BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VIRLENE PINGEL, Claimant, vs. IOWA CENTRAL COMMUNITY COLLEGE, Employer, and EMCASCO INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 20003971.01 A R B I T R A T I O N D E C I S I O N Head Note No. 1108; 1803

STATEMENT OF THE CASE

The claimant, Virlene Pingel, filed a petition for arbitration and seeks workers' compensation benefits from Iowa Central Community College, employer, and EMCASCO Insurance Company, insurance carrier. The claimant was represented by Janece Valentine. The defendants were represented by Brian Scieszinski.

The matter came on for hearing on April 26, 2022, before Deputy Workers' Compensation Commissioner Joe Walsh via CourtCall videoconferencing system. The record in the case consists of Joint Exhibits 1 through 8; and Defense Exhibit A and B. There was an objection to Joint Exhibit 4 and the record was held open for an additional 30 days to allow defendants to submit a rebuttal report. On May 24, 2022, defendants presented Defense Exhibit B which was entered into evidence. The claimant testified at hearing from a cell phone from her home. There were some technical issues with the audio which caused the hearing to be challenging, however, a complete record was ultimately obtained. The parties agreed to allow the claimant to testify by phone due to the audio challenges. (Transcript, page 30) Gina Castro served as the court reporter. The matter was fully submitted on June 20, 2022, after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained an injury which arose out of and in the course of her employment on or about April 25, 2019.

2. Whether the alleged injury is a cause of permanent disability.

3. Whether the claimant is entitled to any permanent disability benefits, and if so, the extent of such benefits, including the commencement date.

4. Whether claimant is entitled to an independent medical examination under Iowa Code section 85.39.

5. Whether claimant is entitled to costs, including Dr. Bansal's report.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.

2. The parties stipulated to all of the elements comprising the rate of compensation and submit a weekly rate of $312.79.

3. The parties have stipulated that the "alleged injury is a cause of temporary disability during a period of recovery."

4. Temporary disability and medical expenses are not in dispute.

5. The parties have stipulated that if the claimant is found to have sustained permanent disability, the disability is industrial.

6. Credit is not in dispute. It appears no benefits have been paid on this denied claim.

7. Affirmative defenses have been waived.

FINDINGS OF FACT

Claimant Virlene Pingel was 62 years old as of the date of hearing. She testified live and under oath at the video hearing. I find her testimony is highly credible. She was not a particularly sophisticated witness. She was a reasonably good historian. Her testimony was not particularly disputed except with regard to her history of smoking. She testified that she has been trying to quit since she started having acute breathing problems while working for the employer in this case. There was nothing about her demeanor that caused me any concern for her truthfulness.

Ms. Pingel obtained her GED in 1978. She lives in Fort Dodge, Iowa. She has a manual labor/service sector work history, and has performed jobs at McDonald's, Wal-Mart, as well as nursing homes and hospitals. She often worked multiple jobs at the

same times to make ends meet. I find she is highly motivated. She began working for Iowa Central Community College (hereafter "Iowa Central") in April 2019. She was hired as a custodian. Her job description is in evidence. (Joint Exhibit 1, pages 5-7) She testified she was hired to clean the cafeteria, but she ended up cleaning all over campus. (Transcript, pages 24-25) Her shift was 8:00 p.m. to 7:00 a.m. In this position, she was exposed to a number of industrial chemicals. (Jt. Ex. 6)

It is noted that Ms. Pingel is a smoker and she had numerous health problems before beginning employment with Iowa Central. She was previously diagnosed with COPD, asthma, emphysema, hypertension, and atrial fibrillation, to name a few of her preexisting conditions. She testified she has had treatment for breathing problems for a long time prior to her work at Iowa Central. (Tr., pp. 48-50; 54-55) She also had a number of diagnosed allergies and has had challenges with her weight which affect her health.

Ms. Pingel testified that shortly after beginning employment for Iowa Central, she noticed having allergic-reaction type symptoms. "When I – like an allergy reaction; your – your front of your face puffs up, your nose gets plugged. And then I was having problems breathing, and it would – with my lungs, we thought – at first I thought it was just pneumonia, but the – you can't have it that many times." (Tr., p. 26) She testified that, at first, she did not make the connection between her work and the symptoms. (Tr., p. 27) Over time, her symptoms worsened, and included earaches, severe congestion, and diarrhea.

There are a number of medical treatment records in evidence. In June 2019, she followed up with her family clinic for an allergic reaction she had to sweet corn. (Jt. Ex. 2, p. 14) She was taken off work at that time for a few days and then resumed normal activities. Between June and October 2019, she went to her family clinic on a number of occasions for these types of symptoms. (Jt. Ex. 3, pp. 14-40) On October 23, 2019, her primary care physician, David Cole, M.D., documented the following:

> HPI has had a sore throat cough shortness of breath aggravation of her pulmonary hypertension possibly related to exposure to chemicals at work or at least aggravated by chemicals. She was on antibiotics in the form of Bactrim last week and that did not clear up her ear pain or sore throat.

(Jt. Ex. 2, p. 41)

Ms. Pingel testified that she continued to have these symptoms every time she would return to work at Iowa Central. She quickly ran out of medical leave. (Jt. Ex. 1, pp. 8-10) When she would be off for a while, her symptoms would subside. She did not have these symptoms prior to being exposed to these industrial cleaning chemicals prior to work at Iowa Central. (Tr., pp. 34-36)

On January 9, 2020, Ms. Pingel had pulmonary function testing and then saw a pulmonologist, James Meyer, D.O., the following day. (Jt. Ex. 3, pp. 49-54) The following is documented by Dr. Meyer at their initial visit:

> Pt states that she has shortness of breath heaviness tightness wheezing with exertion. Pt states that if she goes into a coughing fit those symptoms are worse. Pt thinks its the chemicals she uses for her job that has brought a lot of this on Pt doesnt not [*sic*] wear a mask while using the chemicals to clean at the college

(Jt. Ex. 3, p. 54) At her request, Dr. Meyer took her off work for 10 days. (Jt. Ex. 3, pp. 57-58) He made a number of recommendations, including weight loss and smoking cessation. He ordered some further tests as well. (Jt. Ex. 3, p. 57)

Dr. Meyer reevaluated Ms. Pingel on January 29, 2020. "I told her that finding a different job where she is not exposed to these cleaning chemicals would be more appropriate. When she was working at Walmart she had no problems with exertional dyspnea." (Jt. Ex. 3, p. 60) Dr. Meyer then set forth the following medical opinion and work restriction: "It is my medical opinion that Virlene Pingel should not be working with chemicals as it causes complications with her respiratory system." (Jt. Ex. 3, p. 63)

Ms. Pingel took this restriction to Iowa Central and had a meeting on January 30, 2020. Iowa Central documented the meeting. (Jt. Ex. 1, p. 11) She testified she requested to be transferred to a position not working around the chemicals. This was denied and she was informed there were no vacant positions she could transfer to. She was formally terminated on February 17, 2020, although she did not return to work after January 30, 2020. (Jt. Ex. 1, p. 13)

Ms. Pingel testified that since she left Iowa Central, she is no longer having allergic reaction symptoms. (Tr., p. 38) She testified, however, that her breathing condition, overall, is worse than it was prior to working at Iowa Central. Specifically, she takes her breathing treatments more often and has to use her inhaler regularly. (Tr., pp. 38-39) She testified that the insurance carrier did not deny her claim until April 2020. She then found employment as a contractor with Door Dash where her earnings varied significantly, but she often made more than she did at Iowa Central. (Tr., pp. 40-41) At the time of hearing she was being paid to watch her grandson, who has a disability. (Tr., p. 41)

In addition to the treatment records, there are a couple of expert medical opinions in the record.

Sunil Bansal, M.D., examined Ms. Pingel and prepared a report dated March 25, 2022. (Jt. Ex. 4) He reviewed appropriate medical records, took her history and examined her. (Jt. Ex. 4, pp. 64-69) He opined that she had sustained a 10 percent whole body functional impairment rating pursuant to the AMA Guides, Fifth Edition, Tables 5-9 and 5-10. (Jt. Ex. 4, p. 70) These are ratings for asthma. He opined that her impairment was caused or aggravated by her exposure to chemicals at Iowa Central.

> At the time of her injury, Ms. Pingel was employed by Iowa Central Community College. She cleaned classrooms, the cafeteria, the library, and

> other areas throughout the campus. She worked in environmental services doing general cleaning duties. She cleaned the restrooms, including scrubbing and taking out the trash.
>
> She used multiple cleaners and chemicals in the course of her duties, including a carpet shampoo, strong cleansers for the toilets. There was also a purple cleanser that was supposed to be discontinued three years before she was hired, but they still used the chemical. She used these chemicals every night. She asked for a face mask, but was not provided with one until approximately two weeks before she became very ill, and was then terminated.
>
> She feels that her symptoms resembled pneumonia. It felt as if her lungs were not getting enough air, and she had a hacking cough. She did take breathing treatments prior to this, but only had to do a breathing treatment at night. After her symptoms developed, she had to do a breathing treatment in the morning then again in the early evening before she went to work, and again at night, for a total of three times per day. She states that she has had pneumonia in the past, and even then she only did the breathing treatments it [*sic*] in the morning and once more at night. Her normal baseline prior to working at the college was a breathing treatment once a day.

(Jt. Ex. 4, pp. 70-71) He recommended walking/stairs restrictions and to avoid chemicals which cause her symptoms. (Jt. Ex. 4, p. 71)

Defendants secured a report from J. Joe Hawk, M.D., on March 25, 2022. (Jt. Ex. 5) Dr. Hawk never examined Ms. Pingel. He did, however, review her deposition, various discovery documents, recorded statement, medical records, and MSDS documents. (Jt. Ex. 5, p. 73) Defense counsel prepared a report on defense counsel letterhead that Dr. Hawk signed and agreed with. He opined that he could not relate any permanency to her work at Iowa Central or exposure to chemicals at Iowa Central.

> Based upon Ms. Pingel's deposition testimony, recorded statement, medical records and MSDS sheets, Ms. Pingel may have had an underlying personal allergy condition to a chemical used at Iowa Central Community College. Based upon the MSDS sheets and Ms. Pingel's uncertainty as to which particular chemical, if any, you are unable to state based upon a reasonable degree of certainty, which chemical or chemicals, if any, were causing her alleged symptoms. However, based upon Ms. Pingel's testimony that her symptoms always resolved within a short period of time, any such work related aggravation, if any, was only temporary in nature.

(Jt. Ex. 5, p. 74)

In addition, defendants secured a record review report from a pulmonologist, Ryan Brimeyer, D.O., on May 23, 2022. (Def. Ex. B) Dr. Brimeyer agreed with Dr.

Hawk.

> I agree with the opinions set forth in Dr. Hawk's 03/25/2022 letter. I disagree with Dr. Bansal's opinion that the Claimant's employment led to the Claimant's disability. The patient's symptoms are more likely caused by her 90 pack-year history of smoking cigarettes. Any aggravation related to her work environment would have been temporary and would have resolved in days to weeks after removal from the environment. In Dr. Meyer's 01/10/2020 visit note, his plan states "patient has many reasons for exertional dyspnea (CHF, COPD, obesity, deconditioning, etc." [*sic*] I would agree that these medical conditions are the etiology of her symptoms. She indicates in all records including Dr. Bansal's that she continues to smoke. It is this bad lifestyle choice that continues to worsen her COPD and necessitate her use of additional medications to control her COPD. It is my medical opinion that the Claimant would not have any current and/or permanent restrictions or limitations as a result of her employment at Iowa Central Community College.

(Def. Ex. B, p. 1) Dr. Brimeyer also never examined or met Ms. Pingel.

Defendants repeatedly cited to Joint Exhibit 3, page 55, wherein Ms. Pingel told her treating pulmonologist, Dr. Meyer, that she smoked 2 packs a day since she was 10 years old. Ms. Pingel clarified this at hearing, however, she certainly admits that she is a smoker, and she has been unable to quit, even on the strong advice of her doctors.

CONCLUSIONS OF LAW

The first question is whether Ms. Pingel sustained an injury which arose out of and in the course of her employment.

In this case, Ms. Pingel alleges that her exposure to various industrial chemicals at Iowa Central caused her to develop allergy symptoms which materially aggravated her underlying asthma. There is no question in this record that Ms. Pingel was diagnosed with a number of breathing problems, including asthma and COPD, prior to working at Iowa Central. The two questions are (1) whether her exposure to various chemicals at Iowa Central materially aggravated her preexisting conditions, and (2) if so, whether she has sustained any permanent disability from this exposure.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no

requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Since she was exposed to the various chemicals over a period of time from when she started at Iowa Central in April 2019, until she was released in January 2020, the question of her "injury" is highly intertwined with the question of medical causation.

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).

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been a viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1960). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

While the defendants have technically disputed that she sustained an injury which arose out of and in the course of her employment, the defendants did stipulate that she had temporary symptoms from being exposed to chemicals. (Hearing Report, paragraph 3) She was, in fact, exposed to a variety of chemicals as demonstrated by the Material Safety Data Sheets. (Jt. Ex. 6, pp. 77-114) A number of these products contain chemicals which contain serious warnings about breathing or inhalation and recommend the use of protective equipment. For example, the product "Lime Off" recommends the following: "Do not breath mist/vapours/spray" and recommends wearing "protective gloves/protective clothing/eye protection/face protection." (Jt. Ex. 6, p. 84) The product "Acidulate" has a similar warning. (Jt. Ex. 6, p. 82) The product "Foamicide PQ" indicates "harmful if inhaled" and recommends not to breathe it. (Jt. Ex. 6, p. 78) These are just a few random examples of the chemicals that Ms. Pingel was likely exposed to. In this case, Iowa Central did not provide any type of personal protective equipment while working around these chemicals. It is noted that Ms. Pingel testified that her treating pulmonologist called the college and asked for the list of chemicals she was exposed to. (Tr., p. 32) Ms. Pingel testified that as soon as she was removed from the exposure to these chemicals, her symptoms essentially resolved, and she has been able to work and function.

Based upon Ms. Pingel's highly credible testimony, as well as the contemporaneous treatment notes, I find by a preponderance of evidence that she did sustain an injury which arose out of and in the course of her employment. Specifically, I find that her exposure to various chemicals caused her allergic reaction type symptoms at the time of her exposure. I find this undoubtedly qualifies as an "injury" as defined by Iowa law. The appropriate manifestation date is January 10, 2020, when she was taken off work by her treating pulmonologist. (Jt. Ex. 3, p. 58)

The more debatable question is whether Ms. Pingel has sustained any permanent disability as a result of this work injury. This is, again, a question of causal connection, however, the question is whether the injury resulted in any permanent industrial disability.

The first part of this question is whether the claimant sustained any permanent impairment as a result of the work injury.

By a preponderance of evidence, I find that Ms. Pingel has sustained permanent impairment as a result of her work injury. This finding is based upon the claimant's credible testimony, the MSDS sheets, the contemporaneous medical notes documenting the development of her condition and the medical opinion of Dr. Bansal. The opinion of Dr. Bansal, of course, is key, since, ordinarily medical causation must be proven through expert medical testimony.

The defense argument, for both the injury itself, as well as permanency, centers on Ms. Pingel's preexisting conditions, which were plentiful. Most notably, she had asthma, COPD and a long history of smoking. The defendants accurately argue that these conditions existed long before her exposure to any chemicals at Iowa Central. The defense experts provided opinions supporting this contention. Dr. Hawk opined that "any allergy Ms. Pingel may have to the chemicals used at Iowa Central . . . was due to her personal underlying condition," not to her exposure. (Jt. Ex. 5, p. 75) Dr. Brimeyer, a pulmonologist, concurred. (Def. Ex. B, p. 1)

I do not find these medical opinions persuasive for several reasons. First, and most importantly, the evidence suggests that neither doctor used the correct legal standard for medical causation, namely whether the condition was substantially caused or materially aggravated by her work. Both of these physicians instead focused nearly exclusively upon Ms. Pingel's preexisting conditions. Second, neither of these physicians ever actually evaluated or even saw Ms. Pingel. They both performed medical record reviews.

The greater weight of evidence supports a finding that while Ms. Pingel had numerous preexisting conditions, which ultimately undoubtedly contributed to her overall disability, her exposure to cleaning chemicals at work aggravated her condition. Dr. Bansal opined that her exposure to numerous chemicals at work materially aggravated her asthma. He assigned a 10 percent impairment rating for this condition. I find this is the most convincing medical opinion in the record.

In the alternative, I find that even if the weight of evidence did not support the finding of permanent impairment, industrial disability benefits would still be appropriate. A finding of impairment is not required for an award of industrial disability.

> This is the case of an employee who has no apparent functional impairment and who wants to work at the job he had before but is precluded from doing so because his employer believes the past injury disqualifies him, resulting in a palpable reduction in earning capacity.

Blacksmith v. All-American, Inc., 290 N.W.2d 348, 354 (Iowa 1980); *see also* McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980). The bottom line is this: Ms. Pingel sustained a work-related injury from her exposure to chemicals. This work injury resulted in permanent restrictions of not working around chemicals. Because of this, Iowa Central determined that she is not eligible for any job for the employer. (Jt. Ex. 1, pp. 11-13)

The next issue is the extent of Ms. Pingel's industrial disability.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

The refusal of defendant-employer to return claimant to work in any capacity is, by itself, significant evidence of a lack of employability. Pierson v. O'Bryan Brothers, File No. 951206 (App. January 20, 1995); See also, 10-84 Larson's Workers' Compensation Law, section 84.01; Sunbeam Corp. v. Bates, 271 Ark. 609 S.W.2d 102 (1980); Army & Air Force Exchange Service v. Neuman, 278 F. Supp. 865 (W.D. La. 1967); Leonardo v. Uncas Manufacturing Co., 77 R.I. 245, 75 A.2d 188 (1950). An employer who chooses to preclude an injured worker's re-entry into its workforce likely demonstrates by its own action that the worker has incurred a substantial loss of earning capacity. As has previously been explained in numerous decisions of this agency, if the employer in whose employ the disability occurred is unwilling to accommodate the disability, there is no reason to expect some other employer to have more incentive to do so. Estes v. Exide Technologies, File No. 5013809 (App. December 12, 2006).

Ms. Pingel was 62 years old as of the date of hearing. She has been a hard worker for her entire life. Her work history is mostly in entry-level service sector type positions. She is not highly educated. Her only formal restriction as a result of her work injury is that she cannot work around chemicals. She testified specifically that her condition does not prevent her from working and has significantly returned very near her

baseline status since she is no longer being exposed to these chemicals. She does contend that she has to engage in her breathing treatments more often now, however, again, she insisted that this does not interfere with her ability to work.

Iowa Central disqualified her from any employment at the college and terminated her employment within a very short period of time after learning of these restrictions. Ms. Pingel, however, is capable of working at virtually any of her other pre-work injury positions, with the exception of cleaning jobs where she would be exposed to chemicals. I find that Ms. Pingel is highly motivated.

Considering all of the relevant factors of industrial disability, I find that the claimant has sustained a 20 percent loss of earning capacity, which I conclude entitles her to 100 weeks of compensation, commencing January 30, 2020.

The final issue is IME and costs.

Iowa Code section 86.40 states:

Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

Costs. Costs 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. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

I find that Ms. Pingel is not entitled to an IME. I find she is entitled to the following costs set forth in Joint Exhibit 7:

- $2,126.00 Dr. Bansal's Report
- $103.00 Filing Fee
- $13.90 Service Fees

The total allowable costs are therefore $2,242.90.

ORDER

THEREFORE IT IS ORDERED

Defendants shall pay the claimant one hundred (100) weeks of permanent partial disability benefits at the rate of three hundred twelve and 79/100 dollars ($312.79) per week commencing January 30, 2020.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

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

Costs are taxed to defendants in the amount of two thousand two hundred forty-two and 90/100 dollars ($2,242.90).

Signed and filed this ___1st___ day of December 2022.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Janece Valentine (via WCES)

David Brian Scieszinski (via WCES)

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