BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMANDA ROBERTS, Claimant, vs. LINN COUNTY, IOWA, Self-Insured Employer, Defendant.	: : : : : : : : : : :	File No. 19000117.01 ARBITRATION DECISION Head Note Nos.: 1402.40, 1802, 1804, 2501, 4100

STATEMENT OF THE CASE

Amanda Roberts, claimant, filed a petition for arbitration against Linn County, Iowa, as the self-insured employer. This case came before the undersigned for an arbitration hearing on April 13, 2022. Pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using Zoom. All participants appeared remotely.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal findings relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations. Oral modifications were made to the hearing report at the commencement of hearing, and those modifications are contained in this official transcript of the proceedings.

The written evidentiary record includes Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 7, and Defendant's Exhibits A through E. All exhibits were received without objection.

Claimant testified on her own behalf. Linn County called Steve Estenson, its risk manager, as well as Major Pete Wilson, the Linn County Jail Administrator, to testify. No other witnesses testified live at the hearing. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted, and both parties filed briefs simultaneously on June 10, 2022. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant is entitled to additional temporary total disability, or healing period benefits, from March 24, 2020 through May 20, 2021.

2. Whether the work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits, including a claim for permanent total disability benefits.

3. Whether claimant is an odd-lot employee as a result of the work injury.

4. Whether claimant is entitled to payment or reimbursement for past medical expenses submitted as Claimant's Exhibit 7.

FINDINGS OF FACT

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

Amanda Roberts is a 39-year-old woman. She was born in Illinois, but now resides in Cedar Rapids, Iowa. Ms. Roberts obtained a GED and possesses a certified nursing assistant certificate. Claimant also earned a two-year degree (associate's degree) in nursing and is licensed as a registered nurse in Iowa.

Ms. Roberts has a varied yet consistent work history. She demonstrated motivation to work throughout her work life. She began her work career at the age of 11 detasseling corn and continued in that employment through the age of 17. She has also worked in a hog confinement facility collecting boar semen and feeding hogs. She has worked as a server and dishwasher at a local restaurant and as a clerk in a gas station. At approximately age 21, she left home and obtained full-time employment working as a dealer in a casino in Missouri.

In 2005, Ms. Roberts was recruited and moved to Iowa to work as a casino dealer and train employees at a new casino. While working full-time as a casino dealer, claimant attended nursing school to earn her associate's degree. After obtaining that degree, Ms. Roberts accepted and started employment in the correctional system at the Iowa Medical Classification Center in Oakdale, Iowa. She worked at the Iowa Medical Classification Center from 2012 until accepting a similar nursing position at the Linn County Jail in September 2017.

Claimant experienced an unfortunate situation on June 5, 2019. On that date, she was the only registered nurse on duty at the Linn County Jail. She was passing medications to residents. She and a deputy sheriff, who was escorting her, approached an inmate's cell. The inmate was placed in a "dry cell" condition in which water was restricted. The deputy sheriff opened the door through which items were passed to and

from the inmate. However, upon opening the pass-through door, the inmate reached out of the cell and threw a milk carton full of an unspecified and unknown liquid at claimant.

The inmate subsequently asserted that the liquid in the milk carton was water. However, claimant testified that the liquid was thicker than water and that she suspects it was a bodily fluid. The liquid hit claimant in the face and entered her eye and mouth. She describes the liquid as sticking to her face and having a foul taste. Major Wilson, the jail administrator, testified that he spoke with claimant shortly after the incident and claimant told him she thought the liquid was water. Even if claimant said this, it is unlikely she believed it was water based upon her reaction for the weeks immediately after the event.

Major Pete Wilson, the Linn County jail administrator, advised claimant that the inmate would be criminally charged for this assault. Therefore, claimant did not immediately wash off the liquid thrown on her. Instead, she waited a couple of hours to obtain an evaluation with the medical provider selected by the employer before washing the liquid off her face. Linn County asserts this is not their established procedure for exposure to bodily fluids. Nevertheless, claimant did not rinse the fluid off her face immediately.

Luckily, claimant did not contract any physical disease as a result of this incident. However, the incident had a significant impact on claimant's mental health. Ms. Roberts acknowledged that she had witnessed prior traumatic and disturbing scenes in the correctional setting. She has witnessed and been required to attend to prisoners that attempt suicide. She has seen gruesome fights with significant bloodshed. She has been required to perform CPR on an inmate for up to 45 minutes in the past. She freely acknowledges that she was able to mentally process and deal with each of these prior situations and scenes. She has not experienced any mental breakdowns or issues from these prior encounters. Nor has she required any mental health services as a result of the prior incidents.

Unfortunately, claimant did experience significant mental trauma and anguish as a result of the June 5, 2019 event. After the incident, claimant was scheduled to be on vacation. She was required to wait a couple of weeks for test results to verify she did not contract HIV or Hepatitis C from the incident. She testified that she was unable to relax during the vacation and was experiencing flashbacks of the event and nightmares about the incident.

During her flashbacks or nightmares, claimant described seeing the inmate's face and feeling the fluid on her face. She continues to experience flashbacks and mental discomfort when showering and water hits her in the face. Ms. Roberts testified that her symptoms worsened after the event. Ms. Roberts developed an acute stress reaction after the exposure on June 5, 2019. (Joint Ex. 1, p. 2)

Eventually, claimant had difficulty leaving her house and experienced significant anxiety in doing so. She testified that she was terrified anytime she left her house and that she gets "on edge" any time she is at the jail. Ms. Roberts described panic attacks that occur when she is in a public place such as at the grocery store.

Ms. Roberts did return to work after the incident. However, when she returned to work, claimant perceived that she was being treated differently. She testified that she no longer received verbal assignments. Instead, her assignments would be posted on her computer with post-it notes. She testified another co-worker called her "Sally Sensitive" on one occasion. She felt unsafe in the correctional setting and did not know if she could trust her co-workers if she got into a dangerous situation after the incident. Claimant testified that she did not feel welcome to return to her work.

Ms. Roberts testified that her attempts to return to work aggravated her symptoms and caused her mental health to deteriorate. She testified that she felt worse when she returned to work. Ultimately, her treating physician, Shirley J. Pospisil, M.D., took claimant off work on July 3, 2019. (Joint Ex. 1, pp. 11-12) Claimant never returned to the Linn County Jail after this date and was ultimately terminated by the County. (Claimant's Ex. 6)

Claimant testified that she has ongoing symptoms and difficulties. She explained that she makes lists of places and items she needs before she leaves home when going shopping. She is terrified just putting her truck into reverse to leave her house. Ms. Roberts explained that her blood pressure rises, she becomes sweaty, and is terrified when she leaves her house. Ms. Roberts testified she has experienced an anxiety attack so significant while grocery shopping that she left her filled cart and left the store. She also continues to have sleep issues and still sees the offending inmate's face and relives the event while sleeping.

Ms. Roberts is also concerned because she has memory difficulties since the event. She is concerned she has dementia because of these memory difficulties. However, she has participated in neurologic testing that has ruled out dementia as a diagnosis.

Ms. Roberts sought medical care for her mental health difficulties. Linn County authorized care through Unity Point Health at St. Luke's Hospital. Ultimately, care was assumed by Shirley J. Pospisil, M.D. Claimant was evaluated by a different provider on the date of injury. At that time, the manner of the exposure was documented, and she was recommended to be seen by Dr. Pospisil after her vacation.

Dr. Pospisil evaluated Ms. Roberts on June 17, 2019. She noted the exposure to presumed bodily fluids. She noted claimant was stressed and crying. Dr. Pospisil reiterated the prior recommendation that claimant seek assistance through an employee assistance program. Ms. Roberts followed this recommendation and sought evaluation and assistance through her husband's employee assistance program.

Claimant first submitted to counseling with Leonarda Decker, a licensed mental health counselor, on June 21, 2019. At that evaluation, claimant reported symptoms that included anxiety, irritability, difficulty sleeping, feeling overwhelmed, a sad mood, crying spells, fluctuating motivation, and unsteady energy levels. (Joint Ex. 2, pp. 28-29)

By August 12, 2019, claimant was reporting significant panic attacks and anxiety to her mental health counselor. She continued reporting being "triggered" by thinking about the work incident, seeing co-workers, or talking about her work. She reported feeling scared to leave her house and feeling embarrassed and weak. (Joint Ex. 2, p. 36)

In September 2019, claimant reported having racing thoughts and feeling like she was in a "dark place." (Joint Ex. 2, p. 38) In October 2019, claimant reported an incident where she saw a co-worker at the grocery store. She became extremely upset and started to withdraw. She acknowledged that she had self-stigmatized. (Joint Ex. 2, p. 40) By January 2020, claimant was discussing with her mental health therapist that she had symptoms consistent with post-traumatic stress disorder (PTSD), including irrational fear, avoidance, hypervigilance, and flashbacks. (Joint Ex. 2, p. 45)

In June 2020, Ms. Decker was providing a diagnosis of generalized anxiety disorder for claimant. (Joint Ex. 2, p. 50) Following an evaluation on February 6, 2021, Counselor Decker added a diagnosis of post-traumatic stress disorder (PTSD). (Joint Ex. 2, p. 64) The last type-written note from Ms. Decker in this evidentiary record is dated May 14, 2021.[1] In that note, Ms. Decker continued to diagnose claimant with generalized anxiety disorder as well as PTSD. (Joint Ex. 2, p. 68)

During this period of time, Ms. Roberts also sought evaluation and treatment with a psychiatrist, Adam Woods, M.D. Dr. Woods first evaluated Ms. Roberts on August 16, 2019. He noted issues with anxiety and depression in the past, but he also noted the June 2019 inmate event and stress related to interactions with co-workers after the event. (Joint Ex. 4, p. 76) Claimant reported having panic attacks once or twice per week, particularly with water hitting her face in the shower. (Joint Ex. 4, p. 76)

Dr. Woods authored a report dated May 18, 2020. In his formal report, Dr. Woods opines, "'but for' her work-related injury, Mrs. Roberts would certainly not be experiencing her current symptoms, regardless of what pre-existing conditions were present." (emphasis in original) (Claimant's Ex. 3, p. 4) Dr. Woods confirms claimant's diagnoses are adjustment disorder with anxiety and depressed mood as well as post-traumatic stress disorder. (Claimant's Ex. 3, pp. 3-4) He further opines, "Mrs. Roberts is unable to work at this time due to her work-related injury and attack." (Claimant's Ex.

[1] There is a hand-written note from Ms. Decker, which is difficult to read but appears to be dated May 21, 2021. That handwritten note appears to continue the generalized anxiety disorder and PTSD diagnosis as well. (Joint Ex. 5, pp. 122-123)

3, p. 4) Dr. Woods further noted that claimant requires ongoing therapy, medication management, and is not at maximum medical improvement. (Claimant's Ex. 3, p. 5)

Ultimately, I find the opinions of Dr. Woods and Ms. Decker to be most credible and convincing in this evidentiary record. Both Dr. Woods and Ms. Decker provided claimant treatment and evaluated her on multiple occasions. Both are well-qualified to render opinions about the cause of claimant's mental health symptoms and diagnoses. To the extent her opinions support those of Dr. Woods and Ms. Decker, I also accept the causation opinion of Dr. Pospisil.

Claimant also obtained an independent mental health evaluation performed by licensed psychologist, Catalina D. Ressler, Ph.D., on February 18, 2022. Dr. Ressler evaluated claimant only once and appears to have reviewed all relevant information, including the opinions of defendants' expert, Dr. Woods, as well as claimant's therapy records. Dr. Ressler offered a diagnosis of PTSD, describing it as chronic with dissociative features. (Claimant's Ex. 4, p. 14) Dr. Ressler opines, "it is evident that she was not suffering from this PTSD condition prior to [the inmate] event because her adaptive level of functioning was adequate in all aspect[s] of her life." (Claimant's Ex. 4, p. 17) "As a result, her pre-existing condition of ADHD has also been exacerbated by the symptoms of PTSD." (Claimant's Ex. 4, p. 17)

Dr. Ressler opines, "Mrs. Roberts' mental health condition was clearly caused by the work-related incident as well as how she perceived that others responded to her under those circumstances." (Claimant's Ex. 4, p. 18) In offering this opinion, Dr. Ressler opines that the PTSD is directly related to the work incident and that the PTSD materially aggravated the pre-existing ADHD diagnosis. To the extent that Dr. Ressler's opinion supports Dr. Woods' opinions and those of Ms. Decker, I accept Dr. Ressler's opinions. However, I do not accept or find that the work injury materially aggravated the underlying or pre-existing ADHD diagnosis in any permanent way. In this sense, I reject that limited portion of Dr. Ressler's opinions.

Dr. Ressler opines that claimant should be placed into Class 3 using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, meaning claimant has moderate impairment. Dr. Ressler further defines claimant's condition as chronic and notes that claimant has discontinued psychotherapy. (Claimant's Ex. 4, p. 18) I interpret this to suggest that claimant is at MMI and that her condition is permanent. I accept this opinion and find that claimant has proven she is at MMI and that her PTSD is permanent in the sense that it is not anticipated to significantly improve in the immediate or foreseeable future without additional treatment.

I believe it is possible that claimant could still benefit from additional therapy and treatment and be able to return to some form of employment. In fact, Dr. Ressler notes, "Mrs. Roberts can benefit from pursuing traditional psychological services in addition to the psychiatric treatment she is already receiving…. [S]omeone who specializes in trauma and dissociation may be more likely to be able to establish rapport with her and help her begin to engage in treatment interventions that can further benefit her."

(Claimant's Ex. 4, p. 19) However, at this time, I find that claimant is not medically released to return to work and that she is permanently and totally disabled unless and until she is able to obtain further benefit of treatment and her mental health condition improves.

I acknowledge defendants' expert opinion offered by Phillip Ascheman, Ph.D. However, I give those opinions little weight in this evidentiary record and accept those noted above over the opinions of Dr. Ascheman. Dr. Ascheman evaluated claimant on August 26, 2019. (Defendant's Ex. A) In his initial report, Dr. Ascheman opined, "I concur with the opinion of Dr. Woods that some symptoms of PTSD appear to be present, but that is a provisional diagnosis, and her symptoms may be better attributed to a diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood." (Defendant's Ex. A, p. 5) Dr. Ascheman noted, "her symptoms may also be a function of a pre-existing Generalized Anxiety Disorder, although the employee did not report prior treatment for that or any other disorder other than ADHD at the time of the interview." (Defendant's Ex. A, p. 5) Dr. Ascheman recommended claimant stay off work and follow up with Dr. Woods for further medication management. (Defendant's Ex. A, p. 5)

Defendants requested that Dr. Ascheman re-evaluate claimant on March 10, 2020. Following his second evaluation, Dr. Ascheman opined that claimant's diagnosis is obscured by "apparent over-reporting and inconsistency of symptoms." (Defendant's Ex. A, p. 14) Nevertheless, he opines, "the initial diagnosis of Adjustment Disorder with Anxiety and Depressed Mood was directly related to the work injury." (Defendant's Ex. A, p. 14) However, Dr. Ascheman opined by the time of his second evaluation that claimant's diagnosis "would now be subsumed under Generalized Anxiety Disorder, which appears to be a pre-existing condition." (Defendant's Ex. A, p. 14)

Dr. Ascheman provides no explanation why claimant continues to have symptoms that were not present prior to her work injury. Claimant was not obtaining ongoing psychological or psychiatric treatment for Generalized Anxiety Disorder prior to this work event. Yet, she was fully functioning as a correctional nurse. She experienced prior traumatic events and incidents but did not require psychological or psychiatric treatment until after this work event with the liquid to her face. Again, Dr. Ascheman provides no explanation why these symptoms or treatment have been ongoing since the work incident if they were the result of a pre-existing condition. Ultimately, Dr. Ascheman opines, "the claimant is at maximum medical improvement for symptoms related to the work injury. As stated above, it is my opinion that ongoing symptoms are caused by her perceptions about her coworkers and her employment." (Defendant's Ex. A, p. 15)

Nevertheless, Dr. Ascheman opines that claimant is not fit for duty and cannot return to work as a correctional nurse. He further opines that further treatment is not likely or expected to enable claimant to return to work in the Linn County Jail setting. Yet, Dr. Ascheman recommends no further treatment and no formal mental health

restrictions. (Defendant's Ex. A, p .15) I do not find Dr. Ascheman's opinions to be consistent, logical, or credible on this record.

While he is also well-qualified to render opinions regarding claimant's mental health diagnosis and the cause of her symptoms, Dr. Ascheman evaluated claimant only once. He opines that claimant's condition is the result of a pre-existing condition. Yet, he provides no explanation why claimant did not have ongoing symptoms prior to the date of the incident at the Linn County jail. Claimant required no treatment before that date and was capable of full-time work as a registered nurse in the correctional system. Her abilities and her mental health status have clearly changed, or been materially and substantially aggravated, since the work incident. Therefore, I do not find the opinions of Dr. Ascheman to be convincing in this case.

Ultimately, I find that Ms. Roberts proved she sustained a significant and unexpected mental trauma as a result of the assault on June 5, 2019 at the Linn County jail. I find that the June 2019 incident involving claimant being struck in the face with an unknown fluid clearly arose out of her employment duties and was a sudden, traumatic incident that it was unexpected. I find that it resulted in an unusual mental strain on claimant that also resulted in the development of a mental injury, specifically PTSD.

Having reached these findings, I must also address the extent of claimant's mental health injury and her ability to compete for employment in the labor market. Unfortunately, Dr. Woods, Ms. Decker, and Dr. Ascheman all opine that claimant cannot return to work for the Linn County Jail at this time. Dr. Ressler's restrictions also suggest a return to work at the jail is unrealistic at this time. Dr. Woods and Ms. Decker opine claimant is not medically ready and capable of returning to work in any capacity at this point. Having found their causation opinions to be the most credible and convincing in this record, I similarly find their opinions to be convincing on the issue of claimant's ability to return to work. In fact, the employer appears to agree that claimant is not capable of returning to work and terminated her employment. (Claimant's Ex. 6, p. 43) The employer has not offered any vocational assistance or provided any resources to assist claimant in locating alternate employment. (Tr., p. 121)

Therefore, I find that it is not medically reasonable or advisable for claimant to return to work at this time. Whether she will experience any significant additional recovery or improvement of her post-traumatic stress disorder and symptoms is unknown at this time. However, it is not likely that she will return to work in the foreseeable future.

Moreover, claimant submitted a vocational expert opinion prepared by Barbara Laughlin. (Claimant's Ex. 5) Ms. Laughlin opines that claimant "would be unable to find work in any quality, quantity or dependability in her labor market. It is my opinion that she would require such significant accommodations that she is not regularly employable in any well-known branch of the labor market." (Claimant's Ex. 5, p. 34) Ms. Laughlin further clarifies, "Ms. Roberts is unable to return to the work for which she is trained, or her past relevant work due to her restrictions. It is my opinion that she is so

handicapped that she is not regularly employable in any well-known branch of the labor market." (Claimant's Ex. 5, p. 34)

Defendants offered no competing vocational opinion. I perceive no reason to reject the unrebutted vocational opinion. Therefore, I accept the unrebutted vocational opinions of Ms. Laughlin in this case and find that claimant is not employable in any well-known branch of the labor market and that Ms. Roberts is not currently employable in any well-known branch of the labor market that would provide sufficient quality or quantity of employment opportunities to expect Ms. Roberts to be employed. Therefore, I find that claimant has proven she is permanently and totally disabled. Ms. Roberts proved that she was permanently and totally disabled, and the parties stipulated that permanent disability benefits should commence on May 21, 2021. Claimant has been totally disabled since that date.

Ms. Roberts also seeks temporary total disability benefits prior to May 21, 2021. Specifically, she was not able to work between March 24, 2020 and May 20, 2021 as a direct consequence of her work injury. She was removed from work at the Linn County Jail by Dr. Pospisil on January 27, 2020. (Joint Ex. 1, p. 27) Defendants sought a fitness for duty evaluation, performed by Dr. Ascheman on August 26, 2019. Dr. Ascheman maintained claimant in an off-work status. (Defendants' Ex. A) In his follow-up evaluation, performed on March 10, 2020, Dr. Ascheman continued to recommend claimant remain off work. Dr. Woods also confirmed in a May 18, 2020 report that claimant is not able to return to work. (Claimant's Ex. 3, p. 4) No other medical provider released claimant to return to work between March 24, 2020 and May 20, 2021, during the period of temporary disability claimed. I accept the opinions and work restrictions from Dr. Pospisil, Dr. Woods, and Dr. Ascheman. Claimant proved she was unable to work due to her work injury from March 24, 2020 through May 20, 2021.

Claimant introduced past medical expenses at Claimant's Exhibit 7. Defendant stipulates that these medical expenses are fair and reasonable charges. (Tr., p. 10) Defendant is also willing to stipulate that the medical providers would testify that the treatment they provided was reasonable and necessary medical care. (Tr., p. 11) I accepted the stipulation and find that the treatment documented in Claimant's Exhibit 7 was reasonable and necessary. Defendants disputed causal connection of the medical expenses in Claimant's Exhibit 7. I find that the medical expenses itemized in Claimant's Exhibit 7 are all from medical providers that offered claimant care for her mental health conditions. Review of Claimant's Exhibit 7 demonstrates that the treatment is related to the mental health injury established by claimant.

Defendant sought to assert an authorization defense for these expenses. However, as will be discussed in the conclusions of law section, defendant cannot both deny causation of the medical expenses and assert an authorization defense. Therefore, I find that claimant proved the past medical expenses contained in Claimant's Exhibit 7 are causally related to the work injury, that the treatment was reasonable and necessary, and that the charges submitted are also reasonable and necessary.

CONCLUSIONS OF LAW

Linn County acknowledges that claimant sustained an injury, but disputes whether claimant is entitled to additional temporary total disability, or healing period, benefits from March 24, 2020 through May 20, 2021. 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).

Conceptually, claimant cannot recover temporary total disability benefits because she has proven permanent disability. Iowa Code section 85.33(1), by its explicit provisions, applies only to injuries that involve an "injury producing temporary total disability." Similarly, claimant cannot qualify for healing period benefits under Iowa Code section 85.34(1) because that subsection only permits an award of benefits for an "injury causing permanent partial disability." In this instance, as will be discussed below, I conclude claimant proved permanent total disability.

Nevertheless, claimant was totally disabled during the period of time claimant seeks an award of temporary total, or healing period, benefits. The agency's hearing report is not well-adapted to allowing alternative claims on the form, but claimant clearly gave notice of a claim for benefits for total disability from March 24, 2020 through May 20, 2021. Claimant was under work restrictions, including a recommendation from defendant's psychologist, against returning to work during the entire claimed temporary disability period.

While I conclude that the benefits should be awarded under Iowa Code section 85.34(3), I will award them separately to permit a thorough analysis or review of the issue. Accordingly, I conclude claimant has proven entitlement to weekly disability

benefits from March 24, 2020 through May 20, 2021 pursuant to Iowa Code section 85.34(3).

Linn County also disputes whether that injury caused permanent disability. I found that the June 2019 incident caused a permanent mental injury, including a diagnosis of PTSD. Therefore, I must determine the extent of claimant's entitlement to permanent disability benefits.

A mental injury is an unscheduled injury. Iowa Code section 85.34(2). Accordingly, it is compensated under and 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., 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 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).

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City Ry. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982). In this case, I accepted the restrictions offered by Dr. Woods and the unrebutted vocational opinions of Ms. Laughlin. Accordingly, I found that claimant's mental injury wholly disables her from performing work that is within her experience, training, education, intelligence, and mental capabilities at this time. I conclude claimant proved under the traditional industrial disability analysis that she is permanently and totally disabled. Iowa Code section 85.34(3).

Ms. Roberts also asserted an odd-lot claim. In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

The odd-lot claim is unnecessary if claimant proves the permanent total disability claim under the traditional analysis. Nevertheless, I analyze this claim to demonstrate claimant's entitlement to permanent total disability benefits.

Ms. Roberts satisfied her initial evidentiary burden-shifting requirements under the odd-lot doctrine. She produced opinions from mental health and medical professionals suggesting she should not return to work. She produced a vocational report that opined she is permanently and totally disabled. I conclude claimant presented a prima facie case of permanent and total disability.

Therefore, the burden of production shifted to the employer. The employer was required to produce evidence showing suitable employment exists for claimant. Arguably, the employer has not produced this evidence. In fact, I would find that the employer did not produce sufficient evidence to rebut the claimant's presumption. In fact, even its own mental health expert, Dr. Ascheman, recommends against claimant returning to work at the Linn County Jail. However, there exists minimal evidence in this record that could be construed to suggest perhaps claimant could work somewhere other than in a correctional setting. Potentially, the employer survives the burden of production based on this evidence.

Even if it survives its burden-shifting obligation and the burden of ultimate persuasion reverts to claimant to over-come defendant's evidence, I conclude claimant accomplished that goal and met her burden of persuasion. Claimant produced unrebutted vocational evidence that the employment opportunities currently available to claimant are of such a limited quality, dependability, or quantity that a reasonably stable market for claimant's services does not currently exist. I conclude claimant ultimately proved she is an odd-lot employee entitled to permanent total disability benefits.

Claimant seeks award of past medical expenses contained in Claimant's Exhibit 7. 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).

In this case, defendant stipulated that the charges submitted by claimant were reasonable. Defendant further stipulated, and I so found, that the medical providers would testify that their treatment was both reasonable and necessary. Having found that the medical charges contained in Claimant's Exhibit 7 were causally related to the work injury, I conclude that claimant has proven entitlement to have the expenses contained in Claimant's Exhibit 7 awarded.

Defendant attempted to assert an authorization defense to the claimed expenses. However, defendant cannot challenge causal connection of the claimed medical expenses and also assert an authorization defense. R. R. Donnelly & Sons v. Barnett, 670 N.W.2d 190 (Iowa 2003). Therefore, any authorization defense asserted by defendant fails and claimant has proven entitlement to payment, reimbursement, or satisfaction of the medical expenses contained in Claimant's Exhibit 7. Iowa Code section 85.27.

ORDER

THEREFORE, IT IS ORDERED:

Pursuant to claimant's request for temporary total disability, or healing period, benefits, defendant shall pay claimant permanent total disability benefits from March 24, 2020 through May 20, 2021.

Defendant shall pay claimant additional permanent total disability benefits commencing on May 21, 2021 and continuing to the present and into the future for as long as claimant remains totally disabled.

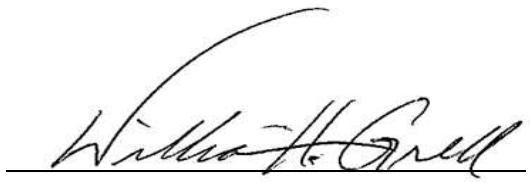
All weekly benefits shall be payable at the stipulated weekly rate of nine hundred fourteen and 49/100 dollars ($914.49) per week.

Interest on any late paid weekly benefits 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).

Defendant is responsible for payment, reimbursement, satisfaction, and to hold claimant harmless for the medical expenses contained in Claimant's Exhibit 7.

Defendant 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 _6th_ day of October, 2022.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Darin Luneckas (via WCES)

Cory Speth (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.