

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SUZETTE SCALES,

Claimant,

vs.

CRST EXPEDITED, INC.,

Employer,

and

LIBERTY MUTUAL,

Insurance Carrier,
Defendants.

FILED

APR 29 2016

WORKERS COMPENSATION

File No. 5049482

ARBITRATION DECISION

Head Note Nos.: 1108.20; 1802; 2501

STATEMENT OF THE CASE

Claimant Suzette Scales ("Scales") filed an original notice and petition on November 17, 2014, alleging she sustained an injury to her body as a whole arising out of and in the course of her employment on August 14, 2012. (Original Notice and Petition) Defendants CRST Expedited, Inc. ("CRST") and Liberty Mutual ("Liberty Mutual") filed an answer on December 19, 2014, admitting a work injury occurred. The first report of injury was filed on August 24, 2012.

The arbitration hearing was held on January 19, 2016, at the Division of Workers' Compensation in Des Moines, Iowa. Attorney Daniel Anderson appeared on behalf of his client, Scales. Scales did not appear by telephone or in-person. Attorney Chris Scheldrup represented CRST and Liberty Mutual. Debra Mentzer testified on behalf of CRST and Liberty Mutual. Exhibits 1 through 14 and A through T were admitted into the record.¹

The record was left open until March 7, 2016, for the filing of post-hearing briefs. The case was deemed fully submitted on that date.

¹ Scales retained Mark Mittauer, M.D., to conduct an independent medical examination in this case. The morning of the hearing Scales filed a Motion in Limine seeking to preclude the admission of Exhibit C, the deposition of Dr. Mittauer. I issued an oral ruling denying the motion, and later issued an order denying Scales's request to submit rebuttal evidence to the deposition of Dr. Mittauer.

STIPULATIONS

Before the hearing, the parties completed a hearing report listing stipulations and issues to be decided by the deputy commissioner. CRST and Liberty Mutual withdrew any affirmative defenses they may have had available. The parties' stipulations are:

1. An employer-employee relationship existed at the time of the alleged injury;
2. Scales sustained an injury on August 14, 2012, which arose out of and in the course of her employment;
3. The injury caused a temporary disability during a period of recovery;
4. Scales was off work from August 15, 2012 through January 31, 2013; and
5. At the time of Scales's alleged injury her gross earnings were \$580.00 per week, she was single, and entitled to one exemption, and her weekly benefit rate was \$370.38.

ISSUES

1. Whether Scales's mental health conditions are sequelae of the August 14, 2012 work injury.
2. If Scales mental health conditions are sequelae of the August 14, 2012 work injury, whether Scales is entitled to additional temporary benefits.
3. Whether Scales sustained a permanent disability.²
4. If Scales sustained a permanent disability, what is the nature and extent of the permanent disability?
5. Whether CRST and Liberty Mutual are entitled to a credit for payments made to Scales.
6. Whether Scales entitled to payment of medical expenses.
7. Whether Scales is entitled to alternate medical care under Iowa Code section 85.27.
8. Whether CRST and Liberty Mutual are responsible for the costs of an independent evaluation under Iowa Code section 85.39.

² On the Hearing Report, the parties identified an alleged injury to the right upper extremity. On April 8, 2016, I contacted the parties and confirmed the alleged injury was to the left, not the right upper extremity.

9. Whether costs should be taxed to either party.

FINDINGS OF FACT

Scales was born on November 3, 1963, and at the time of the hearing she was 52. (Exhibit 2, pages 32-33) Scales is right-hand dominant. (Ex. 2, p. 204) Scales attended school through the 12th grade, but did not graduate from high school. (Ex. 2, p. 33) Scales reported she earned Cs and Ds in school. (Ex. 2, p. 33) Scales has a past medical history of high blood pressure, asthma, and breast cancer. (Ex. 2, p. 55)

Scales has 28 years of experience working as a truck driver and has worked for many companies. (Exs. 2, pp. 32-33; J, Transcript, pp. 63, 66-67, 69) In January 2008, Scales failed to pass a DOT physical due to high blood pressure. (Ex. J, Tr., pp. 64-65) Scales left trucking and engaged in carpentry work part-time "under the table" for friends, until she returned to trucking in September 2011. (Ex. J, Tr., pp. 64-65) Scales has also worked as a bartender, a cocktail waitress, a housekeeping manager, a steel worker, a construction worker, and she has worked on septic tanks and sewer lines. (Ex. J, Tr., pp. 69-70)

Scales began working for CRST on July 2, 2012. (Ex. J, Tr., p. 6) At that time Scales was living in New Jersey with her boyfriend, Robert Aiken. (Ex. J, Tr., pp. 6, 15) Scales had been in a relationship with Aiken since 2009. (Ex. J, Tr., p. 15)

On August 14, 2012, Scales was driving from Indiana to Cedar Rapids and she stopped to use the bathroom in Boone County, Indiana. (Exs. 2, pp. 1, 12; B, p. 2; J, Tr., pp. 17-20) When she opened the driver's side door she slipped and fell. (Exs. 2, pp. 1, 12; J, Tr., pp. 17-20) The ambulance service documented Scales was found sitting in a chair awake and alert in the adjacent building. (Ex. 2, p. 88) Scales reported she had lost her footing and fell from the cab of her truck, and had walked inside the building. (Ex. 2, p. 88) Scales stated she caught herself with her left arm, which was painful, and hit her head slightly above the left eye. (Ex. 2, p. 88) Scales denied being dizzy and having blurred vision. (Ex. 2, p. 88) Scales complained of left hip tenderness during transport to the hospital. (Ex. 2, p. 88)

Scales was taken to Witham Health Services in Lebanon, Indiana for treatment. (Ex. 2, p. 1) Hospital staff documented Scales reported when she opened the door of her truck she slipped and landed on her left hip, left arm, and left side of her head. (Ex. 2, p. 1) Scales denied having nausea, vision changes, or problems with speech or coordination, vomiting, or losing consciousness. (Ex. 2, p. 1) Scales complained her left elbow was painful. (Ex. 2, p. 1) An x-ray of her left elbow revealed a radial head fracture. (Ex. 2, p. 2) Scales's blood pressure was 180/119. (Ex. 2, p. 1) The treating physician documented a "small hematoma [on the] left forehead, no bony crepitation." (Ex. 2, p. 2) The physician diagnosed Scales with a radial head fracture, a hip contusion, and facial contusions, placed Scales's left arm in a volar/plaster splint and sling, and prescribed pain medication. (Exs. 2, pp. 2, 15; E, p. 2)

On August 16, 2012, Scales went to Community Hospitals of Indiana in Indianapolis, Indiana, complaining of pain and a possible loss of consciousness. (Ex. 2, p. 4) Scales reported her pain medication was not relieving her pain. (Ex. 2, p. 4) The physician ordered computerized tomography ("CT") scans of Scales's head and left hip. (Ex. 2, p. 5) The head CT scan did not show any abnormal areas of attenuation, masses, lesions, or hemorrhaging. (Exs. 2, p. 5; 1, p. 2) The left hip CT scan did not reveal a fracture, dislocation, or other abnormality. (Ex. 1, p. 3) The treating physician diagnosed Scales with an elbow fracture and concussion and released her. (Ex. 2, pp. 6, 10)

Mentzer is the workers' compensation claims examiner for CRST who arranged Scales's transportation back to Cedar Rapids. (Ex. H, pp. 1-2) Mentzer had difficulty scheduling a load back to Cedar Rapids for Scales and offered to purchase a return bus ticket for Scales. (Ex. H, p. 2) Scales refused the ticket because she had personal belongings in the truck and she wanted to wait until CRST had a load back to Cedar Rapids. (Ex. H, p. 2) Scales lived in her truck for approximately seven days after her injury. (Ex. 2, p. 80)

Scales returned to Cedar Rapids and attended an appointment with Tracie Abbott, MSN, ARNP at UI Health Works, LLC ("UI Health Works") on August 22, 2012. (Ex. 2, p. 12) Abbott documented Scales reported that at the time of her injury she was sitting in the driver's seat of her truck and when she reached to open the door, the door slipped out of her hand, causing "her to fall forward, head first out of the truck striking her head on the cement parking lot below." (Ex. 2, p. 12) Scales complained of significant elbow and left arm pain, and reported an "intermittent headache over the left frontal area which she states struck the ground." (Ex. 2, p. 12) Scales complained of problems sleeping at night secondary to the pain in her left arm. (Ex. 2, p. 12) Scales denied losing consciousness, having blurred vision, nausea, vomiting, dizziness, or any other neurological symptoms. (Ex. 2, p. 12) Scales did not complain of sleeping problems related to headaches or striking her head.

Abbott's assessment provided, "s/p fall August 14 – headache, left elbow fracture per patient report, trapezius strain with spasm, left hip strain/contusion." (Ex. 2, p. 13) Abbott advised Scales "to discontinue the use of any NSAIDS following [her] head injury," and prescribed Vicodin and physical therapy for the treatment of her trapezius strain/spasm. (Ex. 2, pp. 13-14) Abbott restricted Scales from using her left arm, engaging in commercial driving, and from engaging in safety sensitive duties until her next appointment. (Ex. 2, p. 14)

On August 27, 2012, Scales attended an appointment with Gregory Hill, M.D., an orthopedic surgeon. (Ex. 2, pp. 15-16) Scales's left arm was still in the splint and sling. (Ex. 2, p. 15) Dr. Hill removed the splint and noted Scales had "moderate swelling about the elbow" and tenderness laterally over the radial head. (Ex. 2, p. 15) Dr. Hill examined x-rays of Scales's left upper extremity, and found she had a left elbow radial neck fracture with minimal displacement or angulation, and "narrowing and sclerosis of the first CMC joint [of the left thumb] with lateral metacarpal subluxation and peripheral

osteophytes suggesting first CMC DJD.” (Ex. 2, p. 15) Dr. Hill ordered magnetic resonance imaging (“MRI”) of her elbow and placed a hold on therapy until he obtained the results. (Ex. 2, p. 16) Dr. Hill restricted Scales from commercial driving and using her left arm until the next appointment. (Ex. 2, p. 17)

Scales returned for an appointment with Abbott on August 30, 2012, and reported she was experiencing intermittent headaches, which had not improved or worsened. (Ex. 2, p. 18) Scales complained of posterior neck and upper back discomfort, extending into her shoulders, and reported some improvement with physical therapy. (Ex. 2, p. 18) Scales continued to have difficulty sleeping due to the pain in her arm. (Ex. 2, p. 18) Scales did not report her sleeping problems were related to headaches or striking her head. Scales’s left hip remained tender, but was not painful with activities. (Ex. 2, p. 18) Abbott ordered Scales to continue with Vicodin, physical therapy, and application of heat, and ordered Robaxin at night, with the same work restrictions. (Ex. 2, p. 19)

On September 5, 2012, Scales returned for an appointment with Dr. Hill following a left elbow MRI. (Ex. 2, p. 20) Dr. Hill confirmed Scales had a radial neck fracture and noted a “small subacromial impaction and edema correlating at the capitellum. No depressed articular or subchondral surface. No ligamentous injury about the elbow.” (Ex. 2, p. 20) Dr. Hill found surgery was not indicated, removed the plaster splint, and ordered Scales be fitted with an “OT removable splint.” (Ex. 2, p. 20) Dr. Hill found Scales could appose and touch the tip of her fingers, believed she had a thumb sprain, noted she could continue with a thumb brace, and ordered Scales to work on her thumb apposition motion to the base of the digits with continued physical therapy. (Ex. 2, p. 20) Dr. Hill restricted Scales from using her left arm and engaging in commercial driving until her next appointment. (Ex. 2, p. 21)

Scales requested home time in New Jersey from September 6, 2012 through October 3, 2012. (Ex. P, p. 1) Scales was notified she would not receive wages or workers’ compensation benefits while she was in New Jersey because CRST has offered her work consistent with her restrictions. (Ex. P, p. 1) Scales left Cedar Rapids and returned home to New Jersey.

Scales returned to Cedar Rapids in early October and attended an appointment with Dr. Hill on October 5, 2012. (Ex. 2, p. 22) While Scales was in New Jersey she did not receive formal therapy for her elbow, but reported she had been doing some home exercises and believed she was making progress. (Ex. 2, p. 22) Dr. Hill ordered Scales to resume formal therapy and to discontinue use of her splint and sling, as needed. (Ex. 2, p. 22) Dr. Hill restricted Scales from using her left arm at work. (Ex. 2, p. 23)

Scales also saw Abbott on October 5, 2012, and complained of posterior neck and upper back discomfort and “frontal headaches which seems [*sic*] to occur every 2 to 3 days, quite brief in nature lasting no more than 5 min.” (Ex. 2, p. 24) Abbott ordered Scales to resume physical therapy and to continue with her medications. (Ex. 2, p. 25)

Abbott restricted Scales from using her left arm/hand, commercial driving, and from engaging in safety sensitive duties. (Ex. 2, p. 25)

Scales returned for another appointment with Abbott on October 25, 2012, and again complained of neck and upper back/trapezius pain and "headaches, on average every 2 to 3 days ranging in length from minutes to several hours." (Ex. 2, p. 26) Scales reported her last headache occurred that morning and lasted a few hours. (Ex. 2, p. 26) Abbott ordered Scales continue with her medications, physical therapy, and provided the same work restrictions. (Ex. 2, p. 27)

In late October, Scales left Cedar Rapids and returned to New Jersey because she wanted to recuperate at home and because the basement of her rental home was damaged by flooding during Hurricane Sandy. (Ex. J, Tr., pp. 10-12, 14-15) Scales testified the damage to her home was stressful. (Ex. J, Tr., p. 59) As of the date of the hearing, Scales had not returned to CRST. (Ex. J, Tr., p. 14)

Joann Auld is responsible for assigning work to injured workers performing modified duty for CRST in Cedar Rapids and provided Scales with a modified duty assignment. (Ex. F, p. 2) Auld saw Scales on a daily basis when she returned to Cedar Rapids in August and October 2012. (Ex. F, p. 2) Auld assigned Scales clerical work, including organizing and alphabetizing papers, scanning documents, and answering the telephone for different departments. (Ex. F, p. 2) Auld reported Scales was able to successfully perform the clerical duties, including the communication duties involved with answering the telephone. (Ex. F, p. 3)

Scales testified when she was assigned modified duty at CRST she worked as an operator, where she accepted incoming calls and transferred calls. (Ex. J, Tr., p. 57) Scales acknowledged she was able to successfully perform the operator duties. (Ex. J, Tr., p. 57) Mentzer also reported she observed Scales answer the telephones at night, where she would take incoming calls, place callers on hold, answer questions, direct calls to the proper employee, and transfer calls. (Ex. H, p. 4)

During her employment with CRST, Scales reported to Scott Nelson, the driver manager. (Ex. G, p. 1) Nelson had regular communication with Scales before and after her August 2012 injury, including the time when she was arranging transportation back to Cedar Rapids following her injury. (Ex. G, pp. 1-2) When asked whether Nelson had noticed any difference, complication, or variation in the manner in which Scales communicated with him before and after the August 14, 2012 injury, Nelson replied, "No. Not at all." (Ex. G, p. 2)

On November 28, 2012, Scales attended an appointment with Jay Rosen, M.D., at Riverfront Medical Center in Bridgeport, New Jersey. (Ex. P, pp. 28-29) Scales relayed on August 14, 2012, she fell out of her truck and "landed on her head and hurt [her left] hip, [left] arm, [left] elbow, neck, and [right] knee." (Ex. 2, p. 28) Scales reported she had fractured her left elbow, had two slipped discs, and had severe headaches. (Ex. 2, p. 28) Scales was wearing a brace on her left hand and

complained of numbness in her left thumb, and rated her pain a 7 out of 10 without medication and 9 out of 10 with medication. (Ex. 2, p. 28) Dr. Rosen ordered physical therapy, prescribed Percocet, and restricted Scales from working and driving until her next appointment. (Ex. 2, p. 29) On December 3, 2012, Dr. Rosen restricted Scales from working until further notice. (Ex. 2, p. 29)

Dr. Rosen referred Scales to Jay Gordon, Ph.D., a psychologist, for a neuropsychological consultation appointment on December 7, 2012. (Ex. 2, p. 32) Scales informed Dr. Gordon she fell out of the cab of her truck head-first and landed "on my head." (Ex. 2, p. 32) Scales reported she lost consciousness, she remembered the impact, was dazed, and "thought she was dead." (Ex. 2, p. 32) Scales noted she was found upside down with her feet on the steps of the truck. (Ex. 2, p. 32) Scales complained of neck pain, shoulder pain, and severe head pain that "shoots from the back of her neck to her eyes" and causes her to feel dizzy. (Ex. 2, p. 32) Scales relayed she was forgetful and had difficulty concentrating. (Ex. 2, p. 32) Scales reported that she forgot to take a pot off the stove and was afraid she would start the house on fire. (Ex. 2, p. 32) Scales complained of "headaches, backaches, poor vision, sensitivity to light, loss of balance, poor coordination/dizziness, sleep difficulty, nightmares, forgetfulness, slowed thinking, difficulty managing daily activities, feelings of depression, anxiety/fear/panic, and flashbacks." (Ex. 2, p. 33) Scales denied having a previous psychiatric history. (Ex. 2, p. 32)

Scales informed Dr. Gordon she experienced anxiety from situations reminding her of the accident, including opening the door of her fiancé's truck. (Ex. 2, p. 33) Scales also reported intrusive memories of the scene of the accident. (Ex. 2, p. 33) Dr. Gordon administered the Beck Anxiety Inventory, which indicated a mild to moderate degree of anxiety symptoms, and the Beck Depression Inventory, which indicated a normal degree of depressive symptoms. (Ex. 2, p. 33)

Dr. Gordon observed Scales did not initially exhibit any pain behaviors, but after 30 to 35 minutes, she began holding the back of her head and complaining about pain. (Ex. 2, p. 33) Dr. Gordon noted Scales's thoughts were "logical, relevant, and organized. Evidence of a major thought disorder, delusional ideations, or hallucinatory phenomena were not reported or observed." (Ex. 2, p. 33) Dr. Gordon recommended additional neuropsychological testing. (Ex. 2, p. 34)

On December 21, 2012, Dr. Gordon conducted a psychological assessment of Scales and administered the Minnesota Multiphasic Personality Inventory-II and the Million Behavioral Medicine Diagnostic. Dr. Gordon noted Scales expressed frustration with her performance on the tests that evaluated memory and that she became emotional and tearful when asked to recall information on the delayed recall sections of the test. (Ex. 2, p. 48) Dr. Gordon found Scales had "moderate impairments with working memory, mild to moderate impairments with verbal learning and memory, and borderline to mild impairments with mental flexibility and complex processing, visual memory, and mental processing speed." (Ex. 2, p. 50) He did not find evidence of

malingering and concluded Scales put forth adequate effort during the testing. (Ex. 2, p. 50)

Dr. Gordon opined Scales's presentation was "consistent with a Cognitive Disorder NOS due to mild traumatic brain injury . . . [and she was] also reporting various mood complaints consistent with an Adjustment Disorder with Anxious Mood." (Ex. 2, p. 50) Dr. Gordon recommended cognitive remediation therapy and individual psychotherapy. (Ex. 2, p. 50) Dr. Gordon concluded Scales was unable to return to her former employment because she was unable to drive long distances and he estimated she would be able to return to light-duty work in two months. (Ex. 2, p. 50)

Scales was referred to Marianne Sturr, D.O., a physiatrist with Bacharach Physical Medicine & Rehabilitation ("Bacharach") on February 11, 2013 for an evaluation of her brain injury and further treatment options. (Ex. 2, p. 55) Scales relayed when she fell from the truck she "landed on her left hip, left arm and left side of her face," questioned whether she lost consciousness, and complained of headaches since the fall. (Ex. 2, pp. 55, 57) Dr. Sturr also documented Scales told her that in November or December she fell down some stairs at home without injury. (Ex. 2, p. 56)

Dr. Sturr noted during her examination Scales was "alert but slow to process and answer questions" and complained of light sensitivity, headaches, and severe pain, especially in her left hip and elbow. (Ex. 2, p. 57) Dr. Sturr observed Scales struggled with concentration, and asked her to repeat questions, but she was able to follow simple one and two-step commands. (Ex. 2, p. 57) Dr. Sturr diagnosed Scales with a mild traumatic brain injury ("TBI"), cervical strain and sprain with myofascial pain syndrome, chronic headaches, chest pain, a left radial head impacted fracture, poorly controlled hypertension, asthma, and a history of breast cancer. (Ex. 2, p. 57) She further noted that Scales had ambulatory and activities of daily living dysfunction due to a minor TBI, a cognitive linguistic impairment, and "[l]anguage abnormalities, word-finding, expressive greater than receptive." (Ex. 2, p. 57)

Dr. Sturr recommended an inpatient brain injury program, a head CT scan due to the second fall, and MRI of the brain with and without contrast. (Ex. 2, p. 58) MRI revealed "no intracranial mass or evidence of acute infarction." (Ex. 2, p. 60) Dr. Sturr opined Scales's estimated return to work would be six months. (Ex. 2, p. 59)

Dr. Sturr followed up with Scales's family physician regarding her blood pressure, chest pain, and "excessive use of nitroglycerin and ibuprofen." (Ex. 2, pp. 57, 70) Scales was evaluated by a cardiologist regarding her hypertension, chest pain, and severe headaches. (Ex. 2, p. 65) Additional testing did not reveal any significant cardiac abnormalities. (Ex. 2, p. 70)

On March 5, 2013, Scales was admitted to the brain injury program at Bacharach for an evaluation. (Ex. 2, p. 69) Scales received physical therapy, occupational therapy, psychology, case management, and 24-hour nursing and physician supervision. (Ex. 2, pp. 69-77) Curtis Waechtler, Ph.D., a psychologist, diagnosed

Scales with "Organic Brain Synd[rome] NOS" and a "Brief Depressive React[ion]." (Ex. 2, p. 74) During her stay at Bacharach, Scales began making detailed drawings using a pen, which are produced in the record, at Exhibit M. (Ex. J, Tr., pp. 37-38)

During Scales's evaluation, the speech language pathologist documented Scales was in bed, curled up with her hands in her mouth with "fear in her eyes & tears." (Ex. 2, p. 77) Nursing staff also documented "[p]t continues to keep her hands with fingers curled toward palm and at her cheeks with eyes averted when she communicates and asks for approval of her work and what she is doing to ensure it is liked." (Ex. 2, p. 79)

On March 19, 2013, Scales was discharged from the brain injury program with diagnoses of post-traumatic stress disorder ("PTSD"), anxiety, and depression. (Ex. 2, pp. 80, 82) Dr. Sturr referred Scales to Allen Rubin, M.D., a neuropsychiatrist for medication management and treatment of PTSD. (Ex. 2, p. 83) Dr. Sturr noted,

It is the opinion of myself and our neuropsychologist, Dr. Curtis Waechter, Ph.D., that the initial traumatic brain injury and ongoing stresses with regard to therapy and doctor's appointments and returning home and having difficulty with getting appointments, most likely precipitated the post-traumatic stress disorder. In addition the development of the headaches, another fall down the steps in November or December 2012, has resulted in worsening of the post-traumatic stress disorder (PTSD). The PTSD needs to be treated to effectively return this lady to maximal medical improvement which she is not at this time.

(Ex. 2, p. 83) Dr. Sturr recommended a home health aide to assist Scales with activities of daily living, physical therapy for working on steps, and occupational therapy to work on Scales's myofascial pain, postural and upper extremity range of motion and strengthening. (Ex. 2, p. 84)

Scales attended an evaluation with Dr. Rubin on April 25, 2013 and May 13, 2013, accompanied by Aiken. (Ex. 2, pp. 87, 93) Dr. Rubin noted Scales sustained a prior head injury, date uncertain, where she was thrown through a windshield in Florida. (Ex. 2, p. 88) Scales denied any change in functioning following the accident. (Ex. 2, p. 88)

During her evaluation, Scales discussed intrusive experiences, "including seeing a trucker burned alive, seeing fatal accidents on the road, and of being frightened she might ignite her house on fire." (Ex. 2, p. 94) Scales also complained of nightmares involving injuries to herself and her son where "something picked me up and my son and threw us across the room." (Ex. 2, p. 94)

On May 23, 2013, Aiken called Dr. Rubin and reported Scales was having memory lapses where she did not recognize him and during the prior day she had "wandered in the middle of a busy highway without knowing what she was doing and

without memory for the event.” (Ex. 2, p. 94) He also reported Scales was complained of tinnitus and her body tingling all of the time “like a vibrating chair.” (Ex. 2, p. 94)

Dr. Rubin’s initial impression was that Scales had sustained a work-related injury and suffered a concussion, a left radial head fracture, possible left carpal tunnel syndrome, neuromuscular and musculoskeletal trauma, “cerebral impairment . . . affecting cognition and memory, and . . . the induction of a syndrome of PTSD.” (Ex. 2, p. 94) Dr. Rubin noted,

The PTSD was not manifest overtly or not recognized until 2013, but late occurring forms of PTSD are well known and credibly attributable in her case to her 8/14/12 accident. It is common for PTSD reactions to “recapitulate” earlier traumas, which have been brought into more vivid awareness currently. Whether there is a precipitant for PTSD occurrence or recurrence in 2013 is not known.

The reported deterioration of function about in 1/2013 has yet to be confirmed or disconfirmed. It frequently occurs that attention and medical focus on pain and orthopedic injuries may mask or displace post-concussive symptoms or mild traumatic brain injury (mTBI). It is clear that concussion and post-concussion syndrome were recognized as early as 8/16/12.

(Ex. 2, pp. 94-95) Dr. Rubin expressed concern regarding Scales’s “memory lapses, ambulatory amnesia or ‘fugue’ state” and recommended an electroencephalogram (“EEG”) and MRI of the brain be conducted. (Ex. 2, p. 95)

Scales’s EEG was normal. (Exs. 2, p. 96, I, p. 6) Dr. Rubin received medical records showing Scales had a longstanding history of hypertension, and a history of “a prior CVA, small strokes or TIA’s (variably recorded) without clear identification.” (Ex. 2, p. 96)

On July 15, 2013, David Price, Ph.D., a psychologist, conducted an independent examination of Scales, based on a review of her medical records only. (Ex. D, p. 1) Dr. Price opined Scales did not likely sustain a TBI on August 14, 2012 because she did not lose consciousness, initial reports did not document she was confused or dazed, and a head CT and EEG were both normal. (Ex. D, p. 2) Dr. Price further found, assuming Scales sustained a TBI, it would have been a mild TBI that would have resolved within hours or days, and a mild TBI would not cause a decline in intelligence, a seizure disorder, or catastrophic disability, and “never has a delayed onset.” (Ex. D, pp. 2-3)

Dr. Price noted Scales has had past stressors that could have been sufficient to have caused PTSD or a TBI, including being thrown from the windshield of a car, witnessing a trucker being burned alive, witnessing fatal accidents, and experiencing breast cancer. (Ex. D, p. 1) Dr. Price opined Scales’s fall from the truck was not severe

enough to cause PTSD, and her physical issues, including obesity, hypertension, cardiovascular, pain, and side-effects from multiple medications can affect neuropsychological testing and produce symptoms that mimic a brain injury. (Ex. D, p. 3) Dr. Price further concluded Scales "is likely experiencing either a Somatic Symptom Disorder or Conversion Disorder (Functional Neurological Symptoms Disorder), that has not been properly evaluated." (Ex. D, pp. 2-4)

Dr. Price noted Dr. Gordon's cognitive disorder not otherwise specified diagnosis is obsolete and not included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, that was released on May 29, 2013. Dr. Price found it is possible Scales had an adjustment disorder with mixed emotional features as recommended by Dr. Gordon, but the disorder is very common and benign. (Ex. D, p. 3)

On August 18, 2013, Dr. Rubin issued a letter discontinuing his evaluation and treatment of Scales due to "the W/C carrier's posture of non-neutrality and interference taken thus far impacting my involvement" (Ex. 2, p. 105) Dr. Rubin noted he had not determined malingering was present, and noted he had not arrived "at a formulation which has certainty," but could say the concepts of dissociative fugue and PTSD are within the differential diagnosis applied to Scales, and the proximate cause could be work-related. (Ex. 2, p. 106)

Dr. Rubin noted that prior to his fifth office visit with Scales, he had been invited to participate in a telephone discussion with Dr. Price, "who was described or misrepresented to me as a neuropsychologist, and who has not examined Ms. Scales." (Ex. 2, p. 106) Dr. Rubin opined "it appears he has no clear qualifications or formal training in neuropsychology, and certainly none in the medical fields of neuropsychiatry or behavioral neurology." (Ex. 2, p. 106)

A new case manager was appointed by the insurance carrier, and Dr. Rubin resumed care of Scales. (Ex. 2, p. 108) Dr. Rubin noted his impression on October 18, 2013, that Scales has "severe dissociative disorder [with] psychoform [and] somatoform aspects clearly set against background of multiple traumas; but precipitated by incident/TBI of 8/14/12." (Ex. 2, p. 114)

Scales applied for Social Security Disability Insurance benefits, which were approved on April 5, 2014. (Ex. 5, p. 1) Scales was found to be disabled on January 24, 2013. (Ex. 5, p. 1) The basis for the disability determination and the medical or psychological reports used in making the disability determination were not produced by the parties in this case.

On April 29, 2014, Kathy Lawler, D.Phil., conducted an independent neuropsychological evaluation of Scales. (Ex. B, p. 1) Dr. Lawler reported Scales initially engaged in bizarre behavior, including standing in the corner moaning and whining, walking "along the wall of the room tapping her fingernails on the wall and door" and "occasionally waving, shaking, and clapping her hands," but her behaviors

disappeared when she became engaged with testing. (Ex. B, p. 5) Dr. Lawler reported Scales did not request any breaks, complain of fatigue, headaches, or pain, or exhibit significant symptoms of depression or anxiety during several hours of testing. (Ex. B, pp. 5, 8) Dr. Lawler observed a "marked discrepancy" between Scales's claimed stress and disability and her behavioral observations during the evaluation. (Ex. B, pp. 9-10)

Dr. Lawler agreed with Dr. Price it is unlikely Scales sustained a mild TBI, and even if she did, her test results are not consistent with a mild TBI, but rather indicate poor effort, noting initial hospital records did not document Scales sustained a concussion or had symptoms of a concussion. (Ex. B, p. 9) Dr. Lawler opined the "dissociative fugue state diagnosed by Dr. Rubin is not typical for concussion and her report of these unusual symptoms is most likely attributable to her exaggeration and fabrication of symptoms." (Ex. B, p. 9)

Dr. Lawler further agreed with Dr. Price that the August 14, 2012 fall was not severe enough to cause PTSD. (Ex. B, p. 9) Dr. Lawler noted Scales did not report symptoms that would support a diagnosis of PTSD during her evaluation and noted Dr. Gordon did not document Scales had symptoms of PTSD during the December 2012 evaluation. (Ex. B, p. 9)

Dr. Lawler compared Scales's performance on testing for the current evaluation with Dr. Gordon's evaluation, and noted the testing "revealed variable, contradictory, and improbable test results across multiple domains, which are not consistent with the nature of Ms. Scales' accident on 08/14/2012, or the known effects of concussion." (Ex. B, p. 9) Dr. Lawler concluded Scales's "poor effort during testing and her exaggeration of symptoms suggests malingering." (Ex. B, p. 9) Dr. Lawler opined Scales "does not demonstrate residual cognitive impairment or emotional/mental health problems causally related" to the August 14, 2012 accident and "is not impaired from a neuropsychological perspective and has reached maximum improvement." (Ex. B, pp. 9-10) Dr. Lawler concluded Scales reached maximum improvement for mental health conditions, both psychiatric and neuropsychological, "as early as 07/15/2013." (Ex. B, p. 14)

The next day Scales attended an appointment with Dr. Rubin, where he noted Scales was "more expressive, but with possible psychotic or hallucinatory content. Pervasive anxiety persists, possibly augmented by PTSD components. Episodes of absence vs. psychogenic [*sic*] fugue vs. dissociation persist." (Ex. 2, p. 130) Dr. Rubin prescribed Seroquel "[b]ecause of the possibility of psychotic or hallucinatory elements complicating her anxiety state." (Ex. 2, p. 130)

On May 7, 2014, the police found Scales wandering in a motel parking lot confused, wearing only a t-shirt and underwear, confused and disoriented. (Ex. 2, pp. 131-132) Scales was taken to an emergency room in Washington Township by ambulance. (Ex. 2, p. 132) The emergency room physician ordered a head CT of Scales, which was normal and she was discharged to her home. (Exs. 2, pp. 136-146; I, p. 7)

In a letter dated May 11, 2014, Dr. Rubin challenged Dr. Lawler's opinion, noting she is a neuropsychologist, not a neuropsychiatrist qualified to render opinions of his work. (Ex. 2, p. 147) Dr. Rubin noted while he initially entertained the TBI diagnosis, advanced by other practitioners, including Drs. Gordon and Sturr, he did not believe Scales had a major cognitive disorder caused by her concussion or mild TBI. (Ex. 2, pp. 147-148)

Dr. Rubin reported he was treating Scales for somatoform dissociation, which Dr. Lawler failed to address. (Ex. 2, p. 148) Dr. Rubin relayed he favored this diagnosis "after discovery and confirmation (i.e. not only via self-report) of profound and recurrent traumatization, and a supportive diagnosis of PTSD with dissociation" in an individual who was "effective and functional for a prolonged period [and] precipitously deteriorated at the time of her 8/14/12 accident." (Ex. 2, p. 148)

Dr. Rubin stated that he did not refer Scales for neuropsychological testing because of his belief that "the degree of emotional interference would be too great to achieve a valid assessment of SS's best level of cognitive function." (Ex. 2, p. 147) He also opined Dr. Lawler's interpretation that the "symptom validity tests" showed inadequate effort and supported an inference Scales does not have a persisting brain injury is irrelevant and does not exclude the presence of underlying dysfunction from a cause that was not included in the assessment. (Ex. 2, p. 148)

Dr. Rubin opined "until otherwise established, the precipitating factor in her dysfunctional deterioration was the incident of 8/14/12. The exact psychological and psychiatric effects of the precipitating trauma, while still being clarified, remains the presumptive proximal cause of her deterioration." (Ex. 2, p. 149) Dr. Rubin opined Scales had not reached maximum medical improvement and that cessation of psychiatric care based on a neuropsychological assessment was inappropriate and potentially harmful to Scales, and urged Scales to seek legal representation. (Ex. 2, p. 149)

Dr. Lawler issued an addendum on June 9, 2014, noting Dr. Rubin's assessment is based primarily on behavioral observations and subjective reports from Scales and her family, in contrast to her use of objective tests with validity measures. (Ex. B, p. 15) Dr. Lawler opined the comments by Dr. Rubin do not change her opinion that Scales has reached "maximum improvement" for all psychiatric and neuropsychological mental health conditions associated with the accident of August 14, 2012. (Ex. B, p. 15)

After receiving the opinions from Drs. Lawler and Price, CRST and Liberty Mutual denied liability for Scales's mental injury claim. (Mentzer Testimony) CRST and Liberty Mutual paid Scales \$34,728.96 in temporary total disability from August 23, 2013 through May 27, 2014. (Ex. 4, p. 4)

In 2014, Aiken and Scales were behind on their rent and had to move into a hotel. (Ex. J, Tr. p. 10) Aiken was not paying Scales's other bills. (Ex. J, Tr., p. 10) Scales's daughter, Maria Bell, testified that Aiken was taking her mother's tramadol, he

was mentally abusive to her, and he was failing to provide nourishment to her. (Ex. K, Tr., pp. 21-22, 68-70) Bell returned to New Jersey between December 2014 and February 2015 to bring her mother back with her to Palestine, Texas. (Exs. J, Tr., pp. 8-9; K, Tr., pp. 17, 31) After Scales left New Jersey, she continued to have contact with Aiken. (Ex. K, Tr. pp. 29-30)

Bell had previously stayed with her mother and Aiken during the summer of 2013 through October 2013. (Ex. K, Tr., p. 37) While Bell regularly spoke with her mother it was the first time she had visited her mother since 2008. (Ex. K, Tr., pp. 9, 12, 16, 19) Bell noted that in 2013, Scales was "cooking, feeding, cleaning, dressing and talking and performing her daily life functions well at that time." (Ex. K, Tr., p. 19) Bell also noted that while she was there she observed Aiken be mentally abusive to her mother, but not physically abusive. (Ex. K, Tr. p. 38)

Scales produced medical records from her family practitioner in Texas from July 2015, showing Scales had been diagnosed with generalized anxiety disorder, panic attacks, major depression, and bipolar disorder, and noting she presented as "anxious, cooperative, distrustful, paranoid" with "poor insight; poor judgment." (Ex. 2, pp. 185-186)

Scales sought psychiatric care through Access in Texas. (Ex. 2, pp. 188-231) Staff at Access received information Scales had a past history of physical, sexual, and verbal abuse. (Ex. 2, p. 193) Scales reported she had been abused as a child, but she did not want to discuss it. (Ex. 2, p. 193) Scales noted she attended school through the 12th grade, but she did not receive a diploma. (Ex. 2, p. 195) Scales denied having a developmental delay or attending special education classes in school. (Ex. 2, p. 195)

Scales presented for a psychiatric evaluation with David Korman, M.D., of Access, on July 22, 2015. (Ex. 2, p. 201) During the evaluation, Dr. Korman noted,

[T]he daughter gives an account of the patient having a very traumatic childhood and some post-traumatic stress disorder symptomology predating the injury and that the patient is very apprehensive now and if the mention of falls is made, she becomes terribly anxious and she will wake up from a nightmare about falling and then other occasions if someone touches her she will have apprehension related to her child abuse. She appears terribly anxious and tremulous but also internally distracted, sometimes looking at her fingers which she is holding about eyelevel [*sic*] to her left, sometimes mumbling what seem to be answers to unseen persons or voices. She does acknowledge hearing voices although I felt not entirely certain about the validity of the report.

(Ex. 2, pp. 201-202) Dr. Korman diagnosed Scales with a mood/psychotic disorder due to a TBI, PTSD by history, and a cognitive impairment due to a TBI. (Ex. 2, p. 202) Dr. Korman prescribed Risperdal for psychosis at bedtime, and Cymbalta for depression. (Ex. 2, p. 202)

Scales was also referred to Daniel Sa, M.D., a neurologist, with a complaint of dementia. (Ex. 2, p. 204) Dr. Sa noted Scales was essentially mute and her daughter answered most questions, and reported her mother's medical records had been lost. (Ex. 2, p. 204) Dr. Sa noted that following a motor vehicle accident with head trauma in 2012, Scales remained functional and lived with her boyfriend. (Ex. 2, p. 204) Dr. Sa further noted,

By the daughter's account, the boyfriend was very abusive, not feeding her among other serious issues for which he was later jailed. The daughter had no contact with her, but knew she was functional, seeing her once in 2013 and she was cooking, feeding, cleaning, dressing and talking.

She is afraid of being touched, examined, afraid of noises, will easily go into a panic attack.

At some point she started to decline, and now she cries all of the time, just sits and moans, rocking back and forth. She will talk, but only at home with family members [sic], going mute outside. Apparently she saw psychiatry who believes this is some kind of stress disorder.

A thorough review of neurological signs and symptoms, through daughter, including but not limited to headaches, visual changes, speed difficulties, weakness, sensory changes was otherwise unremarkable, except as mentioned above.

(Ex. 2, p. 204) Dr. Sa noted that given the limited records and his limited exam, "it is hard to be sure, but the most likely diagnosis here would be a very severe PTSD or something similar – she needs to keep following closely with psychiatry. Will rule out neurological causes, such as strokes, dementia (unlikely), seizures, etc." (Ex. 2, p. 205) Dr. Sa opined that Scales needs 24-hour supervision, is incapable of caring for herself, and cannot drive. (Ex. 2, p. 205)

After receiving a report that Scales had experienced a seizure, Dr. Sa ordered an EEG. (Ex. 1, p. 9) The August 12, 2015 EEG was abnormal, with "localized sharp wave activity" in the temporal areas, suggestive of seizure activity. (Ex. 1, p. 9) A CT of Scales's brain without contrast from August 12, 2015 was normal. (Ex. 1, p. 8) MRI ordered by Dr. Sa was noted to be "unremarkable." (Ex. 1, p. 10)

In November 2015, Mark Mittauer, M.D., a psychiatrist, conducted an independent psychiatric evaluation of Scales, *via* Skype. (Ex. 1, p. 1) Dr. Mittauer reviewed treatment records, letters, and reports produced by Scales. (Ex. 1) Dr. Mittauer's report does not indicate that he reviewed the emergency room records following Scales's accident on August 14, 2012, records from UI Health Works, or records from Dr. Hill. (Ex. 1)

Dr. Mittauer diagnosed Scales with major depressive disorder, severe, without psychotic features, other specified anxiety disorder (panic attacks), other specified schizophrenia spectrum and other psychotic disorder, and other specified dissociative disorder following her work injury in 2012. (Ex. 1, pp. 16-18) Dr. Mittauer noted,

Typically, symptoms of schizophrenia begin in the late teens or early 20's. However, it is conceivable that Ms. Scales developed schizophrenia at an older age. A review of the literature also suggests that psychotic symptoms, including schizophrenia, can occur following a head injury. Often schizophrenia develops in clients who suffer a head injury and are predisposed to schizophrenia. For example, clients who had a parent who had schizophrenia are at higher risk for schizophrenia. Clients can also develop psychotic symptoms from a head injury that would merit the diagnosis of Psychotic Disorder due to a general medical condition (head injury) rather than schizophrenia. It is conceivable that this is the accurate diagnosis for Ms. Scales. However, I feel that it is more likely that psychosis developed after her head injury, than she spontaneously developed schizophrenia.

(Ex. 1, pp. 16-17) Dr. Mittauer found Scales was not employable in any capacity because of her work-related diagnoses and that she reached maximum medical improvement on January 1, 2015. (Ex. 1, p. 18)

During his deposition, Dr. Mittauer was asked:

Q. And if it's reported by Ms. Scales that she did not lose consciousness and she was not experiencing nausea or vomiting, those factors would indicate that it would be more indicative of there not being a concussion than there being a concussion, correct?

A. I would say that's correct.

Q. If there were no identifiable problems with speech or coordination and no problems with vision, those findings would be more indicative that there was not a concussion than there was a concussion, correct?

A. That's true, but those symptoms could develop the next day, two days later, things like that.

Q. I understand what you're arguing, but at least in terms of reporting at the time of the injury, those reports are more consistent with someone not sustaining a concussion than having a concussion; would you agree with that?

A. I would say that's true.

Q. And in regard to those factors that I just identified, you don't – you didn't have an opportunity to review the emergency room records to conclude the validity of those factors, is that correct?

A. I don't recall at this moment if I saw the emergency room records. I don't see them summarized in my report, so --

Q. As you --

A. -- I likely did not.

Q. I'm sorry. As you sit here today, you don't have any basis to dispute Dr. Lawler's report or other doctors who say that she did not sustain a concussion when she fell; you don't have any basis to dispute that, do you?

A. I can't dispute that, no.

(Ex. C, pp. 67-69)

Dr. Mittauer also testified he was not provided with a copy of Dr. Price's report dated July 15, 2013. Counsel for CRST and Liberty Mutual noted that in his report:

Q. Dr. Price indicates that in his review of the emergency room records, that Ms. Scales denied a loss of consciousness and that the medical records revealed a Glasgow Coma Scale of 15, which is a perfect score.

A. Uh-huh.

Q. Were you aware of that finding by the treating doctors at the time of the fall?

A. No, I was not.

Q. And the Glasgow Coma score, if it's 15, is also a strong indicator that there has -- there is minimal injury to the head in terms of the signs that one would demonstrate initially, isn't that correct?

A. That's correct.

Q. Now, Dr. Price in his report on page 18 -- or let's start on page 17. He comes to the conclusions -- And I just want to ask you whether you have any basis to refute those conclusions. And the first conclusion he identifies on page 2 of his report is, "Ms. Scales likely did not have a traumatic brain injury at all. She had no loss of consciousness. Initial reports did not document any confusion or being dazed. Her Glasgow

Coma Scale, if computed, would have been 15, or perfect. She had a normal CT scan and a normal EEG." You don't have any basis to refute those findings, do you?

A. No, I don't.

Q. He also says that, you know, even assuming a brain injury had happened, it would have been a mild traumatic brain injury at worst, with complete resolution to be expected within hours to days. Do you have any basis to dispute that assertion?

A. No, I don't.

Q. He goes onto the next page, and on page 3 he concludes, "Mild traumatic brain injury does not cause a decline in IQ, a seizure disorder or catastrophic disability." Would you agree with that assertion?

A. I'd agree with that.

...

Q. And I am correct that given what we shared with you about a questionable concussion, the initial description of lacking any additional symptoms when she went to the emergency room, that that would also, in your opinion, discount any conclusion that she sustained any sort of organic traumatic injury when she fell; would you agree with that?

A. To her brain?

Q. To her brain.

A. To her brain, that's correct.

(Ex. C, pp. 70-76)

During his deposition Dr. Mittauer was asked a series of questions about PTSD and inquired, "Can I ask, why are we – why are we talking so much about PTSD?" (Ex. C, Tr., p. 74) Dr. Mittauer was informed he was being asked for his opinions regarding PTSD because other providers had found that Scales had PTSD. (Ex. C, Tr., pp. 74-75) Dr. Mittauer responded he did not diagnose Scales with PTSD or conclude the fall from her truck caused PTSD. (Ex. C, Tr., pp. 36-37, 75)

Dr. Mittauer testified that Scales's depression diagnosis began after her work-related injury when she was unable to work. (Ex. C, Tr. p. 85) Dr. Mittauer admitted that the events that occurred after Scales returned to New Jersey also could have caused her depression. (Ex. C, Tr. pp. 85-95)

Dr. Mittauer testified that after receiving additional information during his deposition, he would not make a different diagnosis. (Ex. C, Tr. p. 98) Dr. Mittauer believes, within a reasonable degree of medical probability Scales has major depressive disorder that began after her injury that was caused by "being unable to drive a truck or be gainfully employed, associated financial stress, being unable to do certain household chores, et cetera, and not being able to do all the things she could before." (Ex. C, Tr. pp. 98-99) Dr. Mittauer testified "Today I have to concede, you know, as we've already testified, that there are other factors that certainly could contribute to the depression" or caused it. (Ex. C, Tr. p. 99) Dr. Mittauer opined the work injury was a "substantial contributing factor" to the depression diagnosis. (Ex. C, Tr. 99) Dr. Mittauer testified it is not uncommon to develop depression well after the fact. (Ex. C, Tr. p. 108)

In December 2015, counsel for CRST and Liberty Mutual contacted Abbott regarding her treatment of Scales. (Ex. E) Abbott had not examined Scales since 2012, but opined that based upon a review of records from Dr. Hill and physical therapy regarding Scales's left elbow fracture, she "would estimate Maximum Medical Improvement for the left upper extremity as of January 31, 2013 without any impairment expected." (Ex. E, p. 11)

Scales believes that as a result of her August 14, 2012 work injury she has developed anxiety, depression, and schizophrenia. (Ex. J, Tr., p. 33) Scales noted she cannot walk out of the house unless someone is with her, she cannot use the stove because she almost started a fire, she loses sense of time and does not know what is going on around her, she is scared of going up and down the stairs because she is afraid she is going to fall, and she requires assistance getting in and out of the bathtub. (Ex. J, Tr., pp. 33-34) Scales testified her schizophrenia keeps her from driving because she does not want to be responsible for killing someone. (Ex. J, Tr., p. 68)

Scales testified her elbow locks up occasionally when she is dusting or reaching for things. (Ex. J, Tr., pp. 43-44, 45) She also reported she has some difficulty sweeping the floor as a result of her work injury. (Ex. J, Tr., p. 45) Scales noted that when her elbow locks up, she stretches it to unlock it and is able to continue with her activity. (Ex. J, Tr., p. 46) Scales also noted that she has problems with her neck locking up. (Ex. J, Tr., pp. 34-35)

Bell testified her mother stutters, her hands shakes, she rocks back and forth, provides prolonged responses, she is forgetful, and she has problems with cooking, cleaning, dressing, and bathing. (Ex. K, Tr. pp. 49-50) Bell informed Dr. Sa, and testified that when she visited her mother in 2013, following her mother's 2012 work injury, her mother could engage in activities of daily living independently. (Exs. 2, p. 204; K, Tr., p. 19)

Portions of Scales's video deposition were produced as Exhibit T. During her deposition Scales's right hand is shaking and she places her hands at her mouth, rubs her face by her mouth, and she touches her hands together repeatedly. (Ex. T)

Scales's hands stopped shaking when she reached for a cellular telephone and showed counsel for CRST and Liberty Mutual copies of her detailed, pen drawings. (Ex. T) The drawings are very detailed and there is no break in the lines or sign of Scales's hand shaking. (Ex. M).

Auld viewed Scales's deposition and observed an "alleged inability to communicate and what appeared to be limitations in processing questions and providing answers." (Ex. F, p. 4) Auld reported she did not recall Scales "displaying any of the symptoms or strange behavior that she had in the deposition." (Ex. F, p. 4) Nelson and Mentzer also viewed her deposition, and reported they had not observed Scales have any type of limitation or problem like they observed in the video before or after her injury. (Ex. G, p. 3; Mentzer Testimony)

Abbott also noted:

In addition to review of some more recent medical records (between June 2013 and August 2015), I have recently had the opportunity to view a deposition of Ms. Scales dated August 31, 2015. Although I do not remember or recognize Ms. Scales from the video, I can state that I have never cared for a patient at UI HealthWorks who exhibited such physical behaviors which are displayed in Ms. Scales' video deposition. Had an individual ever exhibited these behaviors, I would have certainly indicated as such in my record/dictations as such behaviors would be considered pertinent and note worthy.

(Ex. E, p. 11)

CONCLUSIONS OF LAW

I. The Nature of the Injury

Scales contends she sustained a TBI and injury to her elbow when she fell from her truck on August 14, 2012 and her physical injuries caused permanent mental health conditions. CRST and Liberty Mutual aver Scales did not sustain a TBI, but assuming she did, it was minor, and her physical injuries did not cause her to develop mental health conditions. Alternatively, CRST and Liberty Mutual argue mental abuse inflicted by Aiken, his manipulation, and the stressors associated with Hurricane Sandy caused Scales to develop any mental conditions she has.

An injury to one part of the body can later cause an injury to another. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16-17 (Iowa 1993) (holding a psychological condition can be caused or aggravated by a scheduled injury). The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997); Edwards v. Carroll Cmty. Sch. Dist., File No. 1214941, 2002 WL 32125171, at *1 (App.

September 12, 2002). "In order for a cause to be proximate, it must be a 'substantial factor.'" Id. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

Drs. Gordon, Sturr, and Mittauer found that Scales sustained a TBI when she fell from her truck on August 14, 2012. Following his examination of Scales on December 21, 2012, Dr. Gordon found Scales's presentation was consistent with "Cognitive Disorder NOS" due to a mild TBI, and mood complaints consistent with an "Adjustment Disorder with Anxious Mood." (Ex. 2, p. 50) In March 2013, Dr. Sturr and her team diagnosed Scales with PTSD, anxiety, depression, and a TBI and referred Scales to Dr. Rubin for treatment of her PTSD. (Ex. 2, pp. 80-84) In 2015, Dr. Mittauer diagnosed Scales with major depressive disorder, severe, without psychotic features, other specified anxiety disorder (panic attacks), other specified schizophrenia spectrum, and other psychotic disorder, following her work-related TBI in 2012. (Ex. 1, pp. 16-18)

Drs. Price and Lawler found Scales did not sustain a TBI, and even if she sustained a TBI, it was not severe enough to cause her later psychological symptoms. (Exs. B, p. 9; D, pp. 2-3) Dr. Rubin found that while Scales may have sustained a concussion or mild TBI, "[i]t was not suspected currently that she had a major cognitive disorder on the basis of her concussion or a mild TBI. She is not being treated for neuropsychological impairment or traumatic brain injury." (Ex. 2, pp. 147-148)

Dr. Price is not trained in neuropsychology, so his opinion, while consistent with Dr. Lawler's opinion, is given less weight. Drs. Gordon and Lawler are trained in neuropsychology, but they are not trained in psychiatry. Drs. Rubin and Mittauer are both trained in psychiatry, but do not agree on a diagnosis. Dr. Rubin initially agreed with Dr. Gordon, that Scales has PTSD, but later determined her primary disorder is somatoform dissociation, which was precipitated by the incident of August 14, 2012. (Ex. 2, pp. 148-149) Drs. Mittauer, Price, and Lawler have not diagnosed Scales with PTSD. (Exs. 1; B; D)

While Dr. Mittauer most recently examined Scales in November 2015, Dr. Mittauer was not provided with Scales's initial hospital records, the records from her treatment when she returned to Cedar Rapids in August and October 2012, or any

information concerning her functioning when she was performing modified work for CRST. Because of this failure, Dr. Mittauer's opinion is also given less weight. Moreover, during his deposition, Dr. Mittauer testified he had no basis of disagreeing with Dr. Lawler's assertion that she did not sustain a concussion when she fell. (Ex. C, pp. 67-69) Dr. Mittauer also agreed with Dr. Price's assertion, that even assuming Scales sustained a TBI, it would have been a mild TBI, at worst, with complete resolution expected within hours to days. (Ex. C, pp. 71-72)

Emergency room staff who treated Scales the day of her injury observed Scales had a small hematoma on her left forehead. (Ex. 2, p. 2) Scales denied having nausea, vision changes, or problems with speech or coordination, vomiting, or losing consciousness. (Ex. 2, p. 1) Scales was diagnosed with a radial head fracture, a hip contusion, and facial contusions. (Exs. 2, pp. 2; 15; E, p. 2) She was not diagnosed with a concussion or TBI.

Two days later, Scales presented at a different hospital complaining of pain, and a possible loss of consciousness. (Ex. 2, p. 4) CT scans of her head and hip did not show any abnormalities. (Exs. 2, p. 5; I, pp. 2-3) The treating physician diagnosed Scales with an elbow fracture and concussion, and released her. (Ex. 2, pp. 6, 10)

Scales returned to Iowa and received treatment for her elbow through UI Health Works and through Dr. Hill. During her first appointment with Abbott at UI Health Works on August 22, 2012, Scales complained of an "intermittent headache over the left frontal area" which she reported hit the ground. (Ex. 2, p. 12) Scales denied losing consciousness, having blurred vision, nausea, vomiting, dizziness, or any other neurological symptoms. (Ex. 2, p. 12) Scales complained of sleeping problems secondary to the pain in her left arm; she did not complain of sleeping problems related to headaches or striking her head. (Ex. 2, p. 12)

Scales did not receive treatment for a TBI while she was in Iowa. While she complained of headaches while she was in Iowa, it was not until after she returned to New Jersey, on December 7, 2012, when Dr. Gordon documented her complaints of "poor vision, sensitivity to light, loss of balance, poor coordination/dizziness, sleep difficulty, nightmares, forgetfulness, slowed thinking, difficulty managing daily activities, feelings of depression/anxiety/fear/panic, and flashbacks." (Ex. 2, p. 33) And during his neuropsychological consultation Dr. Gordon noted Scales's thoughts were "logical, relevant, and organized. Evidence of a major thought disorder, delusional ideations, or hallucinatory phenomena were not reported or observed." (Ex. 2, p. 33)

Scales was able to successfully perform the clerical and operator duties while performing modified duty at CRST. (Ex. J, Tr. p. 57) None of her coworkers reported observing her later reported problems. (Exs. F, p. 3; H, p. 4) Abbott also denied observing the later reported problems. (Ex. E, p. 11)

Following her August 14, 2012, injury, Abbott restricted Scales from commercial driving through her last appointment on October 24, 2012. (Ex. 2, p. 26) Dr. Gordon

also restricted Scales from commercial driving during the November 28, 2012 appointment. (Ex. 2, p. 29) Following her left upper extremity injury, Scales could not return to regular duty or drive.

After having fully reviewed the medical records and depositions in this case, I conclude Scales has met her burden of proving she sustained a mild TBI and injury to her left upper extremity on August 14, 2012, but I do not find Scales has met her burden of proving the diagnoses of somatoform dissociation, PTSD, other specified schizophrenia spectrum and other psychotic disorder, and other specified dissociative disorder are sequelae of her mild TBI or injury to her left upper extremity. Scales did not exhibit any symptoms of somatoform dissociation, PTSD, other specified schizophrenia spectrum and other psychotic disorder, or other specified dissociative disorder while she was working and being treated in Iowa, or even after she returned to New Jersey and was evaluated by Dr. Gordon. The record supports she developed anxiety and depression after she was unable to return to work and experienced related financial problems. I find Scales sustained a mild TBI and an impairment to her left upper extremity. I also find her major depressive and anxiety disorders are sequelae of her left upper extremity impairment. Thus, is it necessary to consider the extent of Scales's disability.

II. Extent of Disability

After receiving Dr. Lawler's opinion, CRST and Liberty Mutual stopped paying workers' compensation benefits to Scales. Scales contends she is entitled to additional temporary benefits during a period of recovery, and permanent benefits.

Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for loss of earnings" during a period of recovery from the condition. Id. An award of healing period benefits or total temporary disability benefits is not dependent on a finding of permanent impairment. Dunlap, 824 N.W.2d at 556. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Id.

"[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). "Stabilization of the employee's condition 'is the event that allows a physician to make the determination that a particular medical condition is permanent.'" Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary

total benefits. Id. at 556-57. Scales testified about the residual problems she has with her left upper extremity. Based on the record evidence, I find Scales has a permanent impairment to her left upper extremity. If Scales is entitled to any additional temporary benefits related to her mental health sequelae, she is entitled to healing period benefits.

Iowa Code section 85.34(1) governs healing period benefits, as follows:

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

Under Iowa Code section 85.33(6), “‘employment substantially similar to the employment in which the employee was engaged at the time of the injury’ includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed.”

Scales has received multiple opinions from multiple providers. As analyzed above, I do not find Scales met her burden of establishing her diagnoses of somatoform dissociation, PTSD, other specified schizophrenia spectrum and other psychotic disorder, and other specified dissociative disorder are sequelae of her mild TBI or left upper extremity impairment. I do find she has met her burden of establishing her diagnoses of major depressive disorder, severe, without psychotic features, and other specified anxiety disorder (panic attacks) are sequelae of the physical injury to her left upper extremity. These two diagnoses have persisted over time. The record does not contain recent treatment records addressing these conditions, any treatment Scales is currently receiving, or her prognosis. CRST and Liberty Mutual stopped paying for Scales’s care in May 2014. The current record does not support a finding Scales has reached maximum medical improvement with respect to her sequelae conditions.

During her last appointment with Abbott on October 25, 2012, Abbott noted Scales should continue with modified duty. (Ex. 2, p. 27) Dr. Rosen restricted Scales from working until further notice on December 3, 2012. (Ex. 2, p. 29) I find Scales is entitled to a running award of healing period benefits from December 3, 2012, for a number of reasons. The record supports Scales is still impaired by her major depressive and anxiety disorders. Dr. Sturr and her team, which included a psychologist, diagnosed Scales with anxiety and depression during her inpatient evaluation in March 2013. (Ex. 2, pp. 80-83) Dr. Mittauer found these conditions persisted at the time of his independent psychiatric evaluation in November 2015, when

he diagnosed Scales with "Major Depressive Disorder, severe, without psychotic features," and "Other Specified Anxiety Disorder (panic attacks)." (Ex. 1, p. 16)

When she met with Dr. Mittauer, Scales relayed she felt depressed because she cannot drive a truck, she has difficulty performing simple tasks, she has insomnia, she "freaks out," and she is not herself. (Ex. 1, p. 13) Scales also discussed periodic suicidal thoughts where she thinks about killing herself, and panic attacks where she breathes fast, scratches the skin on her arms and hands, and cannot leave her home. (Ex. 1, pp. 13-15) Dr. Mittauer concluded Scales's symptoms of depression began following her work injury because she was not able to return to her customary job as a truck driver and her inability to work caused financial difficulties. (Ex. 1, p. 16) He also concluded Scales's panic attacks began after her work-related injury and occurred in situations where she was around others, and where she felt unsafe and uncomfortable. (Ex. 1, p. 16)

After receiving Dr. Lawler's opinion in 2014, CRST and Liberty Mutual stopped paying for Scales's medical care. The record is void of any evidence of what treatment Scales has received or is receiving, what the treatment should include, and what her prognosis is with respect to her depression and anxiety. The record does not support she is medically capable of returning to employment substantially similar to the employment in which she was engaged at the time of the injury or that she is at maximum medical improvement.

Based on the record evidence I find Scales is entitled to a running award of healing period benefits from December 3, 2012, the date Dr. Rosen restricted her from working, until such time as those benefits shall end. Since I have found Scales is entitled to a running award of healing period benefits, the issue of permanency is preserved for a later point in time. Accrued benefits shall be paid in a lump sum.

III. Alternate Medical Care and Payment of Medical Expenses

Scales seeks recovery of medical expenses set forth in Exhibit 13, totaling forty-six thousand seven hundred ninety and 76/100 dollars (\$46,790.76), and future medical care. CRST and Liberty Mutual contend Scales is not entitled to recover the medical expenses or to receive payment for future medical care.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. *Id.* As a result of the denial of liability of Scales's mental health sequelae, CRST and Liberty Mutual lost the right under Iowa law to choose the care for her mental health sequelae. Trade Profs, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003).

As analyzed above, Scales's depression and anxiety are sequelae of the physical injury to her left upper extremity. Thus, CRST and Liberty Mutual are liable for Scales's medical expenses to treat her mental health sequelae, including the expenses set forth in Exhibit 13. CRST and Liberty Mutual are also liable for Scales's ongoing care for her mental health sequelae and Scales is entitled to direct her own care due to the denial of liability.

IV. Reimbursement for Dr. Mittauer's Examination

Scales seeks recovery of the cost of Dr. Mittauer's examination, eight hundred fifty dollars and 00/100 (\$850.00). After receiving an injury, the employee, if requested by the employer is required to submit to examination at a reasonable time and place, as often as reasonably requested to a physician, without cost to the employee. Iowa Code § 85.39. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes the evaluation is too low, the employee "shall, upon application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choosing." Id.

CRST and Liberty Mutual obtained an opinion from Dr. Lawler that Scales has no impairment from a neuropsychological standpoint, and reached maximum improvement from her mental health conditions, as early as July 15, 2013. Scales disagreed with the opinion and sought an independent opinion from Dr. Mittauer. Scales is entitled to recover the cost of Dr. Mittauer's examination. See Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 844 (Iowa 2015).

V. Reimbursement of Costs

Scales seeks recovery of costs in this case. The workers' compensation commissioner has discretion to tax costs set forth in rule 876 Iowa Administrative Code 4.33. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 262 (Iowa 1996). The subsequent costs are assessed to CRST and Liberty Mutual:

Filing Fee	\$ 100.00
Service of Process	\$ 12.96
Deposition Transcript of Suzette Scales	\$ 283.75
Video Deposition of Suzette Scales	\$ 919.00
<u>Deposition Transcript of Maria Bell</u>	<u>\$ 110.00</u>
Total	\$1,425.71

ORDER

IT IS THEREFORE ORDERED, that:

Defendants shall pay unto the claimant running healing period benefits from December 3, 2012, at the rate of three hundred seventy and 38/100 dollars (\$370.38) per week, until such time as benefits shall cease pursuant to Iowa Code section 85.34.

Defendants shall take credit for all benefits previously paid.

Defendants shall pay accrued benefits in a lump sum.

Defendants shall pay the medical bills set forth in Exhibit 13, totaling forty-six thousand, seven hundred ninety and 76/100 dollars (\$46,790.76).

The claimant is entitled to ongoing care for treatment of her mental health sequelae and is entitled to direct her own care due to the defendants' denial of liability.

Defendants shall pay the cost of Dr. Mittauer's examination, totaling eight hundred fifty and 00/100 dollars (\$850.00).

Defendants are assessed costs totaling one thousand four hundred twenty-five and 71/100 dollars (\$1,425.71).

Defendants shall file all subsequent reports of injury ("SROI") as required by rule 876 IAC 3.1(2).

Signed and filed this 29th day of April, 2016.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Daniel J. Anderson
Attorney at Law
PO Box 849
Cedar Rapids, IA 52402
danderson@wertzlaw.com

Chris J. Scheldrup
Attorney at Law
PO Box 36
Cedar Rapids, IA 52406-0036
cscheldrup@scheldruplaw.com

HLP/srs

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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.