

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NICOLE FISHER,

Claimant,

vs.

ARCONIC, INC,

Employer,

and

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

File No. 1651146.01

ARBITRATION DECISION

Head Note Nos.: 1108.20, 1402.40,
1803, 1803.1, 1808, 2907

STATEMENT OF THE CASE

Nicole Fisher, claimant, filed a petition in arbitration seeking workers' compensation benefits from Arconic, Inc., as the employer and Indemnity Insurance Company of North America as the insurance carrier. This case came before the undersigned for an arbitration hearing on November 17, 2021, via CourtCall video conferencing.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The evidentiary record also includes Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 4, and Defendants' Exhibits A through E. Claimant testified on her own behalf. Garry Trimble also provided live testimony. The evidentiary record closed at the conclusion of the November 17, 2021, hearing.

Following the arbitration hearing, the parties filed a joint motion to amend the Hearing Report. The motion sought to change the commencement date from September 14, 2018, to October 4, 2020. The joint motion was sustained.

The parties submitted post-hearing briefs on January 7, 2022, at which time the case was considered fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. The nature of claimant's permanent disability and specifically whether the injury is limited to a scheduled bilateral wrist injury or involves permanent injuries to claimant's mental health such that the claim would be compensated with industrial disability;
2. Whether the mental health claim is barred due to Lack of Timely Notice under Iowa Code section 85.23;
3. The extent of claimant's entitlement to permanent partial disability benefits; and
4. Assessment of costs.

FINDINGS OF FACT

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

Nicole Fisher, claimant, sustained a stipulated cumulative injury to her bilateral wrists as a result of her repetitive work duties at Arconic on April 5, 2018. (Hearing Report) The parties agree that the injury caused both temporary and permanent disability. (Hearing Report)

Fisher is a high school graduate, with an associate degree from Colorado Technical University Online. (Hearing Transcript, pages 8-9) She worked in a number of positions for Arconic between 2004 and 2020. (Hr. Tr., pp. 9-10) From September 2010 to July 2018, Fisher worked in the lab preparing and testing samples. (Hr. Tr., p. 10)

After Fisher notified Arconic of the injury, Arconic accepted liability and agreed to authorize Tobias Mann, M.D., as claimant's authorized treating physician. (Joint Exhibit 3) By the time Arconic had finished their investigation, Fisher had already started seeing Dr. Mann for medical treatment. Initially, Dr. Mann assessed Fisher with bilateral recurrent carpal tunnel syndrome and bilateral ulnar-sided wrist pain. (Joint Exhibit 3, page 22) Dr. Mann recommended conservative care, which consisted of bilateral wrist braces, injections, casting, and occupational therapy. (See id.; JE3, p. 47) These modalities helped with the numbness and tingling in Fisher's upper extremities; however, they did little to help Fisher's overall pain. (JE3, p. 28)

On May 25, 2018, Dr. Mann ordered a bilateral EMG to further evaluate claimant's recurrent carpal tunnel syndrome. (JE3, p. 28) He also ordered an MR arthrogram of the right wrist to further evaluate the ulnar-sided wrist pain. (Id.) Dr. Mann

chose to address the right wrist before the left, as the right wrist pain was more bothersome to claimant at the time. (Id.)

The bilateral EMG did not show any evidence of focal neuropathy; however, there was evidence of C-7 radiculopathy. (See JE3, p. 33)

The right wrist MRI, dated June 19, 2018, revealed a central triangular fibrocartilage complex (TFCC) tear. (JE3, pp. 30-31) An MRI of claimant's left wrist, dated May 16, 2019, also revealed central and peripheral TFCC tears. (JE3, pp. 59-60)

Dr. Mann performed a right wrist arthroscopy with TFCC debridement and partial synovectomy on June 12, 2019. (JE3, pp. 66-67) Two months later, he performed the same procedure on Fisher's left wrist. (JE3, pp. 75-76) She was subsequently referred for additional occupational therapy through ORA Physical Therapy and Rock Valley Physical Therapy. (See Ex. 1, p. 9)

Despite undergoing surgery, participating in physical therapy, and receiving multiple injections, Fisher continued to report persistent ulnar-sided wrist pain and weakness through January 2020. (JE3, pp. 82-86) Dr. Mann was hopeful that work hardening to strengthen her wrists would help improve her symptoms. (JE3, p. 86) Dr. Mann scheduled claimant to return to his office in six weeks; however, said follow-up appointment never occurred.

At some point in February 2020, Fisher terminated her employment with Arconic and moved to Rogers, Arkansas for a fresh start. (Hr. Tr., pp. 15-16; see Ex. D, p. 20; Ex. E, p. 24) In Arkansas, Fisher obtained a new job as a technical process operator with Glad Manufacturing. (See Hr. Tr., pp. 15, 17) Her medical care was subsequently transferred to Robert Benafield, M.D., of Ozark Orthopedics. (See JE4, pp. 88-90)

Fisher presented to Dr. Benafield for an initial evaluation on March 3, 2020. (JE4, p. 88) She complained of aching pain in her wrists; but denied experiencing any numbness or tingling. On examination, claimant demonstrated full range of motion in her fingers, thumbs, wrists, and elbows. (JE4, p. 89) Dr. Benafield felt Fisher was close to a point where she could be released to full duty. (Id.) He told Fisher it was likely she would have some chronic, low-grade aching in the wrists for an indeterminate amount of time, however, he did not feel it should keep her from working full duty. (Id.) Dr. Benafield anticipated releasing Fisher to a trial of full duty work in April, 2020. (Id.)

At the conclusion of the March 3, 2020, appointment, Fisher inquired about impairment ratings. (See id.) Dr. Benafield told claimant that her bilateral wrist condition would not warrant much of an impairment rating as she had full range of motion and normal sensation. (Id.)

As anticipated, Dr. Benafield prescribed a trial of full duty work following Fisher's May 7, 2020, follow-up appointment. (JE4, p. 92)

On June 16, 2020, Fisher reported to Dr. Benafield that she returned to full duty work “without too much problem.” (JE4, p. 95) She continued to exhibit full range of motion in her fingers, wrists, and elbows on examination. (Id.) Dr. Benafield subsequently released Fisher from his care and prescribed no additional physical therapy. (See JE4, p. 95; JE5, p. 96)

After working for Glad Manufacturing for approximately six months, claimant decided to move to Tennessee. (Hr. Tr., p. 17) Six months later, Fisher moved back to Iowa. (Hr. Tr., pp. 18-19)

Dr. Mann declared maximum medical improvement on June 16, 2020, the date of claimant’s last appointment with Dr. Benafield. (Ex. B, p. 4) Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Mann opined that claimant sustained one percent upper extremity impairment for each wrist due to her ongoing, mild pain. (Id.) Dr. Mann opined that the range of motion method could not be used as a measure of permanent impairment in this case as claimant demonstrated full range of motion in both wrists. (Id.) Dr. Mann did not assign any permanent restrictions. (Id.)

In response, Fisher pursued an independent medical evaluation, performed by Sunil Bansal, M.D., on August 3, 2020. (See Ex. 1, p. 2) During the evaluation, claimant complained of pain in her bilateral wrists, and difficulty with gripping things for long periods of time. (Ex. 1, p. 11) Dr. Bansal agreed with Dr. Mann’s MMI date and did not believe further treatment was necessary. (Ex. 1, p. 13)

Dr. Bansal assigned permanent impairment based on claimant’s loss of grip strength. (Id.) He explained, “However, strength can be utilized as an impairing factor if ‘the examiner believes the individual’s loss of strength represents an impairing factor that has not been considered adequately by other methods.’” (Id.) Dr. Bansal further stated that loss of grip strength with a TFCC tear is recognized in the medical literature. (Ex. 1, p. 14) Therefore, based on Table 16-34 of the AMA Guides, Dr. Bansal assigned 10 percent upper extremity impairment to each upper extremity. (Id.) Dr. Bansal concluded his report by recommending a 10-pound lifting restriction. (Id.)

Dr. Bansal’s restrictions are much more restrictive than those offered by any other physician in the evidentiary record. The maximum weight recommended by Dr. Bansal is less than the amount of weight claimant consistently lifted at physical therapy. I find the recommendations of Dr. Mann and Dr. Benafield are more objective and reliable than the restrictions offered by Dr. Bansal. Dr. Mann and Dr. Benafield are orthopedic surgeons and operated as Fisher’s authorized treating physicians. Dr. Mann had the chance to observe, examine, and treat claimant’s bilateral wrists over an extended period of time. I find Dr. Mann had the best opportunity to evaluate claimant’s wrists and assess functional limitations regarding the same. His opinions are consistent with the final evaluations of Dr. Benafield. I accept Dr. Mann’s opinion regarding claimant’s need for permanent restrictions as the most convincing and accurate in this evidentiary record.

When comparing the impairment ratings offered by Dr. Mann and Dr. Bansal, I once again note that Dr. Mann had the chance to evaluate claimant on multiple occasions and he performed surgery on both wrists. That being said, Dr. Mann's impairment assessment is not specific to claimant's condition. Dr. Mann utilized Table 16-10 and assigned permanent impairment based on claimant's ongoing complaints of pain. His report acknowledges the same and provides, "This, however, is in discussions for pain from peripheral nerve disorders and so would not directly fit into Ms. Fisher's problem." (Ex. B, p. 4)

Both physicians agree that range of motion should not be used to assess claimant's permanent impairment as she was able to demonstrate near normal range of motion in both of her wrists. (See id.) Dr. Mann elected to assess permanent impairment based on claimant's pain complaints. Dr. Bansal elected to assess permanent impairment based on claimant's loss of grip strength.

The AMA Guides does not assign a large role to strength measurements/evaluations because they are influenced by subjective factors that are difficult to control. (AMA Guides, p. 507) However, as discussed in Dr. Bansal's report, "In a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the Guides, the loss of strength may be rated separately." (AMA Guides, p. 508; Ex. 1, p. 13)

Notably, Dr. Bansal's report does not explain how he concluded that claimant had sustained 10 percent impairment to both wrists. (See Ex. 1, pp. 13-14) Table 16-34 indicates that 10 percent upper extremity impairment correlates with a 10 to 30 percent strength loss index. Admittedly, I am not qualified to conduct an impairment assessment. That being said, the undersigned cannot duplicate a 10 to 30 percent loss when comparing the grip strength measurements documented in Dr. Bansal's report with Table 16-31 or Table 16-32.

In this regard, the AMA Guides provide that loss of strength is calculated by subtracting an individual's limited strength measurements from a "normal strength" measurement and then dividing by the normal strength measurement. The "normal strength" measurements are be found in Table 16-31 (by occupation) and Table 16-32 (by age). The issue with this formula's application in the matter at hand is that the strength measurements recorded by Dr. Bansal exceed the normal strength measurements listed for all occupational categories in Table 16-31 and for claimant's age range (Ages 40-49) in Table 16-32.

Additionally, Dr. Bansal's report provides two different sets of strength measurements. Under the "Physical Examination" section of the IME report, Dr. Bansal notes:

GRIP STRENGTH:

Grip strength measurements with the dynamometer:

Right: 16 kg, 17 kg, and 17 kg.

Left: 14 kg, 13 kg, and 14 kg.

(Ex. 1, p. 12)

Under the "Discussion Questions" section, Dr. Bansal provides:

GRIP STRENGTH:

Grip strength measurements with the dynamometer:

Right: 28 kg, 29 kg, and 27 kg.

Left: 33 kg, 33 kg, and 34 kg.

(Ex. 1, p. 14) Not only does Dr. Bansal provide two different sets of measurements, the measurements reflect inconsistent results as to which hand provided the strongest grip.

Due to Dr. Bansal's failure to explain his calculations, the undersigned's inability to duplicate the same, and Dr. Bansal's inconsistent reporting of claimant's grip strength measurements, I afford little weight to the impairment ratings assessed by Dr. Bansal. Instead, I find the permanent impairment ratings offered by Dr. Mann to be most convincing and consistent with the evidentiary record and the AMA Guides, Fifth Edition. Dr. Mann's opinions are consistent with the opinions of Dr. Benafield, an orthopedic surgeon, who told claimant that her bilateral wrist condition would not warrant much of an impairment rating as she had full range of motion and normal sensation. (JE4, p. 89)

Reviewing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 16-3 on page 439 converts the one percent permanent impairment of the right upper extremity to a one percent permanent impairment of the whole person. The one percent permanent impairment of the left upper extremity similarly converts to a one percent permanent impairment of the whole person under that same table. Using the Combined Values Chart found at page 604 of the AMA Guides, Fifth Edition, I find that the one percent whole person permanent impairment rating for the right arm combines with the one percent whole person impairment rating for the left arm and results in a combined rating equal to two percent of the whole person. Therefore, I find that Fisher proved a two percent permanent impairment of the whole person as a result of the bilateral wrist injuries she sustained on April 5, 2018.

Fisher also asserts that she sustained a mental health injury as a sequela of her physical, bilateral wrist injuries.

In support of her claim, Fisher offers the opinions of Beverly A. Doyle, Ph.D. (Ex. 2) Dr. Doyle is a licensed psychologist in Nebraska. (Ex. 2, p. 19) Dr. Doyle conducted an over-the-phone interview with Fisher on December 30, 2020. (Id.) Claimant asserts that the telephone conference lasted approximately 60 minutes. (Hr. Tr., p. 21) Dr. Doyle's report is the only mental health record offered into evidence by claimant.

According to Dr. Doyle's notes, claimant was first diagnosed with depression by "Dr. Johnston" in Knoxville, Tennessee on December 21, 2020, or nine days prior to Dr. Doyle's over-the-phone interview. (See id.) From the undersigned's review of the evidentiary record, Fisher first references a depressed mood at her March 3, 2020, appointment with Dr. Benafield. (See JE4, p. 89) ("She has a somewhat depressed demeanor.") The medical records from the December 21, 2020, appointment with Dr. Johnston are not in the evidentiary record for the undersigned's review.

According to Dr. Doyle's report, Dr. Johnston prescribed mental health therapy, but did not provide Fisher with the name of a therapist or schedule any appointments for Fisher. (See Ex. 2, p. 20) Dr. Johnston also prescribed claimant anti-depressant medication. (See Ex. 2, p. 20)

Dr. Doyle opined that Fisher demonstrates symptoms consistent with moderate major depressive disorder with anxious distress. (Ex. 2, p. 20) She causally related Fisher's condition to "her inability to successfully return to her previous employment without experiencing physical symptoms." (Id.) The report goes on to note that Fisher has been unable to secure employment that does not require the use of her wrists, and that she has also experienced anxiety from moving twice and trying to adjust to different living and working conditions in a short period of time. (Id.)

In terms of permanency, Dr. Doyle opined Fisher's mental health issues could be temporary with continued treatment and securing an appropriate work setting. (Id.) Dr. Doyle recommended continued medical treatment for depression as well as mental health therapy on a weekly basis. (Id.)

Defendants obtained a competing mental health evaluation, performed by D. Malcolm Spica, Ph.D., a licensed clinical psychologist and neuropsychologist. (Ex. C) Dr. Spica did not interview or examine Fisher. (Ex. C, p. 5) Rather, Dr. Spica reviewed Fisher's medical records and deposition testimony to assess her neurobehavioral status. (Id.)

Dr. Spica opined that the documentation he reviewed does not support a finding of any behavioral health injury resulting from Fisher's occupational activities at Arconic. (Ex. C, p. 8) He further opined that the medical records do not substantiate behavioral health symptoms that would rise to the level of impairing her functional capacity. (Id.) In this regard, Dr. Spica points out that the GAF score of 60 documented by Dr. Doyle, falls within the normal limits of functional capacity. (Id.) Lastly, Dr. Spica's report notes that Fisher has not presented for regular and appropriate care for a debilitating mental health disorder. (Ex. C, p. 9)

Dr. Spica also commented on Dr. Doyle's opinions. (See Ex. C, pp. 7-10) Dr. Spica opined that Dr. Doyle's examination has no utility in establishing Fisher's alleged mental health harm related to her employment at Arconic due to multiple factors, including Dr. Doyle's failure to disclose that she never met with Fisher and the fact that she offered an opinion regarding Fisher's psychological status without administering any standardized or quantified assessment measures. (Ex. C, p. 7) Dr. Spica offers other critiques of Dr. Doyle's report; however, the majority of his opinions center on ethical issues and the fact Dr. Doyle is not licensed to practice in the state of Tennessee. At one point, Dr. Spica goes as far as to say Dr. Doyle likely broke the law by conducting a diagnostic psychological examination of Fisher while Fisher was in Tennessee. (Id.) I did not find the latter opinions particularly relevant or convincing in this matter.

The evidence supporting a mental health injury is thin. The reports of Dr. Doyle and Dr. Spica are the only two mental health records in evidence. At hearing, claimant admitted that she did not report a mental health injury to Arconic between April 2018 and February 2020. (See Hr. Tr., pp. 40-41) There is no evidence Dr. Doyle, or any other mental health specialist, conducted any objective testing relating to claimant's alleged mental health injury. Defendants arranged for Fisher to undergo a neuropsychological evaluation; however, claimant declined to participate in the same. (Ex. D, p. 21)

At the time of hearing, claimant was not taking any medications related to her mental health condition, and she was not operating under any restrictions for her mental health condition. (Hr. Tr., p. 45)

While Dr. Doyle and Dr. Spica are not physicians, a psychologist can express an expert opinion on the causal relationship of depression to a physical injury. As I weigh the respective experience and credentials of Dr. Doyle and Dr. Spica, I find that Dr. Spica's experience with neuropsychological evaluations is superior and bolsters his credibility on the issue of diagnosing mental health issues. (See Ex. C, pp. 11-19; Ex. 2, pp. 23-30) Dr. Spica conducted a comprehensive review of Fisher's medical records and deposition testimony. He drafted a well-explained and easy to follow report. For these reasons, I accept Dr. Spica's opinions and find Fisher failed to prove by a preponderance of the evidence that she sustained a permanent and material aggravation or worsening of her pre-existing mental health conditions as a result of the April 5, 2018, work injury. While it is entirely possible that claimant is suffering from a mental health condition, she simply provided insufficient evidence to establish the same is related to her work injury.

Having found Fisher failed to prove causation with respect to the alleged mental health claim, the issue of whether Fisher provided timely notice regarding the same is moot.

Costs will be addressed in the Conclusions of Law section.

CONCLUSIONS OF LAW

The initial dispute submitted for resolution is whether claimant sustained a mental health injury as a sequela of her physical wrist injuries, entitling her to industrial disability benefits.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or for loss of earning capacity under section 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Fella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (u) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

In this case, I reviewed the expert opinions of Dr. Doyle and Dr. Spica. I ultimately found the training and experience of Dr. Spica to be superior to the training and experience of Dr. Doyle. I further found that Dr. Spica's opinions were consistent with the evidentiary record as a whole. I accepted Dr. Spica's causation opinion and found that claimant failed to prove she sustained a material aggravation of her mental health conditions as a result of the April 5, 2018, work injury.

Having found that Fisher failed to prove a material aggravation of her mental health conditions as a result of the April 5, 2018, work injury, I conclude that claimant failed to prove a compensable mental health injury. Therefore, I conclude that claimant has not proven a permanent injury to her mental health that would remove this case from a bilateral scheduled member injury to an unscheduled, industrial disability situation. Claimant's recovery for permanent disability is limited at this time to a bilateral scheduled member injury. Iowa Code section 85.34(2)(s) (2016).

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

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

Having found the impairment ratings of Dr. Mann to be most convincing in this evidentiary record, I found Fisher proved one percent (1%) permanent impairment of the right wrist and one percent (1%) permanent impairment of the left wrist. Pursuant to Table 16-3 on page 527 of the AMA Guides to the Evaluation of Permanent Impairment Fifth Edition, I found these impairment ratings combined to equate to one percent (1 %) of the whole person for the right wrist and one percent (1%) of the whole person for the left wrist. Using the Combined Values Chart found on page 604 of the AMA Guides to the Evaluation of Permanent impairment, Fifth Edition, I found that these impairment ratings combined to two percent (2%) of the whole person.

Pursuant to Iowa Code section 85.34(2)(t), claimant is entitled to a proportional award based on a 500-week schedule. Therefore, I conclude that claimant has proven entitlement to ten (10) weeks of permanent partial disability benefits for her bilateral wrist injuries.

Lastly, claimant is seeking an assessment of her costs. Costs are to be assessed at the discretion of the workers' compensation commissioner or the deputy hearing the case. 876 IAC 4.33.

Claimant seeks assessment of her filing fee, totaling \$103.00. This cost is appropriate and assessed pursuant to 876 IAC 4.33(7).

Claimant also seeks reimbursement in the amount of \$2,649.00 for the cost of Dr. Bansal's report. In her post-hearing brief, claimant asserts that she is entitled to reimbursement pursuant to Iowa Code section 85.39. While the IME report meets the requirements of Section 85.39, claimant did not assert entitlement to the same on the Hearing Report. As such, I will only address claimant's request for reimbursement under Agency rule 4.33(6).

Agency rule 4.33(6) permits the assessment of the reasonable costs of "obtaining no more than two doctors' or practitioners' reports." However, the Iowa Supreme Court has held that only the cost of drafting the expert's report is permissible in lieu of testimony. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 845-846 (Iowa 2015). The Court stated that the "underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." (Young, 867 N.W.2d 839, 846 (Iowa 2015)).

Exhibit 4 provides that Dr. Bansal attributed \$2,076.00 to the cost of writing the IME report. Defendants assert no argument with respect to the reasonableness of Dr. Bansal's fee. I therefore find Dr. Bansal's fee to be reasonable and assess the same pursuant to 876 IAC 4.33(6).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay ten (10) weeks of permanent partial disability benefits commencing on the stipulated commencement date of October 4, 2020.

All weekly benefits shall be paid at the rate of six hundred thirty-five and 87/100 dollars (\$635.87).

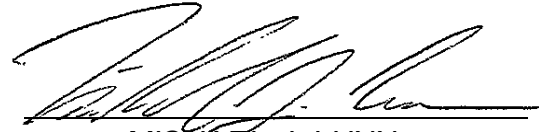
Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall reimburse claimant costs totaling two thousand one hundred seventy-nine and 00/100 dollars (\$2,179.00).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 12th day of July, 2022.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Nathaniel Boulton (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.