BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VIRLENE PINGEL, Claimant, vs. IOWA CENTRAL COMMUNITY COLLEGE, Employer, and EMCASCO INSURANCE COMPANY, Insurance Carrier, Defendants.	: : : : : : : : : : : : : : :	File No. 20003971.01 A P P E A L D E C I S I O N Head Notes: 1402.20; 1402.40; 1803; 2206; 2907;

Defendants Iowa Central Community College, employer, and its insurer, EMCASCO Insurance Company, appeal from an arbitration decision filed on December 1, 2022. Claimant Virlene Pingel responds to the appeal. The case was heard on April 26, 2022, and it was considered fully submitted in front of the deputy workers' compensation commissioner on June 20, 2022.

In the arbitration decision, the deputy commissioner found claimant carried her burden of proof to establish she sustained an injury which arose out of and in the course of her employment on or about April 25, 2019. The deputy commissioner found claimant proved she sustained a permanent aggravation of her pre-existing pulmonary condition. In making this finding, the deputy commissioner relied on the opinions of Sunil Bansal, M.D. The deputy commissioner found claimant sustained 20 percent industrial disability as a result of the work injury. The deputy commissioner found that pursuant to Iowa Code section 85.39, claimant is not entitled to reimbursement from defendants for the cost of Dr. Bansal's independent medical exam (IME) of claimant. Lastly, the deputy commissioner ordered defendants to pay claimant's costs of the arbitration proceeding.

On appeal, defendants assert the deputy commissioner erred in finding claimant proved she sustained a permanent aggravation of her pre-existing pulmonary condition. Defendants assert the aggravation of claimant's pre-existing condition was only temporary in nature. Defendants further assert the deputy commissioner erred in finding claimant sustained any permanent disability as a result of the work injury.

Claimant asserts on appeal that the arbitration decision should be affirmed in its entirety.

Those portions of the proposed arbitration decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.15 and 86.24, the arbitration decision filed on December 1, 2022, is reversed.

As an initial matter, I note that the arbitration decision incorrectly provides claimant first presented for medical treatment in June 2019. (Arbitration Decision, page 3) The arbitration decision further notes that claimant presented to her family clinic on a number of occasions between June and October 2019. (Id.) While claimant testified she began noticing symptoms and trouble breathing within the first few weeks of her employment, the earliest medical record in evidence is dated August 1, 2019. (See Joint Exhibit 2, p. 14) The medical record specifically notes that claimant was not having any trouble breathing. (See JE2, p. 14)

On August 1, 2019, claimant presented to Shannon Fecher, ARNP and reported that she had recently experienced an allergic reaction to sweet corn. (JE2, p. 14) After ingesting the sweet corn, claimant's throat started to close and she experienced an itchiness on her head. (Id.) To address her symptoms, claimant ingested allergy tablets and performed a breathing treatment at home. (Id.) On the date of the examination, claimant reported a sore throat and a pins and needles sensation in her lips. (Id.)

Four days later, claimant returned to Ms. Fecher, and reported ongoing tingling on her tongue. (JE2, p. 18) She reported no new respiratory issues; however, the records provide that claimant's lungs were "diminished throughout." (JE2, pp. 19-20)

Daniel Cole, M.D. evaluated claimant on August 14, 2019. (JE2, p. 22) At the appointment, claimant reported nasal congestion and ear fullness. (Id.) Claimant relayed that the nasal congestion had been an ongoing symptom since the allergic reaction. (Id.) She was breathing a lot better but reported that she still had a cough. (JE2, p. 24) Overall, claimant felt that she was "back towards normal." On examination, claimant was negative for shortness of breath and wheezing. (Id.) Dr. Cole assessed claimant with acute non-recurrent pansinusitis and prescribed a Medrol-dosepak and doxycycline. (JE2, p. 25) He also advised claimant to avoid corn in the future. (Id.)

Claimant returned to Dr. Cole on August 30, 2019, for ear pain and a medication review. (JE2, p. 27) Claimant complained of right ear pain, sore throat, swollen lymph glands in the right cervical chain, and a cough. (Id.) Claimant's physical examination was positive for cough and wheezing, but negative for chest tightness and shortness of breath. (Id.) Dr. Cole assessed claimant with bronchitis and acute suppurative otitis media of the right ear without spontaneous rupture of tympanic membrane. (JE2, p. 29)

Importantly, claimant testified at both her deposition and at the evidentiary hearing that her allergic reaction to sweet corn was unrelated to her alleged work injury. (Ex. A; Hearing Transcript pp. 56-57) As such, I find the symptoms claimant experienced throughout August 2019 are not related to her exposures to chemicals in the workplace.

Claimant did not present for any medical treatment in the month of September 2019.

The next medical record in evidence is dated October 1, 2019. (JE2, p. 31) Claimant returned to Unity Point Family Medicine and reported ongoing right ear pain, as well as congestion, sinus pressure, shortness of breath, and a cough with yellow sputum. (Id.) She also reported experiencing a fever and vomiting the day prior. (Id.) On examination, claimant's pulmonary effort was normal with normal breath sounds and no respiratory distress. (JE2, p. 32) She was assessed with acute maxillary sinusitis and prescribed prednisone and Augmentin. (JE2, p. 33)

On October 16, 2019, claimant presented to Dr. Cole and reported bilateral ear pain, runny nose, sinus pressure, sinus pain, and sore throat. (JE2, pp. 34, 36) Dr. Cole described claimant's condition as a recurrent ear infection and noted that claimant had been on and off antibiotics for her bilateral ear pain since August. (JE2, pp. 34, 36) On examination, claimant's pulmonary effort was normal with normal breath sounds. (JE2, p. 36) Dr. Cole assessed bilateral non-suppurative otitis media and acute recurrent pansinusitis. (JE2, p. 37)

One week later, on October 23, 2019, claimant returned to Dr. Cole's office with a fever, sore throat, and shortness of breath. (JE2, p. 39) This is the first medical record in which claimant asserts her symptoms are related to chemicals she handled in the workplace. The record provides, "HPI has had a sore throat cough shortness of breath aggravation of her pulmonary hypertension possibly related to exposure to chemicals at work or at least aggravated by chemicals." (JE2, p. 41) Claimant was not specific as to the substances she was recently exposed. On examination, claimant demonstrated wheezing and rhonchi. (Id.) Without any additional analysis, Dr. Cole assessed claimant with bronchitis and chronic atrial fibrillation. (JE2, p. 42) He prescribed an antibiotic and prednisone. (Id.)

Claimant did not present for medical treatment in the month of November 2019.

On December 4, 2019, claimant presented to Dr. Cole and reported diarrhea, vomiting, and problems with her right ear. (JE2, p. 44) Claimant reported 10 episodes of vomiting the night before. (JE2, p. 46) In the process of vomiting, claimant caused some Eustachian tube dysfunction and was having trouble hearing. (Id.) On examination, claimant's pulmonary effort was normal with normal breath sounds. (Id.) Dr. Cole diagnosed claimant with gastroenteritis and colitis. (JE2, p. 47) He ordered an encounter for screening colonoscopy and an encounter for screening mammogram for breast cancer. (JE2, p. 47)

Shortly thereafter, it appears claimant was referred to James Meyer, D.O., a pulmonologist. (See JE3, pp. 49, 54) At Dr. Meyer's request, claimant underwent a complete pulmonary function test with Bronchodilator on January 9, 2020. (JE3, pp. 49-53) The results provided a diagnosis of chronic obstructive pulmonary disease. (JE3, p. 49)

The next day, claimant presented for a consultation with Dr. Meyer. (JE3, p. 54) Dr. Meyer noted "Exertional dyspnea" as the reason for claimant's visit. (JE3, p. 55) Claimant reported increased exertional dyspnea over the past several months. (Id.) She reported a cough upon awakening and occasional wheezing. (Id.) She denied chest tightness, pain, and pressure. (Id.) Claimant relayed that she worked at Iowa Central Community College and felt that the chemicals she worked with may be causing some of her dyspnea. (Id.) Again, claimant was not specific as to the substances to which she was recently exposed. Dr. Meyer's medical records note that claimant had smoked "2 packs/day over the last 45 years[.]" (Id.) On examination, claimant's breath sounds were decreased; however, they were clear to auscultation, with no wheezing, crackles, or rhonchi. (JE3, p. 56)

Dr. Meyer documented a primary diagnosis of centrilobular emphysema. (JE3, p. 54) He further assessed claimant with tobacco abuse disorder, chronic systolic congestive heart failure, nonischemic cardiomyopathy, chronic atrial fibrillation, pulmonary hypertension, snoring, sleep disturbance, obesity, and physical deconditioning. (JE3, p. 57)

When addressing his recommendations and plan, Dr. Meyer provided, "Patient has many reasons for exertional dyspnea (CHF, COPD, obesity, deconditioning, etc.)" (Id.) Notably missing from Dr. Meyer's list is claimant's alleged exposure to chemicals in the workplace. (See id.) Dr. Meyer recommended claimant continue her then-current bronchodilator therapy. (Id.) He also recommended claimant stop smoking and lose weight. (Id.) He did not prescribe any medication. Dr. Meyer then referred claimant to IHC for an echocardiogram and ordered a sleep study. (Id.) At claimant's request, Dr. Meyer agreed to take claimant off work until she could be evaluated by cardiology. (JE3, pp. 57-58)

Claimant returned to Dr. Meyer on January 29, 2020. (JE3, p. 59) She reported vomiting on January 28, 2020. (Id.) She also described coughing up yellow phlegm, wheezing at times, and exertional dyspnea. (Id.) However, claimant denied having an unusual cough, wheeze, chest discomfort, or dyspnea on the date of her appointment. (JE3, p. 60) Claimant expressed her belief that the chemicals she worked with were causing her problems. (Id.) Claimant told Dr. Meyer that every time she returns to work she is exposed to cleaning chemicals that cause her to have increased dyspnea. (JE3, p. 60) She further reported that she only has problems when she is exposed to the cleaning chemicals at her job. (Id.) Dr. Meyer's notes recount, "She wants to go on disability. I told her that finding a different job where she is not exposed to these cleaning chemicals would be more appropriate." (Id.)

On examination, claimant's breath sounds were clear to auscultation, with no wheezing, crackles, or rhonchi. (JE3, p. 61) Dr. Meyer assessed claimant with centrilobular emphysema, tobacco abuse disorder, obesity, physical deconditioning, chronic atrial fibrillation, and pulmonary hypertension. (JE3, p. 61) Dr. Meyer recommended claimant continue her then-current bronchodilator therapy and stop smoking. (JE3, p. 61) He also opined that claimant's condition may warrant a work-up for pulmonary hypertension. (Id.) No medications were prescribed. (JE3, p. 62)

Dr. Meyer subsequently provided claimant with a work excuse, noting, "It is my medical opinion that Virlene Pingel should not be working with chemicals as it causes complications with her respiratory system." (JE3, p. 63)

As mentioned, claimant was not specific as to the substances she was recently exposed to when reporting her symptoms to Dr. Meyer. At hearing, claimant testified that Dr. Meyer contacted the defendant employer and requested the MSDS sheets for the chemicals claimant was exposed to. She further testified Dr. Meyer told her all of the chemicals combined to aggravate her asthma condition. (Hr. Tr., pp. 32-33) In her appeal brief, claimant asserts, "After review of those MSDS sheets, Dr. Meyer restricted Virlene from working with chemicals." (Claimant's appeal brief, p. 6) These assertions are not supported by the contemporaneous medical notes of Dr. Meyer. Dr. Meyer did not refer to the MSDS sheets or discuss what, if any, chemicals were responsible for claimant's flare-ups in his medical records. I find it unlikely Dr. Meyer would request and review the MSDS sheets, and then fail to document his findings regarding the sheets.

Similarly, claimant told Dr. Bansal during her IME that Dr. Meyer, "told her that he could not break it down to one chemical, but perhaps all the chemicals combined." (JE4, p. 68) Claimant provided similar statements at the time of the evidentiary hearing. (See Hr. Tr., pp. 32-33, 36) The evidentiary record does not support claimant's statements. Dr. Meyer did not provide a causation opinion or discuss what, if any, chemicals were responsible for claimant's increased exertional dyspnea. In fact, after learning of claimant's belief that her symptoms were related to her use of chemicals in the workplace, Dr. Meyer opined, "Patient has many reasons for exertional dyspnea (CHF, COPD, obesity, deconditioning, etc.)." (JE3, p. 57)

I find it unlikely Dr. Meyer would reach an affirmative opinion on causation but limit his discussion of that opinion to his private conversations with claimant. Such a finding is bolstered by the lack of evidence suggesting claimant requested a formal opinion from Dr. Meyer between January 29, 2020, and April 26, 2022, the date of the evidentiary hearing. For these reasons, I find the contemporaneous medical notes of Dr. Meyer, which are void of any causation opinions, to be more accurate and convincing than claimant's subsequent statements.

Following his January 29, 2020, examination, Dr. Meyer instructed claimant to call or return to his office if she experienced worsening shortness of breath, chest pain, increased use of her rescue inhaler, or if new, unexplained symptoms developed. (JE3, p. 62) There is no evidence claimant called or returned to Dr. Meyer following the January 29, 2020, appointment.

At hearing, claimant confirmed she has not presented to Dr. Meyer since January 29, 2020. (Hr. Tr., p. 62) She further testified she has not experienced any flare-ups in symptoms since she last worked for defendant-employer in January 2020. (See Hr. Tr., p. 70) Claimant testified she continued to present to her family physician for her "lung problems" and whenever she developed pneumonia; however, defendants assert they never received medical records reflecting that, and claimant did not submit any such records into the evidentiary record for consideration. (Hr. Tr., p. 62)

With the exception of expert reports, no additional medical records were entered into evidence.

In the arbitration decision, the deputy commissioner found claimant carried her burden of proof to establish she sustained permanent disability as a result of her work injury. This finding was based, in part, upon "[T]he contemporaneous medical notes documenting the development of her condition[.]" (Arb. Dec., p. 9) I respectfully disagree and find the contemporaneous medical records do not support a finding of permanent disability.

Claimant sought an IME with Dr. Bansal. (JE4) The evaluation occurred on March 18, 2022. (JE4, p. 64) Dr. Bansal assigned ten percent whole person impairment and recommended permanent restrictions based on claimant's asthma. (JE4, p. 70) He recommended claimant avoid walking greater than 15 minutes at a time, avoid traversing multiple stairs, and further avoid exposure to industrial cleaning chemicals and solvents. (JE4, p. 71)

Defendants similarly obtained an expert report from J. Joe Hawk, M.D. (JE5) Following a conference call with defendants' attorney, Dr. Hawk signed a letter that contained several pre-written opinions. Dr. Hawk signed the letter on March 25, 2022. By signing the letter, Dr. Hawk agreed that the pre-written opinions accurately described the opinions and conclusions he provided during the conference call. (JE5, p. 75) In doing so, Dr. Hawk indicated he could not state, based upon a reasonable degree of medical certainty, that claimant sustained any permanent injury or impairment related to her employment at Iowa Central. (JE5, p. 74) Dr. Hawk further indicated that any work-related aggravation was only temporary in nature. (Id.) Lastly, Dr. Hawk indicated that any allergy claimant may have to the chemicals she encountered at Iowa Central was due to her personal, underlying condition and was not caused by, or related to, her employment. (JE5, p. 75)

Defendants also obtained a records review from Ryan Brimeyer, D.O. (Ex. B, p. 1) Unlike Drs. Bansal and Hawk, Dr. Brimeyer is a board-certified pulmonologist. (See id.) Dr. Brimeyer agreed with the opinions set forth in Dr. Hawk's letter. (Id.) He opined any aggravation related to claimant's work environment would have been temporary and would have resolved within days or weeks after removal from that environment. (Id.) Dr. Brimeyer then expressly disagreed with Dr. Bansal's opinion that claimant's employment led to claimant's disability. (Ex. B) He opined that claimant's symptoms are more likely related to her well-documented history of smoking cigarettes. Dr. Brimeyer opines that smoking is a bad lifestyle choice that continues to worsen claimant's COPD and necessitates claimant's use of additional medications to control her symptoms. Dr. Brimeyer agreed with Dr. Meyer's opinion that there are several potential explanations for claimant's exertional dyspnea. (Id.) Lastly, he opined claimant would not have any current and/or permanent restrictions or limitations as a result of her employment at Iowa Central Community College. (Id.)

The deputy commissioner found claimant proved she sustained permanent disability as a result of her exposures to various cleaning chemicals in the workplace. In doing so, the deputy commissioner relied, in part, upon the medical opinion of Dr. Bansal. The deputy commissioner found the expert opinion of Dr. Bansal to be convincing evidence of a causal relationship between claimant's impairment and her alleged work exposures. I respectfully disagree.

In summarizing Dr. Bansal's opinions, the deputy commissioner stated, "Dr. Bansal opined that [claimant's] exposure to numerous chemicals at work materially aggravated her asthma. He assigned a 10 percent impairment rating for this condition. I find this is the most convincing medical opinion in the record." (Arb. Dec., p. 9) However, a thorough review of the IME report reveals Dr. Bansal never affirmatively opines that claimant's workplace exposures materially and/or permanently aggravated her pre-existing condition.

When asked to address causation, Dr. Bansal provided the following response:

> Ms. Pingel has chronic obstructive pulmonary disease. Against that backdrop she was exposed to several industrial cleaners without the benefit of respiratory protection. At least one of the cleaners contained a solvent that is a known (sic) to cause/aggravate reactive airways disease and result in decreased pulmonary function. Her acute breathing distress and cough speak to an aggravation of her reactive airways disease. Her prior medication regimen included only a rescue inhaler as needed. She now has to do daily breathing treatments.

(JE4, p. 71)

While Dr. Bansal states that claimant's acute breathing distress and cough speak to an aggravation of her reactive airways disease, he does not indicate whether the aggravation is temporary or permanent.

Even assuming for the sake of argument that Dr. Bansal definitively opined that the work exposures permanently and materially aggravated claimant's pre-existing pulmonary conditions, he appears to base his finding on information that is unsupported by the evidentiary record. Claimant told Dr. Bansal that her breathing treatments have increased as a result of her exposures to various chemicals in the workplace. As will be discussed, Dr. Bansal's impairment rating appears to rely on this information. However, there are no contemporaneous records to establish claimant's medications have increased in dosage or frequency since the date of injury.

Dr. Bansal's report provides, "She is now prescribed an albuterol inhaler, 90 mcg two times per day, in addition to the breathing treatments with steroid three times a day, morning, noon, and night." (JE4, p. 69) At hearing, claimant testified that prior to working for the defendant employer she used an inhaler, as well as "a breathing treatment on my machine" every night. (Hr. Tr., pp. 27, 54) According to the medical records in evidence, claimant was prescribed an albuterol inhaler, 2.5 mg every four hours as needed for wheezing, as of August 1, 2019. (See JE2, p. 14) She was also prescribed budesonide and ipratropium-albuterol. (See JE2, pp. 14-15) The dosages of these three medications did not change between August 1, 2019, and at least December 9, 2019. (JE2, pp. 14-44) Further, Dr. Meyer did not recommend an increase in dosage or frequency of use when he began treating claimant's condition in January, 2020. Instead, he consistently recommended that claimant continue with her then-current bronchodilator therapy. (JE3, pp. 57, 61) Lastly, there is no evidence a physician prescribed additional medications or recommended claimant increase the frequency of her breathing treatments between her last appointment with Dr. Meyer on January 29, 2020, and Dr. Bansal's IME on March 18, 2022.

The lack of analysis in Dr. Bansal's report extends to his assessment of permanent impairment. Dr. Bansal assigned claimant's permanent impairment based on Chapter 5 of the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition. Utilizing Tables 5-9 and 5-10, Dr. Bansal assigned ten percent whole person impairment based upon "a total asthma score of 2[.]" (JE4, p. 70)

The methodology described in Section 5.5 of the AMA Guides, Fifth Edition assigns an asthma score based on pulmonary function testing, reversibility of airflow obstruction, and the amount of medication that the patient is taking. Dr. Bansal explained that the asthma score of "2" stemmed from claimant's use of a routine inhaler and nebulizer. (Id.) In other words, Dr. Bansal's impairment rating is not based on the results of the pulmonary function testing claimant completed on January 9, 2020; rather, his impairment rating is solely based on claimant's use of a routine inhaler and nebulizer.

Dr. Bansal's decision to assign impairment solely based upon claimant's medication regimen is problematic as there is conflicting evidence with respect to Dr. Bansal's understanding of the breathing treatments claimant utilized prior to working for the defendant employer. Dr. Bansal's summary of claimant's injury provides that claimant only had to do a breathing treatment once per night prior to her work exposures. In the very next section, Dr. Bansal provides that claimant, "previously only had one rescue inhaler to use if needed, but she never really had to use it." Lastly, when addressing causation, Dr. Bansal provides, "Her prior medication regimen included only a rescue inhaler as needed. She now has to do daily breathing treatments." (JE4, p. 71)

Dr. Bansal's failure to address claimant's pre-injury breathing treatments is also problematic as, based on the criterion in Table 5-9, it appears likely claimant possessed the same or similar total asthma score prior to working for the defendant employer. (See Hr. Tr., pp. 27, 54) According to Table 5-9 on page 104 of the AMA Guides, a total asthma score of "2" is assigned when an individual's minimum medication is, "Daily bronchodilator and/or daily cromolyn and/or daily low-dose inhaled corticosteroid[.]" As mentioned, claimant used an inhaler and "a breathing treatment on my machine" every night prior to working for the defendant employer. (Hr. Tr., pp. 27, 54)

As discussed by Dr. Meyer, there are several alternative explanations for claimant's exertional dyspnea, including congestive heart failure, COPD, obesity, and deconditioning. Dr. Brimeyer agreed with Dr. Meyer and added that claimant's symptoms are more likely related to her well-documented history of smoking cigarettes. He further opined that claimant's smoking continues to worsen her COPD and necessitates her use of additional medications to control her symptoms. Dr. Bansal's impairment assessment fails to consider whether any of the alternative explanations provided by Dr. Meyer contributed to claimant's then-current pulmonary condition.

Claimant bore the burden of proof to establish a causal connection between her alleged permanent impairment and the alleged work exposures. Defendants did not bear a burden of production or burden of persuasion on the issue of permanency.

I find the opinions of Dr. Bansal do not establish an affirmative causal relationship between claimant's workplace exposures and her alleged permanent impairment. I respectfully reverse the deputy commissioner's finding that the opinions of Dr. Bansal were most convincing. Thus, when considering the evidence offered by claimant, I find insufficient evidence that her pulmonary condition was permanently aggravated by her work environment or the conditions of her employment.

Alternatively, the deputy commissioner found, "even if the weight of the evidence did not support the finding of permanent impairment, industrial disability benefits would still be appropriate" as the work injury "resulted in permanent restrictions of not working around chemicals." (Arb. Dec., pp. 9-10) I respectfully disagree.

Of the several medical professionals who offered opinions in this case, only Dr. Hawk and Dr. Brimeyer addressed claimant's underlying allergy to the various cleaning chemicals involved in this case. In the March 25, 2022, letter, Dr. Hawk agreed with the following pre-written opinion:

> Based upon Ms. Pingel's deposition testimony, recorded statement, medical records and MSDS sheets, Ms. Pingel may have had an underlying personal allergy condition to a chemical used at Iowa Central Community College. [...]
>
> Based upon the MSDS sheets and Ms. Pingel's testimony indicating she noticed symptoms shortly after her start date and her testimony any flare ups were short in duration and she did not suffer any accidental or unusual exposure, any allergy Ms. Pingel may have to the chemicals used at Iowa Central Community College was due to her personal underlying condition and not caused or related to her employment at Iowa Central Community College.

(JE5, pp. 74-75)

Dr. Brimeyer agreed with the opinions set forth in Dr. Hawk's letter, and further opined claimant would not have any current and/or permanent restrictions or limitations as a result of her employment at Iowa Central Community College. (Ex. B, p. 1)

Claimant offered no evidence to establish she developed a permanent allergy to a chemical she worked with at Iowa Central Community College. Instead, claimant relied upon the expert opinions of Dr. Bansal to assert she sustained a permanent aggravation of her pre-existing asthma condition.

Dr. Meyer and Dr. Bansal imposed restrictions but did not expressly relate the same to the alleged work injury or deem the restrictions permanent.

Claimant bore the burden of proof to establish a causal connection between her alleged permanent impairment and the alleged work exposures. Defendants did not bear a burden of production or burden of persuasion on the issue of permanency. In this case, I found claimant provided insufficient evidence to support her assertion that her exposures to cleaning chemicals in the workplace resulted in permanent disability. While claimant may have sustained an aggravation of her pulmonary condition, she did not prove that the worsening of her pulmonary condition was permanent in nature, that it requires any work restrictions, or that it resulted in any permanent impairment. Therefore, I find claimant failed to prove a permanent pulmonary injury or any permanent disability.

Because I concluded claimant failed to satisfy her burden to prove she sustained any permanent disability as a result of the April 25, 2019, work injury, I respectfully reverse the deputy commissioner and conclude claimant shall take nothing with respect to

permanent partial disability benefits.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on December 1, 2022, is reversed.

Claimant shall take nothing with respect to permanent partial disability benefits.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and the claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed on this 10th day of May, 2023.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Janece Valentine (via WCES)

David Brian Scieszinski (via WCES)