

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

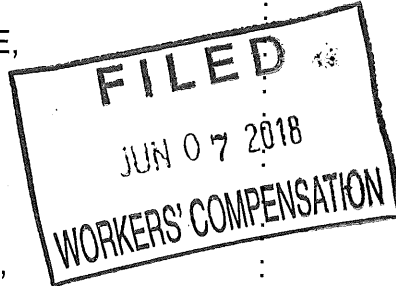
CYNTHIA LAPCHESKE,

Claimant,

vs.

POLK COUNTY, IOWA,

Employer,
Defendant.



File No. 5055505

ARBITRATION
DECISION

Head Notes: 1402.30, 1803

Claimant Cynthia Lapcheske filed a petition in arbitration on April 26, 2017, alleging she sustained injuries to her right shoulder and body as a whole while working for the defendant, Polk County, Iowa ("Polk County"), on December 29, 2015. Polk County filed an answer on May 15, 2017, denying Lapcheske sustained a work injury.

An arbitration hearing was held on May 1, 2018, at the Division of Workers' Compensation in Des Moines, Iowa. Attorney Mark Hedberg represented Lapcheske. Lapcheske appeared and testified. Braedi Gloschen and Michael Lapcheske were also present, but did not testify. Assistant Polk County Attorneys Meghan Gavin and Julie Bussanmas represented Polk County. Joint Exhibits ("JE") 1 through 4, Exhibits 1 and 2, and A through AA were admitted into the record. The record was held open through May 14, 2018, for the receipt of post-hearing briefs. The briefs were received and the record was closed. After the record was closed the parties submitted a joint amendment to the hearing report on May 29, 2018, correcting the commencement date for permanent partial disability benefits to March 29, 2016. I reopened the record for the receipt of the amendment and the record was closed.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. Polk County waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Polk County and Lapcheske at the time of the alleged injury.
2. If the alleged injury arose out of and in the course of Lapcheske's employment with Polk County, the alleged injury is a cause of temporary disability, during a period of recovery.

3. If the alleged injury arose out of and in the course of Lapcheske's employment with Polk County, the alleged injury is a cause of permanent disability.

4. Lapcheske was off work from December 29, 2015 through March 28, 2016, and she worked twenty-five hours per week from March 29, 2016 through April 8, 2016.

5. If Polk County is liable for the alleged injury, Lapcheske is entitled to temporary benefits from December 29, 2015 through April 8, 2016.

6. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.

7. If the injury is found to be a cause of permanent disability, the commencement date for permanent partial disability benefits, if any are awarded, is March 29, 2016.

8. At the time of the alleged injury, Lapcheske's gross earnings were \$1,147.08 per week, she was married and entitled to two exemptions, and the parties believe the weekly rate to be \$716.87.

9. Medical benefits are no longer in dispute.

10. Polk County is entitled to a credit of \$31,662.26 paid by Lapcheske's group health insurance plan.

11. Costs have been paid.

ISSUES

1. Did Lapcheske sustain an injury on December 29, 2015, which arose out of and in the course of her employment with Polk County?

2. If Lapcheske sustained an injury arising out of and in the course of her employment with Polk County, what is the extent of disability?

3. Should costs be awarded to either party?

FINDINGS OF FACT

Lapcheske grew up in Marshalltown, Iowa. (Exhibit Z, pages 27-28) When she was eighteen she moved to Des Moines to attend AIB College of Business ("AIB"). (Ex. Z, p. 28) Lapcheske graduated with an associate's degree from AIB in 1982. (Ex. Z, p. 28) After several years Lapcheske enrolled in additional classes at Grand View University. (Ex. Z, p. 28) Lapcheske later returned to AIB and earned a Bachelor of Science degree in accounting. (Ex. Z, p. 28) Lapcheske is right-hand dominant. (Tr., p. 18) At the time of the hearing she was fifty-six. (Transcript, p. 23)

Lapcheske has worked since she was fourteen years old. (Tr., p. 18) Lapcheske has worked in the accounting field since she moved to Des Moines as an adult.

Lapcheske worked for Blue Cross Blue Shield of Iowa and then for Blue Cross Blue Shield of Louisiana, auditing hospitals and in-home health agencies for Medicare and Medicaid compliance for six years. (Tr., p. 20) Lapcheske hauled heavy audit bags to perform her job duties. (Tr., pp. 20-21) Lapcheske initially worked as a cost report specialist. (Tr., p. 21) Lapcheske moved to Blue Cross Blue Shield of Louisiana when she was promoted to a Medicare auditor. (Tr., p. 21)

After leaving Blue Cross Blue Shield of Louisiana, Lapcheske worked for Communications Data Services as an accountant, assistant manager, and temporary manager for approximately six years. (Tr., p. 19) Lapcheske sold accounting packages to fulfillment companies and her position required frequent travel. (Tr., p. 19)

Lapcheske left Communication Data Services and accepted a position with Wesley Retirement Services as the office manager in accounting. (Tr., p. 18) While working for Wesley Retirement Services she was responsible for accounts payable, accounts receivable, payroll, human resources, and all other office accounting. (Tr., p. 18) Lapcheske worked a lot of overtime, and occasionally moved boxes and filed documents. (Tr., p. 18) After approximately six years, Lapcheske accepted a position with Polk County and she left Wesley Retirement Services. (Tr., p. 18)

Lapcheske is a cash management technician for Polk County, in the Treasurer's Office. (Tr., p. 9; Ex. Z, p. 28) Lapcheske has worked for Polk County for twenty years. (Tr., p. 8; Ex. Z, p. 28) As a cash management technician, Lapcheske processes all of the money that flows in and out of Polk County, including cash receipts and ACH disbursements. (Tr., p. 9) One of Lapcheske's primary functions is property tax apportionment, where funds are distributed to different taxing entities. (Tr., p. 9) Lapcheske conducts wire transfers, remote deposits checks, enters data into financial spreadsheets through a keyboard, scans checks with a remote scanner, and runs checks through a repair and transmits the file. (Tr., p. 9) Earlier in her career, Lapcheske worked with large sub ledgers, but now her job is electronic. (Tr., pp. 9-10, Ex. Z, p. 28)

On December 29, 2015, Lapcheske arrived at work at approximately 7:50 a.m. (Tr., pp. 10-11; Ex. Z, p. 28) Over the course of the day it snowed three inches. (Tr., p. 11) When Lapcheske arrived at work it had just started snowing lightly. (Tr., p. 11) Exhibit 1 documents it was snowing lightly at the time Lapcheske arrived at work, and it continued to snow the morning of her accident. (Ex. 1)

Lapcheske testified, "by the time of the accident it was flurrying, so turned into like blizzard like." (Tr., p. 11) Lapcheske had been entering data on the computer and at 8:38 a.m., she walked from the cash management room to the interior door to the treasurer's office. (Tr., p. 12) Lapcheske testified:

[w]ell, I was getting ready to swipe my badge. So we have an access door there and I felt my foot slip on the floor – floor, and then landed on my right arm and then I rolled, ended up on my back, and I immediately started screaming for help. I was screaming so loud the assessor's office all the way down at the other end of the hallway heard me. That was Keith from the assessor's office, and then Deb Soda from our office heard me and she opened the door and then I was just – I was so relieved, you know, that someone finely heard me that help was there.

My whole body was overcome by the trauma of everything and then other people started arriving and I was in severe pain and waiting for the ambulance to come. And there were several people out there in the hallway by that time. I think ten witnesses or so and they asked me – started asking me questions about how I was feeling and etc., and if I needed a pillow etc., called - our security officer called the ambulance, I believe.

(Tr., pp. 12-13)

Lapcheske testified at the time of the injury, "I didn't notice anything, but the floors are slippery. They're routinely polished with a polishing machine and part marble in one area, which is directly in front of my cash management room, and then around the corner it switches over to cement type of flooring." (Tr., p. 15) Lapcheske reported the area where she fell is cement that was polished at 5:00 p.m. every day at the time of her injury. (Tr., p. 16)

At the time of her injury Lapcheske was responsible for locking the vault, which she did at 5:07 p.m. to 5:10 p.m. (Tr., p. 31) Lapcheske denied the machine used to clean the floors was an industrial vacuum, and relayed "I don't think so, because it leaves a trail of wet behind it." (Tr., p. 31) Lapcheske testified at the time of her accident Polk County was treating the floor in the evening, but she does not know whether Polk County only used water on the floor. (Tr., p. 31)

John Rowan is the director of general services for Polk County. (Tr., p. 29; Ex. S, p. 19) Rowan did not testify at hearing and Polk County submitted an affidavit from him. (Ex. S, p. 19) Rowan relayed the flooring in the area where Lapcheske fell is made of terrazzo and is not uneven. (Ex. S, p. 19) Rowan relayed the last sealant was applied to the floor in 2011, and the floor is not polished or waxed and is vacuumed clean with water only in the evening. (Tr., p. 30; Ex. S, p. 19)

Lapcheske noted everyone in the building knows the floor is slick. (Tr., pp. 16-17) Lapcheske testified she has slipped on the floor before, but caught herself. (Tr., p. 17)

Lapcheske testified she fell forward close to the door as she was attempting to access it with her badge. (Tr., p. 27; Ex. Z, pp. 28-31) Lapcheske was wearing flat

shoes with tread soles at the time of her accident. (Tr., p. 38) Lapcheske reported when she fell one of her shoes fell off and landed next to the wall next to her. (Tr., pp. 38-39)

The Treasurer's Office has a secure entrance and employees must swipe their badges to enter the office. (Tr., p. 15) Lapcheske relayed, "[s]o the employee's come from around the corner from the exterior door, which is maybe 50 feet to that area where you swipe your badge, and they come from the outside so they potentially would be standing there with wet boots swiping their badge." (Tr., p. 15)

Polk County does not have any designated parking for Polk County employees. (Tr., p. 33) During cross-examination Lapcheske testified at the time of her accident she parked in a parking ramp and accessed the Polk County Administration Building through the skywalk, but reported most of the employees do not park in the ramp and park in outside parking lots. (Tr., pp. 32-33) Lapcheske acknowledged many Polk County employees park in the parking ramp where she parked at the time of the accident. (Tr., p. 34)

Lapcheske was taken to the emergency room where she was diagnosed with a dislocated shoulder and fractured right humerus. (Tr., p. 13) The next day she received surgery. (Tr., p. 13)

Lapcheske is a breast cancer survivor. (Tr., p. 26; Ex. Z, p. 31) She does not have any permanent restrictions related to her breast cancer. (Tr., p. 26) Lapcheske also has adult onset diabetes. (Tr., p. 24; Ex. Z, p. 32) Lapcheske relayed she controls her diabetes with insulin and diet. (Tr., p. 25; Ex. Z, pp. 31-32) A medical record from October 2015 documents Lapcheske's diabetes was uncontrolled. (JE 1, p. 6) A medical record from December 27, 2015, documents her "[s]ugars are running good." (JE 1, p. 8)

Lapcheske has had problems with her cervical spine in the past, and in 2002 she underwent an allograft between C6 and C7. (Tr., p. 24) Lapcheske returned to normal duty without restrictions. (Tr., p. 24) Lapcheske has also had problems with her left shoulder, and she has received injections into her left shoulder, including an injection on December 27, 2015, before the accident. (Tr., p. 26; JE 1, p. 10; Ex. Z, pp. 31-32) Lapcheske relayed her physician told her the injection could increase her blood sugar and she should check her blood sugar two to three times per day. (Tr., pp. 34-35; JE 1, p. 10) Lapcheske took a half dose of a muscle relaxer on Sunday night, and a half dose on Monday night. (Tr., p. 36; Ex. Z, p. 32) Lapcheske reported she went to work on December 28, 2015, and did not have any issues "whatsoever." (Tr., p. 26)

Lapcheske testified that at the time of her work injury she was not having any dizzy spells and she has never had issues with passing out. (Tr., pp. 26-27) She had not checked her blood sugar the morning of the accident. Lapcheske relayed she never lost consciousness at the time of her accident, she was not dizzy or drowsy, she did not

have a headache, and she was alert, talking, and answering questions. (Tr., pp. 27, 44-45)

The morning of the accident James Jorgenson with Polk County prepared an incident report, as follows:

[a]t 0849 hours I was notified by telephone that a person was screaming in the hallway by the Treasurer's office room 154. Upon arrival I found that an employee by the name of Cindy Lapcheske had accidentally slipped and fell on the floor and injured herself. The staff were comforting her and E911 had already been called. DMFD arrived and transported her to Methodist Hospital.

While waiting for EMS Cindy said that she isnt [sic] sure exactly why she fell. When she did fall she said that she tried to brace herself with her arm and injured her finger and arm. She was in severe pain. She advised staff and EMS that she was a cancer survivor and was diabetic. She was also currently taking some muscle relaxing medication.

(Ex. W, p. 24)

Lapcheske testified there were a number of Polk County employees who came out when she fell. (Tr., p. 39) Polk County did not call any witnesses at hearing, and submitted written affidavits and statements from Lapcheske's coworkers. (Exs. B-Y)

An affidavit from Rachael Hagedorn documents she observed Lapcheske lying on the floor and Lapcheske was asked what had happened, she replied "she fell and commented about 'these shoes.'" (Ex. B, p. 2) Hagedorn noted she did not observe any abnormal condition in the hallway that could have caused Lapcheske to slip. (Ex. B, p. 2) Hagedorn also sent an e-mail to Polk County officials stating paramedics asked Lapcheske if she had checked her blood sugar and she said no, but she had just ate, so it should be okay. (Ex. C, p. 3)

Glenda Cogley submitted an affidavit reporting she observed Lapcheske lying on the floor in the hallway with one shoe off, and when Lapcheske was asked what happened, Lapcheske "said she thought maybe it was her shoes," Lapcheske reported she had "taken muscle relaxers," and the floor looked normal and dry. (Ex. D, p. 4) Cogley sent an e-mail to Polk County officials, noting several people asked Lapcheske if her blood sugar was low, and she said she had just ate something and she did not think so. (Ex. E, p. 5) Cogley sent a second e-mail stating Jorgenson asked Lapcheske if she was taking medication and Lapcheske responded she had taken muscle relaxers, and again reported Lapcheske relayed she did not believe her blood sugar was low because she had just eaten something, and "when her levels are low, she slurs her words and she wasn't doing that." (Ex. F, p. 6)

An affidavit from Mary Mahnke relays Mahnke observed Lapcheske lying on the floor with one shoe off and when Lapcheske asked what happened Lapcheske "mentioned her shoes were slick on the bottom." (Ex. G, p. 7) Mahnke reported, "I did see a small puddle of water by the door." (Ex. G, p. 7) Mahnke also sent an e-mail to Polk County officials, reporting Lapcheske relayed "she did not lose consciousness when she fell" and documenting she observed the water on the floor by the door. (Ex. H, p. 8)

Kyle Rice submitted an affidavit stating he saw Lapcheske lying on the floor with one shoe off, and when Lapcheske was asked what happened, Lapcheske responded, "the shoes she was wearing that day were sometimes slick in the hallway and that is probably why she fell." (Ex. I, p. 9) Rice relayed he did not notice any abnormal condition of the hallway. (Ex. I, p. 9) Rice submitted a written statement, reporting employees "asked about diabetic reaction said she was o.k. for that. She mentioned she was a 10 year cancer survivor and that she had taken a muscle relaxer earlier." (Ex. L, p. 12)

An affidavit from Merle Hicks documents Hicks discovered Lapcheske lying on the floor on her back, that Lapcheske stated she did not know what happened, and Hicks did not observe any hazards on the floor. (Ex. K, p. 11)

Ben Lacey submitted an affidavit stating he observed Lapcheske lying on the floor in the middle of the hallway with one shoe off, and Lapcheske "reported she was on muscle relaxers." (Ex. M, p. 13) Lacey stated he did not observe anything abnormal about the condition of the hallway. (Ex. M, p. 13)

Donald Lewis submitted an affidavit reporting he observed Lapcheske lying on the floor with one shoe off, and when Lapcheske was asked about what happened, Lapcheske "said she was not sure how she had fallen." (Ex. O, p. 15) Lewis relayed he did not see any objects on the floor and the floor did not appear wet. (Ex. O, p. 15)

An affidavit from Deb Soda relays she observed Lapcheske lying two feet from the door with her feet facing the wall, and when Lapcheske was asked about what happened, Lapcheske "said she slipped on the floor and tried to catch herself as she fell" and she lost one of her shoes. (Ex. Q, p. 17) Soda relayed she did not see anything on the floor. (Ex. Q, p. 17) Soda sent an e-mail to officials at Polk County reporting she noticed blood on Lapcheske's mouth, like she had bit her tongue, and she "asked her if her sugar was low, because she is a diabetic, and she said she had just eaten something and her sugar should be okay." (Ex. R, p. 18)

At hearing and during her deposition Lapcheske denied making a comment about her shoes, and recalled Cogley made a comment about her shoes. (Tr., p. 40; Ex. Z, p. 33) Polk County did not call Cogley as a witness or any other witnesses to rebut Lapcheske's testimony.

Polk County denied Lapcheske's claim, and she used her group health insurance to pay for her treatment. Lapcheske initially attended sixty physical therapy visits, the maximum amount allowed by her insurance. (Tr., p. 14) Lapcheske had to wait six months before she could resume physical therapy, and she received additional treatments. (Tr., p. 14) Lapcheske testified that following surgery her diabetes went out of control due to stress. (Tr., p. 25)

Lapcheske returned to work part-time, twenty-five hours per week, and she eventually returned to full-time employment. (Tr., p. 14) Lapcheske testified she received a thirty-five pound restriction from Megan Brady, M.D., her treating orthopedic surgeon. (Tr., p. 14)

Lapcheske testified that when she returned to work she had difficulty performing her job due to pain and she continues to have pain. (Tr., p. 17) Lapcheske experiences pain when her "arm is outstretched for any length of time" where she is having to hold it up, and she is able to perform her job duties with her keyboard dropped. (Tr., p. 17)

On January 19, 2017, Dr. Brady wrote a letter regarding Lapcheske, which provides:

[t]his is a 54-year-old female who is status post open reduction and internal fixation of a right proximal humerus fracture by myself on December 30, 2015. Of note, this is a workman's compensation injury. The patient did suffer a fall on a wet marble floor. Landing on a wet, slippery, hard surface such as a marble floor did result in a higher-energy fracture than if she would have fallen on carpet. The patient did have a direct fall resulting in a proximal humerus fracture that required surgical fixation. The patient has been doing well overall but does have some decreased range of motion of the right shoulder. She also has some numbness and tingling in her right thumb, index, and long finger. She complains of some dull achiness over the right humerus and having some issues of hygiene secondary to lack of range of motion. The patient had issues with physical therapy being suspended secondary to insurance issues.

(JE 2, p. 12) Dr. Brady assessed Lapcheske with a healed right proximal humerus fracture with typical decreased range of motion. (JE 2, p. 12)

Sunil Bansal, M.D., an occupational medicine physician, conducted and independent medical examination for Lapcheske on January 25, 2018. (Ex. 3) Dr. Bansal reviewed Lapcheske's medical records and examined her. (Ex. 3) Dr. Bansal noted Lapcheske sustained a right proximal humerus fracture when she fell at work onto an outstretched arm onto a hard marble floor, which required surgery, and has resulted in a loss of range of motion in her right upper extremity. (JE 3, pp. 25-26) Using Figures 16-40 through 16-46 of the Guides to the Evaluation of Permanent

Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), and comparing to her left shoulder, Dr. Bansal opined:

	Range of Motion	% UE Impairment
Flexion:	102, 100, and 98 degrees	5
Abduction:	136, 136, and 134 degrees	2
Adduction:	39, 39, and 40 degrees	0
External Rotation:	82, 84, and 81 degrees	0
Extension:	37, 35, and 39 degrees	1
Internal Rotation:	55, 58, and 56 degrees	2

This equals a 10% upper extremity impairment, which is equal to a 6% impairment of the body as a whole.

(JE 3, p. 26) Dr. Bansal recommended permanent restrictions for the right arm of no lifting over twenty-five pounds occasionally, no lifting over ten pounds frequently, and no lifting above shoulder level. (JE 3, p. 27)

Charles Mooney, M.D., an occupational medicine physician, conducted an independent medical examination of Lapcheske on April 9, 2018. (JE 4) Dr. Mooney examined Lapcheske and reviewed her medical records. (JE 4) Dr. Mooney assessed Lapcheske with status post proximal humerus fracture requiring internal fixation, after falling on a marble floor with an outstretched arm. (JE 4, p. 41) Using the AMA Guides, Dr. Mooney opined:

1. Loss of flexion in a 6% impairment based on Figure 16-40, page 476.
2. Loss of abduction in a 3% impairment based on figure 16-43 on page 477.
3. A 2% impairment based on loss of internal rotation, figure 16-46, page 479.

Subsequently, an 11% impairment to the left upper extremity is applicable and when converted to whole person, equates to a 7% whole person impairment.

(JE 4, p. 44)

Lapcheske testified she has sustained a significant loss of range of motion in her right shoulder as a result of the accident. (Tr., p. 17) Lapcheske is able to bathe and dress herself, but she cannot put on her coat, style the back of her hair, perform housework, including any up and down motions like scrubbing her shower, or pushing or pulling with the vacuum cleaner, she cannot carry, push, or pull large, heavy objects, and she cannot reach above her head with her right arm to obtain things from shelves at home or work. (Tr., pp. 18-19, 43) Lapcheske testified she has a difficult time driving because she cannot reach across her body to make left hand turns. (Tr., p. 20) Her husband drives her everywhere since the accident, including to work. (Tr., p. 20) Lapcheske is not using any assistive devices to drive a vehicle with one hand.

Before the accident Lapcheske enjoyed camping with her husband. (Tr., p. 44) Since her work injury she cannot tolerate sleeping on the bed in their camper. (Tr., p. 44) Lapcheske also struggles to stir food with her right arm while cooking. (Tr., p. 44)

Lapcheske reported she is at the top of the pay scale at Polk County for her position. (Tr., p. 21) Lapcheske has applied for the financial reports specialist and accountant position twice after completing additional education, but she has not been promoted. (Tr., p. 22)

Lapcheske testified she would not be able to return to her employment with Wesley Retirement Services because the job was nonstop where she would sit eight hours a day, whereas with Polk County she can get up and do a different task to give herself relief. (Tr., p. 19) Lapcheske relayed she would not be able to return to her work with Communications Data Services because she could not carry her luggage around or be able to drive after she arrived at her destination. (Tr., p. 19) She also reported she would not be able to return to Blue Cross Blue Shield because she could not haul around an audit bag. (Tr., p. 21)

CONCLUSIONS OF LAW

I. Arising Out of Employment

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000).). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the

course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. *An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of the employer.*

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (emphasis in original).

It is undisputed the injury occurred while Lapcheske was working for Polk County, in the course of her employment. The parties dispute whether Lapcheske's injury arose out of her employment with Polk County. Polk County asserts Lapcheske sustained an idiopathic fall, which is not compensable.

Whether a claimant's injury arises out of the claimant's employment is a "mixed question of law and fact." Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007). The Iowa Supreme Court has held,

[t]he factual aspect of this decision requires the [trier of fact] to determine "the operative events that [gave]rise to the injury." Meyer v. IBP, Inc., 710 N.W.2d 213, 218 (Iowa 2006). Once the facts are determined, a legal question remains: "[W]hether the facts, as determined, support a conclusion that the injury 'arose out of . . . [the] employment,' under our workers' compensation statute."

Id.

As a general rule, risks personal to the claimant are not compensable. Koehler Elec., 608 N.W.2d at 4. The Iowa Supreme Court has adopted the "actual-risk" doctrine for determining the compensability of an idiopathic fall. Lakeside Casino, 743 N.W.2d 177; Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990). Under the "actual risk" doctrine adopted by the court in Hanson,

if the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of employment. And it makes no difference that the risk was common to the general public on the date of the injury.

452 N.W.2d at 168. The court noted in Lakeside Casino, "[c]onsequently, with limited exceptions, we have abandoned the requirement that the employment subject the

employee to a risk or hazard that is greater than that faced by the general public.” 743 N.W.2d at 174-75.

A. “Idiopathic Fall”

The appellate courts have not defined the term “idiopathic fall.” There are a number of Iowa appellate published and unpublished idiopathic fall cases involving medical conditions personal to the claimant, such as epilepsy, dizziness, syncope, and alcoholism. Lakeside Casino, 743 N.W.2d at 171 (light-headed and nauseated); Koehler Elec., 608 N.W.2d at 4 (alcohol withdrawal); AARP v. Whitacre, No. 12-1519, 2013 WL 2107398, *2 (Iowa Ct. App. 2013) (choking and passing out); Bluml v. Dee Jays, Inc., File No. 5047125 (App. July 20, 2017) (seizure disorder).

The Iowa Court of Appeals has looked to the dictionary definition of the term “idiopathy” in a workers’ compensation case. Tyson Foods. Inc. v. Tameklo, No. 15-0222, 2015 WL 7075834, *2 (Nov. 12, 2015). The court noted one of the physicians “leaned toward an ‘idiopathic’ or personal cause of the injury,” and noted the term “idiopathy” is defined as ‘1. a disease of unknown origin or cause; a primary disease. 2. A disease for which no cause is known.’” Tameklo, 2015 WL 7075834, *2 (quoting The American Heritage Dictionary 639 (2d College Ed. 1985)). The focus was on a disease of the claimant.

The Iowa Court of Appeals has noted a distinction between idiopathic and neutral or unexplained falls. In Bartle v. Sidney Care, Inc., No. 02-1371, 2003 WL 22346956, *1-2 (Iowa Ct. App. Oct. 15, 2003), the court held “where the claimant slips or trips or falls for no specifically identifiable reason, that the cause of the fall and resulting injury is not idiopathic, but rather neutral or unexplained.” The court, affirmed the district court and agency, finding that even if the fall is neutral or unexplained, the claimant “must establish a nexus between a job duty or condition of employment and her injury,” and the claimant’s testimony indicated carrying the water pitchers did not contribute to her fall, nor did any other conditions of her employment contribute to her fall and injury. Bartle, 2003 WL 22346956, *2.

As in Bartle, Lapcheske testified she did not know why she fell. Lapcheske relayed she never lost consciousness at the time of her accident, she was not dizzy or drowsy, she did not have a headache, and she was alert, talking, and answering questions. (Tr., pp. 27, 44-45) Several of Lapcheske’s coworkers heard Lapcheske speaking and responding to questions. (Exs. C, p. 3; E, p. 5; F, p. 6; L, p. 12; R, p. 18) When questioned about her diabetes, Lapcheske’s coworkers acknowledged she replied she had just eaten and she did not believe her blood sugar was low. (Exs. C, p. 3; E, p. 5; F, p. 6; L, p. 12; R, p. 18) While several of Lapcheske’s coworkers heard her say that she had taken a muscle relaxer for her left shoulder condition, there was no evidence presented at hearing that the muscle relaxer contributed to Lapcheske’s fall. (Exs. D, p. 4; L, p. 12; M, p. 13)

Lapcheske was the sole witness at hearing. During the hearing I assessed her credibility by considering whether her testimony was reasonable and consistent with other evidence I believed, whether Lapcheske had made inconsistent statements, her "appearance, conduct, memory and knowledge of the facts," and her interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). Lapcheske has an obvious interest in the outcome of this case. I had the opportunity to observe her testify under oath. During her testimony, Lapcheske engaged in direct eye contact, her rate of speech was appropriate, and she did not make any furtive movements. Her testimony was consistent throughout the hearing, and I find it reasonable and consistent with the other evidence I believe. Based on my personal observations at hearing, I found Lapcheske to be a credible witness.

Lapcheske has been diagnosed with diabetes, and she was taking a prescription muscle relaxer for her left shoulder condition at the time of her fall. Polk County has not established Lapcheske's personal disease conditions caused her fall. Lapcheske's fall was not idiopathic. This finding does not end the inquiry. Lapcheske still bears the burden of establishing a causal connection between the conditions of her employment and the injury.

B. Causal Connection

Lapcheske testified when she was getting ready to swipe her badge to an interior door "I felt my foot slip on the floor – floor, and then landed on my right arm and then I rolled, ended up on my back. . . ." (Tr., p. 12) Lapcheske testified she fell forward. (Tr., p. 27) Lapcheske was wearing flat shoes with tread soles at the time of her accident. (Tr., p. 38) Lapcheske reported when she fell one of her shoes fell off and landed next to the wall next to her. (Tr., pp. 38-39) Lapcheske relayed, "I didn't notice anything, but the floors are slippery," noting they are polished every evening. (Tr., p. 15) Lapcheske noted everyone in the building knows the floor is slick. (Tr., pp. 16-17) Lapcheske testified she has slipped on the floor before, but caught herself. (Tr., p. 17) No witnesses were present at the time of her fall. Lapcheske did not see any water on the floor before she fell. (Ex. Z, pp. 34-35) As noted above, Lapcheske was the sole witness at hearing. Polk County relied on written affidavits and witness statements at hearing.

Exhibit 1 documents it was snowing lightly at the time Lapcheske arrived at work, and that it continued to snow the morning of her accident. (Ex. 1) The Treasurer's Office has a secure entrance, and employees must swipe their badges to enter the office. (Tr., p. 15) While Lapcheske did not notice the floor was wet outside the office, she testified, "[s]o the employee's come from around the corner from the exterior door, which is maybe 50 feet to that area where you swipe your badge, and they come from the outside so they potentially would be standing there with wet boots swiping their badge." (Tr., p. 15) Polk County did not present any contrary evidence at hearing.

The most probative evidence of the condition of the floor at the time of the accident is from Mahnke, an employee of Polk County. (Ex. G, H) Polk County

submitted Exhibits G and H, an affidavit and an e-mail from Mahnke, which were admitted into the record at hearing. Mahnke, the administrative supervisor for the Treasurer's Office, sent an e-mail to Polk County officials on January 8, 2016, reporting,

I was in my office in room 155 when I heard screaming. When I came out of my office there were several people rushing out of the door by the cash room on the west side of 155. I looked out and saw Cindy laying on her back. She said that her head and back hurt and another employee was on the floor next to her looking at her left hand. Cindy said that her left arm and hand hurt and she thought she may have broken her finger. Her shoe was off of her left?? Foot. She mentioned that her shoes were slick on the bottom. I looked around and did see a small puddle of water in the area by the door. When the paramedics came she said she had eaten something in the morning but had not checked her insulin levels as she is diabetic. She said she did not lose conscienceness [*sic*] when she fell. I left after that and did not witness her being put on the gurney.

(Ex. H, p. 8) Mahnke later signed an affidavit again stating "I did see a small puddle of water by the door." (Ex. G, p. 7) Mahnke's e-mail is very detailed concerning her observations. There was no evidence presented at hearing supporting Mahnke had any reason to be untruthful concerning the condition of the floor. Exhibits H and G were obtained by Polk County, not by Lapcheske. Given it was snowing at the time of the accident, Lapcheske's testimony that individuals could enter the area from outdoors, and Mahnke's e-mail and sworn affidavit, I find the floor was wet at the time of Lapcheske's fall.

This case is distinguishable from the level floor cases, where employees sustained idiopathic falls on level surfaces. McIlravy v. N. River Ins. Co., 653 N.W.2d 323, 326 (Iowa 2002); Bluml v. Dee Jay's, Inc., Case No. CVCV116561 (Iowa Dist. Ct. Jan. 25, 2018); Khambanoun v. Ortiz Co., File No. 5052943 (Arb. Dec. 7, 2017); Falck v. West Fork Servs., File No. 5061094 (Arb. Nov. 13, 2017). The surface of the floor was wet, making it slick, causing a hazard. See Garcia v. JBS USA Holdings, Inc., File No. 5063059 (Apr. 19, 2018) (concluding while the floor was level, "[t]he slickness of the surface upon which claimant fell [which was wet] exposed the claimant to a risk of injury). The wet floor created a condition in the workplace, an actual risk Lapcheske encountered when she fell. As with the discussion of the dangerousness of stairs in Lakeside Casino, and ladders in Koehler Electric, it is a matter of common knowledge a wet surface poses an actual risk of stumbling or falling when traversing a level floor. Lakeside Casino, 743 N.W.2d at 177; Koehler Elec., 608 N.W.2d at 1, 5. While several of Lapcheske's coworkers stated they heard her make comments that her shoes may have contributed to the fall, she denied making the comment. Even assuming Lapcheske's shoes contributed to the fall, the wet condition of the floor created an actual risk Lapcheske encountered. Lapcheske has established she sustained an injury arising out of her employment with Polk County.

II. Extent of Disability

"Industrial disability is determined by an evaluation of the employee's earning capacity." Pease, 807 N.W.2d at 852. In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

Drs. Bansal and Mooney opined Lapcheske has sustained a permanent impairment as a result of the accident. (JE 3; JE 4) Dr. Bansal assigned Lapcheske a six percent impairment rating and Dr. Mooney assigned a seven percent impairment rating. (JE 3, p. 26; JE 4, p. 44) Dr. Mooney's report does not address restrictions. (JE 4) Dr. Bansal recommended permanent restrictions with the right arm of no lifting over twenty-five pounds occasionally, no lifting over ten pounds frequently, and no lifting above shoulder level. (JE 3, p. 27) I find Dr. Bansal's restrictions appropriate.

Lapcheske continues to work for Polk County in the same position she held at the time of her work injury. Lapcheske continues to perform her normal duties within the restrictions imposed by Dr. Bansal. While she continues to perform the same job, Lapcheske has sustained a significant permanent loss of range of motion in her right shoulder as a result of the accident. Lapcheske's employment prior to Polk County required her to lift heavy bags and boxes, which she can no longer do.

Lapcheske credibly testified at hearing she cannot put on her coat, style the back of her hair, scrub the shower, push or pull a vacuum cleaner, carry, push or pull heavy objects, or reach above her head with her right arm. (Tr., p. 20) Lapcheske struggles to stir food while cooking with her right, dominant arm. (Tr., p. 44) Before the accident Lapcheske enjoyed camping, but she cannot tolerate sleeping on the camper bed as a result of her injury. (Tr., p. 44) Considering all of the factors of industrial disability, I conclude Lapcheske has sustained a twenty-five percent industrial disability.

III. Healing Period Benefits

The parties stipulated Lapcheske was off work December 29, 2015 through March 28, 2016, and she returned to work twenty-five hours per week from March 29, 2016 through April 8, 2016.

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. As analyzed above, Lapcheske has sustained a permanent impairment, therefore, she is entitled to healing period benefits.

In Evenson v. Winnebago Indus., Inc., the Iowa Supreme Court held that the healing period lasts until the claimant has returned to work, has reached maximum medical improvement, or until the claimant is medically capable of returning to substantially similar employment, “whichever occurs first.” 818 N.W.2d 360, 372-74 (Iowa 2016). Lapcheske returned to work on March 29, 2016. Under Evenson, when she returned to work, Lapcheske’s healing period ended. Lapcheske is awarded healing period benefits from December 29, 2015 through March 28, 2016.

IV. Costs

Lapcheske seeks to recover the \$100.00 filing fee, the \$545.00 cost of Dr. Bansal’s independent medical examination, and the \$2,043.00 cost of Dr. Bansal’s report. (Ex. 2)

Iowa Code section 86.40, provides, “[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.” Rule 876 IAC 4.33(6), provides,

[c]osts taxed by the workers’ compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors’ and practitioners’ deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors’ or practitioners’ reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

A. Filing Fee

The administrative rule expressly allows for the recovery of the \$100.00 filing fee. Lapcheske is entitled to recover the \$100.00 filing fee.

B. Independent Medical Examination and Report

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.

Polk County denied Lapcheske's claim and she elected to seek treatment covered by her group insurance. Dr. Bansal performed an independent medical examination for Lapcheske on January 25, 2018. (Ex. 3) Dr. Mooney performed an independent medical examination for Polk County on April 9, 2018. (JE 4) The parties did not submit any records or other evidence supporting an evaluation of permanent disability had been made by a physician retained by Polk County prior to Dr. Bansal's independent medical examination. Lapcheske is not entitled to recover the \$545.00 cost of Dr. Bansal's independent medical examination under the statute. Iowa Code § 85.39; cf. IBP, Inc. v. Harker, 633 N.W.2d 322, 326 (Iowa 2001) (holding although the employer acquiesced to the claimant's physician choice, the claimant was not entitled to recover the cost of an independent medical examination because she chose the physicians who provided the unfavorable impairment ratings, and they were not "retained by the employer").

The administrative rule allows for the recovery of the cost of two practitioners' reports. Rule 876 IAC 4.33(6). In the case of Des Moines Area Regional Transit Authority v. Young, the Iowa Supreme Court held:

[w]e conclude section 85.39 is the sole method for reimbursement of an examination by a physician of the employee's choosing and that the expense of the examination is not included in the cost of a report. Further, even if the examination and report were considered to be a single, indivisible fee, the commissioner erred in taxing it as a cost under administrative rule 876-4.33 because the section 86.40 discretion to tax costs is expressly limited by Iowa Code section 85.39.

867 N.W.2d 839, 846-47 (Iowa 2015). Dr. Bansal's bill is itemized. (Ex. 2, p. 2) There was no evidence presented at hearing challenging the amount of Dr. Bansal's report fee. Under Young, Lapcheske is entitled to recover the \$2,043.00 cost of Dr. Bansal's report. Id.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant one hundred twenty-five (125) weeks of permanent partial disability benefits, at the rate of seven hundred sixteen and 87/100 dollars (\$716.87) per week, commencing on March 29, 2016.

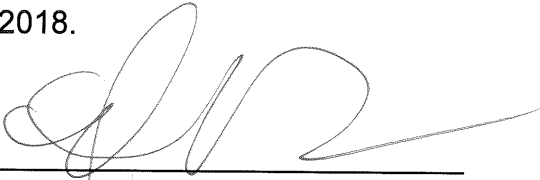
Defendant shall pay the claimant healing period benefits from December 29, 2015 through March 28, 2016, at the rate of seven hundred sixteen and 87/100 dollars (\$716.87) per week.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two (2) percent. See Gamble v. AG Leader Tech., File No. 5054686 (App. Apr. 24, 2018)

Defendant is assessed one hundred and 00/100 dollars (\$100.00) for the filing fee, and two thousand forty-three and 00/100 dollars (\$2,043.00) for the cost of Dr. Bansal's report.

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

Signed and filed this 7th day of June, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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HLP/sam

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.