BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIA PICENO,

Claimant,

vs.

EMCO ENTERPRISES,

Employer,

and

OLD REPUBLIC INSURANCE COMPANY,

Insurance Carrier,
Defendants.

FILED

MAR 9 2017

WORKERS' COMPENSATION

File No. 5046687

APPEAL

DECISION

Head Note Nos: 1803, 1803.1

Defendants EMCO Enterprises, and its insurer, Old Republic Insurance Company, appeal from an arbitration decision filed on August 27, 2015. Claimant, Maria Piceno responds to the appeal. The case was heard on February 23, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on March 16, 2015.

In the arbitration decision, the deputy commissioner found the stipulated work-related injury of May 16, 2011, extended beyond claimant's left upper extremity into claimant's body as a whole due to the onset of Complex Regional Pain Syndrome (CRPS) and the development of right shoulder permanent impairment from overuse. The deputy commissioner awarded claimant 60 percent industrial disability, which entitles claimant to 300 weeks of permanent partial disability (PPD) benefits. The deputy commissioner also awarded claimant reimbursement for two independent medical evaluations (IME) performed by Sunil Bansal, M.D.

Defendants assert on appeal that the deputy commissioner erred in finding the left upper extremity injury developed into CRPS and in finding the right shoulder impairment from overuse. Defendants assert the deputy commissioner erred in failing to award permanent disability benefits limited to an injury to the left upper extremity pursuant to the schedule set forth in Iowa Code section 85.34(2)(m). Defendants also assert the deputy erred in awarding the costs of two independent medical evaluations.

Claimant asserts on appeal that deputy commissioner did not err in finding the elbow injury resulted in CRPS and in finding the injury also caused permanent impairment to the right shoulder which also extends the injury into the body as a whole. Claimant asserts the award of 60 percent industrial disability was correct and should be affirmed. Claimant did not address the IME reimbursement issue in her appeal brief.

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

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I modify the analysis, findings and conclusions reached by the deputy commissioner.

ISSUES ON APPEAL

I. Whether the deputy commissioner erred in finding the work injury to the left upper extremity extended into the body as a whole due either to the development of CRPS or the development of permanent impairment of the right shoulder from overuse as a result of the left arm injury.

II. The extent of claimant's entitlement to permanent disability benefits; and,

II. Claimant's entitlement to reimbursement from defendants for the cost of the two IMEs by Dr. Bansal.

FINDINGS OF FACTS

Claimant was 48 years of age at the time of hearing. She was born in Mexico. She graduated from high school in Mexico and attended law school in Mexico, but did not graduate. Her legal training in Mexico is not transferrable to the United States. She can speak and understand some English, but she is not conversant in English.

Before coming to this country, claimant was employed part-time in various administrative/clerical jobs related to the Mexican legal system. She arrived in the United States in 1990 and began working at a factory trimming clothes. She moved to Iowa in 1996 and began working at Tones Spices as a temporary packer and later on worked at a printing shop. Claimant started at EMCO in 2001 as a production worker and continued to work there at the time of the arbitration hearing in a job she considers lighter duty and within her capabilities. (Transcript, pages 42-43)

Claimant's testimony at hearing that she had no physical limitations or physician-imposed activity restrictions involving her arms and shoulders before her employment at EMCO was uncontroverted. (Tr. pp 19-20)

There is no dispute claimant suffered an initial work injury to the left elbow on May 16, 2011, and suffered some degree of permanent partial impairment to the left arm as a result of that initial injury. Defendants voluntarily paid healing period benefits and ten weeks of permanent disability benefits, and defendants paid for claimant's medical treatment. The parties agreed claimant achieved maximum medical improvement (MMI) on August 9, 2012.

Chronic Regional Pain Syndrome (CRPS):

Claimant first asserts the initial elbow injury is not limited to the arm, but extends into the body as a whole due to the development of CRPS.

The initial treating orthopedic surgeon, Patricia Kallemeier, M.D., performed elbow surgery after a diagnosis of left elbow tendinopathy. When pain in the elbow persisted after surgery, Dr. Kallemeier referred claimant to Steven Quam, D.O., a pain management specialist. Dr. Quam initially diagnosed CRPS on August 6, 2012. (Ex. 7, p. 97) and claimant was treated with gabapentin. Based on Dr. Quam's diagnosis of CRPS, Dr. Kallemeier provided a permanent impairment rating on June 18, 2013, pursuant to the AMA Guides, Fifth Edition, consisting of 62 percent impairment of the left upper extremity due to CRPS and lost range of motion. (Ex. 3, pp. 58-59) However, Dr. Kallemeier stated she was not able to assign permanent restrictions based on the results of a functional capacity evaluation (FCE) performed by John Kruzich, M.S., a physical therapist, on May 22, 2013, (Ex. E) which did not determine functional limitations due to an inconsistent effort by claimant during testing. (Ex. 3, p. 59)

At the request of defendants' attorney, claimant was evaluated by Scott Neff, D.O., another orthopedic surgeon, on July 15, 2013. Dr. Neff reported claimant exhibited significant symptom magnification with pain response from just gentle touching. (Ex. 9, pp. 133-137) Dr. Neff ruled out complex regional pain syndrome due to similar findings in both arms for skin turgor, color, warmth and hydrosis. Dr. Neff recommended two options: 1) impart an upper extremity, scheduled member impairment and continue restrictions or 2) perform additional EMG and MRI studies. (Id.)

Defendants' counsel had a meeting with Dr. Kallemeier and subsequently wrote the doctor a letter, dated September 5, 2013, reciting matters they discussed such as the doctor's doubt concerning a diagnosis of CRPS, after reviewing Dr. Neff's report which did not find any evidence of CRPS, the invalid FCE report, and an injection which provided 100 percent relief of pain ruling out CRPS. (Ex. 3. pp. 60-61) The doctor responded to that letter stating the injection would not rule out CRPS, but she did agree with the other matters in counsel's letter. (Ex. 3, p. 62)

Defendants' counsel also had a meeting with Dr. Quam and similarly wrote Dr. Quam a letter, dated October 24, 2013, stating various opinions which were discussed during their meeting. Dr. Quam agreed with the following statement:

> That you initially felt as though Ms. Piceno may have chronic regional pain syndrome. However, based upon your continued treatment and review of the AMA Guidelines, 5th Edition, you are of the opinion as the pain management specialist in this matter, that Ms. Piceno does not meet the criteria for chronic regional pain syndrome.

(Ex. 7, pp. 115-116)

Dr. Quam went on to agree that due to absence of CRPS, the permanent functional impairment rating under the Guides was limited to four percent of the upper extremity due to lost range of motion. (Id.) Also, based upon the invalid FCE by Kruzich, Dr. Quam could not provide any work restrictions. (Id.)

At the request of her counsel, claimant was evaluated on October 25, 2013, by Sunil Bansal, M.D., an occupational medicine physician. In his report dated November 12, 2013, Dr. Bansal stated he diagnosed CRPS based on the Budapest clinical diagnostic criteria for CRPS. (Ex. 11 p. 154-156) Dr. Bansal asserted that the Budapest criteria were developed in 2003 from peer reviewed empirical studies. (Id.) Dr. Bansal also criticized the Kruzich FCE results as the evaluator was misinterpreting claimant's pain behaviors which Dr. Bansal stated are consistent with CRPS. Dr. Bansal provided an impairment rating of 18 percent of the whole person based on CRPS. (Ex. 11, p. 156) Dr. Bansal recommended permanent restrictions of no lifting greater than ten pounds occasionally with left hand, five pounds frequently; no use of the left hand for any sustained period, and no frequent lifting, squeezing, pinching, grasping, pushing or pulling with the left hand. (Ex. 11, p. 158)

At the request of her counsel, claimant underwent another FCE on November 20, 2013, by Mark Blankespoor, PT. Mr. Blankespoor reported his testing was found valid as claimant gave maximum and consistent effort. (Ex. 12, pp. 172-173) Mr. Blankespoor reported the testing showed claimant capable of only sedentary work, lifting up to 15 pounds rarely and five pounds occasionally. (Ex. 12, p. 175)

Claimant's counsel then had a meeting with Dr. Quam and sent a letter dated December 17, 2013, asking the doctor to agree to various opinions. The doctor agreed that as a pain management specialist he regularly diagnoses and treats pain disorders. (Ex. 7, p. 120) Dr. Quam also agreed while claimant's clinical presentations do not meet the criteria for CRPS in the AMA Guides, Fifth edition, claimant has developed "Chronic Pain Syndrome" as a result of her work injury to her elbow. (Id.) Dr. Quam further agreed the "Chronic Pain Syndrome" extends from the left arm and into the left shoulder causing disability and/or impairment of claimant's left arm and left shoulder and this was substantiated by a valid FCE conducted by Mr. Blankespoor on November 20, 2013 (Id.) Finally, Dr. Quam agreed the results of the Blankespoor FCE are claimant's permanent restrictions from her work injury. (Id.)

Claimant's counsel then met with Dr. Kallemeier and sent a letter dated February 2, 2014, to the doctor asking her to agree with various opinions that were discussed. In Dr. Kallemeier's response dated February 5, 2014, she deferred to Dr. Quam's diagnosis of "Chronic Pain Syndrome." (Ex. 3, p. 67) Dr. Kallemeier agreed the results of Mr. Blankespoor's FCE are generally consistent with the restrictions she had assigned during her treatment of claimant and Dr. Kallemeier agreed with Dr. Quam's endorsement of the Blankespoor FCE results as claimant's permanent restrictions. (Ex. 3, pp. 67-68)

In a letter dated February 5, 2014, to Dr. Kallemeier, defense counsel asked Dr. Kallemeier to affirm her previous statement that she was in no position to disagree with Dr. Quam's opinion that clamant did not meet the AMA Guide's criteria for CRPS, the impairment rating is limited to four percent of the upper extremity, and no restrictions could be assigned because of the invalid FCE by Mr. Kruzich. (Ex. 3, p. 69-70) Dr. Kallemeier responded those were her views as of January 31, 2014, (Ex. 3, p. 70) possibly indicating her views may have changed.

Right Shoulder:

Claimant, who is right-hand dominant (Ex. 3, p. 19), testified she was moved to a new job in the summer of 2013 requiring her to use an air powered drill to install screws on doors. (Tr. p. 37) Claimant stated this job required her to use primarily her right hand and arm to repeatedly force down the drill onto the screws. (Id.) Claimant stated that after performing this work, she began to have more right shoulder problems in December 2013, which were more severe than what she had from time to time before. (Tr. p. 38) Claimant stated she believes those right shoulder problems were caused as a result of her left upper extremity injury because she was forced to use her right hand more often. (Tr. p. 39)

Claimant reported the right shoulder problems to defendants and she was sent to Richard McCaughey, D.O., occupational medicine physician, who evaluated claimant on February 13, 2014. Dr. McCaughey reported complaints of pain in the right shoulder and intermittent numbness and tingling of claimant's right hand for the last three years. Dr. McCaughey's assessment was bursitis or impingement of claimant's right shoulder and possible entrapment neuropathy. He referred claimant for an orthopedic evaluation and restricted her use of the air gun. Dr. McCaughey also advised claimant to seek easier work. (Ex. 13, pp. 187-188)

On March 5, 2014, claimant apparently was evaluated by Mark Kirkland, D.O., an orthopedic surgeon. The only record of this visit in evidence is a status report form which restricts claimant's use of power tools and prescribes a home exercise program. (Ex. 14, p. 190). Claimant was seen again by Dr. Kirkland on April 9, 2014, and the doctor added a restriction of no work at shoulder level or above and claimant was to continue her home exercises. (Ex. 14, p. 192) Claimant returned to Dr. Kirkland on

April 23, 2014, and claimant received an additional restriction of no lifting over ten pounds with both hands and orders to continue the exercises. (Ex. 14, p. 193)

The first complete written report in evidence from Dr. Kirkland was prepared following an evaluation on May 14, 2014. In that report, Dr. Kirkland provided his assessment of claimant's right shoulder condition as acromioclavicular joint internal derangement/osteoarthrosis. (Ex. 14, p. 194-195) Dr. Kirkland also noted claimant continued to complain of pain despite being off work for three weeks due to her left-sided problems. (Id.) Dr. Kirkland added another diagnosis of right deltoid tuberosity bursitis in June 2014 and prescribed formal physical therapy. (Ex. 14, p. 197-200) The restrictions first imposed on April 9, 2014, continued throughout Dr. Kirkland's treatment of claimant's right shoulder through November 2014. (Ex. 14, pp. 197-217) In July 2014, Dr. Kirkland noted that when distracted, claimant moved her shoulder quite well. (Ex. 14, p. 202)

Defendants retained a private investigator to perform surveillance of claimant's activities in March 2014. A video of the surveillance was placed into evidence. (Ex. H) From my review of this video, claimant is mostly shown driving her SUV and walking to and from various locations. However, for a few minutes claimant is shown removing grocery bags from a shopping cart and placing them into the back of her SUV and reaching up overhead to open and close the rear hatch, all with relative ease. The deputy commissioner stated claimant was not observed to be engaging in activities outside of her restrictions. (Arbitration Decision p. 3)

The surveillance video was shown to Dr. Kirkland sometime in late October or early November 2014. In a letter to defense counsel dated November 11, 2014, Dr. Kirkland stated that from his review of the surveillance video, he did not observe any objective evidence of any impairment, limitation or pain. (Ex. 14, p. 214) The doctor added that the complaints he received from claimant over the past eight months were not consistent with the movements and reactions as "visualized" in the surveillance video such as loading the groceries with ease and swinging her arms while walking. (Id.) Dr. Kirkland added that based on the video, it appears claimant would not need any permanent restrictions and she has no permanent impairment under the AMA Guides. (Id.) However, in a letter to the claims adjuster dated November 19, 2014, Dr. Kirkland reported he continued claimant's restrictions stating they were "at least temporary at this time" based on claimant's subjective complaints, and an FCE may be needed in the future. (Ex. 14, p. 217) Dr. Kirkland also noted in the letter claimant may need referral for possible carpal tunnel syndrome, but he had nothing else to offer. In response to an inquiry by defense counsel, Dr. Kirkland stated in a letter dated December 2, 2014, that the temporary restrictions were based only on claimant's subjective complaints and not on objective findings. (Ex. 14, p. 219)

At the request of her attorney, claimant was re-evaluated by Dr. Bansal on December 19, 2014. (Ex. 11, pp. 160A-160M) In his report dated January 14, 2015, Dr. Bansal stated he re-evaluated claimant's left arm and shoulder and he found no change

in his previous findings. Dr. Bansal stated there would be no change in his permanent impairment rating or in the permanent restrictions he previously recommended for claimant's left shoulder CRPS. (Ex. 11, p. 160K-160L)

Dr. Bansal also evaluated claimant's right shoulder condition on December 19, 2014. He opined in his report that there is a three percent permanent right upper extremity impairment or two percent of the whole person pursuant to the AMA Guides, Fifth edition due to lost range of motion. (Ex. 11, p. 160K) Dr. Bansal also recommended permanent activity restrictions for claimant's right shoulder of no lifting over 20 pounds occasionally with her right arm, no lifting greater than ten pounds over shoulder level, and no frequent over-the-shoulder lifting with the right arm. (Ex. 11, p. 160L) Dr. Bansal stated he also reviewed the surveillance video and he observed no activity beyond his recommended restrictions. Dr. Bansal stated his opinions were not changed by the video. (Ex. 11, p. 160J)

It is noted Dr. Bansal charged a fee of $2,975.00 for the first IME and $1,975.00 for the second IME. (Ex. 11, pp. 160 & 160N)

Analysis:

The presiding deputy found Dr. Quam diagnosed CRPS. This finding is incorrect. Dr. Quam's final diagnosis was "chronic pain syndrome," not "chronic regional pain syndrome." This record does not clearly distinguish between the two syndromes and does not show the two syndromes to be the same. The crux of the past court decisions which extend scheduled injuries into the body due to CRPS is that CRPS is an injury to the sympathetic system. Collins v. Department of Human Services, 529 N.W.2d 627, 629 (Iowa App. 1995); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660-664 (1961); (regional pain syndrome formerly called Sudeck's atrophy, causalgia or reflex sympathetic dystrophy (RSD);

While it can be argued that the term chronic pain syndrome may include CRPS, it may also include just neuropathic pain or a nervous system disorder. To date, the courts have not adopted the concept that chronic pain alone from a nervous system disorder takes a scheduled member into the body as a whole. It can be argued that the courts may go there some day in that they have held phantom pain from a lost arm is to be compensated industrially, see Dowell v. Wagler, 509 N.W. 2d 134 (Iowa App. 1993). However, this has not occurred to date.

Looking at the record, Dr. Quam eventually backed away from his initial diagnosis of CRPS because claimant's presentation did not meet diagnostic guidelines for CRPS in the AMA Guides. Dr. Bansal opines claimant meets the diagnostic criteria for CRPS in the Budapest Guides. We don't know what Dr. Quam's views may be using another Guide or in the absence of the AMA Guides. Dr. Neff rejected CRPS early on in July 2013. Claimant suggests defendant's adjuster or counsel told Dr. Quam that use of the AMA diagnostic guidelines for CRPS is mandatory or that Dr. Quam may

have been pressured to use the AMA Guides over use of other guides. However, there is nothing in the record to support such a theory.

In this case, Dr. Quam's views concerning CRPS are more convincing than those of Dr. Bansal. Dr. Bansal has not been shown to possess qualifications in pain management equivalent to those of Dr. Quam. Also, Dr. Quam is more familiar with claimant's clinical presentations over many months. For reasons I will discuss in the next section of this decision, I find nothing improper in Dr. Quam's use of the diagnostic criteria in the AMA Guides, fifth edition. There is nothing in the record to suggest Dr. Quam did not have the opportunity to use other diagnostic criteria beside the AMA Guides. Consequently, Dr. Quam's only diagnosis was chronic pain syndrome. Chronic pain alone from a schedule member injury does not extend the injury into the body as a whole.

I also find unconvincing the claim that claimant's right shoulder has been permanently disabled as a result of the left elbow injury. The only support for this assertion comes from Dr. Bansal, an occupational medicine physician, who has not been shown to have qualifications in orthopedics equivalent to those of the treating orthopedic surgeon, Dr. Kirkland. Dr. Kirkland has continued restrictions, but only based on subjective complaints, which he states are inconsistent with his observation of claimant's activity on the surveillance video. Also, Dr. Kirkland's opinions regarding the video places in question even the diagnosis of chronic pain syndrome by Dr. Quam.

Therefore, claimant has not shown the stipulated work injury of May 16, 2011, extends into the body as a whole. The award of disability shall be limited to the schedule for permanent loss of use to the left arm. Dr. Bansal's rating is based solely on CRPS and is therefore rejected. Dr. Kallemeier's rating for just range of motion is uncontroverted.

I find claimant's work injury of May 16, 2011, is the cause of four percent permanent loss of use of the left arm. Based on such a finding, claimant is entitled to ten weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(m), which is four percent of 250 weeks, the maximum allowable weeks of disability of the arm in that subsection. According to the stipulations in the hearing report, claimant has already been paid her entitlement to permanent disability benefits.

CONCLUSIONS OF LAW

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).

A treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404.408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

The extent of claimant's entitlement to permanent disability benefits is determined by one of two methods. If it is found that the permanent physical impairment or loss of use is limited to a body member specifically listed in schedules set forth in one of the subsections of Iowa Code section 85.34(2)(a-t), the disability is considered a scheduled member disability and measured functionally. If it is found that the permanent physical impairment or loss of use is to the body as a whole, the disability is unscheduled and measured industrially under Code subsection 85.34(2)(u). Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

Where an injury is limited to scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983). The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a-t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the 66 year old case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

> [t]he legislature has definitely fixed the amount of compensation that shall be paid for specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code section 85.34(2)(u) the workers' compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

The final opinions of Drs. Neff, Quam and Kallemeier are that claimant did not meet the criteria to assess CRPS (Ex. 3, pp 69-70; Ex. 7, pp 115-116; Ex. 9, p 136) Dr. Kallemeier expressed significant concern with the diagnosis of CRPS. (Ex. 3, pp 60-62)

Drs. Quam and Kallemeier did agree claimant had a chronic pain syndrome, but not a complex regional pain syndrome. (Ex. 3, p 67; Ex. 7, p 121) The record does not distinguish between these two syndromes and does not indicate the two syndromes are the same. Prior decisions indicate complex regional pain syndrome is an injury to the body as a whole. Collins v. Department of Human Services, 529 N.W.2d 627 (Iowa App. 1995). However, the courts have not adopted the concept that chronic pain syndrome moves a scheduled injury into a body as a whole injury.

Dr. Bansal opined claimant has CRPS. This is contrary to Dr. Quam's final opinion concerning CRPS. Dr. Quam is a pain management specialist. He regularly diagnoses and treats pain disorders. Dr. Quam opined claimant did not meet the criteria for CRPS. Based on Dr. Quam's experience as a pain management specialist, I find his opinion that claimant does not meet criteria for assessing CRPS more convincing.

Drs. Neff, Quam and Kallemeier ultimately opined claimant did not meet the criteria to diagnose claimant as having CRPS. Dr. Bansal's opinion that claimant has CRPS is not convincing. Drs. Quam and Kallemeier both opine claimant has chronic pain syndrome. Precedent does not indicate chronic pain syndrome is to be assessed as an injury to the body as a whole. Based on this record, it is found claimant failed to carry her burden of proof her injury of May 16, 2011, resulted in a complex regional pain syndrome.

For the reasons set forth in the Findings of Fact, I also reject the finding by the presiding deputy that the left elbow injury was a cause of permanent disability to the right shoulder.

Consequently, permanent disability benefits are limited to the schedule for a loss of use to the arm in Iowa Code section 85.34(2)(m).

I find claimant suffered a four percent permanent loss of use of her left upper extremity. Based on such a finding, claimant is entitled to ten weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(m), which is four percent of 250 weeks, the maximum allowable weeks of permanent disability for an injury to the upper extremity in that subsection.

According to the hearing report, claimant has been paid her entitlement to permanent disability benefits for the work injury on May 16, 2011.

Finally, defendants challenge the deputy commissioner's award of the costs of both IMEs by Dr. Bansal. It is unclear what the deputy awarded as the order in the arbitration decision only states claimant shall be reimbursed "for the independent medical evaluation by Dr. Bansal pursuant to Iowa Code section 85.39." There is no reference in the award to the fact that Dr. Bansal performed two IMEs and there is no discussion of the two IMEs in the body of the arbitration decision.

Section 85.39 permits an employee to be reimbursed for a subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes the initial evaluation is too low.

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).

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).

Claimant is entitled to reimbursement in the amount of $2,975.00 for Dr. Bansal's first IME under Iowa Code section 85.39 because it was subsequent to the employer-retained physician's impairment rating. Claimant is not due any reimbursement for the second IME by Dr. Bansal.

As defendants have prevailed in this appeal, claimant shall bear the costs of the appeal.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision of August 27, 2015, is MODIFIED as follows:

Claimant shall take nothing further in the way of weekly disability benefits.

Defendants shall pay claimant the sum of $2,975.00 as reimbursement for the cost of Dr. Bansal's two independent medical evaluations.

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

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

Signed and filed this 9th day of March, 2017.

Joseph S. Cortese II

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WORKERS' COMPENSATION
COMMISSIONER

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