BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

REBECCAY LEVY, Claimant, vs. Q. HEALTH, LLC, D/B/A COMFORT KEEPERS, Employer, and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, and SECOND INJURY FUND OF IOWA, Insurance Carrier, Defendants.	File Nos. 1641868.01 1641454.01 ARBITRATION DECISION Head Note Nos.: 1402.30, 2502

STATEMENT OF CASE

Claimant, Rebecca Levy, filed petitions and arbitration seeking worker's compensation benefits from Q Health LLC, D/B/A Comfort Keepers (Comfort Keepers), employer, and National Union Fire Insurance Company of Pittsburgh, insurer, and Second Injury Fund of Iowa (Fund), all as defendants. This matter was heard on October 1, 2020, with the final submission date of October 29, 2020.

The record in this case consists of Joint Exhibits 1-17, Claimant's Exhibits 1-14, Defendant Comfort Keepers and National Union Fire Insurance Exhibits A-L, Defendant Funds Exhibits AA-CC, and the testimony of claimant.

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

ISSUES

For file number 1641868.01 (date of injury: November 30, 2017):

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether claimant's claims for benefits is barred by application of Iowa Code section 85.23.

3. Whether injury is a cause of a temporary disability.

4. Whether injury is a cause of a permanent disability; and if so,

5. The extent of claimant's entitlement to permanent partial disability benefits.

6. The commencement date of benefits.

7. Rate.

8. Whether there is a cause of connection between the injury and the claimed medical expenses.

9. Whether claimant is due reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39.

10. Whether claimant has a qualifying first and second injury for the purposes of fund benefits.

11. The extent of claimant's entitlement to fund benefits.

12. The extent of the fund's credit.

13. Whether apportionment under Iowa Code section 85.34 (7) applicable.

14. Costs.

For file number 1641454.01 (date of injury: December 1, 2017):

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether claimant's claims for benefits is barred by application of Iowa Code section 85.23.

3. Whether injury is a cause of a temporary disability.

4. Whether injury is a cause of a permanent disability; and if so,

5. The extent of claimant's entitlement to permanent partial disability benefits.

6. The commencement date of benefits.

7. Rate.

8. Whether there is a cause of connection between the injury and the claimed medical expenses.

9. Whether claimant is due reimbursement for an independent medical evaluation (IME) under Iowa Code section 85.39.

10. Whether claimant has a qualifying first and second injury for the purposes of fund benefits.

11. The extent of claimant's entitlement to fund benefits.

12. The extent of the fund's credit.

13. Whether apportionment under Iowa Code section 85.34 (7) applicable.

14. Costs.

FINDINGS OF FACTS

Claimant was 53 years old at the time of hearing. Claimant graduated from high school. Claimant has a CNA certificate. Claimant has worked as a banquet server and serving trainer. She has worked as a receptionist. Claimant has worked as a cashier and a laborer. Claimant has worked in sales. Claimant has also worked as a CNA. (Exhibit 4)

Claimant began with Comfort Keepers on March 31, 2016. Claimant works as a CNA for in-home clients. Claimant's job duties as an in-home CNA included, but were not limited to, grocery shopping, doing laundry, bathing clients, feeding clients, transfer of clients and walking clients by the use of a gait belt. (Tr., pp. 24-25)

Claimant's prior medical history is relevant. In March, 2017, claimant was treated on a number of occasions for shortness of breath and chest pain. Claimant was ultimately diagnosed with having anxiety and fibromyalgia. (JE 1, p. 1, JE 3, pp. 31-33, JE 15, pp. 138, 140)

In June, 2017, claimant was treated for leg swelling, shortness of breath and short-term memory loss. Claimant was assessed as having a major depressive disorder. (JE 4, pp 40-45)

On June 6, 2017, claimant was hit in the right eye with a Hoyer lift. (Tr., p. 37) Claimant was treated at DoctorsNow on July 7, 2017, with complaints of dizziness and right eye pain. Claimant was assessed as having ocular pain and told to follow up with the Wolfe Clinic. (JE 8, pp. 62-64)

On July 7, 2017, claimant was evaluated at the Wolfe Clinic for eye pain after being hit in the eye with a Hoyer lift. Claimant was assessed as having traumatic iritis. Claimant's prognosis was excellent. Claimant was told to return as needed. (JE 5, pp. 53-54)

On October 10, 2017, claimant had gallbladder surgery. (JE 2, pp. 18, 20)

Claimant testified she initially injured her right shoulder over the course of 2017 due to her job as a CNA. She testified that she reported her problem to her employer several times, but was ignored. Claimant said her employer decided to finally make a report of her shoulder injury on December 1, 2017. (Tr., pp. 28-30)

Claimant testified on November 30, 2017, she was putting a client in the sling of a Hoyer lift when she felt a popping in her right shoulder and ribs and a burning sensation. Claimant said she finished working with the client and then went to the hospital. (Tr., pp. 27-28)

Claimant also testified she initially hurt her shoulder at the end of 2016 when a client kept falling and pushed her into a wall. (Tr., p. 61) She also testified she injured her right shoulder in January, 2017. (Tr., p. 59)

In a deposition, claimant testified she had one incident occurring on either November 30, 2017, or December 1, 2017, when she lifted a patient and felt popping in the rib. (Exhibit L, deposition p. 27)

In the recorded statement, claimant said she injured her left rib on November 30, 2017, from repetitive lifting of a client. She said she did not know anything about a December 1, 2017, injury as she was not working on that date. (Exhibit E, p. 7)

On December 3, 2017, claimant was evaluated by Lynn Smits, M.D., for abdominal pain. Records note claimant recently had her gallbladder removed. Claimant was assessed as having postoperative abdominal pain. Claimant was prescribed medication. (JE 2, p. 21)

On December 4, 2017, claimant was evaluated at MercyOne Internal Medicine by Emily Myers, PA-C. Claimant had pain in her left lower ribs for the past two days. Claimant was concerned that she was having kidney pain. Records note claimant indicated she had 50 different active problems including, but not limited to, abdominal pain, anxiety, chronic cholecystitis, gastric reflux, nausea and vomiting, pancreas disorders, shortness of breath, shoulder problems, and stress. Claimant was assessed as having musculoskeletal chest pain. (JE 14, pp. 117-120)

On December 20, 2017, claimant was evaluated by Carol Horner, D.O., for ongoing abdominal pain and lower rib pain that began on a Friday night. Claimant was unsure if her work as a home nurse caused her pain. Claimant was assessed as having musculoskeletal chest pain, abdominal wall pain and constipation. Claimant was recommended to have physical therapy. (JE 14, pp. 121-127)

In a December 21, 2017, email to defendant-employer, claimant indicated she went to the hospital and was told she had a pulled muscle injury. Claimant had worked a Thursday night. Claimant was instructed by what appears to be hospital staff to report an injury. (Exhibit A, p. 1)

On December 21, 2017, defendant-employer filed first report of injury for an injury dated December 1, 2017, for a "strain." (CE 2)

Claimant was evaluated at DoctorsNow for a work comp visit. Claimant had abdominal pain since November 30, 2017. Claimant said it was not due to a traumatic injury, but recurrent lifting caused by transferring home care patients. Claimant was assessed as having a rib sprain and prescribed ibuprofen. (JE 8, pp. 65-67)

Claimant returned to DoctorsNow on December 29, 2017, with continued complaints of abdominal pain. Medical records note, "No injury, possible repetitive motion." Claimant indicated improvement in her ribs. Claimant was assessed as having a rib strain. She was returned to work with no lifting over 25 pounds. (JE 8, pp. 68-70)

Claimant was seen at DoctorsNow on January 12, 2018, for follow-up of abdominal pain. She was feeling 50-60 percent better. Claimant was assessed as having a sprain of the ribs. Claimant was returned to work with a 25 pound lifting restriction. (JE 8, pp. 71-73)

Claimant was evaluated by Dr. Horner on January 16, 2018, for right shoulder pain after an injury with Comfort Keepers. Claimant did not know the date of injury, but believed it began in January, 2017. Claimant was assessed as having shoulder pain. She was referred to Kyle Galles, M.D., orthopedic specialist. (JE 14, pp. 128-131)

Claimant returned to DoctorsNow on January 31, 2018, for a follow-up of abdominal pain. Claimant indicated no traumatic injury and believed the injury was caused by recurrent lifting. Claimant was continued on physical therapy and returned with 25 pound lifting restrictions. (JE 8, pp. 74-76)

Claimant was seen by Dr. Galles on February 26, 2018, for right shoulder problems with onset of one year ago. Claimant had no history of a significant trauma. Claimant was assessed as having adhesive capsulitis on the right and recommended to have physical therapy. On intake forms, claimant did not indicate that her shoulder problem was caused by a work injury. (JE 12, pp. 88-91)

Claimant returned to DoctorsNow on February 27, 2018, regarding her ribs. Claimant was released from care. Claimant was returned to work with a 25 pound lifting restriction. (JE 8, pp. 77-79)

On May 11, 2018, claimant had an MRI of the right shoulder. It showed a small full-thickness rotator cuff tear of the anterior aspect of the supraspinatus tendon. (JE 10, p. 84)

Claimant returned to Dr. Galles on April 18, 2018. Claimant's MRI was discussed. Surgery was discussed and chosen as a treatment option. Claimant had a sick relative in the Carolinas that claimant wanted to see. Claimant would contact Dr. Galles to set up a surgical date. (JE 12, pp. 94-95)

Claimant's last day to work with Comfort Keepers was May 20, 2018. (Exhibit L, p. 50, Tr. p. 43)

On May 22, 2018, claimant underwent a right rotator cuff repair. Surgery was performed by Dr. Galles. (JE 11, pp. 85-86)

Claimant saw Dr. Galles in follow-up on July 16, 2018. Claimant had returned from vacation and had not started physical therapy. (JE 12, pp, 97-98)

Claimant saw Dr. Galles in follow-up care in August, 2018, September, 2018, and October, 2018. Claimant was making good progress, but still had some soreness with activities and was restricted to lifting 15 pounds on the right. (JE 12, pp. 105-106)

In a July 20, 2020, letter, Natasha Jodoin, ARNP, with DoctorsNow, summarized claimant's treatment with DoctorsNow. NP Jodoin indicated that claimant was treated for her work injury between December, 2017, and February, 2018. On her first visit, claimant denied a specific injury. Claimant complained of twisting her torso. Claimant was released from care on February 27, 2018, with no additional treatment except for completion of physical therapy. NP Jodoin indicated claimant had no permanent restrictions. (Exhibit J)

In an August 4, 2020, letter, Dr. Galles summarized claimant's treatment. Claimant never told Dr. Galles she injured her shoulder at work. Based on this, Dr. Galles was unable to attribute claimant's current complaints to a work injury. (Exhibit K)

In an August 25, 2020, report, Sunil Bansal, M.D. gave his opinion of claimant's condition following an IME. Claimant told Dr. Bansal she injured her right eye in July, 2017, when she was struck in the eye with a Hoyer lift. Claimant indicated she had difficulty seeing at times. Claimant told Dr. Bansal she injured her right shoulder on November 30, 2017, when moving a client. Claimant was transferring a patient from a wheelchair to a toilet when her ribs and right shoulder popped. (Exhibit 1, pp. 17-18)

Claimant had continued right shoulder pain. Claimant also had neck stiffness. (Exhibit 1, p. 18)

Dr. Bansal found claimant at maximal medical improvement (MMI) for her shoulder on November 15, 2018. He opined claimant had an 8 percent permanent impairment to the upper extremity for the shoulder injury, converting to a 5 percent permanent impairment to the body as a whole. Claimant had no permanent impairment to her neck or ribs. Dr. Bansal found that claimant had incurred an acute injury to the

right shoulder on November 30, 2017, when transferring a client from a wheelchair to a toilet. (Exhibit 1, pp. 20-21)

Dr. Bansal restricted claimant's lifting to no more than 10 pounds on the right. He opined client could not return to her former work. (Exhibit 1, pp. 21-22)

Dr. Bansal also opinioned that claimant had a 15 percent vision impairment. (Exhibit 1, p. 23)

Claimant testified she has pain in her right shoulder when lifting. She says she has difficulty performing activities of daily living because of her right shoulder. As a result of her injury, claimant said she cannot lift or assist patients as a CNA. She said she is unable to do repair work on her home due to her injury. Claimant said she has difficulty shoveling snow and vacuuming due to her shoulder.

Claimant said that since leaving Comfort Keepers, she has worked part-time doing cleaning and working for H and R Block. She said that since October, 2019, she has been taking care of her nieces. Claimant said she is paid $50 a day to watch her nieces.

Claimant said she could not return to work as a CNA or a banquet server.

Claimant said she had her teeth extracted in July and August, 2019. Claimant said she has not applied for work since having her teeth extracted due to embarrassment over her teeth. (Exhibit L, deposition pp, 70-72)

CONCLUSION OF LAW

The first issue to be determined is whether claimant sustained an injury that arose out of and in the course of employment.

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

Regarding file number 1641868.01 (date of injury November 30, 2017), claimant testified at hearing that on November 30, 2017, she was moving a patient from a Hoyer lift to a chair when she experienced popping in her shoulder and rib and had a burning sensation. (Tr., pp. 27-28)

In her statement with defendant-insurer, claimant indicated the injury occurred while moving the patient from a Hoyer lift to a toilet. She indicated her only injury was to her ribs and abdominal area. (Exhibit E, p. 9)

The first time claimant sought medical treatment for the November 30, 2017, injury was on December 3, 2017. At that time claimant complained of left-sided abdominal pain that began a day prior. There is no mention in the records from this visit that claimant's abdominal pain was due to a work injury. There is no indication of any shoulder pain in the December 3, 2017, visit. Claimant was noted to have recently had a gallbladder surgery. Claimant was assessed as having postoperative abdominal pain. (JE 2, pp. 21-26)

On December 4, 2017, claimant saw Emily Myers, PA-C. Claimant complained of rib pain on the left for two days. There is no note in this record of a work injury or of a shoulder injury. (JE 14, pp. 117-120)

On December 20, 2017, claimant returned to Dr. Horner for continuing abdominal pain. Dr. Horner's notes indicate claimant was unable to recall a specific incident that caused pain, but mentioned lifting a client on November 30, 2017, that the lift was not

bad, but claimant had some discomfort following that night. There is no mention of a popping or traumatic injury. There is no mention of a shoulder injury. (JE 14, p. 121)

On December 21, 2017, claimant reported a rib injury to Comfort Keepers. There is no mention of a shoulder injury. (Exhibit A, p. 1)

On December 22, 2017, claimant was treated at DoctorsNow for a complaint of left-sided abdominal pain. Claimant reported abdominal pain over the past four weeks. Claimant indicated her pain/injury was not the result of an injury, but due to recurrent lifting and straining. (JE 8, p. 65) There is no mention of a shoulder injury. (JE 8, p. 65)

Claimant had subsequent visits to DoctorsNow from December, 2017, through February, 2018. All subsequent visits also indicate that claimant's pain/injury was not the result of a traumatic incident, but was caused by recurrent lifting. There is no mention of a shoulder injury in treatment records from DoctorsNow from December, 2017, through February, 2018. (JE 8, p. 68, 71, 74, 77. See also JE 7, p. 57)

In a July 20, 2020, letter, NP Jodoin noted claimant treated with DoctorsNow from December, 2017, through February, 2018. The letter indicates claimant denied a specific injury or incident regarding her rib pain. (DE J, p. 29)

Claimant also treated with Dr. Galles for an extended period of time for her shoulder. Dr. Galles performed shoulder surgery on claimant. Claimant initially saw Dr. Galles on February 26, 2018, for right shoulder pain. In her intake form, claimant did not indicate her shoulder injury was work related. (JE 12, p. 91) Notes from this visit indicate the claimant had right shoulder pain for a year with no history of significant trauma. (JE 12, p. 88)

Dr. Galles treated claimant for an extended period of time for her shoulder from February, 2018, through October, 2018. There is no mention in any of the medical records from this period that claimant's shoulder injury was work related or caused by a specific traumatic incident. (JE 12, pp. 88-106)

In an August 4, 2020, letter, Dr. Galles indicates that during the approximately eight months that he treated claimant, there was no mention of a work-related shoulder injury or trauma at work. (Exhibit K)

Dr. Bansal evaluated the claimant once for an IME. He opined that claimant had a right shoulder injury on or about November 30, 2017, caused by work while transferring a client from a wheelchair to a toilet. Dr. Bansal does not offer causation opinion regarding an alleged rib injury.

There are several problems with Dr. Bansal's causation opinion as it relates to claimant's right shoulder. First, claimant testified she allegedly injured her right shoulder while moving a client from a Hoyer lift to a toilet or chair. Dr. Bansal's opinion is based, in part, on a history of claimant moving a client from a wheelchair to a toilet.

As noted, there are at least a dozen records indicating claimant's alleged injury to her right shoulder was not the result of trauma, but was caused as a result of "recurrent" lifting. As noted, claimant treated with DoctorsNow for approximately two months. There is no mention in any of the DoctorsNow records of a right shoulder injury. Claimant treated with Dr. Galles for approximately eight months. There is no mention in any of Dr. Galles' records of a shoulder injury or traumatic injury caused by moving a client. Dr. Bansal offers no analysis or rationale to address the numerous inconsistencies in the medical records. Given these problems with his opinion, it is found the opinions of Dr. Bansal regarding causation are not convincing.

Claimant testified at hearing she had a traumatic popping in her ribs and right shoulder while moving a client. Claimant did not report a work injury until approximately 20 days after the alleged November 30, 2017, incident. Medical records from DoctorsNow do not reflect a traumatic injury. Records from Dr. Galles regarding claimant's shoulder make no mention of a traumatic injury at work. No expert has given a causation opinion of claimant's alleged rib injury. The causation opinions of Dr. Bansal regarding an alleged right shoulder injury are found not convincing. Given this record, claimant has failed to carry her burden of proof she sustained an injury that arose out of and in the course of employment to her right shoulder or ribs on November 30, 2017.

Because claimant has failed to carry her burden of proof she sustained an injury that arose out of and in the course of employment on November 30, 2017, all other issues regarding file number 1641868.01 (date of injury November 30, 2017) are moot, except for reimbursement of the IME.

Regarding file number 1641454.01 (date of injury December 1, 2017), claimant appears to argue, although it is unclear, that the December 1, 2017, date of injury is for an alleged cumulative injury to the shoulder. (Claimant's post-hearing brief pp. 6-7)

The law regarding burden of proof, and arising out of the course of employment detailed above applies to this file, but will not be repeated.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler,

483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

As detailed above, it is unclear what the alleged December 1, 2017, date of injury relates to. Claimant was not working on December 1, 2017. (Exhibit E, p. 7) Claimant did not receive treatment on December 1, 2017. December 1, 2017 was not the date that the injury was reported. (Exhibit A) No expert opined that claimant sustained a cumulative or traumatic injury on December 1, 2017. No expert opined that claimant has an alleged cumulative injury that manifested on December 1, 2017. Dr. Bansal's opinions regarding causation, as detailed above, are found not convincing. However, not even Dr. Bansal offers an opinion that claimant sustained any kind of work injury on December 1, 2017.

As detailed, there is no evidence in the record that claimant sustained a traumatic or cumulative injury on December 1, 2017. Given this record, claimant has failed to carry her burden of proof she sustained an injury that arose out of the course of employment on December 1, 2017.

As claimant failed to carry her burden of proof she sustained an injury that arose out of the course of employment on December 1, 2017, all other issues are moot.

The final issue to be determined is whether claimant is entitled to reimbursement for an IME under Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

On July 20, 2020, NP Jodoin issued an opinion that claimant had no permanent impairment. (Exhibit J) On August 30, 2020, Dr. Bansal, an employee-retained expert, issued his opinion regarding claimant's permanent impairment. (Exhibit 1) NP Jodoin is an ARNP. An ARNP is not a physician under Iowa Code section 85.39. Because the only opinion regarding a permanent impairment issued by a physician, pursuant to Iowa Code section 85.39, is claimant's expert, claimant is not entitled to reimbursement for the IME from Dr. Bansal.

As claimant has failed to prove she had a second qualifying injury for the purposes of fund benefits, it is noted that claimant has also failed to carry her burden of proof she is entitled to any benefits from the Second Injury Fund of Iowa.

ORDER

THEREFORE, IT IS ORDERED:

For file 1641868.01 (date of injury November 30, 2017) and file number 1641454.01 (date of injury December 1, 2017), that claimant shall take nothing in the way of any benefits.

That both parties shall pay their own costs.

Signed and filed this 9th day of March, 2021.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Erin Tucker (via WCES)

Aaron Oliver (via WCES)

Amanda Rutherford (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.