BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER LYNN, Claimant, vs. DRYNACHAN, LLC, Employer, and TECHNOLOGY INSURANCE CO., Insurance Carrier, Defendants.	File No. 5059930 ARBITRATION DECISION Headnotes: 1402.40, 1402.60, 1803, 2500

STATEMENT OF THE CASE

Jennifer Lynn seeks workers' compensation benefits from the defendants, employer Drynachan, LLC (Drynachan) and insurance carrier Technology Insurance Company (Technology), for alleged cervical and head injuries sustained in a car crash on January 10, 2017. The agency scheduled the case for a hearing, which the undersigned presided over in Des Moines, Iowa, on February 18, 2020. Lynn participated personally and through attorney Jenna L. Green. The defendants participated through attorney Andrew Tice.

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. A party waives an issue not identified in the hearing report. St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 650 (Iowa 2000). 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) What is the extent of permanent disability, if any, caused by her alleged cervical and head injuries?

2) Is Lynn entitled to recover the cost of an independent medical examination (IME) under Iowa Code section 85.39?

3) Is Lynn entitled to payment of medical expenses under Iowa Code section 85.27?

4) Are costs taxed against the defendants under Iowa Code section 86.40?

5) If the injury is found to be a cause of permanent disability, what, if any, apportionment is appropriate under Iowa Code section 85.34?

STIPULATIONS

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

1) An employer-employee relationship existed between Lynn and Drynachan at the time in question.

2) Lynn sustained an injury on January 10, 2017, which arose out of and in the course of her employment with Drynachan.

3) The stipulated injury is a cause of temporary disability during a period of recovery.

4) If the injury is found to be a cause of permanent disability,

    a) The injury is an industrial disability.

    b) The commencement date for permanent partial disability benefits, if any are awarded, is June 28, 2018.

5) At the time of the stipulated injury:

    a) Lynn's gross earnings were $1,892.31 per week.

    b) Lynn was single.

    c) Lynn was entitled to one exemption.

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

FINDINGS OF FACT

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 35;

- Claimant's Exhibits (Cl. Ex.) 1 through 4 and 7 through 15;
- Defendants' Exhibits (Def. Ex.) A through O; and
- Hearing testimony by Lynn.

After careful consideration of the evidentiary record, the undersigned makes the following findings of fact.

1. Education.

Lynn was 47 years of age at the time of hearing. (Hrg. Tr. p. 33) She graduated from high school in 1990. (Hrg. Tr. p. 36) Lynn earned an Associate of Arts (A.A.) degree from Muscatine Community College and then a Bachelor of Science (B.S.) degree from Iowa State University. (Hrg. Tr. p. 37–38) Lynn then earned an Associate of Applied Science degree at Columbia State Community College. (Hrg. Tr. p. 41) She also obtained her Masters of Science in Nursing degree at Middle Tennessee State University. (Hrg. Tr. p. 41)

2. Work History.

After high school, Lynn worked at Rudy's Tacos for about eight years (Hrg. Tr. p. 82) She then worked as an administrative assistant for a short time before transitioning to a job as a fashion designer. (Hrg. Tr. p. 82) Lynn left her full-time fashion designer job to move to California, where she worked as a freelance fashion designer and actress from 1999 through 2003. (Hrg. Tr. p. 82) Lynn moved to Utah, where she worked as a realtor. (Hrg. Tr. p. 84) She then moved to Tennessee and worked as a realtor until the market slowed due to the subprime mortgage crisis. (Hrg. Tr. p. 84)

As discussed above, Lynn went back to school for nursing. She then got a job in Minnesota as a traveling nurse. (Hrg. Tr. p. 84) Lynn next got a job as assistant director of nursing at Keystone in St. Paul, Minnesota. (Hrg. Tr. p. 84) Lynn moved back to Iowa and got a job managing flu clinics and administering immunizations at them. (Hrg. Tr. p. 85) She got a job as a nursing instructor at Iowa Central Community College before Drynachan hired her in July 2014. (Hrg. Tr. p. 85)

Lynn worked as a traveling nurse for Drynachan. (Hrg. Tr. p. 85) Her job consisted of driving to the homes of Medicare beneficiaries and performing exams. (Hrg. Tr. p. 85) Lynn was supposed to record vital information, check hearing, and could recommend care. (Hrg. Tr. p. 85–87) However, she implemented shortcuts without approval of Drynahchan. (Hrg. Tr. p. 86)

3. January 10, 2017 Car Crash.

Lynn was driving as part of her job with Drynachan on January 10, 2017. Her vehicle hit a patch of ice on the freeway, slipped on it, and went into the ditch. (Jt. Ex. 26, p. 1) Lynn struck her head on the driver's seat headrest, but the blow did not cause her to lose consciousness. (Jt. Ex. 26, p. 1) The crash did not damage Lynn's vehicle.

4. Care and Independent Medical Exams.

Lynn has a history of seeking care for various conditions. Records in evidence date back to mid-2009. For clarity, this decision will discuss Lynn's treatment history in chronological order.

2009

On July 23, 2009, Lynn received care at Vanderbilt Health Services Franklin (VHSF). (Jt. Ex. 1, p. 1) Lynn reported that day experiencing fatigue and joint pain for years as well as pain that moves around and "painful knots in her neck and lower back. (Jt. Ex. 1, p. 1) For an appointment on August 12, 2009, Glenn Douglas, M.D., described Lynn's history in pertinent part:

> [Lynn] states 10 years ago she developed "knots" in her back. She states they were mild and did not bother her much. She states about 4 years ago she developed severe muscle[] "knots" in lower back. She saw PCP, chirop[r]actors, pain management specialist, including Dr. Nuwofia and was diagnosed with fibromyalgia by her natural health provider. She states about 3–4 w[ee]ks ago she developed severe myalgias. She states pain is constant in neck, shoulders, calves, and back. She states symptoms have worsened in past 3–4 w[ee]ks. She states some days are not as bad as others.

(Jt. Ex. 1, p. 2)

Lynn returned to VHSF on November 30, 2009, when Julie Barnes, N.P., noted, "She has possible lipomas, which are painful, and she injured her low back last week, also increasing her pain." (Jt. Ex. 1, p. 3) Barnes further stated Lynn came to the clinic "for help with her pain, which is achy and sore, moderate to severe, not much help with Ibuprofen." (Jt. Ex. 1, p. 3) Lynn shared with Barnes, "She was scheduled for a consult with Center for [S]pine, Joint, and Neuromuscular Rehabilitation, but could not make the appointment due to her school schedule." (Jt. Ex. 1, p. 3) For the back pain, Barnes planned on pain medication and a referral with the Spine Clinic. (Jt. Ex. 1, p. 4)

2012

On November 27, 2012, Lynn went to the Webster City Free Clinic (WCFC) for care due to low back pain following an injury to her neck and back in or around 2011. (Jt. Ex. 2, p. 1) Lynn reported her symptoms worsened over the prior week. (Jt. Ex. 2, p. 1)

2013

On June 3, 2013, Lynn went to Tindall Chiropractic after power-washing her house aggravated her upper and lower back. (Jt. Ex. 3, p. 1) According to the clinic

notes, Lynn described the pain she was experiencing as "aching and deep," and worse when bending and sitting. (Jt. Ex. 3, p. 1)

> [Lynn] was evaluated by palpation and observation with the following findings: The cervical region at the upper cervical area had mild to moderate taut and tender fibers. The thoracic region at the upper thoracic area had mild to moderate taut and tender fibers. The lumbar region at the lumbopelvic area had mild to moderate taut fibers.

(Jt. Ex. 3, p. 2) Lynn received adjustments to levels including C5, C6, T3, T4, T5, T6, L4, and L5. (Jt. Ex. 3, p. 2)

Lynn returned to Tindall Chiropractic on June 19, 2013, with similar complaints. (Jt. Ex. 3, p. 3) She received chiropractic manipulative therapy to remove structure dysfunctions of the involved joints and associated muscles, and secondary neurologic alteration. (Jt. Ex. 3, p. 5) Lynn's adjustments were to levels C5, C6, T3, T4, T5, T6, and L4, as well as L5 on the right-hand side. (Jt. Ex. 3, p. 5) Lynn received similar care for similar complaints during appointments on August 23, 2013, and September 18, 2013. (Jt. Ex. 3, pp. 6–9)

2014

Lynn went to Van Diest Medical Center on January 8, 2014, to establish care because she had been having "some generalized cervicothoracic and lumbar back pain." (Jt. Ex. 4, p. 1) She denied paresthesias and bladder dysfunction. (Jt. Ex. 4, p. 1) Lynn was seeking osteopathic manipulation during her visit. (Jt. Ex. 4, p. 1) Mark Dearden, D.O. assessed Lynn as having somatic dysfunction of the cervical, thoracic, and lumbar spine, insomnia, and "[o]steoarthritis (self reported)," and prescribed Tramadol, which she had previously been using. (Jt. Ex. 4, p. 2)

On January 15, 2014, Lynn continued care with Tindall Chiropractic after she slipped on ice. (Jt. Ex. 3, p. 10) After slipping, she continued to complain of "aching and deep" pain. (Jt. Ex. 3, p. 10) Lynn received adjustments using the diversified technique to the C5, C6, T3, T4, T5, T6, and L4 levels. (Jt. Ex. 3, p. 11) Tindall provided similar care for similar complaints on January 17, 2014; February 28, 2014 (including to the L5 level); March 7, 2014; March 10, 2014; March 12, 2014; May 15, 2014; May 19, 2014; May 21, 2014; (Jt. Ex. 3, pp. 12–27)

On Maye 23, 2014, Lynn went to O'Hearn Family Chiropractic. (Jt. Ex. 5, p. 1) Her chief complaint was lower back pain, according to clinic notes. (Jt. Ex. 5, p. 1) Based on the records, Lynn returned to O'Hearn, complaining of low back pain, for care on May 30, 2014, June 17, 2014; June 23, 2014; June 27, 2014; July 7, 2014; July 14, 2014; and July 21, 2014. (Jt. Ex. 5, pp. 1–2)

Lynn went to Active Health Chiropractic on October 9, 2014. (Jt. Ex. 6, p. 1) Joshua J. Mason noted her complaints as "an acute dull and aching discomfort of insidious onset (non-radiating) located in the posterior cervical (neck), upper thoracic,

left trapezius, right posterior trapezius, lumbar, left sacroiliac and right sacroiliac region(s) of unknown origin." (Jt. Ex. 6, p. 1) On the traditional one-through-ten pain scale, with one low and ten high, Lynn rated her pain a six out of ten. (Jt. Ex. 6, p. 1) Mason further noted, "She reports complaint is aggravated by almost any movement and relieved by nothing. When asked what types of treatment she has had for this episode, she stated 'nothing.'" (Jt. Ex. 6, p. 1) Even though Lynn had been treating with multiple chiropractors over the previous months for similar complaints, she denied previous episodes of her condition. (Jt. Ex. 6, p. 1)

Mason deemed Lynn a good candidate to recover from chiropractic care. (Jt. Ex. 6, p. 3) He diagnosed her with lumbosacral sprain/strain, muscle spasms, sacral subluxation, lumbar subluxation, thoracic subluxation, and cervical subluxation. (Jt. Ex. 6, p. 3) Mason performed Diversified, Manual, and Gonstead manipulative therapy to Lynn's left pelvis, right sacrum, and to the L5, L4, T4, T5, C1, and C2 levels. (Jt. Ex. 6, p. 3)

On October 13, 2014, Lynn rated her pain a six out of ten and received similar care for similar complaints of "unknown origin." (Jt. Ex. 6, p. 5) Lynn returned on November 4, 2014, with a pain rating of four out of ten. (Jt. Ex. 6, p. 7) She received care similar to that which she received during her previous visits. (Jt. Ex. 6, p. 7)

2015

On January 13, 2015, Lynn went to Mobley Chiropractic and Acupuncture for care. (Jt. Ex. 7) She reported "a new complaint of left lumbar, lumbar, right lumbar, left sacroiliac, left cervical dorsal, upper thoracic, right cervical dorsal, cervical, lower thoracic and mid thoracic discomfort" that, began a year prior. (Jt. Ex. 7, p. 1) She rated her pain as a six on a scale of ten and ranging between a six and seven. (Jt. Ex. 7, p. 1) The plan was for Lynn to return for more care one week later, but she did not. (Jt. Ex. 7, p. 1)

Instead, Lynn returned to Active Health Chiropractic on January 19, 2015, rating her pain as eight out of ten after a fall on icy steps while leaving a client's home. (Jt. Ex. 6, p. 9) Lynn received similar adjustments along with low-volt EMS to her posterior cervical (neck), upper thoracic, lumbar and right lumbar region(s), and cervico-thoracic and lumbo-sacral regions. (Jt. Ex. 6, p. 9) Lynn returned on both January 28 and February 23, 2015, rated her pain as four out of ten each day, and received the same manipulative treatment she had received during her prior visits. (Jt. Ex. 6, p. 11–12)

Lynn sought care at Country Club Chiropractic in Fort Dodge, on March 24, 2015, complaining of a stiff neck and pain in her neck and lower back. (Jt. Ex. 8, p. 1) In response to a questionnaire, Lynn provided information about incidents in her childhood (falling a dozen times on back and chin) and adulthood, including multiple falls on ice in the 1990s (one resulting in "whiplash"), a head injury in 1996 that caused her to lose consciousness, and a 2008 fall resulting in injuries to her jaw, head, and neck. (Jt. Ex. 8, p. 2) She filled out a "Functional Rating Index" to help the clinic understand how her neck and back problems were affecting her, indicating her pain intensity was severe, it

greatly disturbed her sleeping, she had to go slowly when caring for herself, she experienced severe pain on short trips, she could "barely" do her usual work, and she was in constant pain. (Jt. Ex. 8, p. 3) During intake, Lynn also shared she was experiencing low back pain, her back had gone out three or four times in the past three years, her back was very stiff and limiting, and she had constant tension and pulled muscles in her neck. (Jt. Ex. 8, p. 4)

On April 16, 2015, Lynn went to Simply Chiropractic in Clive, Iowa, and rated her pain a five out of ten. (Jt. Ex. 9, p. 1) Jason Arndorfer, D.C. diagnosed her with lumbago, pain in thoracic spine, cervicalgia, and somatic dysfunction in the lumbar, thoracic, pelvis, and cervical regions, as well as the upper extremity. (Jt. Ex. 9, p. 2) He adjusted Lynn's spine at the levels C3, C6, C7, T1, T3, T5, T8, T10, L2, L4, and RIII. (Jt. Ex. 9, p. 3) Lynn returned on April 30, 2015, rating her pain at five out of ten. (Jt. Ex. 9, p. 4) Dr. Arndorfer adjusted her spine at levels C2, C5, C7, T2, T6, T10, L4, and R-III. (Jt. Ex. 9, p. 5) On May 15, 2015, Lynn's pain was at four of ten and Dr. Arndorfer adjusted her spine at C2, C7, T2, T5, T10, and LIII. (Jt. Ex. 9, pp. 6–7)

Lynn went to the Iowa Clinic on May 21, 2015, to establish care, primarily for her fibromyalgia, with the intent of ending her use of Tramadol. (Jt. Ex. 10, pp. 1–4) Eight days later, Lynn went to Simply Chiropractic, rated her pain as three out of ten, and received adjustments to her spine at levels C2, C7, T2, T5, T10, L4, and R-III. (Jt. Ex. 9, pp. 8–9) On July 10, 2015, Lynn returned to the Iowa Clinic and reported little improvement with her fibromyalgia and "more pain in her neck" as she has weaned off Tramadol. (Jt. Ex. 10, p. 5)

Jonathan Crosbie, D.O., developed a plan for her symptoms. (Jt. Ex. 10, p. 7) With respect to Lynn's fibromyalgia and neck pain, he recommended physical therapy and noted she wanted to continue seeing a chiropractor, which he endorsed as it seemed to be helping her. (Jt. Ex. 10, p. 7) Because Lynn complained of cervical radiculopathy, Dr. Crosbie ordered magnetic resonance imaging (MRI). (Jt. Ex. 10, p. 7)

Lynn sought care at Pure Wellness Chiropractic and Acupuncture in Clive on June 29, 2015, for chronic neck pain. (Jt. Ex. 12, pp. 1, 3) Justin Allen, D.C. provided care, noting, "Asymmetry present at C6 on the right with pain traveling in a dermatomal pattern and hypomobility noted at this segment. Asymmetry present at T4 on the left and hypomobility noted at this segment. Asymmetry present at L3 on the right and hypomobility noted at this segment." (Jt. Ex. 12, p. 1) He used a Functional Rating Index (FRI) tool to assess Lynn at a moderate disability level. (Jt. Ex. 12, p. 1)

Lynn returned to Pure Wellness the next day. (Jt. Ex. 12, p. 3) Dr. Allen noted she complained of "neck pain" that went into her shoulder and upper back as well as low back pain. (Jt. Ex. 12, p. 3) He performed manipulations to the spine at the levels C6, T4, and L3. (Jt. Ex. 12, p. 3) Dr. Allen did the same on July 9, 2015, and July 13, 2015. (Jt. Ex. 12, pp. 4–5)

On July 16, 2015, Lynn saw Pier Osweiler, A.R.N.P., at the Iowa Clinic, complaining of "chronic pain in her neck," with pain radiating to her shoulders and right

arm like "electricity." (Jt. Ex. 10, p. 8) She rated her pain as a six out of ten, which she found tolerable. (Jt. Ex. 10, p. 8) Lynn described the pain as "constant," though it varied in intensity depending on her activity level. (Jt. Ex. 10, p. 8) Because of the pain, Lynn was on Celebrex without prior approval and was continuing Tramadol. (Jt. Ex. 10, p. 8)

Lynn underwent the MRI of her cervical spine ordered by Dr. Crosbie on July 22, 2015. (Jt. Ex. 13, p. 1) Kevin Koch, M.D., made the following findings on review:

1. Slight degree of straightening of cervical lordosis. Scattered lymph nodes are seen in the cervical chain region, jugulodigastric area, sublingual region and submandibular regions. Clinical correlation requested. Correlation with physical exam findings pertaining to the soft tissues of the neck requested. There appear to be a few small perineural nerve root sheath cystic changes in a few of the visualized neural foramina.

2. At the C4-C5 level there is some right uncovertebral joint hypertrophic change producing a slight degree of right lateral recess stenosis and right neural foraminal encroachment at the C4-C5 level.

3. At the C5-C6 level there is a small amount of central endplate osteophytic spurring and mild central annular bulge which produces mild effacement of subarachnoid space centrally anterior to the cervical cord posterior to the C5-C6 disc space. There are some relatively mild spondylosis changes seen in the visualized upper thoracic spine. Mild degree of right paracentral spondylosis at the T2-T3 level. Signal intensity of cervical cord and visualized upper thoracic cord relatively unremarkable.

(Jt. Ex. 13, p. 2)

Osweiler treated Lynn at the Iowa Clinic again on August 14, 2015. (Jt. Ex. 10, p. 13) She reported her pain "unchanged since her last visit" and "well controlled." (Jt. Ex. 10, p. 13) Osweiler continued her medications. (Jt. Ex. 10, p. 14)

On October 7, 2015, Lynn continued care at Simply Chiropractic, rating her pain as six out of ten, and receiving adjustments to both wrists and her spine at levels C2, C4, C7, T2, T5, T8, L2, and RIII. (Jt. Ex. 9, pp. 10–11). Lynn returned on October 27, 2015, rating her pain as a seven out of ten, and received adjustments to her wrists and spine at levels C4, C7, T1, T5, T8, T11, and RIII. (Jt. Ex. 9, pp. 12–13)

2016

Lynn saw Dr. Crosbie for her annual checkup on March 25, 2016. (Jt. 10, p. 16) Under a note labeled "fibromyalgia/chronic pain/narcotic dependence," Dr. Crosbie noted Lynn requested a refill of Tramadol, which he declined. (Jt. Ex. 10, p. 18) He

informed her he does not do chronic pain management with such medications and encouraged her to wean down off the drug. (Jt. Ex. 10, p.18)

On May 13, 2016, Lynn returned to Simply Chiropractic, where she rated her pain level as six out of ten, and received adjustments to her wrist, elbow, and spine at levels C2, C5, C7, T2, T5, T8, T10, T12, and RIII. (Jt. Ex. 9, pp. 14–15)

Lynn started care at Capital Chiropractic in Des Moines on June 24, 2016. (Jt. Ex. 14, p. 1) According to chart notes from the visit, Lynn described "constant (75-100%) aching discomfort in the back of the neck" rated as seven out of ten and "constant (75-100%) aching, shooting, tightness and throbbing discomfort in the low back" at a level of seven out of ten." (Jt. Ex. 14, p. 4) She also described feeling "rigid through her neck." (Jt. Ex. 14, p. 4) Lynn shared that she threw her back out two days earlier, but implied it was feeling better. (Jt. Ex. 14, p. 4) Christopher LoRang, D.C., diagnosed Lynn with low back pain, cervicalgia, and segmental and somatic dysfunction of the sacral, lumbar, thoracic, cervical, and head regions. (Jt. Ex. 14, pp. 7–8) He adjusted Lynn's spine at: C1, T1-T4, T4-T8, and L1-4. (Jt. Ex. 14, p. 8)

Lynn went back to Simply Chiropractic on August 5, 2016, rated her pain as eight out of ten, and received adjustments to her wrists and spine at levels C2, C4, C7, T2, T4, T6, T8, T11, and L4. (Jt. Ex. 9, pp. 16–17) She returned seven days later, rated her pain as four out of ten, and received adjustments to her left elbow, wrists, and spine at levels C3, C6, T4, T7, T10, L1, and R-III. (Jt. Ex. 9, pp. 18–19) On September 16, 2016, Lynn put her pain level as three out of ten and received adjustments to her left elbow, wrists, and spine at levels C3, C6, T3, T6, T8, T12, L2, and LIII. (Jt. Ex. 9, pp. 20–21) Lynn returned on October 7, 2016, assessed her pain as a three out of ten, and underwent adjustments to her wrists and spine at levels C3, C5, C7, T3, T5, T9, and RIII. (Jt. Ex. 9, pp. 22–23) On November 3, 2016, Lynn rated her pain as six out of ten and received adjustments to her wrists and spine at levels C3, C7, T1, T6, T10, T12, and RIII. (Jt. Ex. 9, pp. 24–25)

On December 27, 2016, Lynn switched to Meylor Chiropractic and Acupuncture in Des Moines. (Jt. Ex. 15, p. 1) She complained of pain in her neck, back, low back, and hip. (Jt. Ex. 15, p. 2) Lynn graded her pain at between six and eight out of ten generally and at between eight and ten out of ten upon movement. (Jt. Ex. 15, p. 1) An exam showed the C6 and L4 vertebrae were subluxated and fixated to the left with decreased motion upon left lateral flexion. (Jt. Ex. 15, p. 2) The T4 vertebrae was subluxated and fixated to the right with decreased motion upon right lateral flexion. (Jt. Ex. 15, p. 2) Moreover, Lynn's thoracic range of motion was limited and produced a pain reaction. (Ex. 15, p. 2) Radiation was noted from her spine to the costal area in a dermatomal pattern. (Jt. Ex. 15, p. 2) Lynn received adjustments to the affected areas. (Jt. Ex. 15, p. 2)

2017

As discussed above, Lynn was in a single-car crash on January 10, 2017, while driving as part of her employment. She did not immediately seek care after the crash.

Lynn went to the Iowa Clinic for care on January 12, 2017. (Jt. Ex. 16, p. 1) According to the records from the appointment, Lynn complained of "significant neck pain" since the crash. (Jt. Ex. 16, p. 1) She had no complaints of radiculopathy, numbness, tingling, or weakness. (Jt. Ex. 16, p.1) Lynn had also been experiencing headaches. (Jt. Ex. 16, p. 1) Eric Donels, D.O., prescribed Tramadol, flexeril, and a Medrol dose pak, and took her off work for two weeks. (Jt. Ex. 16, p. 2)

Lynn went to Simply Chiropractic on January 13, 2017. (Jt. Ex. 17, p. 1) She rated her pain at seven out of ten. (Jt. Ex. 17, p. 1) Lynn was diagnosed with a sprain of cervical ligaments, pain in the thoracic spine, cervicalgia, and segmental and somatic dysfunction of her cervical, thoracic, lumbar, sacral regions, and upper extremity. (Jt. Ex. 17, p. 3) Lynn received adjustments to her spine at the levels C3, C5, T3, T4, T6, T8, T11, L4, and S1. (Jt. Ex. 17, p. 3)

On January 26, 2017, Lynn returned to the Iowa Clinic with complaints of ongoing neck pain and anxiety. (Jt. Ex. 16, p. 3) She requested to remain off work due to her ongoing symptoms. (Jt. Ex. 16, p. 3) Dr. Donels arranged for an MRI of her cervical spine and physical therapy due to her ongoing symptoms. (Jt. Ex. 16, p. 4) He also took her off work for another 30 days. (Jt. Ex. 16, p. 5)

Lynn began physical therapy at Rock Valley Physical Therapy on February 22, 2017. (Jt. Ex. 19, p. 1) On evaluation, Lynn demonstrated "signs and symptoms consistent with cervico/thoracic myofascial tightness and pain." (Jt. Ex. 19, p. 2) Rock Valley created a plan of two visits per week for eight weeks. (Jt. Ex. 19, p. 2)

Lynn underwent an MRI at the Iowa Clinic on February 6, 2017. (Jt. Ex. 16, p. 6) Dr. Koch compared it to Lynn's prior MRI of July 22, 2015. (Jt. Ex. 16, p. 6) He noted:

> Some straightening of cervical lordosis. Posteriorly inferiorly in the right parotid salivary gland there is a small focus of signal alteration which appears stable compared to previous cervical MRI examination 07/22/2015. Also, again noted are multiple lymph nodes in the soft tissues of the neck, some of these lymph nodes measure greater than 1 cm in size, many of these lymph nodes were present on prior cervical MRI examination 07/22/2015. Portions of the right carotid artery tortuous and sweeps relatively far medially in the paracervical right parapharyngeal soft tissues.
>
> At the C2-C3 level there is left articular facet hypertrophic change.
>
> At the C3-C4 level there are right-sided bony hypertrophic changes producing a slight degree of right C3-C4 neural foraminal encroachment.
>
> At the C4-C5 level there is right uncovertebral joint bony hypertrophic change which produces a slight degree of right lateral recess stenosis and some right C4-C5 neural foraminal encroachment.

> At the C5-C6 level there is posterior degenerative annular fissure with small component of central disc protrusion producing effacement of subarachnoid space anterior to the cervical cord and producing mild flattening of the anterior surface of the cervical cord.
>
> C6-C7 disc relatively unremarkable.
>
> C7-T1 disc unremarkable. Mild spondylosis with some right paracentral annular bulge at the T2-T3 level.

(Jt. Ex. 16, pp. 6–7)

On February 8, 2017, Lynn reported to the Iowa Clinic with complaints of dizziness. (Jt. Ex. 16, p. 8) According to Dr. Hawk, Lynn's vertigo was not present during her visit and he instructed her to go to emergency room if her symptoms worsened and he would order an MRI if they continued the next day. (Jt. Ex. 16, p. 10) Because her dizziness did not resolve, she underwent an MRI of her brain on February 13, 2017. (Jt. Ex. 16, p. 12) Dr. Koch interpreted the MRI and recommended additional imaging with contrast. (Jt. Ex. 16, p. 12) Lynn underwent the second MRI of her brain the next day. (Jt. Ex. 16, p. 14) The Iowa Clinic diagnosed her with post-concussion syndrome. (Jt. Ex. 16, p. 18)

That same day, Lynn also received trigger point injections and occipital blocks. (Jt. Ex. 16, p. 13) But they only offered short-lived relief from her symptoms. (Jt. Ex. 16, p. 15) According to Lynn, the pain she experienced led her to stay in bed most of the day. (Jt. Ex. 16, p. 15) Dr. Donels instructed Lynn to follow the recommendations of pain management and referred her to a spine specialist. (Jt. Ex. 16, p. 18)

Lynn went to the emergency room (ER) at Iowa Methodist on February 12, 2017, because of a headache. (Jt. Ex. 18, p. 1) The headache began the night before, made it so she could not sleep, and worsened that day. (Jt. Ex. 18, p. 1)

On March 5, 2017, Lynn went to the Urgent Care at the Iowa Clinic. (Jt. Ex. 16, p. 19) She complained of a post-concussion headache that had started the day prior. (Jt. Ex. 16, p. 19) Bridget Dull, A.R.N.P., noted "[s]ignificant muscle tension on exam," administered an injection of Toradol and Valium, changed her prescription from Flexeril to Soma, and instructed her to start prednisone the next day. (Jt. Ex. 16, p. 22)

Lynn saw Pier Osweiler, A.R.N.P., at the Iowa Clinic on March 9, 2017. (Jt. Ex. 16, p. 23) She estimated her headaches had become daily in their regularity. (Jt. Ex. 16, p. 23) Osweiler noted "excellent results" from the February 14 trigger point injections and occipital blocks and that Lynn's pain was "well controlled" by her following her pain treatment as prescribed. (Jt. Ex. 16, p. 23) Osweiler set Lynn on the plan to continue her medication, follow up for trigger point injections, and referred her for botox injections. (Jt. Ex. 16, p. 25)

On March 9, 2017, Lynn also went to Simply Chiropractic, where she rated her pain level as eight out of ten. (Jt. Ex. 17, p. 4) She was diagnosed with a sprain of cervical ligaments, cervicalgia, pain in the thoracic spine, and segmental and somatic dysfunction of the cervical, thoracic, and lumbar regions, and the upper extremity. (Jt. Ex. 17, pp. 4–5) She received adjustments to her wrist and spine at the levels: C2, C6, C7, T1, T4, T8, T10, and L2. (Jt. Ex. 17, p. 5)

Lynn went to see David Hatfield, M.D., at Des Moines Orthopaedic Surgeons (DMOS) on March 15, 2017. (Jt. Ex. 20, p. 1) Dr. Hatfield noted Lynn appeared to have "two separate potential etiologies to symptoms: specifically potential mechanical change associated with motor vehicle incident itself as well as some component of neural change." (Jt. Ex. 20, p. 2) Dr. Hatfield assigned work restrictions of no driving, limited overhead work, and no lifting more than 10 to 15 pounds. (Jt. Ex. 20, p. 2) On causation, Dr. Hatfield opined, "Regarding causation absent significant, ongoing symptoms predating episode as related, I would relate her current symptoms to the January of 2017 incident. (It is my understanding she had had prior cervical pain however these had been per her description quiet for greater than one year)." (Jt. Ex. 20, p. 2)

Dr. Hawk examined Lynn on March 22, 2017. (Jt. Ex. 16, pp. 26–31) He continued physical therapy and agreed that Lynn may benefit from botox injections. (Jt. Ex. 16, p. 29) Dr. Hawk released Lynn to return to work with the restrictions of no computer work due to it causing headaches, mental rest, and no driving (because Dr. Hatfield assigned the restriction). (Jt. Ex. 16, p. 31)

Lynn returned to Simply Chiropractic on April 4, 2017, and rated her pain as six out of ten. (Jt. Ex. 17, p. 6) Her diagnosis there remained the same as at her prior visit. (Jt. Ex. 17, p. 6–7) She received adjustments to her wrist and spine at the levels C2, C7, T2, T5, T7, T10, L5, and RIII. (Jt. Ex. 17, p. 7)

On April 14, 2017, Lynn saw Steven Adelman, D.O., at Mercy Ruan Neurology Clinic. (Jt. Ex. 26, p. 1–4) Dr. Adelman noted Lynn complained of persistent headache, which she rated as ranging from a pain level of six to ten on a one-to-ten scale, and neck pain, ranging between seven and ten on the same scale. (Jt. Ex. 26, p. 1) Her neck pain was in the posterior cervical region, occasionally radiating into her trapezius and thorax. (Jt. Ex. 26, p. 1) Lynn described her headaches "as a pressure sensation with episodic migraine headaches that may be severe enough that she needs to lay down in a dark room." (Jt. Ex. 26, p. 1) Dr. Adelman further noted:

> She describes major problems with decreased concentration. She believes that her recent memory is more severely affected than her remote memory. She gives examples where she may not schedule enough time for her to drive to her massage appointment. At times she believes that her speech becomes somewhat nonfluent and this has been noticed by her boyfriend and by her attorney.

(Jt. Ex. 26, p. 1)

Dr. Adelman performed a neurologic examination, which he described as "normal." (Jt. Ex. 26, p. 3) He found the MRI of her cervical spine "unremarkable." (Jt. Ex. 26, p. 3) With respect to Lynn's head injury, Dr. Adelman opined:

> Clinically I believe that she did suffer a cerebral concussion however I would presume this to be relatively mild in nature given the fact that there was no loss of consciousness. I do not believe that she sustained serious intracranial injury nor should she have any residual from her concussion.

(Jt. Ex. 26, p. 3)

Dr. Adelman also opined he "believe[d] she suffered cervical strain with tension type headache that she still is experiencing." (Jt. Ex. 26, p. 3) He further asserted Lynn "relates a variety of cognitive issues which I believe are either embellished or related to her discomfort which causes her inability to focus." (Jt. Ex. 26, p. 3) Due to Lynn's subjective complaints, Dr. Adelman was not comfortable releasing her to return to work or driving. (Jt. Ex. 26, pp. 3–4)

Kurt Smith, D.O., examined Lynn at Iowa Ortho on April 21, 2017. (Jt. Ex. 21, p. 1) He described her symptoms as moderate, her pain as intermittent, and her problem as improving. (Jt. Ex. 21, p. 1) Dr. Smith also reviewed Lynn's MRIs up to that point. (Jt. Ex. 21, pp. 3–4) He concluded Lynn sustained a soft tissue whiplash injury to the cervical spine and his examination did not show evidence of cervical radiculopathy. (Jt. Ex. 21, p. 4) Dr. Smith found Lynn had reached maximum medical improvement (MMI) and there was nothing additional to offer her from a physical medicine and rehabilitation standpoint. (Jt. Ex. 21, p. 4) He opined she should avoid repetitive hyperextension of the cervical spine and assigned the work restrictions of avoiding repetitive reaching above her head and repetitive work above shoulder level. (Jt. Ex. 21, p. 4–5)

In a letter dated May 3, 2017, the defendants solicited Dr. Smith's opinion on what, if any, permanent disability Lynn had sustained due to the car crash. (Jt. Ex. 21, p. 6) Dr. Smith responded in a letter dated June 12, 2017, stating his examination demonstrated full range of motion of the cervical spine, upper extremity motor strength of 5/5 and symmetrically intact, intact sensation in her bilateral upper extremities, and no evidence of neurological impairment of the upper extremities. (Jt. Ex. 21, p. 6) He then used the Fifth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (Guides) to conclude Lynn sustained a zero percent impairment due to the car crash. (Jt. Ex. 21, p. 6)

Dr. Adelman referred Lynn to Campbell Neuropsychological Services, where she underwent a neuropsychological evaluation on June 8, 2017. (Jt. Ex. 35, p. 1) Derek Campbell, PhD., a clinical psychologist issued a report based on the evaluation on June 21, 2017. (Jt. Ex. 35, pp. 1–3) Dr. Campbell performed an analysis of performance in auditory comprehension, verbal fluences, confrontation naming, auditory attention, effortful concentration (alpha-numeric sequencing), mental calculation, abstraction, speeded visuomotor coordination, complex mental tracking/set-shifting, visual

perception analysis, and visual memory. (Jt. Ex. 35, p. 2) He summarized his impressions thusly:

> In reference to the primary referral question, Ms. Lynn produces a negative cognitive profile. Performances fall within normal limits across all assessed realms, including attention, memory, language, reasoning, visual perception analysis, speed of information processing, and set-shifting. She appears to have sufficient cognitive faculties to resume her job. In terms of psychological functioning, her presentation suggests mood dysregulation most characterized by persistent mild dysthymia and flares of anxiety ranging from mild to severe in intensity.

(Jt. Ex. 35, p. 3) Dr. Campbell recommended Lynn see a psychiatrist. (Jt. Ex. 35, p. 3)

Lynn followed up with Dr. Adelman on June 27, 2017, after neuropsychological testing. (Jt. Ex. 26, p. 5) Lynn shared with him that her symptoms improved at times but she often experienced relapses. (Jt. Ex. 26, p. 5) Dr. Adelman noted:

> We did review formal neuropsychological testing with her that she had already had read. In particular all performances on her testing fell within normal limits across all assessed realms, including attention, memory, language, reasoning, visual perceptual analysis, speed of information processing, and set shifting. It was felt that she had sufficient cognitive faculties to resume her job. [It] was also felt that in terms [of] psychological functioning her presentation suggested mood dysregulation most characterized by persistent mild dysthymia in flares of anxiety ranging from mild to severe intensity. Was recommended that she seek psychiatric consultation. It was not felt that a repeat neuropsychological evaluation was necessary.
>
> I have told Ms. Lynn that I would release her to return to work from the neurologic standpoint. I believe that she has reached maximal medical improvement. She does not agree with my assessment. She questions whether in fact "brain wave testing" would be of benefit. I do not believe that computerized EEG analysis w[ould] change her diagnosis or treatment. Obviously the most important aspect is her cognitive function which on formal testing was excellent. I have released her to return to work on June 27, 2017.

(Jt. Ex. 26, p. 7)

On June 28, 2017, Lynn followed up at the Iowa Clinic with Dr. Donels. (Jt. Ex. 16, p. 32) Among other complaints and inquiries, she continued to describe headaches, dizziness, and trouble concentrating. (Jt. Ex. 16, p. 32) Dr. Donels continued pain control as needed, opined he was okay with her returning to work, and filled out paperwork certifying her for intermittent leave under the federal Family and Medical Leave Act (FMLA). (Jt. Ex. 16, p. 34)

Lynn saw Dr. Hansen at the Iowa Clinic on July 27, 2017. (Jt. Ex. 16, p. 36) She complained that her neck pain and headaches had returned. (Jt. Ex. 16, p. 36) On exam, Dr. Hansen noted tenderness over the occipital protuberance bilaterally and over the cervical paraspinous muscles, trapezius, and rhomboids bilaterally. (Jt. Ex. 16, p. 36) Dr. Hansen administered occipital blocks and trigger point injections. (Jt. Ex. 16, p. 36)

Lynn returned to the Iowa Clinic on August 23, 2017, complaining of pain in her neck, face, head, and back. (Jt. Ex. 16, p. 37) She stated her pain had worsened since returning to work in July. (Jt. Ex. 16, p. 39)

A week later, Lynn returned to the Iowa Clinic. (Jt. Ex. 16, p. 40) She complained of neck pain she described as "radiating up the back of her head and down into her shoulders," headaches, and facial pain on the right side. (Jt. Ex. 16, p. 40) Dr. Donels amended Lynn's FMLA paperwork to allow for more time off, prescribed medication, and instruct her to follow pain management recommendations. (Jt. Ex. p. 16, p. 42)

Dr. Hansen treated Lynn on September 6, 2017. (Jt. Ex. p. 16, p. 43) She rated her pain as a ten out of ten and requested a referral to a specialist in neurology. (Jt. Ex. 16, p. 43) Lynn denied radiation to her arm or hand. (Jt. Ex. 16, p. 44) Dr. Hansen administered cervical medial branch test blocks on the right side. (Jt. Ex. 16, p. 44) In a follow-up visit on September 8, 2017, Lynn reported "good relief." (Jt. Ex. 16, p. 47)

Lynn's attorney at the time conferred with Dr. Hansen and sent him a check-box letter dated October 2, 2017. (Cl. Ex. 1) Dr. Hansen responded, indicating he believed Lynn's cervical facet mediated injury was caused by the car crash. (Cl. Ex. 1, p. 2) He also indicated he agreed with Dr. Smith's work restrictions of no reaching above her head and no work above shoulder level. (Cl. Ex. 1, p. 2) Moreover, Dr. Hansen opined the car crash caused a cervical facet mediated injury resulting in a five to eight percent permanent impairment to the whole body pursuant to page 392 of the Guides. (Cl. Ex. 1, p. 2) He signed and dated his opinion October 3, 2017. (Cl. Ex. 1, p. 3)

On November 17, 2017, Lynn went to the Central States Pain Clinic on referral from Dr. Donels for treatment of her neck and back pain. (Jt. Ex. 23, p. 1) She rated her pain level as ten out of ten. (Jt. Ex. 23, p. 1) Lynn shared it interfered with most daily activities and sleeping. (Jt. Ex. 23, p. 1) Christian Ledet, M.D., performed trigger point injections. (Jt. Ex. 23, pp.3–4)

Lynn returned to Central States Pain Clinic on December 20, 2017, for treatment regarding her headaches. (Jt. Ex. 23, p. 5) Andrzej Szczepanek, M.D., examined her and prescribed a trial of amitriptyline. (Jt. Ex. 23, p. 7) If the amitriptyline was ineffective, Dr. Szczepanek planned to authorize Botox injections. (Jt. Ex. 23, p. 7)

2018

On January 15, 2018, Lynn followed up with Dr. Ledet regarding her neck and back. (Jt. Ex. 23, p. 8) His assessment included diagnoses of osseous and subluxation

stenosis of intervertebral foramina of the cervical region, and disc disorder at C3-C4, C4-C5, and C5-C6 with radiculopathy. (Jt. Ex. 23, p. 9) Dr. Ledet recommended a midline C7-T1 epidural steroid injection for her symptoms, which he administered on January 18, 2021. (Jt. Ex. 23, pp. 10)

Lynn went to Stickel Chiropractic in Des Moines for care on January 16, 2018. (Jt. Ex. 22, p. 1) Jeffery Stickel, D.C., found a loss of range of motion on examination. (Jt. Ex. 22, p. 1) Dr. Stickel performed adjustments to Lynn's spine at the levels C1, C5, C6, T1, T5, T12, L5, and the sacrum. (Jt. Ex. 22, p. 2)

Simply Chiropractic received a records request from the federal Social Security Administrative (SSA) relating to Lynn's care. (Cl. Ex. 3) Dr. Arndorfer wrote a cover letter dated February 2, 2018, that Simply Chiropractic included with the records. (Cl. Ex. 3) In it, Dr. Arndorfer states:

> Prior to Jennifer's accident she had been coming in to see me for chiropractic care as needed. She had the typical aches and pains that everyone else has with no major issues. She was also receiving massage care for muscle aches. After the accident she had a drastic increase in the levels of muscular pain and tension, along with swelling and edema. Roughly 4 months after the accident, I stopped noticing the diffuse edema. Range of motion was somewhat restricted during that time and ease/fluidity of movement seemed to still be slightly impaired on her last visit.

(Cl. Ex. 3)

Defense counsel spoke with Dr. Smith regarding Lynn and on February 16, 2018, sent a check-box letter to Dr. Smith with a series of questions, blanks to indicate a "Yes" or "No" response, and space for comments. (Ex. A) Enclosed with the letter were records from Active Health Chiropractic, Country Club Chiropractic, Simply Chiropractic, Capital Chiropractic, and Dr. Sassman. (Ex. A, p. 1) Based on Dr. Smith's care of Lynn and review of the medical records provided by defense counsel, he provided his opinion by answering the questions posed in the letter. (Ex. A)

Dr. Smith indicated the documented lack of impact in the car crash reduced the likelihood of a serious whiplash injury. (Ex. A, p. 2) Lynn did not complain of radiculopathy between the car crash and Dr. Smith's evaluation of her. (Ex. A, p. 2) And she showed no evidence of cervical radiculopathy on April 21, 2017, when he examined her, even though she made such complaints earlier. (Ex. A, p. 2)

Further, Dr. Smith opined that due to the car crash on January 10, 2017, Lynn sustained at most a temporary exacerbation of a pre-existing condition. (Ex. A, p. 2) He indicated his belief that she returned to her baseline condition by the time of his April 21, 2017 evaluation. (Ex. A, p. 3) Dr. Smith affirmed his opinion that Lynn sustained no permanent impairment due to the car crash. (Ex. A, p. 3) Lastly, Dr. Smith indicated the work restrictions he assigned Lynn were needed before the car crash and not

necessitated by it. (Ex. A, p. 3) Dr. Smith signed his responses to the check-box letter and dated his signature February 23, 2018. (Ex. A, p. 3)

Defense counsel spoke with Dr. Adelman about Lynn and on February 22, 2018, sent him a check-box letter. (Ex. B) The check-box letter included a series of questions, blanks for Dr. Adelman to indicate "Yes" or "No" in response, and space for comments. (Ex. B) Dr. Adelman indicated he believes Lynn sustained a mild concussion in the January 10, 2017 car crash that would not cause ongoing or permanent residuals, permanent impairment, or necessitate further medical treatment or work restrictions. (Ex. B, p. 5) Further, he indicates Lynn sustained a minor cervical strain that would have resolved within three to six months without causing permanent impairment, a need for any permanent work restrictions, or further treatment. (Ex. B, p. 6) Dr. Adelman also agreed that "Lynn's clinical presentation was out of proportion with the objective findings" and he "found embellishment in [her] clinical presentation." (Ex. B, p. 6)

Dr. Adelman also indicated he disagreed with Dr. Sassman's impairment ratings of Lynn because they were inconsistent with his objective and clinical findings. (Ex. B, p. 7) He commented that Dr. Sassman's report states Lynn "denied headache or neck pain prior to the accident" even though "[m]edical records indicate this is not correct." (Ex. B, p. 7) Dr. Adelman further explained, "Neuropsych testing showed no evidence of memory impairment, yet Dr. Sassman gave her 2% impairment 'due to some impairment of memory.'" (Ex. B, p. 7)

On February 24, 2018, Lynn went to Mercy West Family Practice and Urgent Care for her migraine headaches. (Jt. Ex. 26, p. 9) She received Toradol from a nurse. (Jt. Ex. 26, p. 10)

Lynn saw Dr. Szczepanek for Botox injections for her headaches on January 29, 2018. (Jt. Ex. 23, p. 14) She complained of no meaningful benefit from the injection 11 days earlier. (Jt. Ex. 23, p. 16) The two discussed other potential treatment. (Jt. Ex. 23, p. 16)

Lynn's symptoms caused her to go to UnityPoint Urgent Care on March 7, 2018. (Jt. Ex. 25, p. 4) She complained of left occipital and head pain as well as facial pain for the previous two or three days. (Jt. Ex. 25, p. 4) She received injections for her migraine, with instructions to follow up with her personal physician. (Jt. Ex. 25, p. 5)

Lynn participated in physical therapy on March 29, 2018, which triggered a migraine on the right side of her head. (Jt. Ex. 26, p. 11) She returned to Mercy West Family Practice and Urgent Care. (Jt. Ex. 26, p. 11) Lynn received a shot of Toradol. (Jt. Ex. 26, p. 12)

Dr. Szczepanek performed a bilateral C2, C3, C4, and C5 medial branch block on March 2, 2018. (Jt. Ex. 23, pp. 17–20) She reported a 90 percent improvement of her symptoms on the right side and 50 percent on the left on March 27, 2018. (Jt. Ex. 23, p. 21) That day, Dr. Szczepanek performed a right C2, (third occipital nerve), C3, C4, and C4 medial branch radiofrequency ablation. (Jt. Ex. 23, p. 22–23)

Lynn went back to Mercy West Family Practice and Urgent Care on April 13, 2018, complaining of neck pain and a headache. (Jt. Ex. 26, p. 13–14) She was sensitive and tender on the right side of her neck, with symptoms worsening over the prior few days. (Jt. Ex. 26, p. 13) Staff provided her with medication to address her pain. (Jt. Ex. 26, p. 14)

On April 15, 2018, Lynn sought care at the Iowa Methodist ER. (Jt. Ex. 18, p. 4) She complained of "pain in her neck on the right side that is going into her head causing more severe headache." (Jt. Ex. 18, p. 4) Lynn also reported radiculopathy into her left index finger and thumb. (Jt. Ex. 18, p. 4) The ER gave her a shot of Toradol and denied Lynn's request for promethazine because she drove herself to the hospital. (Jt. Ex. 18, p. 6)

She returned to UnityPoint Urgent Care on April 20, 2018. (Jt. Ex. 25, p. 6) She complained of neck pain radiating to the right side of her head that she rated as 8.5 out of ten. (Jt. Ex. 25, p. 6) Lynn described it as a "typical migraine for her." (Jt. Ex. 25, p. 6) She received an injection of Toradol. (Jt. Ex. 25, p. 7)

Lynn saw Dr. Szczepanek April 25, 2018. (Jt. Ex. 23, p. 25) She shared her pain was at eight out of ten after an incident at physical therapy. (Jt. Ex. 23, p. 25) Further, according to Lynn, she was experiencing pain radiating in her arms. (Jt. Ex. 23, p. 25) Because of this, Lynn was unable to assess how the ablation procedure had impacted her symptoms. (Jt. Ex. 23, p. 25)

Central States Pain Clinic had Lynn scheduled for more Botox injections. (Jt. Ex. 23, p. 32) But on July 19, 2018, Lynn cancelled the appointment because she felt she needed immediate care, went to the clinic, where she saw Leslie Fenimore, A.R.N.P. (Jt. Ex. 23, p. 32) Lynn complained of headaches and neck pain that radiated into her arms. (Jt. Ex. 23, p. 31) Lynn rated her pain as eight out of ten. (Jt. Ex. 23, p. 31) Fenimore noted that Lynn told her she was receiving care from multiple providers, had trained herself to give Botox injections and had done so previously, and, based on internet research she had done, she wanted a referral for an MRI of her cranial nerve at the McFarland Clinic in Ames. (Jt. Ex. 23, pp. 32–35) Fenimore shared notes from the visit in a letter to Dr. Donels. (Jt. Ex. 23, pp. 34–35)

Dr. Szczepanek saw Lynn on August 17, 2018. (Jt. Ex. 23, p. 36) Her symptoms remained unchanged. (Jt. Ex. 23, p. 36) She rated her pain as eight out of ten. (Jt. Ex. 23, p. 36) Dr. Szczepanek performed medial branch block at C2-3, C3-C4, and C4-5. (Jt. Ex. 23, p. 37)

Lynn returned to see Dr. Szczepanek on August 20, 2018. (Jt. Ex. 23, p. 40) Lynn reported an 80 to 90 percent improvement of left-sided axial cervical pain following the procedure three days earlier. (Jt. Ex. 23, p. 40) Dr. Szczepanek performed Botox injections to treat her headaches. (Jt. Ex. 23, pp. 41–42)

She went back to Mercy West Family Practice and Urgent Care on April 24, 2018, (Jt. Ex. 26, p. 15) She complained of pain in her back and neck. (Jt. Ex. 26, p. 15) Lynn received Toradol. (Jt. Ex. 26, p. 16)

On June 27, 2018, Lynn sought care at Mercy Clinics in Iowa City. (Jt. Ex. 26, p. 17) She described feeling weird and not the same after the car crash due to a cloudy feeling in her head. (Jt. Ex. 26, p. 17) Lynn complained she felt uncoordinated, nauseous, and dizzy, when propranolol wears off. (Jt. Ex. 26, p. 17) Lara Lazarre, M.D., went through a multi-pronged plan to reduce Lynn's headaches that included a focus on reducing pain medication, reducing triggers, dietary changes, stress control, and at least eight hours of sleep nightly. (Jt. Ex. 26, pp. 19–20)

Lynn returned to Mercy Clinics in Iowa City on July 24, 2018, for a follow-up appointment. (Jt. Ex. 26, p. 21) Dr. Lazarre reiterated the plan to reduce her migraines. (Jt. Ex. 26, pp. 23–24) Lynn went off Xanax and tizanidine and increased gabapentin as part of the plan. (Jt. Ex. 26, p. 27) On October 2, 2018, Lynn returned to see Dr. Lazarre, complaining that she had not experienced the improvement she thought possible, with migraines spiking. (Jt. Ex. 26, pp. 27–28) They scheduled a follow-up appointment.

Lynn went to the Iowa Heart Center on August 13, 2018, for heart palpitations. (Jt. Ex. 27, p. 1) She "had an unremarkable cardiac workup and no arrhythmias seen." (Jt. Ex. 27, p. 1) Ryan Young, P.A., discussed with Lynn that musculoskeletal pain management may be the best way to manage her heart palpitations. (Jt. Ex. 27, p. 1)

Lynn sought care at UnityPoint Urgent Care on September 18, 2018. (Jt. Ex. 25, p. 8) She complained of a migraine with flashing lights the night before and that morning, dizziness, nausea, and sensitivity to light and sound. (Jt. Ex. 25, p. 8) Lynn described the migraine as typical, stating it is not the worst she has had. (Jt. Ex. 28, p. 10) She received injections of phenergan, toradol, and benadryl. (Jt. Ex. 25, p. 10)

On October 28, 2018, Lynn saw Adam Andrews, D.O., at UnityPoint Urgent Care. (Jt. Ex. 25, p. 11) Lynn complained of a headache sudden in onset and preceded by an aura consisting of visual scintillations. (Jt. Ex. 25, p. 11) Dr. Andrews treated Lynn's headache with toradol. (Jt. Ex. 25, p. 12)

Lynn saw Dr. Lazarre in Iowa City on November 1, 2018. (Jt. Ex. 26, p. 33–34) She complained of tingling having developed in her hands and face, drooping face in her mouth, and difficulty managing her medications. (Jt. Ex. 26, p. 34) Lynn expressed interest in hyperbaric oxygen therapy. (Jt. Ex. 26, p. 34) They scheduled a follow-up appointment for February the following year.

Lynn returned to UnityPoint Urgent Care on November 3, 2018, complaining of a migraine. (Jt. Ex. 25, p. 13) She identified her pain level as 2,000 on a scale of one to ten. (Jt. Ex. 25, p. 13) Lynn described her pain as frontal pressure with electrical sensation. (Jt. Ex. 25, p. 13) She received a Toradol injection. (Jt. Ex. 25, p. 14)

On December 10, 2018, Lynn returned to Central States Pain Clinic, where she saw Dr. Szczepanek. (Jt. Ex. 23, p. 43) She rated her pain as eight out of ten on average. (Jt. Ex. 23, p. 43) Dr. Szczepanek prescribed a trial of Ajovy, with the course of care moving forward determined by how well it worked. (Jt. Ex. 23, p. 44)

2019

Lynn received care at Meylor Chiropractic and Acupuncture on January 9, 2018. (Jt. Ex. 24, p. 1) She complained of neck pain and headaches. (Jt. Ex. 24, p. 2) According to Neal Meylor, D.C., he performed adjustments on Lynn. (Jt. Ex. 24, p. 2)

Lynn went to Central States Pain Clinic for a left C2, C3, C4, and C5 medial branch radiofrequency ablation on January 23, 2019. (Jt. Ex. 23, p. 46) Dr. Szczepanek noted no material change in her condition since her visit in December. (Jt. Ex. 23, p. 46) He performed the procedure as planned. (Jt. Ex. 23, pp. 46–48)

Lynn returned to Mercy Clinics in Iowa City on February 18, 2019, to see Dr. Lazarre. (Jt. Ex. 26, p. 38) Lynn shared her pain had improved in her temples, but her nausea and dizziness had continued to worsen. (Jt. Ex. 26, p. 39) She still was experiencing confusion at times. (Jt. Ex. 26, p. 39) They scheduled a follow-up appointment for three months later. (Jt. Ex. 29, p. 40)

On February 26, 2019, Lynn returned to Central States Pain Clinic. (Jt. Ex. 23, p. 49) She complained of pain in her "entire" neck, "all over the back of the head and both sides," and radiating into her upper back and left shoulder. (Jt. Ex. 23, p. 49) Lynn rated her average level of pain as nine out of ten. (Jt. Ex. 23, p. 49) Nonetheless, she assessed the impact of the ablation Dr. Szczepanek performed the month prior to have provided a 70 percent reduction in pain. (Jt. Ex. 23, p. 49) Dr. Szczepanek prescribed a trial of Aimovig for Lynn's headaches and they discussed bilateral occipital nerve blocks as a possible treatment. (Jt. Ex. 23, p. 51)

Lynn went to the Iowa Ear Center on February 27, 2019, for treatment for vertigo. (Jt. Ex 30, p. 1) She described the history of her vertigo as follows:

> [Lynn notes a history of right [benign paroxysmal positional vertigo (BPPV)] ever since her concussion s/p MVA 2 years ago. She had it right after the MVA and the positional s[p]inning symptoms went away. They came back 2 months ago when she was doing yoga. She has been to PT and Epley done. When they were doing it, she became very sick.

(Jt. Ex. 30, p. 1)

Lynn returned to the Iowa Ear Center on March 4, 2019, to undergo additional testing. (Jt. Ex. 30, p. 3) She underwent an Epley maneuver to treat her right posterior semicircular canal BPPV and was instructed to follow up with Fyzical to rule out BPPV in other canals. (Jt. Ex. 30, p. 3) Lynn followed up on March 15, 2019, and denied any

improvement from therapy at Fyzical. (Jt. Ex. 30, p. 5) She was instructed to continue therapy at Fyzical to resolve BPPV. (Jt. Ex. 30, p. 6)

Lynn went back to Meylor Chiropractic and Acupuncture on March 19, 2019. (Jt. Ex. 24, p. 4) She rated her pain between two and four out of ten. (Jt. Ex. 24, p. 5) Dr. Meylor performed adjustments. (Jt. Ex. 24, pp. 5–6)

On April 20, 2019, Lynn went to the Des Moines University (DMU) Clinic, complaining of "chronic continuous head and neck pain" since the January 2017 car crash. (Jt. Ex. 32, p. 1) The DMU Clinic notes also observe that "prior to the [car crash] she had significant neck and hip arthritis and pain." (Jt. Ex. 32, p. 1) With respect to Lynn's headaches, they state:

> She had no [history] of migraines before accident[.] She has had continuous headaches since the accident. Initially felt like a throb, but after steroids, it changed to a pressure; 8/10 generally but flu[ct]uates.

(Jt. Ex. 32, p. 1)

Lynn had an appointment with Dr. Lazarre at Mercy Clinics in Iowa City on May 17, 2019. (Jt. Ex. 26, p. 42) She reported her migraines were somewhat better and her headaches had improved due to lower blood pressure. (Jt. Ex. 26, p. 43) However, Lynn complained of ongoing severe fatigue and episodes of confusion. (Jt. Ex. 26, p. 43)

On May 22, 2019, Lynn returned to UnityPoint Urgent Care due to a headache. (Jt. Ex. 25, p. 15) She shared complaints of ongoing neck pain and headaches. (Jt. Ex. 25, p. 15) Lynn received an injection of Toradol for her headache. (Jt. Ex. 25, p. 16)

Defense counsel sent Dr. Szczepanek medical records from Dr. Smith, Dr. Adelman, and Dr. Sassman along with a check-box letter dated May 31, 2019, that contained a series of questions. (Ex. C) Dr. Szczepanek responded by a letter dated June 12, 2019. (Ex. C) In response to a question about Lynn having a pre-existing neck condition, Dr. Szczepanek wrote, "The patient had been seen/received treatment(s) for her cervical complaints/headache by several providers before her accident." (Ex. C, p. 11) Dr. Szczepanek also indicated he believes Lynn's MRI findings from 2017 and after the January 10, 2017 accident are "very similar." (Ex. C, pp. 11–12)

Defense counsel also asked whether:

1) Dr. Szczepanek was "unable to causally relate the symptom complaints" Lynn presented to him with the January 10, 2017 car crash; and

2) The car crash most likely would have caused a temporary aggravation of symptoms from Lynn's pre-existing condition that would have resolved within approximately three months. (Ex. C, p. 12)

Dr. Szczepanek responded to the compound question, "Yes; Based on the mechanics of Ms. Lynn's injury, the incident would have caused a temporary exacerbation of symptoms." (Ex. C, p. 12) Thus, he agreed that he was unable to causally relate Lynn's complained-of symptoms to the car crash at the center of this case and he believes the crash most likely caused a temporary aggravation of Lynn's pre-existing condition. Dr. Szczepanek also agreed that Lynn did not complain of radiculopathy at his most recent examination of her and he would anticipate her pre-existing condition would result in periodic radiculopathy complaints unrelated to the car crash on January 10, 2017. (Ex. C, p. 12)

Lynn again saw Dr. Lazarre at Mercy Clinics in Iowa City on June 17, 2019, for a follow-up appointment regarding her migraines. (Jt. Ex. 26, p. 46) She reported the reduction in lamictal worsened her temper and the reduction in gabapentin worsened her vertigo. (Jt. Ex. 26, p. 47) Lynn was continuing physical therapy for her dizziness, but that was set to conclude in the near future. (Jt. Ex. 26, p. 47)

Lynn returned to Central States Pain Clinic on July 11, 2019. (Jt. Ex. 23, p. 52) She complained of posterior neck pain on the left side and all over the back, front, and side of her head, but had no radiating pain. (Jt. Ex. 23, p. 52) Dr. Szczepanek administered trigger point injections. (Jt. Ex. 23, p. 53–54)

Lynn went to Iowa Ear Center on July 18, 2019, for an unscheduled appointment. (Jt. Ex. 30, p. 7) Her 20 sessions of therapy at Fyzical had resolved her right BPPV. (Jt. Ex. 30, p. 7; Jt. Ex. 31) The Center advised her to follow up as needed. (Jt. Ex. 30, p. 8)

On August 28, 2019, Dr. Szczepanek performed left C2, C3, C4, and C5 medial branch radiofrequency ablation. (Jt. Ex. 23, pp. 55–56) That same day she went to UnityPoint Urgent Care complaining of neck pain. (Jt. Ex. 25, p. 17) Staff advised her to follow up with her pain specialist the next day. (Jt. Ex. 25, p. 19)

Robin Sassman, M.D., saw Lynn for an IME on December 11, 2019. (Cl. Ex. 2) As part of the IME, Dr. Sassman reviewed 545 pages of medical records from the following providers and time periods:

- Simply Chiropractic, January 13, 2017–August 16, 2017;
- The Iowa Clinic, February 3, 2017–April 24, 2018;
- Iowa Methodist Medical Center, February 17, 2017–April 15, 2018;
- Rock Valley Physical Therapy, February 22, 2017–April 12, 2017;
- Iowa Pathology Associates, P.C., March 16, 2017;
- Mercy Ruan Neurology Clinic, April 14, 2017–June 27, 2017;
- Campbell Neuropsychological Services, P.C., June 21, 2017;
- Skinner Law Firm, October 2, 2017;
- Central States Pain Clinic, November 17, 2017–July 19, 2018;
- Medix Occupational Health, November 27, 2017;
- UnityPoint at Home, December 28, 2017–July 5, 2018;
- Ahlers and Cooney, February 16, 2018;
- UnityPoint Health, March 7, 2018–July 25, 2018;

- Mercy West Family Practice and Urgent Care, April 24, 2018;
- Mercy Clinics, May 29, 2018–July 24, 2018;
- Iowa Heart Center, June 13, 2018–August 13, 2018;
- Mary Greeley Medical Center, July 13, 2018; and
- Progressive Rehabilitation Associates, September 17, 2018.

There is no indication Dr. Sassman reviewed any records relating to care Lynn received for symptoms pre-dating the car crash central to this case. (Cl. Ex. 2, pp. 1–14) It is more likely than not Dr. Sassman did not review records from the providers as detailed above from 2009 through 2016, except for some referencing Lynn's 2015 cervical MRI. Dr. Sassman states in her report the following regarding Lynn's pre-crash symptoms:

> After starting her job at Drynachan, Ms. Lynn noted that she had some neck pain due to the amount of driving that was required. She states that this was the reason for the cervical MRI that was done on 7/22/15. This showed slight right lateral recess stenosis and right neural foraminal encroachment at C4-5. At C5-6, there was a small amount of central endplate osteophytic spurring and mild central annular bulge which produced mild effacement of the subacrachnoid [*sic*] space. Ms. Lynn states that her neck symptoms resolved shortly after this MRI was done.

(Cl. Ex. 2, pp. 2–3)

Dr. Sassman diagnosed Lynn with cervical pain and head trauma. (Jt. Ex. 2, p. 16) On the question of what caused the diagnoses, she opined:

> Ms. Lynn had one episode of cervical pain in 2015 after she started the job at Drynachan and had to do a lot of driving. She stated that the symptoms resolved with conservative treatment. She then denies having any ongoing cervical symptoms or head pain until the motor vehicle accident that occurred on 1/10/17. It was on this date that she was driving her car on slick roads when her car started to spin, and she went into a ditch. During the accident she hit her head on the headrest. She has had the above symptoms since that time. Given this information, it is my opinion that the motor vehicle accident that occurred on 1/10/17 was a direct and causal factor in the above diagnoses, the need for the care she has received up to this point and the need for her ongoing care.

(Cl. Ex. 2, p. 16–17)

Dr. Sassman concluded Lynn reached MMI on December 20, 2019, because her care at the time was for symptom management and unlikely to change her impairment rating. (Cl. Ex. 2, p. 17) Dr. Sassman assigned the permanent work restrictions of:

- Limit lifting, pushing, pulling, and carrying to up to 20 pounds occasionally from floor to waist and waist to shoulder level;

- No lifting, pushing, pulling, or carrying above shoulder height;
- No using vibratory or power tools. (Cl. Ex. 2, p. 18)

On the question of permanent impairment to Lynn's back, Dr. Sassman used Section 15.2, on page 379 of the Guides, to find the DRE is the most appropriate method for assessing Lynn's back and concluded she would be placed in DRE Cervical Category II with eight percent impairment of the whole person. (Cl. Ex. 2, p. 17) With respect to Lynn's alleged head injury, Dr. Sassman used the following parts of the Guides to reach the following conclusions:

- Section 13.2 on page 308 to conclude Lynn sustained no permanent impairment in her level of consciousness or awareness;
- Table 13-6 on page 320 to find Lynn has a two percent impairment due to memory issues;
- Table 13-7 on page 323 to find zero percent impairment due to no disturbance in comprehension and production of language symbols in daily living;
- Table 13-8 on page 325 to find zero percent impairment to the whole body due to no limitation of activities of daily living and daily social and interpersonal functioning;
- Page 308, Table 13-1, and the Combined Values Chart on page 604 to find a total impairment due to memory loss (two percent) and headaches (two percent) of four percent to the whole body.

(Cl. Ex. 2, p. 17–18)

Dr. Sassman then consulted the Combined Values Chart on page 604 of the Guides to arrive at Lynn's comprehensive whole body impairment based on the individual ratings. (Cl. Ex. 2, p. 18) She combined Lynn's eight percent whole body impairment for the cervical spine injury with the four percent whole body impairment for her head injury to arrive at a 12 percent whole body impairment. (Cl. Ex. 2, p. 18)

In Dr. Sassman's concluding remarks, she explains her "analysis is based on the history provided by the examinee, the records reviewed and the examination findings. It is assumed that the information provided to me is correct. If more information becomes available later, an additional report may be requested." (Cl. Ex. 2, p. 19)

5. Discharge by Drynachan.

Lynn applied for unemployment insurance benefits under the Iowa Employment Security Law, Iowa Code chapter 96. (Hrg. Tr. p. 89) The Division of Unemployment Insurance Services Division at Iowa Workforce Development found her ineligible for

benefits. (Hrg. Tr. p. 89) She appealed and an administrative law judge in the Unemployment Insurance Appeals Bureau affirmed the determination. (Hrg. Tr. p. 89) After Lynn filed a second-level appeal, the Employment Appeal Board at the Department of Inspections and Appeals did the same, rejecting Lynn's attempt to introduce new evidence into the record. (Hrg. Tr. p. 89–90)

The defendants have included the decisions regarding Lynn's claim for unemployment insurance benefits as Exhibit F. However, Iowa Code section 96.6(4) provides:

> A finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of [Iowa Workforce Development], administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States.

Consequently, neither the findings of fact nor the conclusions of law in the decisions in Exhibit F are binding on the parties or the agency in this contested case proceeding. The contents of those decisions do not preclude a different conclusion in this case based on the evidentiary record developed by the parties. Moreover, while the decisions are hearsay upon which one could reasonably rely in one's daily affairs, Lynn's testimony in the unemployment insurance appeal hearing is not hearsay and therefore the best evidence in the record on questions that might exist relating to her discharge from employment. While neither party introduced a transcript of the unemployment insurance appeal hearing, it appears Lynn's testimony in the unemployment insurance appeal hearing is generally in harmony with the evidence in this workers' compensation case.

After returning to work, Lynn falsified information about her patients on multiple occasions. (Hrg. Tr. pp. 88–89) Rather than performing the duties she was hired to perform, she estimated her patients' heights and weights. (Hrg. Tr. pp. 74–75, 89) Drynachan discovered Lynn's dishonest acts and fired her because of them. At hearing, Lynn claimed her ongoing symptoms were partly to blame for her lapse in judgment. (Hrg. Tr. pp. 75, 89)

6. Responses to Interrogatories.

The defendants propounded interrogatories on Lynn, who provided answers dated on or about January 15, 2018. (Ex. G) Interrogatory No. 12 asked Lynn to provide information about "any injury, condition, disability, symptoms, or other problem with any parts of [her] body which [she] claim[s] to have been injured or affected in this case." (Ex. G, p. 27) Lynn answered that she previously experienced "occasional, minor neck pain" from "approximately 2011 into 2015" with "100% recovery after physical therapy." (Ex. G, p. 27) She did not identify any of the complaints or care from before the car

crash on January 10, 2017. In supplemental answers dated February 21, 2019, Lynn provided information regarding the care she received as detailed in the summary of care above. (Ex. H, pp. 34–36)

Interrogatory No. 14 asked Lynn if she had "undergone any physical examination within the past years" and for each to identify the date, purpose, "name and address of the medical practitioner or institution" that performed the examination, and the health condition identified or observed. (Ex. G, p. 28) Lynn identified only "annual wellness exam" for 2016. (Ex. G, p. 28) She did not identify any of the symptoms or care from before the car crash on January 10, 2017.

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 injuries at issue in this case occurred before July 1, 2017, the Iowa Workers' Compensation Act in effect before the 2017 amendments applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

1. Permanent Disability.

Under the Iowa Workers' Compensation Act, permanent disabilities are divided into scheduled and unscheduled losses. See Iowa Code § 85.34(2). Lynn alleges unscheduled cervical and head injuries, which means that the question of permanency in this case is one of industrial disability. Clark v. Vicorp Restaurants, Inc., 696 N.W.2d 596, 605 (Iowa 2005) (citing Sherman v. Pella Corp., 576 N.W.2d 312, 320–21 (Iowa 1998)); see also Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W.2d 899 (1935)). The factors considered when determining industrial disability are "functional impairment, age, education, work experience, qualifications, ability to engage in similar employment, and adaptability to retraining to the extent that any factor affects the employee's prospects for relocation in the job market." Id. (citing Sherman, 576 N.W.2d at 321, and St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 653 (Iowa 2000)).

"Industrial disability measures an employee's lost earning capacity." Id. (citing Sherman, 576 N.W.2d at 321. "'The focus is not solely on what the worker can or cannot do; industrial disability rests on the ability of the worker to be gainfully employed.'" Id. (quoting Myers v. F.C.A. Servs., Inc., 592 N.W.2d 354, 356 (Iowa 1999)). "Showing that the employee's actual earnings have decreased is not always necessary 'to determine an injury-caused reduction in earning capacity.'" Id. (quoting Gray, 604 N.W.2d at 653). The inquiry focuses on what an injured employee could earn before the work injury compared to after. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 201, 208 (Iowa 1995).

a. Did the cervical injury cause a permanent functional impairment?

Multiple doctors have opined on whether the 2017 car crash caused a cervical injury resulting in permanent disability. Lynn believes the agency should find in her favor on the question of causation due to the opinions of Drs. Hansen, Sassman, and Arndorfer.

Dr. Hansen opined on October 2, 2017, that Lynn sustained a cervical injury in the car crash of January 10, 2017. He also stated he agreed with the permanent work restrictions Dr. Smith assigned. That same day, he opined the crash caused a permanent impairment of between five and eight percent to the whole body. There is no indication Dr. Hansen reviewed Lynn's pre-January 10, 2017 records. Instead, he took Lynn at her word about her past symptoms, which the evidence shows to have been a mistake. Dr. Hansen's opinion is based at least in part on incorrect information.

Further, Dr. Smith explained that he believed Lynn needed the permanent work restrictions he assigned before the January 10, 2017, which caused, in his opinion, a temporary aggravation. Thus, Dr. Hansen's agreement with Dr. Smith is based on an incomplete understanding of the latter's opinion on permanency and the need for work restrictions. There is an insufficient basis in the record from which to conclude Dr. Hansen reviewed Dr. Smith's opinion on causation and the need for permanent work restrictions between October 2, 2017, the date of his opinion, and the date of hearing. Dr. Hansen's opinion on permanent disability is not as persuasive as those of Drs. Smith, Adelman, and Szczepanek.

Dr. Arndorfer's opinion is a snapshot in time and therefore limited. The substance of his letter to the SSA demonstrates he believes the car crash worsened Lynn's back symptoms. While it supports the idea that the worsening of Lynn's symptoms was at least in part temporary, Dr. Arndorfer does not directly address the question of permanency. There is also no indication Dr. Arndorfer is aware of the care Lynn received in December 2016 from Meylor Chiropractic or the symptoms she reported at that time. Consequently, Dr. Arndorfer's opinion supports the conclusion the car crash caused, at most, a temporary worsening of symptoms, based on what is more likely than not, his limited knowledge of her symptoms and the care she received for them. It is therefore less persuasive than the opinions of Drs. Smith, Adelman, and Szczepanek.

Lastly, there is Dr. Sassman's IME report. Dr. Sassman did not review records relating to Lynn's care or complaints of symptoms from before the January 10, 2017 car crash. Dr. Sassman's causation opinion is based on inaccurate information provided by Lynn. Specifically, Dr. Sassman's opinion on causation relating to Lynn's cervical injury is based on her incorrect belief that Lynn's symptoms resolved with conservative treatment in 2015 and did not reemerge until after the car crash. (This belief is in line with the one noted by Dr. Hatfield, whom Lynn gave a similarly inaccurate account of her pre-crash symptoms.)

Contrary to the narrative Lynn gave Dr. Sassman, the records demonstrate Lynn's symptoms did not resolve after conservative care in 2015. Rather, Lynn sought

and received care for complaints of neck and back pain in 2016 from multiple providers. Lynn received care regularly from at least as early as May 13 through December 27, 2016. On that date, Lynn went to Meylor Chiropractic and complained of pain in her neck, back, and low back (as well as her hip), which she rated at between six and eight out of ten generally and at between eight and ten out of ten upon movement.

Because Dr. Sassman's causation opinion is based on an inaccurate understanding of Lynn's history of symptoms, her opinion with respect to permanent disability is undermined. Her opinion does not support a finding of permanent impairment due to other expert opinions in evidence. Dr. Sassman's permanent disability opinion is less persuasive than those offered by Drs. Smith, Adelman, and Szczepanek, which are based on a more complete understanding of Lynn's symptoms before and after the crash.

Drs. Smith and Adelman expressly opined the crash did not cause anything more than temporary symptoms. Dr. Adelman opined that Lynn's symptoms, including but not limited to tension headaches, were temporary in nature. Moreover, Dr. Szczepanek, who treated Lynn for pain management, was unable to relate Lynn's cervical complaints to the car crash based on the mechanics of the injury.

Further, Dr. Smith's opinion with respect to work restrictions is more persuasive than Dr. Sassman's because there is no indication Dr. Sassman knew of Lynn's pre-crash symptoms. Dr. Smith opined the permanent work restrictions he assigned Lynn were needed before the crash. Given her symptoms and complaints, this is persuasive. The weight of the evidence shows Lynn needed work restrictions due to the back symptoms she had before the crash and the crash did not cause an injury resulting in permanent functional impairment or the need for additional work restrictions.

Drs. Adelman, Smith, and Szczepanek knew that Lynn complained of symptoms and sought care for those complaints prior to the car crash. They also participated in Lynn's post-crash care. Consequently, the opinions of Drs. Adelman, Smith, and Szczepanek are more persuasive than those of Drs. Hansen, Sassman, and Arndorfer on the question of whether Lynn sustained a cervical injury in the January 10, 2017 crash that caused permanent disability.

For these reasons, Lynn has failed to meet her burden of proof on permanent disability. The evidence, taken as a whole, does not establish Lynn sustained a cervical injury in the crash that caused anything more than a temporary worsening of her symptoms. There is an insufficient basis in the record from which to conclude Lynn's cervical injury resulted in permanent disability. She failed to prove by a preponderance of the evidence she sustained any industrial disability due to the temporary cervical injury she sustained in the crash.

b. Did the head injury cause a permanent functional impairment?

Dr. Adelman examined Lynn from a neurological standpoint. He opined with respect to her cervical issues and headaches. Dr. Adelman diagnosed Lynn with a

concussion, but felt it was not serious because she did not lose consciousness at the time of injury. He ordered neuropsychological testing and found "all performances on her testing fell within normal limits across all assessed realms, including attention, memory, language, reasoning, visual perceptual analysis, speed of information processing, and set shifting." Thus, Dr. Adelman concluded Lynn was exaggerating her symptoms and released her to return to work without restrictions. He concluded Lynn's concussion did not cause any permanent issues.

Dr. Sassman's opinion is based primarily on Lynn's subjective complaints. Because of Lynn's credibility issues, this makes Dr. Sassman's opinion less persuasive than Dr. Adelman's. With respect to Lynn's headaches, Dr. Adelman's opinion with respect to Lynn exaggerating her symptoms is persuasive, given the fact she misstated her history of cervical symptoms to treating physicians and in discovery during the litigation of this case. The weight of the evidence does not support a finding of permanent impairment due to headaches caused by the car crash.

Further, Dr. Sassman did not address the neuropsychological testing results in her report with respect to permanent disability. Consequently, she did not offer a compelling explanation with respect to why Lynn's symptoms would have continued or worsened (in the case of her finding a memory deficit) relative to the neuropsychological testing results from 2017. Therefore, Dr. Sassman's finding of permanent impairment due to memory loss is unavailing. It is less persuasive than Dr. Adelman's conclusion Lynn sustained no cognitive impairment due to the car crash.

Lynn has thus failed to meet her burden of proof on the question of permanent disability relating to her head injury. There is an insufficient basis in the evidence from which to conclude Lynn sustained a permanent disability stemming from the head injury she sustained in the crash. Lynn is not entitled to any permanent partial disability benefits for her head injury.

2. Medical Expenses.

Iowa Code section 85.27(1) states:

> The employer, for all injuries compensable under this chapter or chapter 85A, shall 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. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

Under the Iowa Workers' Compensation Act, an employer's responsibility to provide care is coupled with the right to choose care for the employee's work injury. Id. at § 85.27(4). "[A]n employer who authorizes care is responsible for the cost of care up

to the time when the employer notifies the employee it is no longer authorizing care." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 771 (Iowa 2016).

The statute obligates the employer to monitor the care and determine if, and when, it no longer wishes to authorize care. Id. at 771. "An employer can easily reconsider whether it wishes to authorize further care when an authorized medical provider indicates an employee requires no further care for a workplace injury or when the employer authorizes a new provider to take over an employee's care." Id. at 772. "Section 85.27(4) balances this minimal burden with a significant corresponding benefit—a means of extinguishing the employer's ongoing obligation to pay for medical expenses following its acknowledgment of compensability and exercise of the right to choose care." Id.

Here, the evidence shows it is more likely than not the defendants chose Lynn's care and authorized it until Drs. Smith and Adelman opined that the nature of the car crash and her history of cervical complaints led them to believe the crash did not result in an injury causing permanent disability. Further, the parties stipulated the commencement date for permanent disability benefits (if any were awarded) is June 28, 2017. As found above, Lynn failed to prove entitlement to permanent partial disability benefits, but the parties nonetheless agree that Lynn reached maximum medical improvement (MMI) for her temporary disability on June 28, 2017. Because Lynn failed to prove a connection between the car crash and her ongoing symptoms, the evidence shows it is more likely than not the care following June 28, 2017, is not related to the January 10, 2017 car crash.

The expenses listed in Claimant's Exhibit 12 relate to care from July 11, 2019, through October 25, 2019, for cervical complaints and headaches. Those in Claimant's Exhibit 14 relate to care between January 9, 2018, and June 27, 2019. Because the evidence is insufficient from which to conclude the alleged head and cervical injuries caused the need for care during the time of the care reflected in Claimant's Exhibits 12 and 14, Lynn is not entitled to payment of the expenses itemized in them. Claimant's Exhibit 13 contains billing information relating to medical expenses from February 16, 2017, to July 27, 2017. The expenses relating to care on or after June 28, 2017, are denied because Lynn failed to prove a connection between such and the work injuries at issue in this case.

The care itemized in Claimant's Exhibit 13 from before June 28, 2017, is unauthorized. The parties dispute whether Lynn is entitled to reimbursement for it under Iowa Code section 85.27. "Nothing in the statute prevents an employee from obtaining unauthorized care" or "reimbursement for expenses incurred in seeking unauthorized care upon an adjudication of compensability." Id. at 773 (citing Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 205–06 (Iowa 2010) and R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 197 (Iowa 2003)). The agency has the authority to order the employer to pay for unauthorized care. Id. (citing W. Side Transp. V. Cordell, 601 N.W.2d 691, 693 (Iowa 1999)). To recover expenses incurred in seeking unauthorized care, the employee must prove, by a preponderance of the evidence that the care was:

1) Reasonable; and

2) Beneficial. Id. (citing Bell Bros., 779 N.W.2d at 206).

The determination of whether unauthorized care was reasonable and beneficial is based on the totality of the circumstances. Id. "[T]he reasonableness of unauthorized treatment can normally only be fully evaluated in light of the effectiveness of the treatment." Bell Bros., 779 N.W.2d at 206 (citing Linn Care Ctr. v. Cannon, 704 P.2d 539, 540 (1985)). "[U]nauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

Based on the totality of circumstances in this case, there is an insufficient basis in the evidence from which to conclude the unauthorized care was reasonable or beneficial. Lynn sought out the care while simultaneously receiving care from the defendants' chosen providers. There is no indication in the evidence Lynn had reason to find the provided care was ineffective. Further, there is an insufficient basis in the evidence from which to conclude the unauthorized care was beneficial. Therefore, the defendants are not responsible for paying for the care referenced in Claimant's Exhibit 13 from before June 28, 2017.

3. Costs.

"All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commission." 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 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. Co., 545 N.W.2d 318, 321 (Iowa 1996)).

In the current case, Lynn failed to meet her burden of proof on permanent disability. She did establish the defendants are liable for some of the medical expenses for which she sought reimbursement. The outcome in this case does not support taxation of costs against the defendants. The parties shall be responsible for their own costs relating to this case.

ORDER

THEREFORE, it is ordered:

1) Lynn shall take nothing more in this case.

2) The parties shall be responsible for their own hearing costs.

Signed and filed this _____5th_____ day of January, 2022.

BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jenna Green (via WCES)

Andrew Tice (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.