

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEPHANIE THOMPSON,

Claimant,

vs.

WASHINGTON REHABILITATION
and HEALTHCARE, LLC d/b/a
PEARL VALLEY HEALTHCARE
CENTER OF WASHINGTON,

Employer,

and

UNITED WISCONSIN INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 5066416

ARBITRATION DECISION

Head Note Nos.: 1108.20, 1108.50,
1402.40

On October 22, 2018, Claimant Stephanie Thompson filed a petition in arbitration against Defendants Washington Rehabilitation and Healthcare LLC, d/b/a Pearl Valley Rehabilitation and Healthcare Center ("Pearl Valley") and United Wisconsin Insurance Company ("United"), alleging she sustained an injury to her back and body as a whole while working for Pearl Valley on June 6, 2018. Pearl Valley and United filed an answer on November 13, 2018, denying Thompson sustained a work injury.

An arbitration hearing was held on November 13, 2019, at the Division of Workers' Compensation. Attorney James Hoffman represented Thompson. Thompson appeared and testified. Attorney Laura Ostrander represented Pearl Valley and United. Brooke Vondal appeared and testified on behalf of Pearl Valley and United. Joint Exhibits ("JE") 1 through 5, Claimant's Exhibits 1 through 3A through 3G, and Defendants' Exhibits A through F were admitted into the record. The record was closed at the conclusion of the hearing.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. Pearl Valley and United agreed to waive all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Thompson and Pearl Valley at the time of the alleged injury.
2. Thompson sustained an injury to her back on June 11, 2018, which arose out of and in the course of her employment with Pearl Valley.
3. Temporary benefits are no longer in dispute.
4. If the injury is found to be the cause of permanent disability, the commencement date for permanent partial disability benefits, if any are awarded, is August 30, 2018.
5. At the time of the alleged injury Thompson's gross earnings were \$531.35 per week, she was married and entitled to three exemptions, and the parties believe her weekly rate is \$367.26.

ISSUES

1. What is the nature of the alleged injury?
2. Is the alleged injury a cause of permanent disability?
3. If the injury is found to be the cause of permanent disability is the disability an industrial disability?
4. Is Thompson entitled to payment of medical expenses set forth in Exhibit 3?
5. Is Thompson entitled to recover the cost of an independent medical examination under Iowa Code section 85.39?

FINDINGS OF FACT

Thompson left high school in the eleventh grade. (Thompson Testimony) She has not completed a general education diploma. (Thompson Testimony) At the time of the hearing she was thirty-four. (Thompson Testimony)

In 2015 Thompson completed training as a certified nursing assistant. (Thompson Testimony; Exhibit E) From 2015 until her work injury in June 2018, Thompson worked exclusively for nursing care facilities as a certified nursing assistant. (Thompson Testimony; Ex. E)

Pearl Valley hired Thompson as a certified nursing assistant on March 2, 2018. (Thompson Testimony; Ex. E) Thompson testified she had to lift individuals weighing up to 500 pounds with assistance from others at Pearl Valley. (Thompson Testimony)

Thompson testified on or about June 6, 2018, she went to a resident's room in preparation for a two-person assist. (Thompson Testimony) Thompson reported she turned the resident over on the resident's side and Thompson felt a sharp pain down her back. (Thompson Testimony) Thompson testified she continued to work for Pearl Valley until she was let go. (Thompson Testimony) Thompson alleges she sustained an injury to her lumbar spine, cervical spine, and a mental injury caused by the June 2018 work injury.

Thompson testified she reported her work injury to Pearl Valley, but Pearl Valley did not send her for immediate medical care. (Thompson Testimony) Thompson stated she went for treatment with her chiropractor. (Thompson Testimony) Thompson reported Pearl Valley later sent her to Rey Lin, M.D., an internal medicine provider and her personal physician, for treatment. (Thompson Testimony)

Thompson testified she was in good health before the June 2018 work injury, and she went to the chiropractor approximately once per month before the work injury. (Thompson Testimony) Thompson has a long history of treatment for lumbar, thoracic, cervical spine, and mental health issues.

Thompson was involved in a car accident on April 27, 2011. (JE 1, page 2) Thompson was a front passenger in a vehicle that was struck from behind and then struck from the front while stopped at a red light. (JE 1, p. 2) Thompson attended an appointment with Hess Spinal Center on May 27, 2011, in Clearwater, Florida, and relayed she was experiencing upper back pain between her shoulder blades and low back pain and that her pain had become worse since the accident. (JE 1, pp. 3-4) Thompson reported a history of two prior motor vehicle accidents with no injuries. (JE 1, p. 4) John Grassam, D.C., examined Thompson, diagnosed her with a post-traumatic thoracic and lumbar sprain/strain, post-traumatic cervical spine, thoracic spine, and lumbar spine segmental dysfunction, post-traumatic tension headache, and post-traumatic cervicgia, thoracalgia, and lumbalgia, and recommended conservative chiropractic care. (JE 1, p. 7)

On July 11, 2013 Thompson attended an appointment with David Huber, D.C., in Cedar Rapids, Iowa, complaining of low back pain and mid back pain. (JE 2, p. 8) Dr. Huber performed a chiropractic manipulation. (JE 2, p. 8) Thompson returned to Dr. Huber on January 30, 2015, September 24, 2015, October 5, 2015, and October 12, 2015, complaining of low back pain and mid back pain. (JE 2, pp. 8-9) Dr. Huber again performed chiropractic manipulations. (JE 2, pp. 8-9) On May 24, 2016, Thompson attended an appointment with Dr. Huber complaining of low back and neck pain. (JE 2, p. 9) Dr. Huber performed a chiropractic manipulation. (JE 2, p. 9) Thompson attended appointments with Dr. Huber on January 6, 2017, May 12, 2017, and June 23, 2017, complaining of neck pain and low back pain. (JE 2, pp. 9-10) Dr. Huber again performed chiropractic manipulations. (JE 2, pp. 9-10)

On June 9, 2017, Thompson attended physical therapy with Jeffrey Swartzendruber, D.P.T., complaining of headaches, cervical pain, and low back pain centrally located that was aggravated by heavier lifting at work. (JE 3, p. 12) Swartzendruber documented Thompson reported she had chronic neck and back pain with multiple motor vehicle accidents over the past ten years, but denied any significant limitations in daily, work, or recreational activities. (JE 3, p. 12) Swartzendruber documented Thompson relayed she experienced pain limiting her ability to perform patient transfers while working as a certified nursing assistant, and increased low back pain with weight-lifting and workouts. (JE 3, p. 12) Swartzendruber recommended skilled physical therapy to work on mobility, strength, and motor control deficits to decrease pain and improve Thompson's functional status. (JE 3, p. 12) Thompson attended physical therapy on June 13, 2017, June 29, 2017, July 24, 2017, August 1, 2017, and September 11, 2017 (JE 3, pp. 14-20) Thompson reported in 2017 she was working a lot of hours as a certified nursing assistant for another employer, she was lifting weights, and she experienced a lot of pain while doing crunches while exercising. (Thompson Testimony)

On August 28, 2017, Thompson sought emergency medical care when she was experiencing depressed and suicidal thoughts. (JE 5, p. 23) Thompson reported she had a life time history of problems starting with her father's sexual abuse at age eight, sex trafficking, and due to an abusive husband. (JE 5, p. 23) Thompson noted she had been diagnosed with post-traumatic stress disorder in the past. (JE 5, p. 23) Margaret Millar, M.D., examined Thompson, and listed an impression of suicidal ideation and chronic post-traumatic stress disorder, documented Thompson had no active suicidal plans, and discharged Thompson, with a plan to follow up with Hillcrest in the morning. (JE 5, p. 26) Thompson acknowledged before the June 2018 work injury she had received treatment for post-traumatic stress disorder and depression from a therapist and counselor. (Thompson Testimony)

On May 14, 2018, Thompson attended an appointment with Dr. Lin, complaining of a bad cough, and "pain in right side and back, down leg once." (JE 5, p. 31) Dr. Lin listed active problems including a binge eating disorder, recurrent major depressive disorder, in partial remission, post-traumatic stress disorder, primary insomnia, insomnia, unspecified type, and chronic GERD, noting Thompson had a past history of anxiety and depression. (JE 5, p. 31)

On May 16, 2018, Thompson attended an appointment with Daniel Tweeton, D.C., complaining of acute and chronic episodes of low back pain and neck pain, and intermittent pain radiating into her right lower extremity. (JE 4, p. 21)

On August 15, 2018, more than two months after the work injury Thompson attended an appointment with Dr. Lin, reporting she hurt her lumbar spine while working at Pearl Valley in June 2018 when she was rolling a patient over in bed to perform activities of daily living. (JE 5, p. 35) Thompson relayed she had tried ice, heat, and over-the-counter pain relievers, and she wore a back brace, but she did not receive

much pain relief. (JE 5, p. 35) Dr. Lin documented Thompson reported she had low back pain in the middle to the left side, the condition appeared to be chronic, and Thompson was experiencing pain in the morning and when twisting or moving in certain ways. (JE 5, p. 35) Thompson received lumbar spine imaging, and the reviewing radiologist listed an impression of a negative lumbar spine. (JE 5, pp. 34, 36) Thompson testified Dr. Lin ran some tests and provided her with anti-inflammatory medicine, but he did not do anything that solved her problem. (Thompson Testimony)

Thompson signed a letter from Pearl Valley on August 18, 2018, noting pursuant to a physician-imposed work restriction of no lifting over sixty pounds she was being assigned to work her normal certified nursing assistant duties on the low sensory unit. (Ex. D, p. 1) Thompson agreed not to violate her lifting restriction and to use her assigned radio or the telephone paging system to call for assistance. (Ex. D, p. 1)

On August 19, 2018, Pearl Valley issued Thompson a written warning for insubordination, unprofessional conduct, failing to follow procedure, and refusing to follow instructions. (Ex. D, p. 2) The disciplinary form indicates Thompson was “[h]aving attitude with nursing staff/agency staff. Unwilling to perform duties within scope and restrictions.” (Ex. D, p. 2) Thompson refused to sign the written warning. (Ex. D, p. 3)

Pearl Valley delivered a notice to Thompson on August 21, 2018, which provided Pearl Valley had received a report from Dr. Lin dated August 15, 2018, which reported she was able to return to work with a sixty-pound weight restriction, and the facility was offering her a transitional job in accord with the restriction, as a residential environmental aide, at her same rate of pay, and requesting she report to work on Thursday August 23, 2018, at 6:00 a.m. (Ex. D, p. 4) The notice informed Thompson if she failed to return to work Pearl Valley would consider she had voluntarily resigned. (Ex. D, p. 4)

On August 30, 2018, Dr. Lin responded to correspondence from the representative for Pearl Valley and United, agreeing he could not state to a reasonable degree of medical certainty Thompson’s condition is related to her employment. (JE 5, p. 37) As of August 31, 2018, Thompson had restrictions of no lifting over twenty-five pounds, and to avoid repetitive twisting and bending. (Ex. E)

On September 6, 2018, a representative for Pearl Valley and United determined Thompson’s workers’ compensation claim would be denied. (Ex. E) On September 10, 2018, after Thompson’s claim was denied Pearl Valley stopped providing Thompson with an accommodation of light duty work. (Ex. E) Thompson has not worked for Pearl Valley since September 10, 2018. (Ex. E)

On November 28, 2018, Thompson attended an appointment with Ernest Ajax, M.D., a neurologist, complaining of lumbar pain in her back and buttock, tingling and numbness over the lateral thigh to dorsum of the foot and to all of the toes, which is

improved with walking unless she walks too much. (JE 5, p. 38) Dr. Ajax noted EMG nerve conduction studies of Thompson's left lower extremity were normal, she was noticing some benefit from nabumetone, and magnetic resonance imaging of her lumbosacral spine

demonstrated a small broad-based central disc protrusion but without clear impingement on the nerve roots or neural foraminal narrowing at L3-4 with some minimal facet arthropathy. At L5-S1 there was a broad-based right paracentral disc protrusion which seemed to impinge on the right S1 nerve root but possibly on the left S1 nerve root although this was not corroborated by radiology. There was also an annular tear. There was no other neural foraminal or spinal canal narrowing.

(JE 5, p. 39) Dr. Ajax recommended a lumbar epidural steroid injection and an exercise program under the direction of physical therapy, and imposed restrictions of no lifting over twenty pounds, and to avoid repetitive bending and lifting. (JE 5, p. 39)

Sunil Bansal, M.D., an occupational medicine physician, conducted an independent medical examination for Thompson on February 15, 2019, and issued his report on May 2, 2019. (Ex. 1) Dr. Bansal's report notes he reviewed records from Washington County Hospitals and Clinics involving Dr. Lin from August 15, 2018, August 23, 2018, October 16, 2018, and November 28, 2018, Tweeton Family Chiropractic from May 16, 2018 through June 22, 2018, Jet Physical Therapy for service from August 30, 2018 through September 7, 2018, the job description for residential environmental aide, the August 18, 2018 letter from Pearl Valley to Thompson, and the August 21, 2018 letter from Pearl Valley to Thompson with a job offer within her work restrictions. (Ex. 1, pp. 1-3) Dr. Bansal's report does not indicate that he reviewed any of Thompson's medical records before May 2018. (Ex. 1, pp. 1-3)

During cross-examination Thompson testified she believed Dr. Bansal had been provided all of her medical records and that she told him she had treated with a chiropractor before the June 2018 work injury. (Thompson Testimony) Thompson also relayed she told Dr. Bansal about her four previous motor vehicle accidents, and noted the 2011 accident was the only accident that affected her back. (Thompson Testimony) Thompson testified she did not tell Dr. Bansal she experienced pain in her legs before the June 2018 work injury because she did not experience pain down her legs before the work injury. (Thompson Testimony) Thompson agreed she had back pain before the work injury, for which she received chiropractic adjustments, but reported the pain did not limit her activities. (Thompson Testimony)

Dr. Bansal documented Thompson sustained an injury while working with a resident who weighed approximately 250 pounds. (Ex. 1, p. 3) Thompson reported she was bent forward and rolled the patient over to a sling and when Thompson pushed the resident into the sling she felt a sharp pain in her back. (Ex. 1, p. 3) Thompson relayed she had previous minor muscle strains in her back and neck from working in a nursing

home, she saw a chiropractor for adjustments which helped, but “she never had any pain radiating down her arms or legs.” (Ex. 1, p. 3) Dr. Bansal noted Thompson went to physical therapy, which helped, but she continued to experience back pain radiating into her buttocks, which was sharp and piercing, and pain radiating down her leg. (Ex. 1, p. 3) Dr. Bansal noted Thompson received an epidural injection, but she reported she only experienced temporary relief for about two weeks, she was supposed to receive a call with the next step in treatment, but she did not receive a call. (Ex. 1, p. 3)

Dr. Bansal diagnosed Thompson with L3-4 and L5-S1 disc bulging. (Ex. 1, p. 5) Dr. Bansal opined “[t]he mechanism of being bent forward and pushing the 250-pound resident to a sling, coupled with her acute clinical presentation, is consistent with the L3-L4 and L5-S1 disc bulging.” (Ex. 1, p. 5) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) (“AMA Guides”) Dr. Bansal opined “she shares some elements of a DRE Category II impairment. She has radicular complaints with loss of range of motion and guarding. She is assigned a **5% whole person impairment based on Table 15-3.**” (Ex. 1, p. 6) (emphasis in original)

Thompson testified after her work injury she continued to experience significant pain on the left side of her back, and her back was so tight she could hardly walk or move around. (Thompson Testimony) Thompson reported she had significant pain every day for a year. (Thompson Testimony) Thompson testified she experiences pain in her neck into her arm, headaches, and pain down her left side, and down her leg into her toes. (Thompson Testimony) Thompson reported Dr. Ruder, a pain specialist at the University of Iowa Hospitals and Clinics, administered a shot in her neck that helped her pain, noting an earlier lumbar spine injection provided no relief, and that she is supposed to return for another injection in her neck. (Thompson Testimony)

Thompson testified she believes Pearl Valley terminated her employment because when she went in with a friend to look at the schedule, Pearl Valley “called the cops” on her and her friend, and the police report stated she and her friend were “two previous employees” of Pearl Valley. (Thompson Testimony)

Thompson testified she used to enjoy weight lifting and running, which are activities she can no longer engage in. (Thompson Testimony) Thompson reported she has difficulty bending at her waist. (Thompson Testimony) Thompson can bend to tie her shoes, but relayed bending causes her to experience pain. (Thompson Testimony) Thompson testified she enjoyed working with the elderly as a certified nursing assistant, which she can no longer do. (Thompson Testimony)

Thompson reported she recently started looking for work because she has been feeling better. (Thompson Testimony) She testified following her work injury she was severely depressed because she had been unable to return to work as a certified nursing assistant and because of the impact her injury had on her life, including her ability to care for her daughter. (Thompson Testimony) Thompson reported she took medication for post-traumatic stress disorder and depression before the work injury, but

after the work injury some of her medication dosages had to be increased. (Thompson Testimony)

Thompson testified two weeks before the hearing she accepted a position with the Cedar Rapids Gazette delivering newspapers one hour per day. (Thompson Testimony) Thompson reported she is paid \$20.00 per day by the Gazette. (Thompson Testimony)

Thompson recently applied for a minimum wage position with the Dollar Tree. (Thompson Testimony) Thompson told the Dollar Tree she could only work part-time, and she is waiting to hear whether she passed the background check. (Thompson Testimony) Thompson reported she could not work more than part-time because she has anxiety, she needs to care for her child, her husband's work hours, and she is starting over in a new career. (Thompson Testimony)

Vondal is a regional human resources professional and payroll director for Pearl Valley. (Vondal Testimony) Vondal testified Thompson would be permitted to return as a certified nursing assistant for Pearl Valley if she were released without restrictions. (Vondal Testimony) Vondal relayed Thompson could work the same number of hours and receive the same hourly pay she did in the past. (Vondal Testimony) For a period of time Pearl Valley accommodated Thompson with a light duty position, but after her workers' compensation claim was denied the light duty position was no longer an option. (Vondal Testimony)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including nature and extent of disability, recovery of medical bills, recovery of the cost of an independent medical examination, and interest under Iowa Code sections 85.27, 85.34, 85.39, and 535.3. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. This case involves an injury occurring after July 1, 2017, therefore, the provisions of the new statute involving nature and extent of disability and the recovery of the cost of an independent medical examination under Iowa Code sections 85.34 and 85.39 apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid

when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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 percent. Again, given this case concerns an injury occurring after July 1, 2017, the new provision on interest applies to this case.

II. Nature of the Injury

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. Cihá, 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. Wills, 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 his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (quoting Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 1018, 226 N.W. 719, 723 (1929)). The parties stipulated Thompson sustained a work injury, but disagree on the nature of the injury. Pearl Valley and United contend Thompson sustained a temporary back injury only.

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). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. 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 cause does not need to be the only cause, “[i]t only needs to be one cause.” Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

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 deputy 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).

Thompson received treatment for post-traumatic stress disorder, depression, anxiety, and for her lumbar, thoracic, and cervical spine before her work injury. (JE 1-JE 5; Ex. 2) During an appointment with Dr. Lin on May 14, 2018, less than one month before the work injury Thompson complained of “pain in right side and back, down leg once.” (JE 5, p. 31) Moreover, during an appointment with Dr. Tweeton on May 16, 2018, Thompson complained of acute and chronic episodes of low back pain and neck pain, and intermittent pain radiating into her right lower extremity. (JE 4, p. 21) No physician has opined Thompson sustained a permanent impairment to her cervical spine, or arms, or a permanent mental impairment caused by the June 2018 work injury.

On August 30, 2018, Dr. Lin, Thompson’s personal physician and also treating physician for the work injury, opined he could not state to a reasonable degree of medical certainty Thompson’s lumbar spine was related to her employment. (JE 5, p. 37) Dr. Bansal is the only physician to causally connect Thompson’s lumbar spine condition to her employment with Pearl Valley. I do not find Dr. Bansal’s opinion convincing.

Dr. Bansal’s report contains a summary of the medical records he reviewed, a summary of his discussion with Thompson concerning her injury, and a summary of his examination findings. Dr. Bansal’s report notes he reviewed records from Washington County Hospitals and Clinics involving Dr. Lin dated August 15, 2018, August 23, 2018, October 16, 2018, and November 28, 2018, Tweeton Family Chiropractic from May 16, 2018 through June 22, 2018, Jet Physical Therapy for service from August 30, 2018 through September 7, 2018, the job description for residential environmental aide, the August 18, 2018 letter from Pearl Valley to Thompson, and the August 21, 2018 letter from Pearl Valley to Thompson with a job offer within her work restrictions. (Ex. 1, pp. 1-3) Dr. Bansal’s report does not indicate that he reviewed any of Thompson’s medical records before May 2018. (Ex. 1, pp. 1-3) Dr. Bansal did not document he was aware Thompson was previously involved in a car accident, or that she had received

chiropractic treatment, physical therapy, and other medical treatment for low back pain before May 16, 2018, or that he reviewed any records for the treatment she received before May 16, 2018. Dr. Lin is Thompson's personal physician and he was selected as the treating physician for Thompson after the June 2018 work injury. Dr. Lin opined he could not state to a reasonable degree of medical certainty Thompson's lumbar spine was related to her employment. (JE 5, p. 37) Dr. Lin has treated Thompson over time. Dr. Bansal examined Thompson on a single occasion for purposes of conducting an independent medical examination. And Dr. Bansal did not have access to all of Thompson's medical records. For these reasons I find Dr. Lin's opinion most persuasive. Thompson has not met her burden of proof that she sustained a permanent impairment caused by the June 6, 2018 work injury.

III. Medical Bills

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses 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. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

Thompson seeks to recover medical bills set forth in Exhibit 3A-G. Exhibit 3A-1 is a \$21.31 bill for a chest x-ray. I do not find it causally related to the work injury. Exhibit 3B-4 is a \$124.00 bill for a lab from August 12, 2018. I do not find the lab charge related to the work injury. Exhibit B-5 contains a \$844.00 bill for an emergency room visit from August 10, 2018. No explanation is given for the August 10, 2018 bill. I do not find it related to the work injury.

Pearl Valley and United stipulated Thompson sustained a temporary back injury on June 11, 2018, and initially provided her with treatment with Dr. Lin. The claim was denied on September 6, 2018. I do not find any of the medical bills after September 6, 2018, are causally related to the temporary back injury. Pearl Valley and United are responsible for all medical bills causally related to the temporary back injury.

IV. Independent Medical Examination

Thompson seeks to recover the \$1,489.00 cost of Dr. Bansal's independent medical examination. (Ex. 1, p. 7) Dr. Bansal's bill is not itemized.

Iowa Code section 85.39(2) (2017), provides:

2. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the 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 choice, and reasonably necessary transportation expenses incurred for the examination. . . . An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

No physician retained by the employer provided an impairment rating before Dr. Bansal conducted the independent medical examination for Thompson. Moreover, Thompson was not successful in proving her claim. Under the statute, Thompson is not entitled to recover the cost of Dr. Bansal's independent medical examination.

Given Thompson cannot recover the cost of the independent medical examination under Iowa Code section 85.39, it is necessary to determine whether she can recover the cost of Dr. Bansal's report. 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." And rule 876 Iowa Administrative Code 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.

Dr. Bansal's bill does not contain separate charges for his examination and the report. 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). Given Dr. Bansal's bill is not itemized, I find Thompson is not entitled to recover the cost of the report.

ORDER

IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing in this case.

Defendants are responsible for all causally connected medical bills through September 6, 2018.

Defendants 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 6th day of December, 2019.


HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)
Laura Ostrander (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 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.