BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KORI GREEN, Claimant, vs. BROADLAWNS MEDICAL CENTER, Employer, and SAFETY NATIONAL CASUALTY CORP., Insurance Carrier, Defendants.	File No. 1658822.01 ARBITRATION DECISION Head Note Nos.: 1100, 1108.50, 1802, 1803, 2500

STATEMENT OF THE CASE

Kori Green seeks workers' compensation benefits from the defendants, employer Broadlawns Medical Center (Broadlawns) and insurance carrier Safety National Casualty Corp., for an alleged work injury to the body as a whole. The undersigned presided over an arbitration hearing on April 8, 2021, held by internet-based video under order of the Commissioner. Green participated personally and through attorney Jason D. Neifert. The defendants participated by and through attorney Valerie A. Landis. Rick Barrett, legal counsel for Broadlawns, served as the defendant-employer's representative.

ISSUES

Under rule 876 IAC 4.149(3)(*f*), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

1) Did Green sustain an injury arising out of and in the course of her employment with Broadlawns on January 7, 2019?

2) Is Green entitled to temporary disability or healing period benefits from January 7, 2019, through October 3, 2019?

3) What is the nature and extent of permanent disability, if any, caused by the alleged injury?

4) Is Green entitled to payment of the medical expenses itemized in Joint Exhibit 19?

5) Is Green entitled to taxation of the costs against the defendants?

STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

1) An employer-employee relationship existed between Green and Broadlawns at the time of the alleged injury.

2) Although entitlement to temporary disability or healing period benefits cannot be stipulated, Green was off work from January 7, 2019, through October 3, 2019.

3) If the alleged injury is found to be a cause of permanent disability, the disability is an industrial disability.

4) The commencement date for permanent partial disability (PPD) benefits, if any are awarded, is October 4, 2019.

5) At the time of the stipulated injury:

    a) Green's gross earnings were five hundred seventy-nine and 58/100 dollars ($579.58) per week.

    b) Green was married.

    c) Green was entitled to three exemptions.

6) With reference to the disputed medical expenses:

    a) Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and the defendants are not offering contrary evidence.

    b) Although causal connection of the expenses to a work injury cannot be stipulated, the listed expenses are at least causally connected to the medical condition(s) upon which the claim of injury is based.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

FINDINGS OF FACTS

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 22;
- Defendants' Exhibit (Def. Ex.) A; and
- Hearing testimony by Green and Heidi Garton, a supervisor at Broadlawns.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

Green has lived in central Iowa her whole life. (Hrg. Tr. p. 13) At the time of hearing, she lived in Mingo. (Hrg. Tr. p. 13) Green was 43 years old at the time of hearing. (Hrg. Tr. p. 14)

Green graduated from high school in 1996. (Hrg. Tr. pp. 14–15; Jt. Ex. 15) She then attended Indian Hills Community College, obtaining her certified nursing assistant (CNA) certificate. (Hrg. Tr. pp. 15, 43) She obtained her advanced CNA certificate as part of the nursing program at Des Moines Area Community College (DMACC) but did not finish the nursing program. (Hrg. Tr. p. 43–44; Jt. Ex. 15, p. 97)

In 2003, Green was in a car crash. (Hrg. Tr. p. 59) Green filed a civil suit against the other driver, alleging she sustained a whiplash injury. (Hrg. Tr. p. 59) The parties ultimately settled the case. (Hrg. Tr. p. 59) There is an insufficient basis in the evidence from which to conclude Green had ongoing symptoms after the 2003 crash.

Green worked full time for Mercy as a patient care technician (that organization's label for the position with duties that are largely those traditionally performed by a CNA) on the oncology floor. (Hrg. Tr. pp. 16–17; Jt. Ex. 15, pp. 99) Her job duties included assisting patients with daily activities such as bathing, walking, and transferring them from bed to a cart. (Hrg. Tr. pp. 16–17) Green had no physical issues performing her job duties at Mercy and sustained no work injuries while employed there. (Hrg. Tr. pp. 17–18)

In 2006, Green left employment at Mercy to work at Lutheran as a CNA. (Hrg. Tr. p. 18; Jt. Ex. 15, pp. 98–99) She worked on the medical-surgical (med-surg) floor there. (Hrg Tr. p. 18) Green's tenure with Lutheran was injury free until 2009, when she ruptured a disk in her back while lifting a patient from a low bed and required three surgeries. (Hrg. Tr. p. 20–21) Green's treating surgeon, Lynn Nelson, M.D., released her from care in 2011. As part of the parties' settlement of Green's workers' compensation claim stemming from her back injury at Lutheran, she resigned from her job as a CNA there. (Hrg. Tr. p. 22)

According to Green, her treating doctor assigned her a lifting restriction of up to fifty or sixty-five pounds that was not permanent in nature and there is no indication to the contrary in the evidentiary record. (Hrg. Tr. p. 22–23, 48–49; Jt. Ex. 22, Depo. p. 13)

Green testified she believed a lifting limit of fifty pounds would have prevented her from working as a CNA. (Hrg. Tr. p. 48) However, at least at Broadlawns, CNAs are required to lift up to fifty pounds, so such a restriction would not have disqualified her from working there. (Jt. Ex. 10, p. 83) The evidence shows it is more likely than not Dr. Nelson did not assign Green a work restriction that would have disqualified her from the CNA position at Broadlawns.

Green continued to take pain medication "as needed" for symptoms relating to her 2009 work injury. (Hrg. Tr. p. 62; Jt. Ex. 22, Depo. pp. 22, 29) Her doctors continued to prescribe her these medications with the intent she take them when her symptoms created a need. (Hrg. Tr. p. 62; Jt. Ex. 22, Depo. pp. 22, 29) The weight of the evidence shows Green did not take the pain medications regularly because her symptoms were irregular. (Jt. Ex. 22, Depo. p. 28) Green's intermittent symptoms necessitated taking pain medication when they were significant enough to require her to do so. (Hrg. Tr. p. 62; Jt. Ex. 22, Depo. pp. 22, 28–29)

In 2013, Green was in another car crash. (Hrg. Tr. pp. 60; Jt. Ex. 22, Depo. pp. 14–16) The crash caused her to sustain a whiplash injury. (Hrg. Tr. p. 60) She experienced left-arm radiculopathy because of it. (Hrg. Tr. p. 60)

After Green's employment at Lutheran ended, she did not work for pay for a few years due to lingering issues with her back. (Hrg. Tr. p. 49) However, she did tend bar at a restaurant owned by a family member without getting paid. (Hrg. Tr. pp. 49–50) Green considered it helping out a family member as opposed to work because she did not receive payment for her time or efforts. (Hrg. Tr. pp. 49–50) Nonetheless, she listed the activity on her application to work at Broadlawns. (Hrg. Tr. p. 50) Green did not misrepresent the nature of her tending bar at the restaurant to Broadlawns during the hiring process or in her testimony during this case.

During this time, on advice from her attorney, Green applied for disability benefits from the federal Social Security Administration (SSA) and was denied. (Hrg. Tr. p. 61–62) She also performed at-home rehabilitation exercises. (Hrg. Tr. p. 23) They helped improve her back condition to the point she felt comfortable performing the job duties of a CNA again. (Hrg. Tr. p. 23)

In 2015, Green returned to work with the temporary staffing firm IntelliStaff. (Hrg. Tr. p. 23; Jt. Ex. 15, p. 98) IntelliStaff employed Green and assigned her to work temporarily as a CNA at third-party facilities. (Hrg. Tr. pp. 23–24) She earned between fifteen and eighteen dollars per hour depending on the facility and position. (Hrg. Tr. p. 24) Green did not sustain any on-the-job injuries while working for IntelliStaff. (Hrg. Tr. p. 24) She was able to physically perform the job duties of a CNA while employed there. (Hrg. Tr. p. 24)

Green started working at Broadlawns through IntelliStaff in 2016. (Hrg. Tr. pp. 25, 46; Jt. Ex. 15, p. 98; Jt. Ex. , p. 130, Depo. p. 17) In 2017, Broadlawns bought out Green's contract with IntelliStaff and hired her as a healthcare technician. (Hrg. Tr. p. 25) Green underwent a physical before she began her employment with Broadlawns

and passed it. (Hrg. Tr. p. 25) Green worked as a floater between all departments except mother-baby. (Hrg. Tr. p. 25) The Broadlawns job description for the position Green held requires those who hold it to lift up to fifty pounds and frequent carrying of up to twenty-five pounds. (Jt. Ex. 10, p. 83) Green credibly testified she had no issues physically performing her job duties until January 7, 2019. (Hrg. Tr. p. 26)

It is undisputed between the parties Broadlawns gave Green positive job reviews. (Hrg. Tr. p. 103) But there is some question regarding the nature of reprimands Broadlawns issued Green during her employment. Green testified she believed Broadlawns issued her oral warnings that it memorialized in writing. (Hrg. Tr. pp. 54–58) Defense counsel contended they were written warnings. (Hrg. Tr. pp. 54–58) Regardless, Broadlawns memorialized in writing two reprimands Green received for "occurrences relating to attendance" and one for alleged use of profane language while on the job. (Hrg. Tr. p. 54–58, 113; Def. Ex. A)

While the documents memorializing Green's warnings included boilerplate language often used by employers on reprimands to preserve their rights as an at-will employer under Iowa law, there is an insufficient in the evidence basis from which to conclude Broadlawns placed Green on what is often referred to as a last chance agreement during her employment. (Def. Ex. A, Hrg. Tr. pp. 103–05) The weight of the evidence shows Green was good at her job, Broadlawns gave her positive permanence reviews because of it, Broadlawns reprimanded Green three times, Broadlawns never suspended Green, and Broadlawns never issued Green a last-chance warning because of misconduct.

Patients in the ICU are more acute, so it is important for Broadlawns to monitor their vitals at all times. (Hrg. Tr. p. 113) To help hospital staff do this, Broadlawns has monitors at the nurse's station that go off when there is a change in an ICU patient's vitals. Every patients that is on a telemetry has a screen monitor hooked up to the monitor in their room. (Jt. Ex. 22, p. 130, Depo. p. 22)

When something is wrong, the monitor sounds an alarm that is a loud, repetitive, and annoying beep. (Jt. Ex. 22, p. 130, Depo. p. 23) An alarm sounds due to changes in condition, mechanical faults, or something going wrong with a lead (like it falling off). (Hrg. Tr. pp. 113–14, 117) Sometimes an alarm indicates a life-threatening emergency. (Hrg. Tr. p. 114, 117) When the alarm goes off, staff does not know the cause. (Jt. Ex. 22, p. 130, Depo. p. 23) Monitor alarms do not go off very often in Green's experience. (Jt. Ex. 22, p. 13), Depo. p. 23) Broadlawns expects its staff to respond quickly to alarms because of the potential for a life-threatening emergency. (Hrg. Tr. p. 114)

On January 7, 2019, Green was working in the Broadlawns intensive care unit (ICU). (Hrg. Tr. p. 26) She was working on a computer, completing charts, at the nursing station. (Hrg. Tr. p. 27) While Green was working at the nursing station, the alarm on a monitor located behind her went off. (Hrg. Tr. p. 26) In order to determine what caused the alarm, Green turned her head and felt a pop in her neck. (Hrg. Tr. p. 26) Thus, Green turning her head to check patient vitals in response to an alarm was a part of her job duties at Broadlawns that directly related to patient health. (Hrg. Tr. p. 29)

After the injury, Green attempted to perform her work duties but could not do so, even after taking an over-the-counter pain reliever. (Hrg. Tr. p. 30) Green told multiple Broadlawns employees what happened. (Hrg. Tr. p. 30) She told the house supervisor what had happened and that she was in pain. (Hrg. Tr. p. 30–31) The next day, Green followed up with her supervisor at the time, Garton, who filed an incident report. (Hrg. Tr. p. 31, pp. 110)

The Broadlawns incident report is typewritten and submitted by computer. (Jt. Ex. 1, pp. 1–2; Hrg. Tr. p. 110) Green did not type out the information contained in it; Garton did. (Jt. Ex. 1, p. 1; Hrg. Tr. p. 98–99, 110) On the report, Garton wrote Green "was sitting and turned her head to the right and felt a 'pop' in her neck and began feeling pain immediately." (Jt. Ex. 1, p. 1)

The defendants sent green to Occupational Medicine at UnityPoint Health for care. (Hrg. Tr. p. 31; Jt. Ex. 2, pp. 3–5) On January 9, 2019, Green filled out an intake form and stated she injured herself when she "turned [her] head and [her] neck popped." (Jt. Ex. 2, p. 3) She also stated her symptoms included pain in her neck and right arm, numbness in her hand, a headache, and dizziness. (Jt. Ex. 2, p. 3)

Betsy Bolton, PA-C, recounted in her progress notes for the appointment state under the header "History of Present Illness":

> The patient states on 01/07/2019, at roughly 9 AM, she was working in the ICU charting vitals. She turned her head to the right and felt a pop in her neck. She had immediate pain that she rates a 9/10 in her neck and tingling into her right arm. The patient states she did not turn her head quickly. She did not startle. There was nothing abnormal about the situation or the way she turned her head to the right. The patient states she then started getting numbness into her arm and hand the following morning on 01/08/2019. She also started having a headache to the posterior aspect of her head, which she describes as someone squeezing her head, and some dizziness which also started yesterday morning.

(Jt. Ex. 2, p. 4) During Green's hearing testimony, she disputed the accuracy of the part of the note describing the way she turned her head as not quickly. (Hrg. Tr. p. 33)

Under the "Comments" section, Bolton stated, "Per patient report, this is a work-related injury that occurred as she was charting and simply turned her head to the right causing popping in her neck, instant pain in her neck, and tingling into her right arm followed by numbness into her right arm, with headache and dizziness to follow the next day." (Jt. Ex. 2, p. 5) She assigned Green work restrictions, effective January 9, 2019, of:

- No lifting, pushing, or pulling of more than ten pounds;
- Sitting, standing, and walking as tolerated;
- No overhead work or reaching with her right arm;

- No climbing.

(Jt. Ex. 2, p. 6)

These work restrictions were set to be in place until Green's scheduled follow-up on January 16, 2019. (Jt. Ex. 2, p. 6)

On January 10, 2019, Green gave a recorded statement to a claims adjuster at EMC. (Hrg. Tr. pp. 74–75; Jt. Ex. 17, pp. 104–10) The EMC representative (Q) and Green (A) had the following the interaction regarding how her injury occurred:

> Q: At nurse's station. Okay. And can you describe in detail to me what happened?
>
> A: I was just sitting in the chair and I turned my head to check the vitals and my neck popped.
>
> Q: Okay. Which way did you turn your head?
>
> A: To the right.

(Jt. Ex. 17, p. 107)

Green attempted to go to her scheduled follow-up appointment at UnityPoint on January 16, 2019. (Hrg. Tr. pp. 33, 77–78) But she was unable to do so because it was cancelled. (Hrg. Tr. pp. 33, 78) In a letter dated January 10, 2019, EMC informed Green her workers' compensation claim was denied. (Hrg. Tr. p. 77; Jt. Ex. 12, p. 90) This denial of care necessitated Green getting care on her own. (Hrg. Tr. pp. 33, 38)

On January 18, 2019, Green went to her primary personal care provider, Laura Francisco, D.N.P., at Altoona Family Medicine. (Jt. Ex. 3, pp. 7–10) Francisco noted Green "turned her neck quickly on 1/7/19 and since then has had excruciating neck pain with a cold, numb feeling down [her right] arm." (Jt. Ex. 3, p. 10) Francisco prescribed oral steroids, hydrocodone so Green could rest, heat, and a physical therapy evaluation. (Jt. Ex. 3, p. 10) Green attended physical therapy at the direction of Francisco. (Hrg. Tr. p. 80; Jt. Ex. 19, pp. 115–16)

Francisco also completed certification paperwork for leave under the federal Family and Medical Leave Act (FMLA). (Jt. Ex. 3, pp. 10–14) Broadlawns placed Green on FMLA leave due to her neck injury. (Jt. Ex. 11, p. 86–88) On Aril 11, 2019, Green exhausted her FMLA leave and Broadlawns sent her a letter, offering extended leave. (Jt. Ex. 11, p. 85) The letter also informed Green she could request an unpaid leave of absence, but Broadlawns might fill her position based on its needs. (Jt. Ex. 11, p. 85) Broadlawns also informed Green it had paid her health and dental premiums through May 31, 2019, and she would have to continue this insurance through COBRA beginning on June 1, 2019. (Jt. Ex. 11, p. 85) Green remembers requesting an unpaid leave of absence, but no such documentation is in her personnel file. (Hrg. Tr. pp. 51–52) No such documentation is in evidence.

Broadlawns sent Green a letter dated June 3, 2020, informing her that her family health, dental, and vision benefits were terminated on May 31, 2019. (Jt. Ex. 11, p. 89) The evidence shows it is most likely Broadlawns was terminating her insurance effective May 31, 2019, and she had the option to extend it by paying the premiums herself through COBRA. (Jt. Ex. 11, pp. 85, 89) Therefore, the letter informing Green that Broadlawns had terminated her insurance effective May 31, 2019, does not allow for an inference regarding whether or not she requested an unpaid leave of absence.

It is more likely than not Green's employment with Broadlawns ended when she exhausted all FMLA leave on April 11, 2019. There is no indication Broadlawns granted Green an unpaid leave of absence after she exhausted her FMLA leave, regardless of whether she requested one. Green did not file a claim for unemployment insurance benefits immediately after her employment with Broadlawns ended. (Hrg. Tr. pp. 53–54)

After Green's symptoms did not improve, Francisco referred her to Christopher Stalvey, D.O., a neurologist at Mercy. (Hrg. Tr. p. 34; Jt. Ex. 5) On the intake form for Dr. Stalvey, Green wrote she "turned [her] neck to chart." (Jt. Ex. 5, p. 17) Dr. Stalvey noted Green "was turning her head/neck and felt her neck 'crunch'" and pain "shoot[ing] down her [right] arm." (Jt. Ex. 5, p. 21) The medical records from Dr. Stalvey's care incorrectly state Green's date of injury and her history as a smoker. (Hrg. Tr. p. 82–83) Dr. Stalvey performed a steroid injection for radiculopathy at C4 through C7. (Jt. Ex. 5, pp. 24–25)

Green also saw Todd Troll, M.D., at the Iowa Clinic. (Jt. Ex. 7) In the medical records for Green's first visit, Dr. Troll noted, "She developed sudden onset of neck pain with radiation down the right arm in January of this year. Pain is accompanied by tingling in the fingers of the right hand as well." (Jt. Ex. 7, p. 56) Dr. Troll was unable to offer additional treatment and referred Green to pain management. (Jt. Ex. 7, p. 61)

Over the seven months Green treated with Dr. Stalvey, she continued to feel pain in her neck and tingling down her arm and into her hands. (Hrg. Tr. p. 34; Jt. Ex. 5, pp. 27, 31, 35, 40, 46) On July 15, 2019, Dr. Stalvey opined Green had spondylosis without myelopathy or radiculopathy in the cervical region. (Jt. Ex. 5, p. 34) Dr. Stalvey performed a nerve block that helped temporarily alleviate Green's neck pain but did little to reduce the tingling in her arm or hand. (Hrg. Tr. p. 34) On October 3, 2019, Dr. Stalvey released Green from care. (Hrg. Tr. p. 34; Jt. Ex. 5, p. 50)

Because Dr. Stalvey was unable to provide treatment that provided lasting relief from her pain, Green stopped seeking specialized care for her symptoms. (Hrg. Tr. p. 35) Since Dr. Stalvey released Green from care, she has continued to receive care from Francisco at the Altoona Family Clinic. (Hrg. Tr. p. 35) She has seen Francisco five or six times for prescriptions of pain medication. (Hrg. Tr. p. 35)

Green filed a claim for unemployment insurance benefits on March 15, 2020, at the start of the COVID-19 pandemic because she figured it was worth a shot. (Jt. Ex. 13, p. 91; Hrg. Tr. p. 40–41) In a fact-finding determination, the Division of Unemployment Insurance Services at Iowa Workforce Development (IWD) denied her

claim based on the finding she voluntarily quit work on January 6, 2019, because of a non-work-related injury or illness and her quitting was therefore not caused by her employer.[1] (Jt. Ex. 13, p. 91) Consequently, Green's claim was denied. (Jt. Ex. 13, p. 91; Hrg. Tr. p. 40–41) She did not appeal the fact-finding determination. (Hrg. Tr. p. 41)

In July of 2020, the Iowa Clinic hired Green as a patient experience representative. (Hrg. Tr. p. 40) The position is primarily a desk job that does not involve Green physically providing patient care. (Hrg. Tr. p. 40) She is able to perform her job duties without issue. (Hrg. Tr. p. 41) Green held the job at the time of hearing. (Hrg. Tr. p. 41) Green was making eighteen dollars per hour in the position. (Hrg. Tr. p. 65)

Green does not need a CNA certificate for this job. (Hrg. Tr. p. 66) Her CNA certificate was set to expire in 2021. (Hrg. Tr. p. 66) As of the time of hearing, Green has not taken any action to maintain or renew her CNA certificate. (Hrg. Tr. p. 66)

On February 11, 2021, Green underwent an independent medical examination (IME) arranged by her attorney at Medix with John Kuhnlein, D.O. (Jt. Ex. 8, p. 62) As part of the IME, Dr. Kuhnlein reviewed medical records, spoke with Green over Zoom for about 30 minutes, and performed an in-person physical examination that lasted about 60 minutes. (Hrg. Tr. p. 96–97; Jt. Ex. 8)

In Dr. Kuhnlein's IME report, he states Green described her injury as follows:

> Ms. Green relates that on or about January 7, 2019, she was working in the intensive care unit. She says that she was charting with her back to the coronary monitoring screens when one of the monitor alarms went off. She turned her head quickly, given that she was working in an intensive care unit with severely ill patients and a coronary monitor had just gone off. She says that she heard a pop in her neck with the immediate onset of severe right-sided neck pain that soon after developed into pain radiating down the right arm when she did so. She checked the patient, noting that a lead had come loose that she replaced. She returned to her charting, stating she could not turn her neck because of the severe pain she experienced. She notified the house supervisor and went home.

(Jt. Ex. 8, p. 63)

Dr. Kuhnlein diagnosed Green with cervical spondylosis and right radiculopathy/radiculitis, as well as possible peripheral nerve entrapment and benign paroxysmal positional vertigo (BPPV). (Jt. Ex. 8, p. 68) On causation, Dr. Kuhnlein opined in his report that when Green turned her head to check a patient's vitals, she:

[1] Under Iowa Code section 96.6(4), findings of fact and conclusions of law made by IWD with respect to a claimant's entitlement to unemployment insurance benefits under the Iowa Employment Security Law, Iowa Code chapter 96, are not binding in a case before the Iowa Workers' Compensation Commissioner such as this one. This decision does not adopt any finding or conclusion from the IWD fact-finding determination regarding Green's entitlement for unemployment insurance benefits.

> "lit up" and materially aggravated the underlying degenerative changes in her neck, producing the radiculopathic or radiculitic symptoms from which she now suffers. The arm and forearm symptoms that she describes would not be related to the potential peripheral median/ulnar nerve entrapment, as these are on the opposite side of the arm. She may have a concurrent peripheral nerve entrapment that would not be related to the January 7, 2019, incident. Turning her head suddenly, while it might cause neck problems and the BPPV, would not produce a peripheral nerve entrapment.
>
> Ms. Green states that she did not have the BPPV symptoms before January 7, 2019, when she suddenly turned her head to look at a monitor in an Intensive Care Unit setting, and I have no reason to disbelieve what she says. When she Ms. Bolton two days later, on January 9, 2019, she complained of dizziness that started the day before. BPPV can be triggered by a sudden movement of the head. Ms. Green states that she did not have the symptoms before, she did afterward, and still rarely has the BPPV symptoms. It is more likely than not that the BPPV was causally related to the January 7, 2019, work related incident.

(Jt. Ex. 8, p. 69)

Dr. Kuhnlein opined Green reached maximum medical improvement (MMI) for her cervical condition on October 3, 2019, but had not yet reached MMI for the BPPV condition. (Jt. Ex. 8, p. 70) On the question of further care, Dr. Kuhnlein said epidural injections and reconsideration of radiofrequency ablation were possible treatments but deferred to Dr. Stalvey. (Jt. Ex. 8, p. 69) He assigned Green permanent work restrictions when lifting weight that is kept close to her body's axial plane of:

- Lifting up to thirty pounds occasionally from floor to waist;
- Lifting up to thirty-five pounds occasionally from waist to shoulder height; and
- Lifting up to twenty pounds occasionally over shoulder height.

Dr. Kuhnlein also assigned Green permanent work restrictions when reaching or lifting more than elbow's distance away from the body of:

- Lifting up to twenty pounds occasionally from floor to waist;
- Lifting up to twenty-five pounds occasionally from waist to shoulder height; and
- Lifting up to ten pounds occasionally over shoulder height.

(Jt. Ex. 8, p. 70)

Dr. Kuhnlein opined Green can sit, stand, and walk on an unrestricted basis with the ability to change positions for comfort. (Jt. Ex. 8, p. 70) She can frequently bend, stoop, squat, and kneel. (Jt. Ex. 8, p. 70) Green can occasionally crawl and work above shoulder height. (Jt. Ex. 8, p. 70)

On the question of permanent impairment, Dr. Kuhnlein used the Fifth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment to conclude:

> The DRE method is indicated according to pages 379 – 380. Turning to Table 15-5, page 392, I would place Ms. Green between DRE Cervical Category II and III and assign 10% whole person impairment. At this time, there would be no impairment for the BPPV.

(Jt. Ex. 8, p. 70)

On February 16, 2021, defense counsel took Green's deposition. (Jt. Ex. 22, p. 130, Depo. p. 1) Green explained that she was sitting in a swivel office chair on wheels. (Jt. Ex. 22, p. 130, Depo. p. 20–21) When asked how she could be charting with her back to the monitors, Green explained:

> There's two computers. So, like, if you're on the front computers and you are facing the monitor, you're also facing the patient rooms. Then, like, if you were, like, right behind you, there would be another computer that's facing, like, the wall, so my back would be towards your back, and that's how I was charting on the back computer. And then I turned around. Like, the monitors were in front of you, so then I turned real fast and turned my neck just -- like my head just to see what the alarm was.

When asked how the injury occurred, Green stated, "I was sitting on the back desk of the ICU and had my back to the monitors, and the monitor alarm went off. And I went to turn around to look to see why it was going off; and when I did, my neck just popped and instantly was pain." (Jt. Ex. 22, p. 130, Depo. p. 20) In response to follow-up questioning, Green explained that she turned her head before her body and the chair followed. (Jt. Ex. 22, p. 130, Depo. p. 21) She experienced instant pain in her neck, on the right side, that shot down her arm to her fingertips. (Jt. Ex. 22, p. 130, Depo. p. 24) Ultimately, it turned out a patient's EKG lead, which monitors the patient's heart rhythm, was off. (Jt. Ex. 22, p. 130, Depo. p. 22)

On February 18, 2021, Green served answers to interrogatories propounded by the defendants. (Jt. Ex. 15, p. 95) Interrogatory No. 10 asked and Green answered as follows:

> Describe in claimant's own words the incident or manner in which claimant contends the incident alleged in claimant's pleadings was sustained; including but not limited to:
>
> a. The time, date and place of the alleged incident, event, or exposure;

b. A detailed description of the incident, event, or exposure; and

c. The name and address of each person present at the events alleged in claimant's pleadings and state what each person's involvement was in said events.

ANSWER:

On January 7, 2019, I was charting and the alarm was going off on a heart monitor behind me, so I turned my head quickly to look at the monitor, and I heard a pop in my neck and immediately felt pain. I couldn't turn my head afterwards and felt numbness down my right arm.

(Jt. Ex.15, p. 101)

Green saw Trevor Schmitz, M.D., for a medical examination arranged by defense counsel on March 17, 2021. (Jt. Ex. 9) Dr. Schmitz examined documents including Green's petition in this case, her answers to interrogatories, and medical records relating to care for her neck and arm symptoms. (Jt. Ex. 9, p. 77–78) It does not appear Dr. Schmitz considered Green's previous car crashes in his report. (Jt. Ex. 9, pp. 77–82)

Dr. Schmitz diagnosed Green with "self-reported axial neck pain" because she did not have significant findings on her MRI or on physical examination other than her subjective pain complaints. (Jt. Ex. 9, p. 81) On the question of causation, Dr. Schmitz opined:

I would state that her diagnosis is not causally related to her work at Broadlawns Medical Center. She does not have any findings of acute injury on my examination nor did she have any findings of injury on MRI or EMG. Thus, she is presenting with subjective complaints only with no evidence of any objective findings. I would state that individuals turn their head all day every day. I could not state that a minor head turn was in any way sufficient to cause a neck injury nor could I state that her work was more likely than not the cause of her neck injury. Obviously, this was not a significant mechanism of injury and certainly would not be enough to cause a significant injury to her neck.

(Jt. Ex. 9, p. 81)

Dr. Schmitz opined Green did not need any further treatment. (Jt. Ex. 9, p. 82) He further stated, "She certainly did not sustain any permanent impairment nor does she need any permanent restrictions for any alleged injury, particularly given the fact she has no evidence of injury by any objective measurement." (Jt. Ex. 9, p. 82)

At hearing, Green testified she "was sitting at the back half of the nurse's station doing my charting, and then one of the monitors went off that was behind me, and I turned to look at it and [I] turned my head, and my neck popped and like couldn't move my neck after that and my arm started to go numb." (Hrg. Tr. p. 27) She further testified

to details about the incident that are largely consistent with her deposition testimony. (Hrg. Tr. pp. 28–30)

As detailed above, there are multiple documents reflecting statements Green made about the mechanism of injury. Some are hearsay because their substance is based on how someone else chose to describe the incident based on a conversation with Green (medical records and the Broadlawns incident report). Some are Green's statements and therefore not hearsay (EMC interview transcript, Green's deposition transcript, her interrogatory answers, and the hearing testimony). The undersigned gives the hearsay evidence less weight than the transcripts, her interrogatory answer, or her sworn hearing testimony, which was generally credible.

There are discrepancies in the descriptions of how her injury occurred. Some of that is most likely due to the nature of the interactions that resulted in the descriptions. A medical provider may not ask a series of questions in the way an attorney might when eliciting testimony during litigation if the medical provider feels the patient has given enough information for diagnosis and treatment purposes. With respect to the transcript of Green's conversation with the EMC representative, it shows Green fielded no follow-up questions seeking more details about how her injury occurred, let alone follow-up questions similar to those she fielded during her deposition or hearing testimony.

Further, it is common for the description of an injury-causing event to become more detailed as litigation progresses. This is due to the nature of fill-in-the-blank forms, the notice pleading standard, discovery, and hearing testimony during direct and cross-examination. The weight of the evidence shows the thrust of Green's description of her injury has been consistent. She felt a pop and immediate pain after she turned her head to check vitals. The additional details Green provided in response to detailed interrogatories and questioning by attorneys do not undermine Green's credibility in this case.

The evidence establishes it is more likely than not Green was sitting at the ICU nurse's station with her back to the monitors while charting. One of her duties was to quickly respond to monitor alarms. The monitor alarms are loud, repetitive, and annoying. When a monitor alarm went off on the day in question, Green reacted by turning her head to check the monitors. This resulted in her feeling a pop or crunch in her neck, followed by pain that radiated down her arms to her fingertips.

Green's injury has not prevented her from enjoying pools for leisure. (Hrg. Tr. p. 71) She is able to go camping with her family, using their recreational vehicle (RV). (Hrg. Tr. p. 71–72) Green can drive a motorized boat. (Hrg. Tr. p. 72)

Green is able to go deer-hunting with the accommodation of using a crossbow. (Hrg. Tr. p. 72) She must use a crossbow because she is physically incapable of using a standard bow. (Hrg. Tr. p. 102–03) Green has submitted the requisite paperwork to get a license to use a crossbow when hunting deer in Iowa. (Hrg. Tr. p. 102)

Green and her husband shoot pool as a hobby. (Hrg. Tr. p. 70) They play in a pool league once per week. (Hrg. Tr. p. 71) Her husband competes in more pool tournaments than Green does. (Hrg. Tr. p. 70) She used to participate in one American Poolplayers Association (APA) tournament per year, but they did not qualify in 2019 and the COVID-19 pandemic caused its cancellation in 2020. (Hrg. Tr. pp. 70–71)

Green testified that at the time of hearing, her pain level had gone down since the end of her care with Dr. Stalvey but the tingling in her arm never went away. (Hrg. Tr. p. 36) She uses a heat pad almost every day and purchased a new bed to elevate her neck to help reduce her pain and sleep better. (Hrg. Tr. p. 37) Constant head movement, driving for long periods of time, and sitting in the same position for too long make her pain worse. (Hrg. Tr. p. 38)

CONCLUSIONS OF LAW

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred after July 1, 2017, the Iowa Workers' Compensation Act, as amended in 2017, applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

1. Personal Injury.

Under Iowa Code section 85.3(1), an employer covered by the Iowa Workers' Compensation Act must:

> [P]rovide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury.

Section 85.61(4) provides the words "injury" or "personal injury" must be construed to "include death resulting from personal injury" and "shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8." But the statute provides no additional definition.

In the seminal workers' compensation case of Almquist v. Shenandoah Nurseries, Inc., the Iowa Supreme Court held:

> A personal injury, contemplated by the Iowa Workmen's Compensation Law, obviously means an injury to the body, the impairment of health, or a disease, not excluded by the act, which comes about, not through the natural building up and tearing down of the human body, but because of a traumatic or other hurt or damage to the health or body of an employee. The injury to the human body here contemplated must be something, whether an accident or not, that acts extraneously to the natural

> processes of nature, and thereby impairs the health, overcomes, injures, interrupts, or destroys some function of the body, or otherwise damages or injures a part or all of the body. This is the personal injury contemplated by [the statute].

254 N.W. 35, 39 (1934) (citations omitted); see also Dunlavey v. Econ. Fire & Cas. Co., 526 N.W.2d 845, 850–51 (Iowa 1995) (quoting Almquist, 254 N.W. at 39); JBS Swift & Co. v. Ochoa, 888 N.W.2d 887, 896 (Iowa 2016) (quoting Almquist, 526 N.W. at 39); Tew v. Sparboe Farms, Inc., File No. 5065716 (App. December 5, 2019) (quoting Almquist, 526 N.W. at 39).

The parties dispute whether Green sustained an injury arising out of and in the course of her employment with Broadlawns. Dr. Schmitz's opinion questions whether Green sustained an injury at all. Dr. Kuhnlein opined she "lit up" preexisting degenerative changes in her neck when turning her head to check vitals on a monitor after an alarm sounded and diagnosed her with cervical spondylosis and right radiculopathy/radiculitis, as well as BPPV. Dr. Stalvey also diagnosed Green with cervical spondylosis. As found above, Dr. Kuhnlein's opinion is more credible. It supports the conclusion Green sustained a "personal injury" under the law.

2. Causation.

"In order for an injury to be compensable in Iowa, there must be 'a connection between the injury and the work.'" Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007) (quoting Meyer v. IBP, Inc., 710 N.W.2d 213, 221 (Iowa 2006)). To recover, a claimant must prove by a preponderance of the evidence that the injury for which the claimant is seeking workers' compensation arose (1) out of the claimant's employment and (2) in the course of the claimant's employment. St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 652 (Iowa 2000) (citing Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996)); see also Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996).

"'The two tests are separate and distinct.'" Blue, 743 N.W.2d at 174 (quoting Miedema, 551 N.W.2d at 311). Under Iowa law, "'both must be satisfied in order for an injury to be deemed compensable.'" Id. (quoting Miedema, 551 N.W.2d at 311). In this case, the parties agree Green's injury occurred in the course of her employment at Broadlawns. They dispute whether it arose out of her employment under the actual risk rule.

The Iowa Supreme Court has "divided this causation requirement into two separate determinations: (1) factual or medical causation and (2) legal causation." Dunlavey v. Econ. Fire and Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995) (citing Newman v. John Deere Ottumwa Works of Deere & Co., 372 N.W.2d 199, 202 (Iowa 1985) and Schreckengast v. Hammermills, Inc., 369 N.W.2d 809, 810–11 n.3 (Iowa 1985)). Factual or medical causation "involves whether a particular event in fact caused certain consequences to occur." Schreckengast, 369 N.W.2d at 811 n.3. "In the context of this workers' compensation case, factual causation means medical causation, that is whether the employee's injury is causally connected to the employee's employment."

Dunlavey, 526 N.W.2d at 853 (citing Schreckengast, 369 N.W.2d at 810). "Legal causation presents a question of whether the policy of the law will extend responsibility to those consequences which have in fact been produced." Id. (citing Schreckengast, 369 N.W.2d at 810 n.3). Application of the actual risk rule is a mixed question of law and fact. Blue, 743 N.W.2d at 173 (citing Meyer, 710 N.W.2d at 218).

a. The Actual Risk Rule.

"An injury 'arises out of' employment if there is a causal connection between the employment and the injury." Gray, 604 N.W.2d at 652 (citing Bailey v. Batchelder, 576 N.W.2d 334, 338 (Iowa 1998)). "'In other words, the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of [the] employment.'" Blue, 743 N.W.2d at 174. (quoting Miedema, 551 N.W.2d at 311). Subject to limited exceptions, the actual risk rule applies in cases brought under the Iowa Workers' Compensation Act. Bluml v. Dee Jay's Inc., 920 N.W.2d 82, 85–86 (Iowa 2018).

The Iowa Supreme Court's holding in Lakeside v. Blue, cited above, fleshes out the actual risk rule. In that case, the claimant fell while using stairs on the job. Id. at 171. The Commissioner found the injury arose in the course of employment. Id. at 172.

The court addressed the Commissioner's apparent injection of the positional-risk rule into the actual risk analysis. Id. at 176. Under the positional-risk rule, "'[a]n injury arises out of the employment if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where he would be injured.'" Id. (quoting 1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 3.05, at 3–6). The court held, "Iowa has not adopted the positional-risk rule, and we decline to do so now under the circumstances presented in this case" even though "Larson argues in his treatise that an unexplained fall should be compensated under the positional-risk rule." Id. at 176–77 (citing Larson at § 7.04[1][a], at 7–28 to 7–29).

The court also found error in the district court's reversal on judicial review, which stated "there was 'no indication that the conditions of Blue's employment exposed her to a hazard *not generally associated* with traversing stairs.'" Id. at 177 n.7 (emphasis in original). On appeal, the Iowa Supreme Court reversed the district court even though it ostensibly applied the actual risk rule because "its rationale is more consistent with the discarded increased-risk rule" and the "detour to increased-risk analysis may account for the district court's mistaken conclusion that the Commissioner's application of the actual-risk rule was incorrect." Id.

The court then affirmed the Commissioner's determination under the actual risk rule, which holds:

> If the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and

> during the course of the employment. And it makes no difference that the risk was common to the general public on the day of injury.

Blue, 743 N.W.2d at 174 (quoting Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990)).

The focus on the actual risk created by the nature of the employment is consistent with the court's holding in Almquist that the nature of the employee's body movement when performing work is not dispositive:

> If in doing his work the employee, in a *usual or unusual* manner, lifts an object, stoops, or takes a step, or makes any movement of his limbs or body, and such exertion unexpectedly and unintentionally results in an injurious strain upon his nerves, muscles, heart, or any other organ, so as to incapacitate him for work, the event or result is an injury as contemplated by the act.

Almquist, 254 N.W. at 40–41 (quoting Southern Cas. Co. v. Flores, 294 S.W. 932, 933–34 (Tex.Civ.App. 1927) (emphasis added by the Iowa Supreme Court)).

Thus, the inquiry under the actual risk rule focuses on the nature of the employment, not the employee's work exertion or body movement outside of that context. The reason for this is commonsense. Bending, stooping, lifting, twisting, kneeling, turning, walking, using stairs, turning one's head, etc. are all common body movements at work and outside of it. The human body can only move in so many ways, so the type of body movement cannot dictate whether the allegedly resultant injury is within the purview of the statute. Disqualifying an injury from compensation under the Iowa Workers' Compensation Act because people outside of work frequently perform the movement that caused it would significantly limit the scope of the statute's coverage, which would run contrary to the precedent underpinning the Iowa Supreme Court's adoption of the actual risk rule:

> We think the actual risk rule is the better rule and more in line with how we construe our Workers' Compensation Act. We construe the Act liberally in favor of the employee; we resolve all doubts in favor of the employee.

Hanson, 452 N.W.2d at 168 (citing Teel v. McCord, 394 N.W.2d 405, 406–07 (Iowa 1986)); see also Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 257 (Iowa 2010) ("We apply the workers' compensation statute broadly and liberally in keeping with its humanitarian objective: the benefit of the worker and the worker's dependents.").

At the time of injury, Green was working at a nurse's station. She was in the ICU, where staff provide intensive care for patients. Patients in the ICU are more acute, so Broadlawns continuously monitors their vitals. As part of her job duties in the ICU, Green was required to monitor patient vitals.

To aid Broadlawns staff with this important duty, the nurse's station had monitors equipped with alarms to alert them when a patient's vitals changed in a possibly dangerous way. The alarms were loud, repetitive, and annoying. Sometimes an alarm signaled a life-threatening situation for a patient and other times the cause was much more benign—but staff did not know the cause when the alarm sounded. Given the possible stakes, Broadlawns understandably expected its staff to respond quickly when one of the monitor alarms goes off.

Sitting at the back of the nurse's station, the monitors were directly behind Green because she was facing the other way while charting. An alarm that could have signaled an emergency interrupted her work. In response, she turned her head to perform the job duty of checking the monitors so she could quickly respond as Broadlawns expected her to do. Green's sudden head movement to check patient vitals on the monitor caused her neck to pop and her to feel immediate pain.

For these reasons, the fact that Green's neck injury happened while she was working was not coincidental to her employment at Broadlawns. She sustained an injurious strain during a one-time movement of her body when performing a work duty. Therefore, the evidence establishes her injury was caused by or related to the working environment or the conditions of employment. Green's injury arose out of her employment at Broadlawns under the actual risk rule.

b. Medical Causation.

The parties also dispute medical causation. To prevail on this question, the claimant must prove by a preponderance of the evidence that the "injury has a direct causal connection with the employment." IBP, Inc. v. Harpole, 621 N.W.2d 410, (Iowa 2001) (quoting Dunlavey v. Econ. Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)). "Medical causation 'is essentially within the domain of expert testimony.'" Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Dunlavey, 526 N.W.2d at 853). The weight given an expert's opinion may be affected by the accuracy of the facts relied upon by the expert, the completeness of the premise with which the expert is given, and other surrounding circumstances. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010); Dunlavey, 526 N.W.2d at 853.

Two doctors have opined on medical causation in this case. Neither of them provided Green with treatment relating to this case. Dr. Kuhnlein opined Green's injury arose out of her employment after an IME arranged by claimant's counsel. Dr. Schmitz's opined Green sustained no injury after an examination arranged by defense counsel.

Dr. Schmitz's opinion in this case is unpersuasive. He stresses that Green's complaints are "subjective" in nature and that he did not have objective evidence of a "significant" injury. Dr. Schmitz impliedly found Green's pain complaints were not credible.

Dr. Schmitz's opinion on Green's credibility is contrary to the weight of the evidence in this case. Green consistently described her pain symptoms to providers throughout her treatment. Further, Green's demeanor during her testimony about her symptoms was credible. She was not evasive or tense. Green also candidly testified her pain level had gone down over time and was lower at the time of hearing than closer to the date of injury.

Further, Green's pain complaints led to work restrictions that caused her to use FMLA for unpaid leave and ultimately lose her job at Broadlawns. This caused Green pecuniary loss in the form of lost income. Her discharge was also a setback for her career since she had held jobs with duties consistent with those of a CNA (though with sometimes with different job titles) dating back about twenty years.

Green's ongoing symptoms caused her to not seek another CNA job because she felt she would risk the health of patients due to her physical limitations. Dr. Kuhnlein's permanent work restrictions proved her belief correct. The symptoms Green's injuries caused ended her career as a CNA, the focus of the postsecondary education or training she was able to complete and the type of position she held for about twenty years. This undermines the credibility of Dr. Schmitz's causation opinion.

On the mechanism of injury, Dr. Schmitz dismissed how Green was injured by stating "individuals turn their head all day every day" and he could not state "a minor head turn was in any way sufficient to cause a neck injury." Dr. Schmitz's general dismissal is inconsistent with the weight of the evidence in this case. As discussed above, Green's suddenly turned her head while working in the ICU and in response to an alarm regarding patient vitals that could signal a life-or-death situation. His apparent misunderstanding of the circumstances surrounding Green's injury further damages the credibility of his opinion.

In contrast, Dr. Kuhnlein's opinion is premised on a conclusion about the validity of her symptoms that is in line with the weight of the evidence in this case. His report also reflects a more accurate understanding of the circumstances surrounding Green's injury. Dr. Kuhnlein diagnosed Green with cervical spondylosis and right radiculopathy/radiculitis as well as BPPV. Dr. Stalvey also diagnosed her with cervical spondylosis. Dr. Kuhnlein credibly opined Green's sudden turn of her head "'lit up' and materially aggravated the underlying degenerative changes in her neck, producing the radiculopathic or radiculitic symptoms from which she now suffers" and that her head-turn is the most likely cause of her BPPV symptoms. Dr. Kuhnlein's opinion on causation is therefore the most credible.

Green has satisfied her burden of proof on medical causation. The weight of the evidence demonstrates Green's sudden turn of her head to check monitors in response to an alarm caused her injury. The question now turns to her entitlement to benefits.

3. Benefits.

Green contends she is entitled to temporary disability or healing period benefits from January 7, 2019, through October 3, 2019, and permanent disability benefits. The defendants dispute her entitlement to any benefits. They have paid Green no benefits to date.

Under the Iowa Workers' Compensation Act, "if a claimant had a pre-existing condition or disability, aggravated, accelerated, worsened or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist, [she] would be accordingly entitled to compensation." Musselman v. Cent. Tel. Co., 154 N.W.2d 128, 132 (Iowa 1967); see also Plumrose USA v. Hathaway, 844 N.W.2d 469 (Iowa App. 2014) (Table). Because the weight of the evidence in this case establishes Green sustained a work injury by lighting up underlying degenerative changes in her neck when she turned her head to check a patient's vitals, she is entitled to workers' compensation if she can establish that she sustained a disability in accordance with applicable statutory criteria.

a. Healing Period.

Temporary benefits compensate an employee for lost wages until the employee is able to return to work. Mannes v. Fleetguard, Travelers Ins. Co., 770 N.W.2d 826, 830 (Iowa 2009). An injured employee is entitled to temporary total disability (TTD) or healing period (HP) benefits when the employee is unable to work during a period of convalescence caused by a work injury. Iowa Code §§ 85.33(1), 85.34(1). Whether an employee's injury causes a permanent disability dictates whether the employee's temporary benefits are considered TTD or HP. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citing Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604–05 (Iowa 2005)). If there is a permanent disability, the benefits are considered HP; if not, they are TTD. See id.

As discussed below, Green has sustained a permanent disability. Consequently, her benefits for time off work are considered healing period benefits under the Iowa Workers' Compensation Act. Under Iowa Code section 85.34(1):

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

The evidence shows Green left work on January 7, 2019, because she was unable to continue working due to the pain caused by her work injury. Bolton, the

defendants' chosen care provider, placed her on work restrictions that prevented her from being able to physically perform her job. After the defendants denied liability and refused to provide additional care, she sought care with her family provider, Francisco, who took her off work until further notice and completed certification paperwork for FMLA leave, which Broadlawns accepted. Green credibly testified at hearing Francisco did not release her to work because of her ongoing symptoms and there is no documentary evidence to the contrary. Dr. Kuhnlein found Green had reached maximum medical improvement (MMI) on October 3, 2019, the day Dr. Stalvey released her from care, and opined on her permanent functional impairment.

For these reasons, the weight of the evidence shows Green is entitled to healing period benefits from January 7, 2019, through October 3, 2019. This time period consists of thirty-eight weeks and three days. The defendants shall pay to Green healing period benefits for this amount of weeks.

b. Permanent Disability.

"'A claimant must prove by a preponderance of the evidence that the injury is a proximate cause of the claimed disability.'" Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002). "Ordinarily, expert testimony is necessary to establish the causal connection between the injury and the disability for which benefits are claimed." Id. The same standards apply to expert opinions in the disability context as medical causation context. Id.

Dr. Kuhnlein is the only doctor to opine on extent of permanent functional impairment. He did so solely by utilizing the Guides. His opinion that Green sustained a ten percent functional impairment to the body as a whole caused by her work injury of January 7, 2019, at Broadlawns. Dr. Kuhnlein's permanent functional impairment rating is adopted.

Green sustained a neck injury causing permanent functional impairment. The neck is not a scheduled member listed under Iowa Code section 85.34(2). Therefore, Green's injury is to the body as a whole and her disability is industrial in nature, which means it is determined based on the impact on her earning capacity. Iowa Code § 85.34(2)(*v*); Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 605 (Iowa 2005). The agency considers the following factors when determining industrial disability: functional disability, age, education, qualifications, work experience, inability to engage in similar employment, earnings before and after the injury, motivation to work, personal characteristics, and the employer's inability to accommodate the functional limitations. See E.N.T. Assoc. v. Collentine, 525 N.W.2d 827, 830 (Iowa 1994); Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 526 (Iowa 2012); IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632–33 (Iowa 2000); Ehlinger v. State, 237 N.W.2d 784, 792 (Iowa 1976). "Showing that the employee's actual earnings have decreased is not always necessary 'to demonstrate an injury-caused reduction in earning capacity.'" Clark, 696 N.W.2d at 605 (quoting Gray, 604 N.W.2d at 653).

Green was forty-three years of age at the time of hearing. She was unable to complete DMACC coursework in the field of nursing. Her permanent work restrictions more likely than not preclude her from working as a nurse in the future.

Green was able to obtain her CNA certificate, the only postsecondary training or education that she has completed and for which she obtained a certificate or degree. Since obtaining her CNA certificate, Green has worked almost exclusively in jobs with duties substantially similar to those of a CNA. The permanent work restrictions assigned by Dr. Kuhnlein due to the physical limitations caused by her work injury mean she will more likely than not be unable to work as a CNA again. Thus, Green's primary vocation is no longer available to her because of the work injury.

Green applied for an obtained a job at the Iowa Clinic as a patient experience representative. It is sedentary office work. She checks patients in at the Iowa Clinic, sits during the majority of her workday, uses a computer and fax machine to complete most of her job duties, and works only forty hours per week. Green earns over two dollars more per hour in this position than she did as a CNA but works less overtime.

Green has met her burden of proof on permanent disability. The evidence shows it is more likely than not the work injury caused lost earning capacity. Based on the factors for determining lost earning capacity, her industrial disability is thirty-five percent. This entitles her to one hundred seventy-five weeks of permanent partial disability benefits (thirty five percent multiplied by five hundred weeks equals one hundred seventy-five weeks), commencing on October 4, 2019.

c. Rate.

The parties stipulated that Green's gross earnings were five hundred seventy-nine and 58/100 dollars ($579.58) per week at the time of injury. They also stipulated she was married and entitled to three exemptions. Consequently, Green's workers' compensation rate is four hundred one and 86/100 dollars ($401.86) per week.

4. Medical Expenses.

For compensable injuries under Iowa Code chapter 85, the employer must "furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services." Iowa Code § 85.27(1). Here, the defendants denied liability and refused care. After they did so, Green sought care on her own.

The defendants' denial of liability means they lost the right to choose Green's care for the work injury. Winnebago Indus., Inc. v. Haverly, 727 N.W.2d 567, 575 (Iowa 2006) (citing Trade Prof'ls, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003)). Green could therefore obtain reasonable care from any provider for the injury, at her expense, and seek reimbursement for such care through this contested case proceeding. See Trade Prof'ls, 661 N.W.2d at 121–25 (affirming on judicial review an agency decision ordering the payment of medical expenses for unauthorized care because the

defendants denied liability for the alleged injury and therefore lost the right to control care).

Green has proven compensability. Therefore, the defendants are responsible for the cost of reasonable care. The evidence establishes it is more likely than not the care itemized in Joint Exhibit 19 is related to the compensable work injury. Further, the care Green obtained was conservative in nature and after it had a limited effect, Green stopped seeking out care except for prescription medications through her family physician. The weight of the evidence shows the care was reasonable. Green is therefore entitled to payment for the medical expenses in Joint Exhibit 19.

5. Costs.

"All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Iowa Code § 86.40. "Fee-shifting statutes using 'all costs' language have been construed 'to limit reimbursement for litigation expenses to those allowed as taxable court costs.'" Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846 (Iowa 2015) (quoting City of Riverdale v. Diercks, 806 N.W.2d 643, 660 (Iowa 2011)). Statutes and administrative rules providing for recovery of costs are strictly construed. Id. (quoting Hughes v. Burlington N. R.R., 545 N.W.2d 318, 321 (Iowa 1996)).

Because Green prevailed on the disputed issues, she is entitled to taxation of the following costs under the following provisions of 876 IAC 4.33:

- One hundred eighteen and 00/100 ($118.00) for the amount paid for the transcript and videoconference for Green's deposition as the cost of the attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, 876 IAC 4.33(1), and transcription costs, id. at 4.33(2);

- Thirteen and 90/100 dollars ($13.90) for the cost of service, id. at 4.33(3); and

- One hundred three and 00/100 dollars ($103.00) for the filing fee, id. at 4.33(7).

Green also seeks taxation of the cost of Dr. Kuhnlein's IME report. The assessment of costs includes "the reasonable costs of obtaining no more than two doctors' or practitioners' reports." 876 IAC 4.33(6).

> A "report" is a "formal oral or written presentation of facts or a recommendation for action." Black's Law Dictionary 1492 (10th ed.2014). The word "obtain" is used as a modifier in the rule and means "[t]o bring into one's own possession; to procure, esp[ecially] through effort." Id. at 1247. Thus, the concept of obtaining a report for a hearing is separate from the concept of a physical examination. A "physical examination" is

> "[a]n examination of a person's body by a medical professional to determine whether the person is healthy, ill, or disabled." Id. at 680. The concept of "obtaining" a report is separate from the process of "obtaining" an examination. Our legislature recognized as much by separately authorizing the commissioner to appoint "a duly qualified, impartial physician to examine the injured employee and make report." Iowa Code § 86.38. A medical report for purposes of a hearing is aligned with a prehearing medical deposition. In the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition.

Young, 867 N.W.2d at 845–46.

Dr. Kuhnlein conducted a full IME of Green for this case. His report shows he performed an examination and reviewed medical records. However, there is no itemized bill in evidence and Green paid for the IME and report with one check. (Jt. Ex. 20, p. 121) Consequently, the weight of the evidence shows Green is not entitled to the full three thousand ninety and 50/100 dollars ($3,090.50) paid to Dr. Kuhnlein. While somewhat speculative, the undersigned awards half this amount as the cost of the report. The defendants shall pay Green one thousand five hundred forty-five and 25/10 ($1,545.25) as the cost of an expert report under 876 IAC 4.33(6).

ORDER

Based on the above findings of fact and conclusions of law, it is ordered:

1) The defendants shall pay to Green at the rate of four hundred one and 86/100 dollars ($401.86) per week:

    a) One hundred seventy-five (175) weeks of permanent partial disability benefits from the commencement date of October 4, 2019.

    b) Thirty-eight and 43/100 (38.43) weeks of healing period benefits from January 7, 2019, through October 3, 2019.

2) The defendants shall pay accrued weekly benefits in a lump sum.

3) The defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

4) The defendants shall pay the medical expenses itemized in Joint Exhibit 19.

5) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

6) The defendants shall pay to Green the following amounts for the following costs:

   a) One hundred eighteen and 80/100 dollars ($118.80) for the attendance of a certified shorthand reporter or presence of mechanical means at a deposition and a copy of Green's deposition transcript under 876 IAC 4.33 (1) and (2);

   b) Thirteen and 90/100 dollars ($13.90) for the cost of service under id. at 4.33(3);

   c) One thousand five hundred forty-five and 25/10 ($1,545.25) for Dr. Kuhnlein's IME report as the cost of an expert report, id. at 4.33(6); and

   d) One hundred three and 00/100 dollars ($103.00) for the filing fee under rule id. at 4.33(7).

7) The parties shall be responsible for paying their own hearing costs. Each party shall pay an equal share of the cost of the transcript.

Signed and filed this 23rd day of February, 2022.

BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jason Neifert (via WCES)

Valerie Landis (via WCES)

Jane Lorentzen (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.