R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197-198 (Iowa 2003). Defendants have denied that claimant's current condition is causally related to the work injury. I have concluded differently and found that the current condition is causally related to the work injury. Therefore, defendants owe claimant treatment for the current condition, including the ulnar side left wrist symptoms. Alternate medical care is appropriate.

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

In this case, defendants failed to authorize surgery recommended by Dr. Castenada. Defendants failed to authorize the referral from Dr. Castenada to the University of Iowa Hospitals and Clinics. Instead, defendants transferred care to Dr. Hussain.

However, Dr. Hussain's treatment focused on some areas of claimant's complaints without resolving all of those complaints. Dr. Hussain did not perform the surgery recommended by Dr. Castenada, or otherwise address symptoms on the ulnar side of claimant's left wrist. Both Dr. Castenada and Dr. Taylor have recommended additional follow-up for the ulnar side symptoms, as well as the trigger finger in claimant's left, long finger. Treatment to date has not been effective and alternate care is identified. I conclude claimant has established entitlement to alternate medical care.

The undersigned cannot order a physician to assume care of a patient. However, to the extent that Dr. Lawler will accept claimant as a patient, defendants are ordered to provide and pay for such care. Defendants shall contact Dr. Lawler's office within 14 days of the entry of this decision and attempt to coordinate care. If referrals are required, defendants shall coordinate such referrals through Dr. Kennedy, Dr. Castenada, and/or Dr. Taylor to accomplish the intended result of my order.

If Dr. Lawler declines to accept claimant as a patient, defendants shall have 21 days from the date Dr. Lawler declines to accept claimant as a patient to identify another board-certified hand specialist, other than any of the medical providers already utilized in this case, to assume care for claimant's left wrist and left trigger finger conditions. Defendants shall provide prompt and reasonable medical care for claimant's ongoing conditions.

Finally, claimant seeks an award of costs. Costs are awarded at the discretion of this agency. Iowa Code section 86.40. In this case, claimant has prevailed. I conclude that it is appropriate to assess costs in some amount against the employer and insurance carrier.

Claimant attached a statement of costs to the hearing report. Claimant seeks assessment of two filing fees. Claimant filed an original notice and petition in July 2015 and voluntarily dismissed the petition in September 2016. Claimant re-filed the petition in April 2017. I conclude it is appropriate to assess only one of the filing fees. A filing fee totaling $100.00 is assessed pursuant to 876 IAC 4.33(7).

Claimant next seeks assessment of Dr. Taylor's independent medical evaluation fee as a cost. This expense has already been addressed and awarded pursuant to Iowa Code section 85.39. No additional portion of the fee is assessed as a cost.

Finally, claimant seeks assessment of charges for a functional capacity evaluation performed by Short Physical Therapy. The functional capacity evaluation had no bearing on the ultimate award in this case. While that evaluation likely would help establish permanent work restrictions and likely could have affected an industrial disability award against the Second Injury Fund, if that claim had not settled prior to trial, the functional capacity evaluation was not a convincing, or significant, piece of evidence in rendering a scheduled member award against the employer. I conclude that it would be inappropriate to assess this as a cost under these circumstances.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant twenty (20) weeks of permanent partial disability benefits commencing on July 15, 2016.

All weekly benefits shall be paid at the rate of one hundred ninety-nine and 72/100 dollars ($199.72).

Defendants employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall pay medical providers directly for any outstanding medical expenses, reimburse claimant for any out-of-pocket expenses paid, and otherwise hold claimant harmless for the April 17, 2015 emergency room visit to Mercy Medical Center totaling two hundred twenty-four and 00/100 dollars ($224.00) and for the December 4, 2015 bone scan performed at Finley Hospital totaling one hundred sixty-five and 00/100 dollars ($165.00).

Defendants shall contact Dr. Lawler's office within fourteen (14) days of the entry of this decision and attempt to coordinate care.

If referrals are required by Dr. Lawler to establish care through her office, defendants shall coordinate such referrals through Dr. Kennedy, Dr. Castenada, and/or Dr. Taylor to accomplish the intended result of this order.

If Dr. Lawler will accept claimant as a patient, defendants are ordered to provide and pay for such care, including any referrals, diagnostic testing, or other recommendations made by Dr. Lawler.

If Dr. Lawler declines to accept claimant as a patient, defendants shall have twenty-one (21) days from the date Dr. Lawler declines to accept claimant as a patient to identify another board-certified hand specialist, other than any of the medical providers already utilized in this case, to assume care for claimant's left wrist and left trigger finger conditions.

Regardless of whether Dr. Lawler accepts claimant as a patient, defendants shall provide prompt and reasonable medical care for claimant's ongoing conditions.

Defendants shall reimburse claimant an additional seven hundred eight-six and 83/100 dollars ($786.83) for claimant's independent medical evaluation.

Defendants shall reimburse claimant's costs in the amount of one hundred dollars ($100.00).

Defendants employer and insurance carrier 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 7th day of January, 2019.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/kjw

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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.