BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHELLE TUTTLE,	:	
Claimant,	:	File Nos.: 21011951.02, 20003796.03, 22700262.01
vs.	:	
ARCHER DANIELS MIDLAND,	:	A R B I T R A T I O N
Self-Insured Employer,	:	D E C I S I O N
and	:	
SECOND INJURY FUND OF IOWA,	:	Head Notes: 1100, 1108, 1400, 1800, 1803, 1804, 2200, 2206, 2500, 3200, 4100
Defendants.	:	

STATEMENT OF THE CASE

The claimant, Michelle Tuttle, filed three petitions for arbitration seeking workers' compensation benefits from self-insured employer, Archer Daniels Midland ("ADM"), and the Second Injury Fund of Iowa ("Fund). Dennis Currell and Jeff Carter appeared on behalf of the claimant. Peter Thill appeared on behalf of ADM. Sarah Timko appeared on behalf of the Fund. Also present were Ryan Priddy, a corporate representative of ADM, Caitlin Fairchild, a law clerk with the Fund, and Paul Grieder, a witness.

The matter came on for hearing on June 21, 2023, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

It should be noted for the record that the undersigned reached out to the parties ahead of the hearing to remind them of the time limit for the presentation of evidence as laid out in the Hearing Assignment Order. No party requested additional time via motion to present witness testimony or additional evidence. The undersigned allowed the hearing to run for an additional 30 minutes of testimony, as the motions discussed below took considerable time to discuss. This was done as a courtesy to the parties despite the language of the Hearing Assignment Order. While the claimant made an objection or mention on the record of the time provided to the parties, they were reminded prior to the hearing, and at the outset of the hearing of the well-established rules pertaining to contested case hearings before the Agency.

ADM objected to the inclusion of Claimant's proposed exhibit 24. Proposed exhibit 24 was opinion summaries and a prior U.S. District Court ruling from the Eastern Division of the Northern District of Illinois regarding defendant's expert, Dr. Andrew Zelby. The defendant argued that the exhibit was irrelevant and immaterial to the matter. The claimant requested that the undersigned take judicial notice of the exhibit since it contained records of rulings in workers' compensation cases and before a U.S. District Court. The claimant also argued that the record shed light on Dr. Zelby's bias as an expert witness, and that other tribunals have found his reports to be less than credible.

In reviewing the proposed exhibit, it was unclear as to what tribunal or judicial body issued most of the summary rulings in proposed claimant's exhibit 24:417-423. This agency has broad authority to apply administrative rules and act as the gatekeeper of evidence that is offered before it. See e.g. Marovec v. PMX Industries, 693 N.W.2d 779 (Iowa 2005). Iowa Code section 17A.14(1) allows for the exclusion of "irrelevant, immaterial, or unduly repetitious evidence…" from contested cases. The statute continues that the finding should be based upon "the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs and may be based upon such evidence even if it would be inadmissible in a jury trial." See Iowa Code section 17A.14(1). Additionally, Iowa Code section 17A.14(5) allows the agency to use their expertise, technical competence, and specialized knowledge to evaluate evidence. Iowa Code section 85.34(2)(x) limits a deputy's ability to use anything but the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, for evaluating permanent functional impairment; however, this particular piece of proposed evidence does not pertain to the evaluation of permanent impairment. Based upon the foregoing sections of Iowa Code section 17A.14, I found that the evidence offered in claimant's proposed exhibit 24 was irrelevant and immaterial. Therefore, the objection was sustained, and the proposed exhibit was excluded from the record.

The claimant objected to ADM's proposed exhibit K, which was an employability analysis addendum, dated May 26, 2023. The claimant offered to withdraw their objection, provided the record be held open for them to submit a rebuttal report. Neither ADM, nor the Fund objected to this proposal. Therefore, the record was held open at the conclusion of the hearing for 30 days in order to receive a rebuttal report from claimant's employability expert, Kent Jayne. The report was to be limited solely to rebutting the addendum report from Paradigm.

The claimant objected to portions of proposed exhibit J. Specifically, the claimant alleged that the letter sent from ADM to Dr. Zelby contained factual allegations, and that Swanson v. Blue Bird Midwest, prohibited the evidence from being admitted to the record. See Swanson v. Blue Bird Midwest, File No. 1281357 (App., September 24, 2003). Further, the claimant alleged that the ruling in Swanson would also require that the report of Dr. Zelby be excluded from evidence. ADM disagreed.

Swanson, discussed the burden of proving facts to apportion existing liability resting upon the defendant. Id. The claimant relies upon a specific sentence from the

appeal decision, which states, "[a]llegations of fact made by counsel cannot form the basis for an expert opinion and the resulting expert opinion must be disregarded." Id. The doctor in Swanson "relied upon representations of fact made by defense counsel and his purported opinion therefore lacks foundation and was properly rejected." Id.

Again, Iowa Code section 17A.14(1) provides for the exclusion of "[i]rrelevant, immaterial, or unduly repetitious evidence…" from contested cases. As noted above Iowa Code section 17A.14(5) allows the Agency to use expertise, technical competence, and specialized knowledge in evaluating evidence. The questions of reliability of a doctor's opinion, and whether that opinion lacks foundation or credibility are for the finder of fact. Excluding the opinion of Dr. Zelby based upon the arguments of the claimant that ADM provided Dr. Zelby with a factual background of the injuries alleged would prejudice the defendant. Precluding the defendant from providing a description of the facts to the examining physician would lead to an absurd result, and inject inherent unreliability to the physician's opinion. Relying upon the language of the decision in Swanson would, theoretically, prevent any attorney or party from providing a description of the facts at issue in the case to their experts. Admitting the letter in proposed exhibit J and placing it in the context of the evidence in the record would allow the undersigned to evaluate the reliability of the physician's opinions while not prejudicing any parties.

Finally, the claimant objected to page 88 of ADM's proposed exhibit I. This is the expert fee of Dr. Abernathey. The undersigned previously assessed this fee as a sanction against the claimant for improper service of a subpoena upon Dr. Abernathey. This has been discussed at length in another ruling in the record of this case. That ruling was subsequently appealed to the Commissioner, Iowa District Court, and Iowa Court of Appeals. The Court of Appeals did not rule on the merits of the claimant's argument, but remanded it to the District Court for further consideration. As of the time of the hearing, the record on Iowa Courts Online indicated that the matter remained under consideration by the District Court. Considering the ruling issued by the undersigned remains standing, and has not been overruled by any higher authority, the objection was overruled and the proposed exhibit was admitted into the record.

The record in this case consists of Joint Exhibits 1-15, Claimant's Exhibits 1-23, Defendant's Exhibits A-Q, and Fund Exhibits AA-EE.

Mamonate Nyane, Kathryn Bunger, Karl Schewe, Ryan Priddy, and the claimant provided testimony. Kimmberly Allen was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record was held open for 30 days following conclusion of the hearing solely for the receipt of Kent Jayne's rebuttal report. The matter was fully submitted after the parties filed post-hearing briefing on August 11, 2023.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

File No. 21011951.02

1. There was an employer-employee relationship at the time of the alleged injury.

2. That the claimant sustained an injury, which arose out of and in the course of employment, on July 24, 2019.

3. That, at the time of the alleged injury, the claimant's gross earnings were one thousand three hundred forty-three and 61/100 dollars ($1,348.61), per week, the claimant was married and entitled to two exemptions, providing the claimant with an agreed upon rate of eight hundred fifty-seven and 00/100 dollars ($857.00).

4. That, with regard to disputed medical expenses:

    a. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants were not offering contrary evidence.

5. That, prior to the hearing, the claimant was paid 13.2 weeks of permanent partial disability benefits at the agreed upon weekly rate.

6. That the defendant, ADM, was entitled to a credit of five thousand four hundred twenty-nine and 53/100 dollars ($5,429.53) for sick pay or disability income pursuant to Iowa Code section 85.38(2).

The defendant, ADM, waived their affirmative defenses.

File No. 20003796.03

1. There was an employer-employee relationship at the time of the alleged injury.

2. That, while entitlement to temporary disability and/or healing period benefits cannot be stipulated, the claimant was off work from March 20, 2020, to April 26, 2022.

3. That, at the time of the alleged injury, the claimant was married, and entitled to two exemptions.

4. That, with regard to disputed medical expenses:

    a. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants were not offering contrary evidence.

5. That the defendant, ADM, was entitled to a credit of five thousand four hundred twenty-nine and 53/100 dollars ($5,429.53) for sick pay or disability income pursuant to Iowa Code section 85.38(2).

The defendant, ADM, waived their affirmative defenses.

File No. 22700262.01

1. There was an employer-employee relationship at the time of the alleged injury.

2. That, while entitlement to temporary disability and/or healing period benefits cannot be stipulated, the claimant was off work from March 20, 2020, to July 14, 2020.

3. That, at the time of the alleged injury, the claimant was married, and entitled to two exemptions.

4. That, with regard to disputed medical expenses:

    a. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants were not offering contrary evidence.

5. That the defendant, ADM, was entitled to a credit of five thousand four hundred twenty-nine and 53/100 dollars ($5,429.53) for sick pay or disability income pursuant to Iowa Code section 85.38(2).

The defendant, ADM, waived some of their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

File No. 21011951.02

1. Whether the alleged injury is a cause of temporary disability during a period of recovery.

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

3. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from July 24, 2019, to December 14, 2021.

4. Whether the claimant was off work from July 24, 2019, to December 14, 2021.

5. The extent of permanent disability benefits, should any be awarded.

6. Whether the disability is a scheduled member disability to the left lower extremity, or an industrial disability.

7. The proper commencement date for permanent disability benefits, should any be awarded.

8. Whether the claimant is entitled to reimbursement of medical expenses as itemized in Claimant's Exhibit 20.

9. With regard to the disputed medical expenses:

    a. Whether the fees or prices charged by providers are fair and reasonable.
    b. Whether the treatment was reasonable and necessary.
    c. Whether the listed expenses were casually connected to the work injury.
    d. That, although causal connection of the expenses to a work injury cannot be stipulated, whether the listed expenses were at least causally connected to the medical conditions upon which the claim of injuries was based.
    e. Whether the requested expenses were authorized by the defendant(s).

10. Whether the claimant is entitled to reimbursement for the costs of an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

11. Whether the claimant is entitled to alternate medical care.

12. With regard to the Fund:

    a. Whether the claimant sustained a prior qualifying loss to the left eye on October 5, 1992.
    b. Whether the functional loss from the prior qualifying loss was 30 percent of the left eye.
    c. Whether the claimant sustained a compensable loss to the left lower extremity on July 24, 2019.
    d. Whether the functional loss from the second qualifying loss was 6 percent to the left lower extremity.
    e. The proper commencement date for Fund benefits, should any be awarded.

f. Whether the Fund is entitled to credit pursuant to Iowa Code section 85.64 for 55.2 weeks of benefits.

13. Whether an assessment of the defendant ADM's bill of costs against the claimant of nine hundred forty-two and 50/100 dollars ($942.50) is appropriate.

14. Whether any additional sanction for claimant's failure to pay a prior sanction is appropriate.

15. Additional issues according to the claimant include: "Determination of BAW v. scheduled injury; causation of sequela to lumbar disc injury 3/20/20 and right hip and psychological injury; odd lot; unconstitutional determination of subpoena and sanctions [still on appeal]; ongoing medical care; unpaid mileage."

16. Whether a specific taxation of costs is appropriate.

File No. 20003796.03

1. Whether the claimant sustained an injury, which arose out of, and in the course of employment on March 20, 2020, or March 19, 2020, which was her last day of work.

2. Whether the alleged injury is a cause of temporary disability during a period of recovery.

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

4. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from March 20, 2020, to April 26, 2022.

5. The extent of permanent disability benefits, should any be awarded.

6. Whether the disability is an industrial disability.

7. The proper commencement date for permanent disability benefits, should any be awarded.

8. The proper gross earnings, and resulting rate of compensation for the claimant.

9. Whether the claimant is entitled to reimbursement of medical expenses as itemized in Claimant's Exhibit 20.

10. With regard to the disputed medical expenses:

a. Whether the fees or prices charged by providers are fair and reasonable.
b. Whether the treatment was reasonable and necessary.
c. Whether the listed expenses were casually connected to the work injury.
d. That, although causal connection of the expenses to a work injury cannot be stipulated, whether the listed expenses were at least causally connected to the medical conditions upon which the claim of injuries was based.
e. Whether the requested expenses were authorized by the defendant(s).

11. Whether the claimant is entitled to reimbursement for the costs of an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

12. Whether the claimant is entitled to alternate medical care.

13. Whether an assessment of the defendant ADM's bill of costs against the claimant of nine hundred forty-two and 50/100 dollars ($942.50) is appropriate.

14. Whether any additional sanction for claimant's failure to pay a prior sanction is appropriate.

15. Additional issues according to the claimant include: "Determination of DOI; odd lot; unconstitutional determination of subpoena & sanctions [still on appeal]; ongoing medical care; unpaid mileage; sequela to psychological injury as physical/mental injury."

16. Whether a specific taxation of costs is appropriate.

File No. 22700262.01

1. Whether the claimant sustained an injury, which arose out of, and in the course of employment on June 19, 2020, and July 8, 2020, or "alternatively her last day of work, March 19, 2020."

2. Whether the alleged injury is a cause of temporary disability during a period of recovery.

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

4. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from March 20, 2020, to July 14, 2020.

5. The extent of permanent disability benefits, should any be awarded.

6. Whether the disability is an industrial disability.

7. The proper commencement date for permanent disability benefits, should any be awarded.

8. The proper gross earnings, and resulting rate of compensation for the claimant.

9. Whether the claimant is entitled to reimbursement of medical expenses as itemized in Claimant's Exhibit 20.

10. With regard to the disputed medical expenses:

    a. Whether the fees or prices charged by providers are fair and reasonable.
    b. Whether the treatment was reasonable and necessary.
    c. Whether the listed expenses were casually connected to the work injury.
    d. That, although causal connection of the expenses to a work injury cannot be stipulated, whether the listed expenses were at least causally connected to the medical conditions upon which the claim of injuries was based.
    e. Whether the requested expenses were authorized by the defendant(s).

11. Whether the claimant is entitled to reimbursement for the costs of an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

12. Whether the claimant is entitled to alternate medical care.

13. Whether an assessment of the defendant ADM's bill of costs against the claimant of nine hundred forty-two and 50/100 dollars ($942.50) is appropriate.

14. Whether any additional sanction for claimant's failure to pay a prior sanction is appropriate.

15. Additional issues according to the claimant include: "Costs for 85.39 reports; unreimbursed mileage; date of cumulative injury to right hip & subsequent sequela; unconstitutional disposition of adjudication of sanction on subpoena; on-going medical care still on appeal; odd lot."

16. Whether a specific taxation of costs is appropriate, and whether those costs have been paid.

17. Whether the defendant, ADM, proved an affirmative defense of lack of timely notice pursuant to Iowa Code section 85.23.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Michelle Tuttle, the claimant, was 59 years old at the time of the hearing. (Testimony). She was married, and has adult children. (Testimony). She has a high school diploma, and an associate degree in environmental tech from Kirkwood Community College. (Testimony). While earning her associate degree, she made the dean's list. (Testimony). She also had a CNA license, and certifications as an EMT and in CPR. (Testimony). However, she did not keep these certifications or licenses current as of the hearing. (Testimony).

Ms. Tuttle's career generally consisted of working in industrial labor positions. (Testimony). She worked for a time at a turkey processor and as an EMT. (Defendant's Exhibit K:126). She also worked as a CNA and at a woolen mill. (DE K:126). For a short time she worked in production at Rockwell Collins where she built computer parts. (DE K:126). During the middle of her career she took time out of the workforce to help her husband. (DE K:126).

Ms. Tuttle also worked selling things on the internet for a time. (DE K:126).

For a time, Ms. Tuttle worked at Greater Machining and Manufacturing ("GMM"). (DE K:126; Testimony). She worked as a quality control specialist and assembled parts for other manufacturers. (DE K:126). Ms. Tuttle testified that this was not as physically demanding of a job as some of her prior positions. (Testimony). While working for GMM, Ms. Tuttle received several write-ups. (DE DD:29-31). One of these was due to a conflict between her and another employee. (DE DD:29). The other two revolved around violating company policies. (DE DD:30-31).

From 2012 to 2015, Ms. Tuttle worked at John Deere as a foundry worker. (DE K:126). She completed CNC training, worked on CNC machines, assisted in training, worked as a truck driver, and moved large items with cranes. (DE K:126). Ms. Tuttle was laid off from her job at John Deere in 2015, and was considered to be a below average employee. (DE P:190). She was provided unacceptable ratings regarding her conduct at work for John Deere. (DE P:190). Ms. Tuttle testified that she had an opportunity to return to John Deere, but that she declined it as her job at ADM had better pay and less of an opportunity for a layoff. (Testimony).

Ms. Tuttle began working at ADM in March of 2015 as a mill utility worker. (Testimony; DE K:126). She generally worked eight hours per day, but at times worked 12 hours per day. (Testimony). She estimated that, about one-third of the time at ADM, she worked more than forty hours per week. (Testimony). Ms. Tuttle shoveled corn, tore down items for cleaning, performed various testing, used ladders and sanders, and

climbed stairs. (DE K:126). She also assisted operators in a control room, started up or shut down systems, used pressure washers to clean parts, and disassembled or reassembled various parts. (Testimony). Ms. Tuttle described her work as physically demanding. (Testimony). This was confirmed by Kate Bunger, Ms. Tuttle's supervisor at ADM. (Testimony). She worked for ADM for the next five years. (Testimony). Ms. Tuttle acknowledged that she was trained on how to report a work injury when she started with ADM. (Testimony).

Ms. Bunger testified that Ms. Tuttle was a good employee. (Testimony). She would report concerns if she had any. (Testimony). Ms. Bunger could not recall a time that Ms. Tuttle reported a work injury to her. (Testimony). She recalled Ms. Tuttle reporting some work injuries. (Testimony). Ms. Bunger recounted another time when she spoke to Ms. Tuttle about the COVID pandemic, and her concerns about her personal health in light of her pre-existing conditions. (Testimony). During this conversation, Ms. Tuttle made no mention about any other issues. (Testimony).

Karl Schewe also testified on behalf of ADM. (Testimony). He noted that ADM valued a culture of safety. (Testimony). Mr. Schewe outlined ADM's workers' compensation reporting and medical provisioning processes. (Testimony).

Ms. Tuttle alleges that her last day of work was in March of 2020, but as noted elsewhere in this decision, she was terminated in March of 2021. (Testimony). Ms. Tuttle testified that she had no issues with her right hip until after she began working at ADM. (Testimony). Ms. Tuttle further testified that her right hip would periodically "flare up," especially when she would work on certain machinery. (Testimony). She also testified that her right hip issues would cause her to periodically limp. (Testimony).

The record included submission of considerable records that pre-date the alleged dates of injury in this matter. This includes records that are under the claimant's prior name. (Testimony). Ms. Tuttle treated at Mercy for obesity, menstrual irregularities, costochondritis, and depression. (Joint Exhibit 1:1). She noted difficulties falling asleep, difficulties staying asleep, and a poor mood. (JE 1:1). The record also noted a previous diagnosis of a "chemical imbalance," at which time she was placed on medication. (JE 1:1). The provider recommended that she refill her medications and undertake counseling due to a "difficult social situation." (JE 1:1).

Ms. Tuttle was diagnosed with a left foot contusion in 1996 after a retaining wall brick fell on her foot. (JE 2:6).

On February 27, 1999, the claimant was discharged from inpatient care to inpatient rehabilitation at Mercy Medical Center in Cedar Rapids, Iowa. (JE 1:2). The claimant was diagnosed with Guillain-Barre Syndrome ("GBS"), severe generalized weakness secondary to GBS, depression, obesity, and diabetes. (JE 1:2). During her hospitalization, it was noted that she had muscle weakness in her upper extremities, hip girdle muscles, and lower back muscles. (JE 1:2). Her obesity complicated her care and hospitalization. (JE 1:2). The providers recommended that she continue with

intensive rehabilitation, which resulted in her transfer to inpatient rehabilitation. (JE 1:3). For a time during her hospitalization, she was a quadriplegic. (JE 2:7).

Ms. Tuttle continued her treatment for GBS on March 1, 1999. (JE 1:4). During this visit, an EMG and nerve conduction study were conducted. (JE 1:4). The EMG showed indications of sensory and motor demyelinating polyneuropathy. (JE 1:4). The examining physician opined that this was consistent with her diagnosis of GBS. (JE 1:4).

On March 19, 1999, Ms. Tuttle was admitted to St. Luke's Hospital in Cedar Rapids, Iowa, with a positive test for the Epstein-Barr virus. (JE 3:81-83). She was diagnosed with GBS. (JE 3:83). She was hospitalized through April 28, 1999. (JE 3:90).

During a July 28, 1999, follow-up visit, Ms. Tuttle complained of pain in her feet, the back of her legs, and her heels. (JE 3:91). She complained that her toes felt as though they were broken. (JE 3:91). She also complained that her left foot swelled. (JE 3:91). She testified that she did not remember telling her physicians this information. (Testimony).

By September of 1999, the claimant noted "a lot of health concerns" since her GBS diagnosis, including worsening depression. (JE 2:7). She treated her depression with Prozac. (JE 2:7).

In February of 2000, Ms. Tuttle began aquatic therapy following her GBS diagnosis. (JE 3:92). She reported numbness to her hands and arms in the morning. (JE 3:92).

By July of 2000, Ms. Tuttle noted pain in her legs, along with fatigue. (JE 3:98). She had an EMG, which showed significant evidence of polyneuropathy in the upper and lower extremities. (JE 3:98). Dr. Flory felt that this was not related to the claimant's GBS. (JE 3:98). At the time of this visit, the doctor felt that some of the claimant's ongoing issues may have resulted from her overdoing it, rather than from her GBS. (JE 3:98).

Throughout the remainder of 2000, Ms. Tuttle treated for her ongoing depression, bilateral shoulder pain, and bilateral carpal tunnel syndrome. (JE 3:104).

There are intermittent treatment records included that relate to the claimant's follow-up for GBS in 2001, 2002, and 2003, but I am not documenting them further because they had little relevance to my decision. Ms. Tuttle recalled telling her doctors in 2001 that she had numbness and tingling in her feet due to her GBS. (Testimony).

There is some mention in 2004 of her depression flaring up. (JE 3:123). She had issues with her home, her finances, and her family and noted, "I just can't deal with it anymore." (JE 3:123). She also became suicidal following these issues. (JE 3:125).

Ms. Tuttle had some physical therapy in 2004 due to pain in her left lower extremity. (JE 4:234). She experienced some weakness in her left lower extremity, as well. (JE 4:234). It appears that this was due to her GBS. (JE 4:234). Finally, she reported pain to her right heel. (JE 4:234).

In October of 2005, Ms. Tuttle reported to a doctor that she hurt her back. (JE 2:8). She was unsure how she hurt herself, but simply noted it being "really painful." (JE 2:8). She later determined that the pain came on when she leaned over. (JE 2:8). She described her pain as muscle spasms. (JE 2:8). She noted feeling as though she was unable to walk, so she used crutches and a wheelchair while in the doctor's office. (JE 2:8). The doctor recommended medication and rest. (JE 2:8). It was noted during her examination that she had no palpable spasm in her lower back. (JE 2:8).

Ms. Tuttle told a doctor in October of 2006 that she began feeling dizzy. (JE 2:10). She was asked to rise from an exam table, and upon attempting to do so began to cry as her back pain has worsened over the last year. (JE 2:10). Moving or twisting caused sharp pain down her leg. (JE 2:10). By mid-October of 2006, Ms. Tuttle complained that her pain worsened. (JE 2:10). An MRI showed a disk bulge at L4-5; however, the doctor opined that the disk bulge was not compressing any nerves. (JE 2:10). By late October of 2006, Ms. Tuttle complained of continued worsening pain with physical therapy. (JE 2:10). She displayed a slow gait, side bending, and hunching over when she reported for physical therapy. (JE 4:235-236). She recounted her back injury one year prior to the therapist. (JE 4:235). Her low back pain radiated to the buttocks, down the back of her lower extremities, and into the lateral aspect of her foot. (JE 4:235). Her foot pain felt as though her foot was falling asleep. (JE 4:235). Ms. Tuttle could not get out of bed in the morning without taking a pain pill. (JE 4:235). The therapist opined that Ms. Tuttle seemed to be a "pain magnifier," based upon her behavior since injuring her low back. (JE 4:236).

An MRI in October of 2006 showed mild bulging of the annulus at L4-5 with "slight effacement of the thecal sac" but without compression. (JE 5:237). It also showed mild degenerative changes at L5-S1, and L4-5. (JE 5:237).

On November 7, 2006, Ms. Tuttle had an L5-S1 lumbar epidural steroid injection at St. Luke's Hospital. (JE 3:115-116). She had diagnoses of: low back pain, left lower extremity pain, lumbar radiculitis, lumbar facet syndrome, and lumbar degenerative disk disease. (JE 3:115).

In January of 2007, Ms. Tuttle visited with Mark Young, M.D., at the recommendation of Dr. Flory. (JE 6:241-242). She recounted her medical history to date, including the fatigue and issues following her GBS diagnosis. (JE 6:241). Dr. Young opined that Ms. Tuttle appeared to have residual sensory polyneuropathy along with gait instability and fatigue following her GBS. (JE 6:242). He noted that these were common sequelae of severe GBS, and that it was likely that the symptoms would persist. (JE 6:242). He further opined that some of Ms. Tuttle's recent problems appeared to stem from her difficulty coping and having increased depressive symptoms.

(JE 6:242). He recommended she undergo therapy and continue treating with a pain clinic. (JE 6:242).

Ms. Tuttle called Jill Flory, M.D.'s office on June 25, 2007, complaining of bilateral hip pain, and asking what Dr. Flory recommended. (JE 2:11). She also noted her continued low back pain. (JE 2:11). Ms. Tuttle did not recall making any complaints about her hips during this visit. (Testimony).

Ms. Tuttle had another lumbar epidural steroid injection on June 28, 2007. (JE 3:127). She complained of increasing pain over the last month. (JE 3:127).

An MRI of the lumbar spine performed on July 16, 2007, showed annular disk bulging at L5-S1 with a shallow left paracentral disk protrusion. (JE 3:133). The MRI also suggested that material abutting the exiting S1 nerve root represented a "small, sequestered disk fragment." (JE 3:133).

On July 24, 2007, Ms. Tuttle met with a neurosurgeon for her two-year history of back and leg pain. (JE 2:5). She treated with chiropractic care, physical therapy, medication, and ESIs. (JE 2:5). Her leg pain ran down her left leg and the lateral portion of her left foot. (JE 2:5). She told the physician that her pain substantially worsened within the last three weeks. (JE 2:5). An MRI showed disc protrusion in the far lateral position at L3-4 and "what appears to be a small, extruded fragment at L5-S1 on the left." (JE 2:5).

Hip x-rays done in December of 2007 showed symmetric osteoarthritis that was "perhaps slightly advanced" for Ms. Tuttle's age. (JE 5:238).

On August 7, 2011, Ms. Tuttle went to the emergency room complaining of low back and left foot pain. (JE 7:253-254). The emergency room record is handwritten, and largely illegible. (JE 7:253-254).

On August 8, 2011, Ms. Tuttle went to Dr. Flory's office complaining of lower back pain. (JE 2:12). The pain started in late July of 2011 when she was pulling weeds. (JE 2:12). During that activity, she moved a 200-pound cement yard ornament and subsequently developed pain. (JE 2:12). She described the pain as shooting and burning. (JE 2:12). Sitting and walking aggravated her lower back pain. (JE 2:12). She reported issues controlling her pain with prescription medications. (JE 2:12).

Another MRI was done on August 9, 2011. (JE 5:239). The MRI showed a "[p]otential very small left paracentral disk protrusion at L5-S1," which was not seen on the 2007 MRI. (JE 5:239).

Dr. Flory saw Ms. Tuttle again on September 6, 2011, for pain in her lower back that radiated to her left thigh. (JE 2:13). She was scheduled to have another epidural steroid injection for her lower back pain. (JE 2:13).

On September 7, 2011, Ms. Tuttle had another lumbar epidural steroid injection. (JE 3:138). She continued to have pain in her lower back as of that visit. (JE 3:138).

By September 12, 2011, Ms. Tuttle returned to a doctor's office with complaints of worsening lower back pain that radiated to her left foot and left thigh. (JE 2:16). She felt slight improvement since a recent epidural steroid injection. (JE 2:16). She was diagnosed with lumbago and radiculitis. (JE 2:17). The provider noted "[h]er exam is more remarkable than her MRI from early August." (JE 2:17).

On September 26, 2011, Mary Hlavin, M.D. recommended that Ms. Tuttle undergo a diskectomy to remedy the "very small herniated disk at L5-S1" which critically compressed and displaced the nerve. (JE 3:140).

In 2012, Ms. Tuttle complained of difficulties with forgetfulness and concentration. (JE 2:19). Her issues were so severe that she was written up for doing improper work or forgetting to complete tasks. (JE 2:19). The provider opined that it sounded like she had "adult ADHD," but that she should have neuropsychological testing since Ms. Tuttle indicated that it was a "long-standing problem." (JE 2:19).

In October of 2014, Dr. Flory's office provided Ms. Tuttle with a psychiatric referral for treatment of her depression. (JE 2:21).

Dr. Flory saw Ms. Tuttle again in September of 2015, for complaints of musculoskeletal pain, which included limping, swelling and weakness. (JE 2:23). Ms. Tuttle noted she was climbing a ladder when she felt a pop in her left calf. (JE 2:23).

Ms. Tuttle was hospitalized for several days in January of 2016, for issues with pyeloneophritis. (JE 3:146). The scans taken during her stay indicated that she experienced a kidney stone, and had since passed it. (JE 3:148).

Ms. Tuttle sought chiropractic care in 2016. (JE 9:257). She had pain in the area of her sacroiliac, upper thoracic, and cervical spine areas. (JE 9:257).

In February of 2017, Ms. Tuttle returned to a doctor with complaints of constant pain in her left heel that radiated to her left ankle. (JE 2:30).

On October 19, 2017, Ms. Tuttle presented to the emergency room following a motor vehicle accident, wherein she struck a deer. (JE 3:149). The deer striking her vehicle caused the airbags to deploy. (JE 3:149). She had back and leg pain. (JE 3:149). Ms. Tuttle began physical therapy following this visit. (JE 3:151-157).

Ms. Tuttle returned to Dr. Flory's office with complaints of musculoskeletal pain following a motor vehicle accident two days prior, when she hit a deer. (JE 2:33). She reported "considerable" pain in her back. (JE 2:33). X-rays were ordered, along with prescription medications. (JE 2:36). She followed up this visit by returning to the chiropractor. (JE 9:258).

In December of 2017, Ms. Tuttle complained of pain in her bilateral hips and thighs, especially at night. (JE 2:38).

Ms. Tuttle had more chiropractic care in 2018. (JE 9:259). She had complaints of right sacroiliac and right pelvic discomfort following a hernia repair. (JE 9:259).

In November of 2018, ADM provided Ms. Tuttle with a final written warning and a suspension, as she failed to properly perform a lockout on a sump pump. (DE Q:201). According to the suspension notice, she violated "cardinal rule #1." (DE Q:201). She refused to sign this notice. (DE Q:201).

At various other times in 2018, Ms. Tuttle received a disciplinary write-up for attendance issues. (DE Q:197-199, 203).

In early April of 2019, Ms. Tuttle threw her back out while helping her son move. (JE 9:261). She experienced worsening issues in her right cervical spine. (JE 9:262). The chiropractor indicated that her symptoms were exacerbated causing a setback in her care. (JE 9:262).

On April 23, 2019, Ms. Tuttle returned to Dr. Flory's office with complaints of pain in her right hip for the last two years. (JE 2:44). She described the pain as dull and throbbing. (JE 2:44). She also noted feeling fatigued. (JE 2:44). The doctor noted concerns about arthritis. (JE 2:49). Her fatigue was connected to her prior GBS diagnosis. (JE 2:49). Dr. Flory referred Ms. Tuttle to orthopedic surgery. (JE 2:51).

A hip x-ray on April 26, 2019, showed "some amorphous soft tissue calcification along the superior margin of [the] greater trochanter," that could be calcific tendinitis. (JE 5:240).

On May 2, 2019, Dr. Flory wrote a letter noting Ms. Tuttle's previous diagnosis of GBS. (JE 2:53). Because of this, Dr. Flory opined that Ms. Tuttle could "take longer to recover from other medical illnesses such as the flu, a cold, [*sic*] bronchitis." (JE 2:53).

Ms. Tuttle treated with Thomas Paynter, M.D., on May 28, 2019, for complaints of right lateral hip pain over the previous year. (JE 6:243-247). Dr. Paynter observed that the claimant had focal tenderness over the greater trochanter, but no pain with flexion or internal rotation. (JE 6:243). X-rays did not show any significant degenerative changes. (JE 6:244). Dr. Paynter opined that her symptoms were consistent with trochanteric bursitis. (JE 6:244). He provided her with prescription medications and an order for physical therapy. (JE 6:244).

On May 30, 2019, Ms. Tuttle completed a "lower extremity functional scale." (JE 10:268). This appears to have been done as part of her treatment at Ability Physical Therapy. (JE 10:269-271). Ms. Tuttle reported right hip pain that began along the side of her hip and extended down her lateral leg into her mid-calf. (JE 10:269). Standing aggravated her pain. (JE 10:269). In filling out the lower extremity functional scale, she indicated extreme difficulty or an inability to perform the following activities: walking one mile, ascending or descending a flight of 10 stairs, running on even or uneven ground, making sharp turns while walking quickly, hopping, and rolling over in bed. (JE 10:268). She would have "quite a bit of difficulty" squatting or walking for two blocks. (JE 10:268). She anticipated "moderate difficulty" doing her usual work, household or

school activities, performing her usual hobbies, getting into or out of a bath, walking between rooms, putting on socks, performing heavy activities at home, standing for one hour, and sitting for one hour. (JE 10:268). She expressed that she would have "a little bit of difficulty" performing the following tasks: lifting a bag of groceries from the floor, performing light activities at home, and getting into or out of a vehicle. (JE 10:268). There were no tasks to which she indicated she would have "no difficulty." (JE 10:268). The therapist opined that Ms. Tuttle's symptoms were consistent with trochanteric bursitis with secondary piriformis syndrome and "ITB" syndrome. (JE 10:270). The therapist recommended that Ms. Tuttle continue with therapy to increase her strength and decrease her pain. (JE 10:270).

Ms. Tuttle continued therapy through June and July of 2019. (JE 10:272-278). The claimant generally reported pain while driving, although as her therapy progressed, she displayed less pain. (JE 10:272-273). On July 5, 2019, she completed another "lower extremity functional scale" assessment, which showed improvement across a number of findings. (JE 10:274). She also told the therapist that she could lay on her right side for short periods of time and ascend or descend stairs with "slightly less difficulty." (JE 10:275). However, if she climbs too many stairs, such as while she worked, her pain increased. (JE 10:275).

Beginning on July 9, 2019, Ms. Tuttle reported increasing pain through the left hamstring area, including while walking or bending over. (JE 10:277). There is no mention in the record of a work incident. (JE 10:277). Her hamstring improved "a little" by July 12, 2019. (JE 10:277). The therapist felt the claimant made some gains during this time. (JE 10:277). By July 18, 2019, Ms. Tuttle reported decreased pain levels. (JE 10:278).

Ms. Tuttle testified that on July 24, 2019, she tripped on a curb while trying to relieve pressure in a machine while at work at ADM. (Testimony). She slipped in a wet area, tripped on a curb and then "did the splits." (Testimony). Ms. Tuttle testified that she began to limp only after this injury, and that she limped constantly until March of 2020. (Testimony).

Ms. Tuttle told her therapist on July 25, 2019, that she tripped over a step at work and "pulled something" in her left buttock or lower leg. (JE 10:278). She displayed painful hip motion and significant pain in the left ischial tuberosity. (JE 10:278).

On July 30, 2019, Ms. Tuttle reported to the emergency room at St. Luke's Hospital, complaining of left leg discomfort. (JE 3:158-162). Ms. Tuttle recounted hyperextending her left leg while turning off a hose. (JE 3:158). She immediately felt pain in her left posterior hip region. (JE 3:158). She told the doctor that she finished her shift, but had increased pain in the left posterior hip. (JE 3:158). Ms. Tuttle indicated that she had pain and swelling in her left posterior hip. (JE 3:158). The doctor diagnosed Ms. Tuttle with long-standing hamstring pain in the left hip. (JE 3:159). She was allowed to work provided she could alternate walking, sitting, and standing as tolerated for comfort, and also avoid climbing. (JE 3:159). An x-ray was done, which showed no fracture, but mild degenerative enthesopathy of a greater trochanter. (JE

3:160). The radiologist opined that there were no significant degenerative changes visualized on the x-ray. (JE 3:160). The provider recommended that Ms. Tuttle follow-up with Dr. Pospisil in five to seven days, and notify her supervisor if she could not perform the essential functions of her job. (JE 3:159).

Ms. Tuttle had another therapy appointment on August 2, 2019, wherein she indicated that she has further doctor's appointments in the next week. (JE 10:278). She felt that her right hip was worsening due to her walking differently after her hamstring injury. (JE 10:278). After this visit, Ms. Tuttle canceled her future visits, as she was to receive physical therapy through workers' compensation. (JE 10:278).

Shirley Pospisil, M.D., M.P.H., examined the claimant at UnityPoint Health on August 5, 2019, as a follow-up to her emergency room visit. (JE 3:163). Ms. Tuttle told the doctor that her buttocks pain was resolving slowly, and moved to her groin and left hip. (JE 3:163). She described the situation as "very painful" along with stiff. (JE 3:163). She rated her pain 2 to 3 out of 10. (JE 3:163). During the previous weekend, she worked a 12-hour shift, and recounted barely making it back to her vehicle to drive home. (JE 3:163). Upon examination, Dr. Pospisil observed no tenderness to palpation in the left buttocks where the hamstring attaches. (JE 3:163). Based on her examination, Dr. Pospisil diagnosed Ms. Tuttle with left hip and left hamstring pain. (JE 3:163). Dr. Pospisil prescribed physical therapy two to three times per week. (JE 3:163). She provided Ms. Tuttle with work restrictions of no climbing ladders, limiting climbing of stairs to one flight per hour, and avoid forceful pushing or pulling. (JE 3:163). She also opined that Ms. Tuttle should alternate walking, standing, and sitting as tolerated for comfort. (JE 3:163). Finally, the doctor restricted Ms. Tuttle to working a maximum of eight hours per day. (JE 3:163).

ADM provided Ms. Tuttle with a disciplinary written warning in August of 2019, which Ms. Tuttle refused to sign. (DE Q:206). She was disciplined for failing to timely report her trip and injury on July 25, 2019. (DE Q:206). ADM indicated that this was failing to report a safety issue. (DE Q:206). This was later reduced from a written warning to verbal coaching after Ms. Tuttle filed a grievance through her labor union. (DE Q:207). Ms. Tuttle testified that she was given restrictions from various physicians, but that it was difficult to perform her job within the restrictions. (Testimony). She also testified that at one time, her restrictions were changed in the middle of her shift. (Testimony). The implication of this testimony was that ADM was somehow influencing what restrictions were provided to Ms. Tuttle, but there was no direct evidence to indicate that this happened.

Ms. Tuttle had more chiropractic care on September 6, 2019. (JE 9:263). She reported doing well, but that her back "had started to tighten up…" and that she wanted "to 'stay ahead of it.'" (JE 9:263). The chiropractor found Ms. Tuttle to have an excellent prognosis, and to have an uncomplicated case. (JE 9:263). During this visit, the chiropractor discharged her from ongoing care with no further treatment necessary. (JE 9:263).

On September 12, 2019, Dr. Pospisil examined Ms. Tuttle again. (JE 3:164-165). She rated her pain 3 out of 10. (JE 3:164). She felt pain in various spots of her left lower extremity. (JE 3:164). She reported "becoming very concerned that this is low back pain with left lower extremity radiating pain." (JE 3:165). Physical therapy was providing her with no benefit, so the doctor put a pause to further appointments. (JE 3:165). Dr. Pospisil observed tenderness over the left inferior buttocks. (JE 3:165). She diagnosed the claimant with a presumed hamstring tear or strain. (JE 3:165). Dr. Pospisil ordered an MRI due to the ongoing, unresolved pain. (JE 3:165). Dr. Pospisil reiterated the restrictions from the August 5, 2019, visit. (JE 3:165).

Ms. Tuttle returned to visit Dr. Pospisil on September 24, 2019. (JE 3:166). Dr. Pospisil observed that the MRI showed a partial tear to the proximal left hamstring tendon at its origin, along with "mild to modest myositis along the myotendinous junction consistent with grade 1 muscle strain." (JE 3:166). However, the MRI showed no complete tear or retraction. (JE 3:166). The site of Ms. Tuttle's pain correlated to the MRI results, and Ms. Tuttle's complaints of difficulty sitting. (JE 3:166). Ms. Tuttle expressed frustration with "how long this is taking." (JE 3:166). Dr. Pospisil diagnosed Ms. Tuttle with a left hamstring strain and reiterated her previously provided restrictions. (JE 3:166).

Ms. Tuttle visited Family Medicine Specialists again on October 1, 2019, for a hamstring injury that appeared "a few months ago at work." (JE 2:54). She previously had physical therapy as prescribed by another doctor, but told Dr. Flory that it was not providing her with any improvement. (JE 2:54). She had an MRI, which showed a partial hamstring tear. (JE 2:54). Ms. Tuttle requested that Dr. Flory provide a second opinion as to the treatment provided by her workers' compensation doctors to date. (JE 2:54).

On October 7, 2019, Ms. Tuttle returned to Dr. Pospisil's office for continued follow-up. (JE 3:167). Ms. Tuttle reported difficulty performing her job, and experienced increased left hamstring pain. (JE 3:167). Dr. Pospisil continued the previous restrictions, and prescribed Voltaren twice per day. (JE 3:167). The doctor also sent Ms. Tuttle to an orthopedic physician for further evaluation. (JE 3:167).

ADM disciplined Ms. Tuttle with a major written warning on October 9, 2019, as she again failed to report an injury from October 7, 2019. (DE Q:208). She indicated that she walked through some sludge and came down on her left leg causing increased pain. (DE Q:208). She also did not report the incident to a supervisor, and did not work in accordance with a plan to work through her shift without compromising her restrictions. (DE Q:208). Ms. Tuttle refused to sign the written warning. (DE Q:208).

During an October 16, 2019, visit with Dr. Pospisil, Ms. Tuttle indicated that her pain was 3 out of 10 at rest, but 7-8 out of 10 when sitting. (JE 3:168).

Dr. Flory saw Ms. Tuttle again on October 28, 2019, for a follow-up on her previous anxiety treatment. (JE 2:55). Ms. Tuttle complained of fearful or anxious thoughts, excessive worrying, and racing thoughts. (JE 2:55). Ms. Tuttle told Dr. Flory

that she was dealing with a stressful work situation which caused her to experience "mild panic symptoms off and on during the day." (JE 2:55).

Dr. Paynter examined the claimant again on October 29, 2019, for a two-month history of posterior left hip and thigh pain following a work incident. (JE 6:248-249). Ms. Tuttle indicated that rest helped alleviate her pain. (JE 6:248). Upon physical examination, Dr. Paynter observed that Ms. Tuttle had tenderness along the "ischial tuberosity," but had full hip range of motion and 5 out of 5 strength. (JE 6:249). Dr. Paynter diagnosed the claimant with tendinitis of the left hamstring. (JE 6:249). He referred her for physical therapy and advised her to take NSAIDs. (JE 6:249). He allowed her to undertake activities as she could tolerate and referred her back to Dr. Flory for any potential work restrictions. (JE 6:249).

For a short time, Ms. Tuttle worked light duty in an office, scanning documents and "putting them in the computer where they belong." (Testimony). Ms. Tuttle returned to her regular work as a utility employee in the milling department in late November of 2019. (Testimony).

Ms. Tuttle returned to chiropractic care on February 13, 2020, with complaints of right pelvic, right sacroiliac, lumbar, thoracic, cervical, arm, and shoulder. (JE 9:264). Her pain issues began two weeks prior. (JE 9:264). She rated her pain 7 out of 10 at the worst, and 2 out of 10 at its best. (JE 9:264). Palpation by the chiropractor revealed tenderness up and down the spine. (JE 9:264). The chiropractor provided a series of diagnoses. (JE 9:264). The chiropractor recommended that Ms. Tuttle avoid heavy lifting and place ice on the area. (JE 9:264).

On February 21, 2020, Dr. Flory examined Ms. Tuttle for complaints of a cough. (JE 2:56). She diagnosed Ms. Tuttle with a viral infection, and provided her with Xofluza to treat influenza, despite a negative influenza test result. (JE 2:57).

Ms. Tuttle returned to Dr. Flory's office on March 11, 2020, for complaints of a non-productive cough. (JE 2:58). Ms. Tuttle complained that the cough caused her ribs to be sore. (JE 2:58). She also had the chills, fatigue, and night sweats. (JE 2:58). Dr. Flory diagnosed her with bronchitis, and prescribed her with an antibiotic. (JE 2:59).

On March 16, 2020, Ms. Tuttle saw Dr. Flory again with complaints of swelling in her left lower leg. (JE 2:60). She reported feeling "horrible" and achy, and expressed fear of returning to work due to the pandemic. (JE 2:60). She also felt off balance and nauseated at times. (JE 2:60). Dr. Flory ordered an ultrasound of the left lower extremity, which was negative for DVT. (JE 2:61). Dr. Flory excused her from work from March 11, 2020, through March 17, 2020. (JE 2:64).

Ms. Tuttle testified that she worked until about 11:45 p.m. on March 19, 2020. (Testimony). She could not recall anything abnormal happening at work on March 18, 2020, or March 19, 2020. (Testimony). Visual images show the claimant at ADM walking with no visual signs of an altered limp or gait. (DE D:12). Of note, these are not included in the record, so it is difficult for me to evaluate their veracity. Ms. Tuttle

left work, returned home, and went to bed. (Testimony). Ms. Bunger recalled seeing Ms. Tuttle on March 19, 2020, and not noticing anything out of the ordinary with her. (Testimony). Neither other employees, nor her supervisor, felt that Ms. Tuttle reported any back injury or back pain on March 18 or March 19, 2020. (DE D:11).

Ms. Tuttle awoke on the morning of March 20, 2020, a normally scheduled day off for her, with some pain in her back. (Testimony; DE D:12). She got out of bed, took a few steps down a hall, and experienced excruciating pain. (Testimony). The pain went down her leg to the extent that she could not put weight on one leg. (Testimony). She yelled for help, and her son and husband helped her to a bar in her kitchen. (Testimony). She stood for a few moments before being helped to the couch in the living room. (Testimony).

The claimant reported to the chiropractor again on March 20, 2020. (JE 9:265-266). She complained of left sacroiliac, sacra, right sacroiliac, right pelvic, left pelvic, right buttock, and right posterior leg complaints, that were worse since her last visit. (JE 9:265). Earlier in the week, Ms. Tuttle "felt like she over did it at work and now has severe low back pain with radiation causing spasms and weakness into her legs." (JE 9:265). The chiropractor noted that Ms. Tuttle "showed up in severe pain, with an antalgic posture, sweating profusely, and extremely tender to touch and lumbar and pelvic joint motion." (JE 9:265). The chiropractor suggested that Ms. Tuttle had a severe case of facet syndrome, a disc bulge, or space occupying lesion, and recommended imaging. (JE 9:265). The chiropractor recommended that Ms. Tuttle ice the area, use anti-inflammatories, and seek care at an urgent care. (JE 9:266).

After leaving the chiropractor's office, Ms. Tuttle returned home and contemplated reporting to the emergency room. (Testimony).

Ms. Tuttle called Dr. Flory's office on March 20, 2020, noting that she experienced right sided back and leg pain. (JE 2:66). She reported feeling as though it was on fire, and that she attempted Tylenol, Advil, cyclobenzaprine, lidocaine patches and heat or ice with no relief. (JE 2:66). She could hardly bear weight on her right side, so Dr. Flory recommended Ms. Tuttle report to the emergency room for additional treatment. (JE 2:66). Ms. Tuttle made no mention of this call during her testimony. (Testimony).

Ms. Tuttle reported to CRS 3C Surgical on March 20, 2020, for complaints of back pain radiating down her right leg. (JE 3:169-179). Ms. Tuttle told the provider that she experienced pain for "about 2 week[s] and has [*sic*] gotten worse to the point she cannot get comfortable." (JE 3:169). The visit notes her previous back surgery. (JE 3:169). Upon presentation to the emergency room, she complained of right lower back and inner groin pain. (JE 3:170). The record noted, "[u]p until yesterday it was manageable but acutely worsened last night…" (JE 3:170). Movement and walking worsened her pain. (JE 3:170). She was admitted to the hospital until March 26, 2020. (JE 3:169-179). During her hospitalization, she was offered steroid shots, but declined them due to her pre-existing mood disorder. (JE 3:172). While in the hospital, she was provided with increasing amounts of pain medications. (JE 3:172). She had an MRI

performed on March 23, 2020, which showed mild posterior disc bulging at L3-4 with "mild asymmetric extension into the left foramen, without significant change," and "[t]iny sequestered disc fragment suspected posterior to the inferior aspect of the L3 vertebral body on the right extending into the right foramen, new since the prior study." (JE 3:174). X-rays also showed "[m]ultilevel mild and moderate spondylosis" and degenerative disc disease in the lumbar spine. (JE 3:174). She was diagnosed with intractable right lower back pain, with a "[d]ifficult to determine etiology…but most likely MSK in origin…" (JE 3:175). As a result, the claimant had a right L3-4 foraminal microdiscectomy and decompression of the right L3 exiting nerve root on March 25, 2020. (JE 3:172).

Ms. Tuttle testified that her husband called ADM. (Testimony). She could not recall whether Mr. Tuttle told ADM that she was injured. (Testimony). No ADM employee could recall receiving a call from Ms. Tuttle on March 20, 2020. (DE D:12). She also testified that her attorney wrote ADM a letter regarding the alleged injury. (Testimony). She vaguely recalled someone from ADM contacting her while she was in the hospital awaiting surgery, but could not recall the conversation with any specificity. (Testimony).

According to ADM, Ms. Tuttle called ADM on March 21, 2020, and March 23, 2020, to inform them that she would not be in to work, and would need someone to cover her shift. (DE D:12). ADM asserts that Ms. Tuttle did not report an injury or request medical care during either phone call. (DE D:12).

The claimant's attorney sent a letter to ADM, dated March 24, 2020, indicating that the claimant was injured at work on March 20, 2020. (Testimony). ADM asserted that this was the first notice that they had of an injury to Ms. Tuttle. (DE D:12). Ms. Tuttle could not recall who decided that March 20, 2020, was the date the injury manifested, but she assumed it was her husband telling her attorney. (Testimony). ADM noted that the letter from claimant's counsel also indicated that Ms. Tuttle was "crying in pain" on March 19, 2020. (DE D:12). Mr. Schewe testified that ADM did not receive the letter from claimant's counsel until it was presented to him by ADM's attorney. (Testimony). Mr. Schewe opined that Ms. Tuttle did not comply with ADM's injury reporting requirements for her alleged low back injury. (Testimony). Mr. Schewe testified that he helped prepare a timeline identified as defendant's exhibit D:11-13. (Testimony). He attested that this timeline was true and accurate. (Testimony).

Ms. Tuttle was examined again at Cedar Rapids Neurosurgery on April 6, 2020, following her surgery. (JE 3:180-187). She continued to have "a little back pain and right hip pain," but that her leg pain was gone. (JE 3:180). She used assistance with ambulation due to some lingering stiffness. (JE 3:181). The provider removed the staples in the lower back. (JE 3:186). The provider also changed Ms. Tuttle's pain medication dosage. (JE 3:186-187).

In April of 2020, Ms. Tuttle had another back surgery, as she developed an infection in her backbone. (Testimony).

On May 13, 2020, Ms. Tuttle called Dr. Flory's office requesting a prescription for a lidocaine patch. (JE 2:67). She told Dr. Flory's office that she used her husband's and that it "helped to take the edge off." (JE 2:67).

Dr. Mestad, the chiropractor who treated the claimant intermittently, wrote a letter to claimant's counsel on May 20, 2020. (CE 5:52-53). Dr. Mestad opined that Ms. Tuttle "suffered a severe disc herniation/rupture complicated by prolapse and sequestration due to a combination of factors that exacerbated a probably underlying previously undiagnosed chronic condition." (CE 5:52). Dr. Mestad noted that Ms. Tuttle was sick for several days prior to her exacerbation, and that this would have caused her disc to accumulate fluid due to swelling. (CE 5:52). The resulting swelling made the disc "far more prone to herniation/rupture." (CE 5:52). Upon returning to work following her illness, the lifting and twisting required of her job at ADM exacerbated her condition to the point of "rupture, prolapse, and sequestration." (CE 5:52). Dr. Mestad explained that this issue was not recognized until the next morning because lying flat allowed the disc to swell again after being injured. (CE 5:52). Dr. Mestad reached his conclusion after a "quick recent history" during a visit in early March of 2020. (CE 5:52). Dr. Mestad provided an unsolicited opinion that Ms. Tuttle "repeatedly asked what I could do for her, so she could work the rest of the week. Her toughness and work ethic were impressive." (CE 5:52).

Counsel for the claimant then wrote a letter with two questions for Dr. Mestad on May 20, 2020. (CE 5:54). Dr. Mestad replied, and opined that Ms. Tuttle's work at ADM played a role in "aggravating her disc condition in more than slight and not insignificant or inconsequential nature." (CE 5:55).

On June 8, 2020, Ms. Tuttle returned to Cedar Rapids Neurosurgery for continued follow-up care. (JE 3:188-196). She expressed concern about increasing low back pain, along with continued discomfort in the right groin. (JE 3:189). She again complained of pain down her left leg from the buttock; however, the provider noted that this was secondary to her hamstring tear. (JE 3:189). Due to swelling, the provider recommended that the claimant have an ultrasound to rule out a DVT. (JE 3:196). The provider also recommended an MRI and physical therapy. (JE 3:196).

Ms. Tuttle had an MRI on June 15, 2020. (JE 3:197). The MRI showed postsurgical changes in the right L3-4 with epidural and paraspinal soft tissue issues. (JE 3:197). It also showed a small protrusion or focal bulge of the right L3-4 resulting in moderate right foraminal narrowing. (JE 3:197).

On June 30, 2020, the claimant had an EMG. (JE 3:198-201). Ms. Tuttle described a continued dull, achy, pain along her right groin. (JE 3:198). She also complained of some numbness and tingling in the "medial proximal thigh/groin area." (JE 3:198). The MRI results were also reviewed during this visit, and it was noted that the MRI did not show recurrent disc herniation. (JE 3:199). The EMG was abnormal, which showed evidence of neurogenic changes on the right that were "most consistent with a right obturator mononeuropathy…" (JE 3:201). The EMG reviewer opined that

the EMG showed evidence of healing at L2-3 that was "likely related to [the] previous spinal surgery." (JE 3:201).

At the request of claimant's counsel, Robin Sassman, M.D., M.P.H., M.B.A., C.I.M.E., C.L.C.P., completed a telemedicine evaluation of Ms. Tuttle on July 1, 2020. (CE 9:73-91). Dr. Sassman is board certified in occupational and environmental medicine, and is a certified independent medical examiner. (CE 9:91). Dr. Sassman issued a report detailing her findings on July 8, 2020. (CE 9:73-91). According to Dr. Sassman, the telemedicine evaluation began at 1:55 p.m., and ended at 3:40 p.m. (CE 9:73). As part of her evaluation, Dr. Sassman reviewed over three thousand pages of medical records dating back to 2001. (CE 9:73-74). Dr. Sassman began her report by reviewing Ms. Tuttle's medical history, as discussed more thoroughly above. (CE 9:73-85).

Dr. Sassman interviewed Ms. Tuttle about her symptoms at the time of the telemedicine visit. (CE 9:85-86). Ms. Tuttle continued to have aching pain across her lower back. (CE 9:85). It was worse on the right, and radiated to the hip and groin; however, it did not "go down her leg." (CE 9:85). She characterized her right hip pain, as coming "around the side and into the groin." (CE 9:86). She claimed to never have the groin pain prior to her low back injury. (CE 9:86). She also had pain in her left hip. (CE 9:86). In the past, her hamstring "was her biggest issue…" but that she now had hip pain. (CE 9:86). Sitting increased her pain. (CE 9:86).

Dr. Sassman proceeded to recount the various aspects of Ms. Tuttle's job duties with ADM. (CE 9:86-87). Ms. Tuttle worked from 2:45 p.m. to 10:45 p.m., and would get home before midnight. (CE 9:87). While at work, Ms. Tuttle needed to climb ladders, take samples, clean rotors, start and stop equipment, open and shut valves, and wash screens. (CE 9:86). In order to complete these tasks, she had to lift and use hand tools, push, pull and carry, climb ladders and stairs, bend, stoop, crouch, kneel, crawl, twist, turn, sit and stand. (CE 9:86). Ms. Tuttle told Dr. Sassman that she was on her feet for her entire shift unless she was entering items into a computer or taking a break. (CE 9:87).

After deferring on a physical examination, Dr. Sassman provided her diagnoses and opinions. (CE 9:88-91). Dr. Sassman diagnosed Ms. Tuttle with a left hamstring tear, low back pain with radicular symptoms, and right hip pain with "MRI evidence of a focal tear and strain of the right gluteus medius muscle and an associated, high-grade, partial tear of the right gluteus medius insertion with a small partial tear of the gluteus minimus instertion and a superior right acetabular labral tear." (CE 9:88). Dr. Sassman opined that the left hamstring tear was "directly and causally related" to the July 24, 2019, incident wherein Ms. Tuttle tripped and did the splits. (CE 9:88). Dr. Sassman noted the MRI which showed a tear to the left proximal hamstring tendon at the ischial tuberosity. (CE 9:88). The ischial tuberosity is in the buttocks area according to diagrams provided in Dr. Sassman's report. (CE 9:88-89). Based upon this, Dr. Sassman opined that "this injury should be considered encompassing the body as a whole as the area of the injury is not confined to the lower extremity." (CE 9:90).

Dr. Sassman moved on to discussing Ms. Tuttle's low back condition. (CE 9:90). Dr. Sassman opined that Ms. Tuttle walked with an altered gait for an extended time. (CE 9:90). Ms. Tuttle also told Dr. Sassman about instances of low back symptoms while working at ADM. (CE 9:90). Ms. Tuttle felt that these generally resolved with time, until her March 19, 2020, low back symptoms. (CE 9:90). Ms. Tuttle recounted to Dr. Sassman that she had "some" back pain when she returned home around midnight on March 19, 2020, but then she could not walk when she woke up on March 20, 2020. (CE 9:90). Since Ms. Tuttle undertook no additional activity, except for work, during the time, and "given the physical demands of her work", Dr. Sassman opined that the claimant's low back issues were "substantially aggravated by the work she did at ADM," along with her altered gait from the left hamstring injury. (CE 9:90).

The doctor proceeded to discuss the claimant's right hip issues. (CE 9:90). She began by recounting Ms. Tuttle's previous complaints of right hip pain and right hip trochanteric bursitis. (CE 9:90). Following her back surgery, Ms. Tuttle's symptoms reportedly increased, and an MRI showed a focal tear and strain of the right gluteus medius muscle and an associated high-grade partial tear of the right gluteus medius insertion with a small partial tear of the gluteus minimus insertion and superior right acetabular labral tear. (CE 9:90). Dr. Sassman opined that the right hip issues were present at the time of the left hamstring injury and were "substantially aggravated" by the claimant's gait change. (CE 9:90). Based upon this, Dr. Sassman concluded that the claimant's right hip issues were substantially aggravated by her left hamstring injury and gait change. (CE 9:90-91).

Dr. Sassman deferred on any impairment ratings, restrictions, or opinions on restrictions until she could perform a physical examination of Ms. Tuttle. (CE 9:91).

Dr. Flory referred Ms. Tuttle to Stanley Matthew, M.D. for her chronic low back pain. (JE 2:68). There was some discussion about the referral needing to come from a workers' compensation physician, or the claimant would need to utilize her personal health insurance. (JE 2:70).

Matthew White, M.D., examined Ms. Tuttle on July 14, 2020, for a "right hip tear." (JE 6:250-252). Dr. White noted that she had right hip pain dating to 2018. (JE 6:250). Dr. White then outlined the claimant's medical care to date. (JE 6:250). Following her recent medical care, Ms. Tuttle continued to complain of right hip issues, for which she rated her pain 5 out of 10. (JE 6:250). She described it as burning, sharp, and occasional stabbing. (JE 6:250). Dr. White diagnosed Ms. Tuttle with pain in the right hip, along with a strain of the right gluteus medius. (JE 6:251). He noted MRI evidence of the strain, but he opined that it was not clear that this was the main source of her pain. (JE 6:251). In fact, he opined that her pain was more consistent with L2-3 chronic radiculopathy noted on previous EMG studies. (JE 6:251). He referred her to physical therapy. (JE 6:251).

On July 15, 2020, Ms. Tuttle had a telehealth visit with Dr. Flory for her continued back and hip pain. (JE 2:71-72). She was told she could return to work and continue physical therapy, but she told Dr. Flory that physical therapy did not wish to see her due

to her partially torn hamstring. (JE 2:71). Ms. Tuttle claimed that she could not work, and that she tried to do some walking and standing; however, these activities only aggravated her pain. (JE 2:71). Dr. Flory opined that the claimant needed physical therapy, and could not work. (JE 2:72).

Dr. Flory provided the claimant with a physical therapy referral on July 20, 2020. (JE 2:73).

Jane Burbridge, P.T., M.P.T., saw the claimant for her fifth session of physical therapy on July 20, 2020. (JE 3:202). The therapist noted that Ms. Tuttle complained of significant right hip and groin pain, along with lower back pain. (JE 3:202). Ms. Tuttle showed significant weakness and pain with flexion of her right hip. (JE 3:202). The therapist opined that Ms. Tuttle would benefit from continued physical therapy. (JE 3:202).

On July 28, 2020, Ms. Tuttle reported to the emergency room again. (JE 3:203-219). Ms. Tuttle was outside carrying a glass dome when her right leg "gave out" on her causing her to trip on concrete and fall. (JE 3:204). She recounted landing on her left knee and then landed on her back. (JE 3:204). Ms. Tuttle noted that she had ongoing weakness in her right leg since her surgery. (JE 3:204). The doctor observed a large abrasion to the left knee and a laceration to the right hand, and that she had pain in her back, right hip, and left knee. (JE 3:204). She displayed reduced strength to the right lower extremity with pushing and pulling. (JE 3:210). X-rays of the thoracic spine showed no issues. (JE 3:212). X-rays of the lumbosacral spine showed mild degenerative changes, but no fractures. (JE 3:212). X-rays of the right hip, left knee, and right hand, were normal. (JE 3:212). An MRI was also done due to her discomfort. (JE 3:212). The MRI showed postsurgical changes at L3-4, along with diffuse disc bulge; however, there were no significant central or foraminal stenoses noted. (JE 3:212). The laceration was repaired via sutures, and she was prescribed Oxycodone. (JE 3:213-214).

On September 9, 2020, Ms. Tuttle told Summit Orthopedics that she had nearly intolerable back, hip, hamstring, and overall leg pain. (JE 12:284). She further indicated that her health was fair, her quality of life was poor, her physical health was poor, and that her mental health was fair. (JE 12:285). She noted often being bothered by emotional problems such as anxiety and depression during the previous seven days. (JE 12:286). She rated her pain 5 out of 10. (JE 12:286). The examining provider recommended a CT to evaluate the right L3-4 complex. (JE 12:287). The provider also recommended a right L3 selective nerve root injection. (JE 12:287). The provider observed that Ms. Tuttle ambulated with an "abnormal tandem gait, Trendelenburg gait…" and that she was unable to perform a single shallow leg bend on her right side. (JE 12:287). The provider opined that there was no surgical treatment for the left hamstring tendon issue, right hip issue, and mild hip osteoarthritis. (JE 12:289). The provider further opined that the claimant's issues appeared to come from her lower back. (JE 12:289).

Ms. Tuttle had additional physical therapy, completing her fifteenth visit on September 22, 2020. (JE 3:220). She continued to demonstrate limited activity tolerance due to right hip and groin pain. (JE 3:220). She also complained of low back pain. (JE 3:220). The therapist opined that Ms. Tuttle demonstrated significant weakness along her right hip. (JE 3:220). The therapist recommended that Ms. Tuttle continue physical therapy for four more weeks. (JE 3:220).

David Strothman, M.D., examined Ms. Tuttle at Summit Orthopedics, in Minnesota, on September 23, 2020. (JE 12:290-291). Dr. Strothman reviewed the claimant's situation with her. (JE 12:290). Based upon her treatment, the imaging, and the doctor's review with her, he recommended that Ms. Tuttle undergo a revision right L3-4 transpedicular decompression posterior spinal fusion transforaminal lumbar interbody fusion at L3-4. (JE 12:290). However, this surgery would be "unlikely to relieve all of her back pain," and facet arthropathy or degeneration may cause additional pain. (JE 12:290). The doctor's recommendation came partially because the right L3 selective nerve root block provided the claimant with significant benefit on the right side. (JE 12:291). Ms. Tuttle noted she would discuss the doctor's recommendations with her husband and contact the office with her decision. (JE 12:290).

On September 25, 2020, Dr. White responded to a check-box letter from claimant's counsel. (CE 7:61-62). He agreed with the statement: "Mrs. Tuttle's work at ADM played a role that was a substantial factor [more than slight and not insignificant] in the aggravation of her preexisting right hip symptomatology for which I examined and treated her." (CE 7:61). Dr. White also agreed that Ms. Tuttle's work at ADM played a role that was a substantial factor in aggravating her right hip symptomatology, "including the partial-thickness gluteus medius insertion tear; a small, partial tear of the gluteus minimus insertion and a superior right acetabular labral tear…" none of which were previously diagnosed. (CE 7:61). Dr. White provided no commentary on either of these questions, and simply checked "[a]gree" for each statement. (CE 7:61-62).

At the request of Ms. Tuttle's legal team, Dr. Flory drafted a medical opinion letter, dated September 30, 2020. (CE 2:43). Dr. Flory opined that Ms. Tuttle's work at ADM was a contributing factor to her injuries and "current orthopaedic medical conditions." (CE 2:43). Dr. Flory also noted that she supported the conclusions of Drs. Sassman, White, and Mestad. (CE 2:43).

Jeremy Glawatz, PA-C, issued an opinion letter regarding Ms. Tuttle, on October 2, 2020. (CE 3:46-47). Mr. Glawatz provided a brief recounting of Ms. Tuttle's treatment, including her March 20, 2020, admission to the hospital following two weeks of right-sided back and right leg pain. (CE 3:46). Mr. Glawatz used the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, in order to provide a permanent impairment rating for Ms. Tuttle. (CE 3:46). Mr. Glawatz used Table 15-3, category 3, on page 384 of the Guides to arrive at a 10 percent whole person impairment rating "secondary to her significant radicular pain in a dermatomal pattern with a herniated disc for which she underwent surgery…" (CE 3:46). Mr. Glawatz also made note of the "separate injury" of a hamstring tear; however, he did not provide any opinions as to this issue. (CE 3:46).

On October 13, 2020, Ms. Tuttle visited with another provider for a second opinion. (JE 12:292-293). She rated her pain 10 out of 10. (JE 12:292). The provider noted that Ms. Tuttle had "near perfect relief" from the L3 nerve root injection. (JE 12:292). Based upon this, the provider opined that Ms. Tuttle had "no other option than the right L3-4 TLIF proposed by Dr. Strothman." (JE 12:292).

Chad Abernathey, M.D., examined Ms. Tuttle on October 14, 2020, and provided opinions in regard to his examination in a letter dated October 28, 2020. (DE I:85-86). Ms. Tuttle reported that she had a chronic history of right hip issues, and then developed a new onset of severe right sciatica on March 19, 2020. (DE I:85). Dr. Abernathey recounted the claimant's symptoms and treatment following the March 19, 2020, incident. (DE I:85). Following the surgery, Ms. Tuttle felt improvement; however, she had "persistent residual pain and paresthesia into her right lower extremity." (DE I:85). At the time of the examination, Ms. Tuttle was considering a possible reconstructive surgery in Minnesota. (DE I:85). Dr. Abernathey reviewed the imaging done, which included the MRI performed on March 23, 2020. (DE I:86). He opined that the MRI showed a right L3-4 disc extrusion with lateral recess stenosis. (DE I:86). Dr. Abernathey opined that a component of her continued pain "may be related to her prior right hip issues in addition to residual spine related sciatica." (DE I:86). He would not commit to whether an additional surgery would provide a benefit, but noted that "it may be the only reasonable option she has available to her at this time." (DE I:86). The doctor opined further that the proposed reconstruction only had a 50-50 chance of providing her with relief. (DE I:86). Dr. Abernathey agreed with another physician that the claimant's work activities on March 19, 2020, were "consistent with her presentation of an acute right L3-4 disc extrusion assuming the veracity of the patients' oral history." (DE I:86). Dr. Abernathey noted that ADM provided an alternative timeline of events, but did not specify whether he found that alternative timeline to be credible, nor did he opine as to whether it changed his opinion on causation. (DE I:86).

On November 6, 2020, Dr. Abernathey issued a letter in response to ADM's counsel. (DE I:87). He noted that he could not state with a reasonable degree of medical certainty when the claimant's herniated disc occurred. (DE I:87). He opined that causation was "very dependent" on history provided by a patient, and that Ms. Tuttle reported that her symptoms began after working at ADM on March 19, 2020. (DE I:87). The doctor concluded that he was "unaware of any other event identified by the patient." (DE I:87).

Dr. Strothman drafted a note dated November 19, 2020, in response to a denial of a recommended surgical procedure. (JE 12:294). He began the note by recounting the claimant's complicated history, including her surgery. (JE 12:294). Despite the surgery, she continued to have "ongoing severe back and leg pain." (JE 12:294). Dr. Strothman noted that he strongly disagreed with the decision to deny the surgical procedure. (JE 12:294). He continued, "[i]f we do not provide her care … to improve her quality of life she will not see improvement in her symptoms and will continue to need chronic opioid and pain management which will have further psychosocial impacts on her life." (JE 12:294). Dr. Strothman opined that the full decompression of the L3

nerve root was a reasonable surgical option to give a "change to substantially improve her quality of life." (JE 12:294).

In response to several letters from ADM's counsel, Trevor Schmitz, M.D., from Iowa Ortho, provided the defendant-employer with a records review. (DE H:65-71). ADM's counsel posed several questions to Dr. Schmitz, who endeavored to answer them after performing the records review. (DE H:70). Dr. Schmitz noted that Ms. Tuttle treated for her right hip issues immediately preceding the injury, and therefore, he could not relate the right hip complaints to the July 24, 2019, work injury. (DE H:70). Dr. Schmitz felt that the claimant's longstanding hip complaints were related to personal underlying health problems like obesity. (DE H:70). Dr. Schmitz also noted that Ms. Tuttle walked with an antalgic gait prior to the injury date, and thus opined that the right hip issues pre-existed the July of 2019, date of injury. (DE H:70). Dr. Schmitz also felt that Dr. Flory's referral for Ms. Tuttle to visit an orthopedic surgeon was not work related due to her longstanding right hip issues that predated the injuries. (DE H:71). He also opined that Ms. Tuttle's July 24, 2019, injury did not cause, materially aggravate, accelerate, or light up her right hip symptoms. (DE H:71).

On November 20, 2020, Ms. Tuttle had another medical visit with UnityPoint Health in Cedar Rapids, to follow-up on her chronic low back pain, and to request an injection. (JE 3:221-223). She recounted her medical history, including her previous surgery. (JE 3:221). She acknowledged some reduction in her back pain following said surgery. (JE 3:221). She continued to have some low back pain radiating around her right hip and into her right groin, along with left hamstring pain. (JE 3:221). Ms. Tuttle was able to ambulate for limited distances, but displayed an antalgic gait. (JE 3:222). Ms. Tuttle was injected with Lidocaine at six trigger points and was told to continue taking her prescribed medication. (JE 3:223). The provider also noted that they were "…in full support of patient's disability application…" however, the provider made no mention of continued employment. (JE 3:223).

On January 28, 2021, Ms. Tuttle returned to Summit Orthopedics. (JE 12:295-297). Ms. Tuttle had worsening left leg pain over the last two months. (JE 12:295). She had a surgery scheduled in one month including a fusion, and a right L3-4 transforaminal lumbar interbody fusion. (JE 12:295). The provider recommended a repeat MRI due to the worsening pain. (JE 12:295).

Dr. Flory responded to a check-box type letter from claimant's counsel on February 9, 2021. (CE 2:44-45). Dr. Flory was asked to respond to certain questions about the opinions of Dr. Abernathey. (CE 2:44-45). Dr. Flory indicated that Dr. Abernathey's opinions did not alter her causation opinions. (CE 2:44). She also noted that she found Ms. Tuttle to be truthful and credible. (CE 2:45).

Ms. Tuttle reported to North Memorial Health Hospital in Robbinsdale, Minnesota, on February 26, 2021. (JE 12:298). Dr. Strothman performed an open right transpedicular decompression at L3-4, a posterior spinal fusion at L3-4, and a transforaminal lumbar interbody fusion at L3-4. (JE 12:298). The diagnoses provided by Dr. Strothman were: status post right L3-4 transpedicular decompression at an

outside hospital, partial right L3-4 facet resection with the majority of the right L3 descending articular process resected, persistent right L3-4 foraminal stenosis, and rotatory listhesis at L3-4. (JE 12:298). She tolerated the procedure and was hospitalized through March 1, 2021. (JE 12:298).

On March 1, 2021, ADM wrote Ms. Tuttle a letter indicating that she was off work for 12 months as of March 21, 2021. (DE Q:214). They requested that she contact them on or before March 21, 2021, if she could return to work with or without an accommodation. (DE Q:214). If she did not contact them by March 21, 2021, the letter indicated that she could be terminated from employment with ADM. (DE Q:214).

Ms. Tuttle had a post-surgical follow-up at Summit Orthopedics on April 7, 2021. (JE 12:299). Ms. Tuttle felt 50 percent better during the visit, including slow improvement of pain into the right groin. (JE 12:299). According to Ms. Tuttle's husband during this visit, she was not always in compliance with the provided restrictions. (JE 12:299). X-rays were normal. (JE 12:299).

Stanley Mathew, M.D., examined Ms. Tuttle on April 20, 2021. (JE 3:224-227). Ms. Tuttle recounted her recent low back surgery, and that she was having more lower back pain. (JE 3:224). She rated her pain 1 out of 10, and located it in her neck, head, and shoulders. (JE 3:224). She again displayed an antalgic gait, but could walk limited distances on her own. (JE 3:225). Upon physical examination, Dr. Mathew observed that passive range of motion in the claimant's lumbar spine was limited due to pain or stiffness. (JE 3:225). Dr. Mathew diagnosed the claimant with enthesopathy of the lumbar spine, trochanteric bursitis, lateral femoral cutaneous neuropathy, chronic low back pain, and a partial tearing of the left hamstring tendons. (JE 3:226). He provided her with six trigger point injections, which Ms. Tuttle opined helped improve her pain by 70 percent. (JE 3:226). Dr. Mathew supported Ms. Tuttle's "disability application" as she displayed "limited mobility to walk[,] stand[,] bend[,] and lift," along with her history of neuropathy. (JE 3:226). Dr. Mathew recommended restrictions of no bending, no lifting more than 20 pounds, and no twisting. (JE 3:226).

In response to a request from claimant's counsel, Dr. Mathew issued a letter containing his answers to several questions posed by claimant's counsel. (CE 4:48-51). Dr. Mathew opined that Ms. Tuttle's left hamstring injury resulted in changes in gait, body habits, and balance deficits. (CE 4:50). Dr. Mathew then noted that Ms. Tuttle's "altered gait and subsequent work at ADM following her torn left hamstring [was] a substantial aggravating factor in bringing about her present low back, right hip pain, [and] multiple tears in her right hip." (CE 4:50). Finally, Dr. Mathew noted his agreement with Dr. Sassman's opinions that Ms. Tuttle's "accumulative work at ADM" along with her left hamstring injury, resulted in an altered gait for "a substantial period of time" which "played a contributing role in significantly aggravating her previous low back symptoms as well as her L3 disc injury which resulted in low back surgery." (CE 4:50).

On May 26, 2021, Ms. Tuttle had another post-operative follow-up visit with Summit Orthopedics. (JE 12:300). Ms. Tuttle was told to "advance activities as tolerated using pain as a guide." (JE 12:300). The provider referred Ms. Tuttle to

physical therapy. (JE 12:300). Ms. Tuttle felt that her left leg symptoms had resolved, despite some ongoing left low back and buttock pain. (JE 12:300). She could tolerate standing and walking for "slightly further distances," however, it tended to increase her pain. (JE 12:300).

On June 14, 2021, David Segal, M.D., J.D., sent claimant's counsel an IME report based upon his examination of Ms. Tuttle on May 14, 2021. (CE 10:145-188). Dr. Segal is board certified in brain and spine neurosurgery. (CE 10:145). Dr. Segal recounted the two alleged dates of injury of July 24, 2019, and March 19, 2020, and the claimant's symptoms following each incident. (CE 10:145). Dr. Segal opined that Ms. Tuttle remained "substantially symptomatic and impaired because of her work injuries" at the time of the examination. (CE 10:145). Dr. Segal then provided an overview of the plethora of medical and other records reviewed in preparing his report. (CE 10:146-147). He also completed a records review. (CE 10:189-207).

Ms. Tuttle described constant, nagging, achy pain across her low back with radiation from the right lateral hip to the right groin. (CE 10:148). Her low back pain was "much worse on the right." (CE 10:148). She experienced aching pain in her left hamstring. (CE 10:148). Walking, sitting, standing, pushing, pulling, lying down, lifting, bending, and squatting all aggravated various aspects of Ms. Tuttle's body. (CE 10:148). Medication helped alleviate her pain, along with ice. (CE 10:148). Ms. Tuttle told Dr. Segal that her right leg was "very weak" and that she walked with a cane for safety. (CE 10:149).

Dr. Segal found Ms. Tuttle to be eager to be independent "despite her severe disability." (CE 10:187). He also noted that he did not see any indications of symptom magnification during his examination. (CE 10:187). Ms. Tuttle rated her low back pain 4 to 5 out of 10, with it being 1 out of 10 at its lowest and 8 to 9 out of 10 at its worst. (CE 10:147). She rated her right hip pain 3 out of 10 as of the time of the examination, with it being 1 out of 10 at its lowest and 8 to 9 out of 10 at its worst. (CE 10:147). She rated her left hamstring pain 1 to 2 out of 10 at the time of the examination, which also represented the lowest level of pain she experienced. (CE 10:147). She indicated that her worst pain was rated 6 to 7 out of 10. (CE 10:147). Dr. Segal opined that the left hamstring issue had an acute onset, while the low back and right hip were "cumulative with exacerbations and aggravations." (CE 10:147).

The report outlined Ms. Tuttle's surgical history, including her March 23, 2020, right L3-4 discectomy. (CE 10:149). Ms. Tuttle told Dr. Segal that this surgery allowed her to walk again, although she could not walk very far. (CE 10:149). The surgery also did not eliminate her pain. (CE 10:149). With regard to the February 25, 2021, right L3-4 fusion, Ms. Tuttle told Dr. Segal that her left hamstring felt 80 percent better since that surgery. (CE 10:149). It also eliminated right radicular pain in the "inner part of her leg to her knee." (CE 10:149). However, she continued to complain of radicular pain that she described as wrapping around into her right groin. (CE 10:149). Ms. Tuttle felt that her improvement plateaued at 50 percent to 60 percent. (CE 10:149).

Ms. Tuttle told Dr. Segal that she had "very intense pain" in her right hip that radiated to the groin. (CE 10:149). Dr. Segal documented that Ms. Tuttle indicated the pain was in the greater trochanter area. (CE 10:149). She indicated an inability to "pull herself up with her right leg" due to pain and weakness. (CE 10:149).

Ms. Tuttle recounted to Dr. Segal the details of her alleged work injuries. (CE 10:150-151). These incidents have largely been discussed through testimony and other evidence in the record. I would only note a few items of interest from the report. With regard to her March of 2020 incident, she told Dr. Segal that she was able to get out of bed on the morning of March 20, 2020. (CE 10:151). When she began walking down a hallway, she developed severe pain in her back and down her right leg into her groin. (CE 10:151). Ms. Tuttle also recounted the details of her employment with ADM. (CE 10:151-152). She told Dr. Segal that "most nights her back pain was 2-5/10" after completing work. (CE 10:152). She alleged that the back pain progressively worsened over the years and finally stayed worse in 2019, at which time her back pain became a "constant severe aching with occasional sharp pain." (CE 10:152).

The report then outlined Ms. Tuttle's life following the alleged injuries at ADM. (CE 10:153). Ms. Tuttle told Dr. Segal that she was unable to work since her March 20, 2020, incident, and Dr. Segal expressed a concern that "at this point, it would be very difficult for her to find any position that could accommodate her significant limitations…." (CE 10:153). She also cited to financial difficulties for her family following her work injury. (CE 10:153). Ms. Tuttle noted difficulty playing with her grandchildren, and participate in hobbies like hunting, fishing, gardening, or woodworking. (CE 10:153). She also told Dr. Segal that she could no longer mow the lawn, walk the dog, do the dishes, or perform certain household chores without significant difficulties. (CE 10:153). Ms. Tuttle also recounted reduced social activities and a general "crabby" attitude. (CE 10:153). Ms. Tuttle reported certain limitations to Dr. Segal. (CE 10:153-154).

Upon physical examination, Ms. Tuttle displayed tenderness to palpation across her low back. (CE 10:154). This included a palpable spasm around her scarring. (CE 10:154). She also showed tenderness over the right sacroiliac joint, and extreme tenderness over the right greater trochanter. (CE 10:154). Dr. Segal found Ms. Tuttle to have slight tenderness in the area of her left hamstring. (CE 10:154). The doctor noted a loss of sensation in the right L3 dermatomal distribution. (CE 10:154). Dr. Segal observed that Ms. Tuttle ambulated without a cane during the examination for testing purposes, and that she had a shorter stride on the right side. (CE 10:154). Dr. Segal found that Ms. Tuttle did not lift her right leg as much when she walked. (CE 10:154). The doctor measured Ms. Tuttle's range of motion and noted that her low back rotation was reduced by 50 percent on the right and 25 percent on the left, while her side bends were reduced 50 percent on both the right and left. (CE 10:154). Ms. Tuttle's left hip had 90 degrees of flexion, 15 degrees of extension, 20 degrees of abduction, 5 degrees of adduction, 10 degrees of internal rotation, and 25 degrees of external rotation. (CE 10:154).

The report continued with Dr. Segal's review and comments on select imaging studies performed on Ms. Tuttle. (CE 10:155-156). Dr. Segal opined that the March 23,

2020, MRI of the lumbar spine performed at St. Luke's showed left sided pathology at L3-4 and L4-5, which was "sufficient to cause left-sided radicular symptoms." (CE 10:155). Dr. Segal also observed that the exiting nerve root was compressed by the right foraminal herniation. (CE 10:155). Dr. Segal noted residual herniation in the right neural foramen at L3-4 on a June 15, 2020, MRI. (CE 10:155). Dr. Segal also saw left-sided issues in the lumbar spine. (CE 10:155).

Prior to providing an overall summary, Dr. Segal mentions a surveillance video of Ms. Tuttle. (CE 10:156). This video is not included in the record, so Dr. Segal's opinions of the video are irrelevant to this decision.

Dr. Segal opined that Ms. Tuttle had two work-related injuries on July 24, 2019, and March 19, 2020, along with a cumulative injury "over the years at her job in her hips and lower back." (CE 10:156). The doctor cites to the claimant suffering multiple "lower-grade injuries" that she "worked through" but did not report to ADM. (CE 10:156). Dr. Segal further opined that the July of 2019 and March of 2020 work injuries caused distinct damage to Ms. Tuttle's bilateral hips and spine, as well as "permanent exacerbations of her preexisting conditions in her hips and spine." (CE 10:156). Dr. Segal goes on to outline how Ms. Tuttle's July 24, 2019, work injury occurred, and adds that, besides left hamstring pain, Ms. Tuttle also experienced left-sided low back pain following this injury. (CE 10:156). Dr. Segal also noted that Ms. Tuttle claimed worsened right hip pain following the July 24, 2019, work injury. (CE 10:157). Dr. Segal also restated previous descriptions of the alleged March of 2020 injury. (CE 10:157).

Dr. Segal then discussed a cumulative injury suffered by Ms. Tuttle due to her work at ADM. (CE 10:157). Dr. Segal noted that there were three elements to the claimant's cumulative injury, "the repetitive heavy labor in awkward and difficult positions, multiple injuries where Mrs. Tuttle hurt her low back and hips but continued working, and damage to the low back and hips due to altered gait." (CE 10:157). The doctor felt that the duties of Ms. Tuttle's job with ADM were specific to her job and were not like any "stressors" encountered in a person's normal life. (CE 10:157). Based upon this, Dr. Segal determined that Ms. Tuttle's work at ADM was a "substantial factor" in the development of her trochanteric bursitis, and that her trochanteric bursitis was likewise a "substantial factor" in the development of a cumulative work injury. (CE 10:157). Dr. Segal continued by opining that Ms. Tuttle's work activities, even outside of the specific dates of injury, "were a substantial cause of her lumbar, hip, and leg symptoms that have resulted in substantial impairment in her ability to work and participate in activities of daily living." (CE 10:158).

Dr. Segal diagnosed Ms. Tuttle with the following as causally related to the July 24, 2019, incident, and cumulative work injury:

1. Left hamstring tendon tear and myositis
2. Left L3-L4 radiculopathy
3. Permanent aggravation of left L5-S1 radiculopathy
4. Permanent aggravation of degenerative spine disease including facet arthropathy

5. Permanent aggravation of right hip preexisting trochanteric bursitis
6. Right hip tear gluteus medius and gluteus minimus muscle and tendon
7. Right hip superior acetabular labral tear
8. Gait abnormality

(CE 10:158). Dr. Segal opined that the mechanism of injury for the proximal hamstring rupture was Ms. Tuttle suddenly extending her knee while flexing her hip under an "eccentric load," as happens in a slip and fall. (CE 10:159). Dr. Segal noted that while Ms. Tuttle's legs went in opposite directions, rapid stressors occurred in her bilateral hips causing the injury to the left hamstring and aggravation of the right hip, "including the greater trochanteric bursa and the tendons of the gluteus medius and minimus muscles." (CE 10:159). According to Dr. Segal, this injury also caused a rotation of the lumbar spine and thus an injury to the discs, joints, and exiting nerve roots of the lumbar spine. (CE 10:159). Dr. Segal was not more specific as to how this caused an injury besides rotation of the spine. (CE 10:159).

Dr. Segal continued by casually relating the following diagnoses to "the work injury of March 19-20, 2020, and cumulative work injury…":

1. Disc herniation L3-L4 tight
2. Right L3 and L4 radiculopathy
3. Status post right L3-L4 laminectomy and discectomy complicated by wound infection and rotatory instability
4. Rotatory listhesis L3-L4
5. Status post spinal fusion L3-L4
6. Post laminectomy syndrome
7. Permanent aggravation of degenerative spine disease including facet arthropathy
8. Permanent aggravation of right hip preexisting trochanteric bursitis
9. Sleep disturbance and fatigue

(CE 10:158-159). According to Dr. Segal, Ms. Tuttle's repeated work activities, such as heavy lifting, pushing, pulling, bending, and being in awkward positions, caused the above diagnoses. (CE 10:159). Dr. Segal opined that the combination of the foregoing factors caused "the failure of the annulus, causing the tear and the disc herniation at L3-L4…" on March 19, 2020. (CE 10:159).

Dr. Segal continued by asserting that the work injuries on July 24, 2019, and March 19, 2020, "caused the permanent aggravation of Mrs. Tuttle's preexisting conditions and symptoms as well as new symptoms.'' (CE 10:159). Dr. Segal felt that Ms. Tuttle had a vulnerable spine that repeatedly flexed and rotated from her heavy work. (CE 10:159). Thus, the mechanism, according to Dr. Segal was the "repeated heavy work with lifting and moving of many heavy objects over a specific span of time that day…" (CE 10:159).

Dr. Segal opined that Ms. Tuttle's residual nerve symptoms could permanently follow a discectomy or fusion, and that this represented a permanent nerve injury from

pressure on a nerve. (CE 10:165). Ms. Tuttle's residual symptoms included low back pain, right leg pain, and right leg weakness. (CE 10:165). While Ms. Tuttle's symptoms may improve, Dr. Segal felt that she would continue to experience substantial permanent impairment and pain. (CE 10:165). This is also referred to as "failed back surgery syndrome," according to Dr. Segal. (CE 10:165). The doctor also opined that Ms. Tuttle was at risk for advanced and progressive degeneration known as adjacent segment disease at L2-3 and L4-5. (CE 10:165).

The report continued with Dr. Segal's opinions as to pertinent medical records to the diagnoses. (CE 10:165-174). Specifically, Dr. Segal provided criticism of Dr. Abernathey and Dr. Schmitz. (CE 10:173-174). The doctor felt that Dr. Abernathey did not adequately explain certain elements of his opinion. (CE 10:173). Dr. Segal also felt that ADM did "not give information that substantively contradicts Mrs. Tuttle's history." (CE 10:173). The doctor felt that Dr. Schmitz failed to address that the claimant's right hip worsened after her March of 2020 surgery. (CE 10:174). Dr. Segal again mentions the claimant's altered gait but does not indicate why this is important as to Dr. Schmitz's opinions. (CE 10:174).

Dr. Segal continued his report by answering specific questions, apparently posed by claimant's counsel. (CE 10:175-187). Dr. Segal reiterated his causation opinions as to Ms. Tuttle's disc injury which "manifested" on March 19 or 20, 2020. (CE 10:175-177). Dr. Segal noted that Ms. Tuttle had "progressively increasing pain and right radicular symptoms that started at the end of the day on March 19, 2020, and increased through March 20, 2020," which was "the continuation of the same work injury that began on March 19, 2020." (CE 10:176). Dr. Segal opined that the work injury caused the need for surgery on March 25, 2020, and "the progression after surgery." (CE 10:176). Dr. Segal concluded that Ms. Tuttle's left hamstring tear played "a substantial role" in the development of the disc injury manifesting on March 19 or 20, 2020. (CE 10:178). Dr. Segal restates his opinion that the hamstring injury was also a left lumbar injury with left radiculopathy. (CE 10:178). Dr. Segal cited to Ms. Tuttle's altered gait and "compensatory body mechanics" as contributing factors to her disc condition and subsequent surgeries. (CE 10:179).

The report next discussed whether Ms. Tuttle achieved maximum medical improvement ("MMI") for her various alleged injuries, and what the extent of her permanent impairment may be pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (CE 10:179-185). Dr. Segal opined that Ms. Tuttle achieved MMI for her left hamstring injury and left lumbar radiculopathy on May 25, 2021, which was three months following her spinal fusion surgery, as this would provide the nerve "sufficient time to heal." (CE 10:179). Dr. Segal also felt that Ms. Tuttle achieved MMI for her March 19, 2020, work injury on May 25, 2021, as that was three months following her surgery. (CE 10:179).

Because of her diagnosis of left lumbar radiculopathy with L3 and L4 nerve root issues, Dr. Segal felt that Ms. Tuttle met the Guides criteria for a diagnosis and rating of lumbar radiculopathy for her left hamstring issues. (CE 10:180). Dr. Segal opined that Ms. Tuttle met the criteria for a lumbar DRE category III under the Guides. (CE 10:180).

Since she was a DRE category III, who had resolved left leg radicular symptoms, Dr. Segal provided Ms. Tuttle with a 10 percent impairment of the whole person. (CE 10:180). Dr. Segal then moved on to the left hamstring itself. (CE 10:180). He used Table 17-9 on page 537 of the Guides to provide her with a mild range of motion impairment in her left hip, which was 2 percent of the whole person or 5 percent of the left lower extremity. (CE 10:180). Dr. Segal conducted strength testing of the claimant's left lower extremity and found her to be 5/5 for hip extension 5-/5 for hip flexion, and 5/5 for hip abduction. (CE 10:180). Dr. Segal cited to Table 17-8 on page 532 of the Guides to provide the claimant with a 2 percent whole person impairment or 5 percent lower extremity impairment based upon these measurements for what he termed "motor weakness." (CE 10:180). Dr. Segal combined the "left hip" measurements for a 4 percent whole person impairment, or a 10 percent lower extremity impairment. (CE 10:180). Dr. Segal then combined the lumbar whole person impairment with the left hip impairment for a 14 percent whole person impairment related to the July 24, 2019, work incident. (CE 10:180).

Dr. Segal then provided a "provisional" impairment rating based upon his assessment of injuries from the March 18, 2020, injury. (CE 10:181-183). Dr. Segal discussed the different methods for evaluating permanent impairment for spinal impairments from the Guides. (CE 10:181). He opined that Ms. Tuttle qualified for the range of motion or "ROM" method of evaluation, as she met certain symptoms and issues discussed by the Guides. (CE 10:181). Dr. Segal included pain and restricted range of motion that he related to facet arthropathy in his impairment rating. (CE 10:181). The doctor noted that there are three components to an analysis based upon ROM, which are: the specific disorder, the range of motion, and the nerve disorder. (CE 10:181). For the spine disorder impairment, Dr. Segal used subsection IV and part D of Table 15-7 on page 404 of the Guides to provide Ms. Tuttle with a 12 percent whole person impairment for someone with "spinal stenosis, segmental instability, spondylolisthesis, fracture, or dislocation, operated on…" including a "[s]ingle-level spinal fusion with or without decompression with residual signs and symptoms…" (CE 10:181). Dr. Segal then used Part E to provide another 2 percent whole person impairment due to the second spinal operation. (CE 10:181). This totals 14 percent whole person impairment. (CE 10:181). For range of motion impairment, Dr. Segal reiterated the ranges of motion to each aspect of the spine. He provided these results in a table, which I will not copy exactly, but included pertinent information as noted in the below table:

	Normal ROM	Mean ROM on Exam	Whole Person Impairment Percentage
Flexion	60 degrees	45 degrees	2 percent

Extension	25 degrees	10 degrees	5 percent
Right Lateral Flexion	25 degrees	10 degrees	3 percent
Left Lateral Flexion	25 degrees	15 degrees	2 percent

(CE 10:182). Based upon table 15-8 and 15-9 on page 407, Dr. Segal provided the claimant with a combined 12 percent whole person impairment for range of motion issues. (CE 10:182). Dr. Segal then discussed the rating for spinal nerve deficits. (CE 10:183). Dr. Segal opined that there were four nerve roots involved in the claimant's issues: the left L4 and L5, and the bilateral S1 nerve roots. (CE 10:183). These were to be evaluated using Tables 15-15 and 15-16 on page 424 of the Guides. (CE 10:183). For the right L3, Dr. Segal found that the claimant had a 40 percent grade 3 sensory impairment, which he multiplied by 5, to provide a 2 percent lower extremity impairment. (CE 10:183). He also found a 25 percent grade 4 motor impairment, which he multiplied by 20 to provide a 5 percent lower extremity impairment rating. (CE 10:183). These combined for a 7 percent lower extremity impairment, or a 3 percent whole person impairment. (CE 10:183). Combining the 14 percent whole person impairment for the spine specific disorder, the 12 percent whole person impairment for the range of motion, and the 3 percent whole person impairment for the spinal nerve deficit provided Ms. Tuttle with a 26 percent whole person impairment for the lumbar spine injury, according to Dr. Segal. (CE 10:183).

The doctor then discussed an impairment based upon the claimant's diagnosed trochanteric bursitis. (CE 10:184). Since this affects the claimant's right leg, and also occurred with an abnormal gait, Dr. Segal used Table 17-33 of the Guides on page 546 to provide a 3 percent whole person impairment, or 7 percent lower extremity impairment. (CE 10:184). Dr. Segal noted "[t]his would apply regardless of whether the trochanteric bursitis is directly or secondarily caused by the work injury." (CE 10:184).

Dr. Segal provided an impairment rating for sleep disturbance and fatigue based upon Ms. Tuttle's reporting disrupted sleep and difficulty initiating sleep due to her pain. (CE 10:184). Dr. Segal noted Ms. Tuttle's reporting that these sleep issues caused her to be fatigued during the day, which interfered with her ability to perform activities of daily living. (CE 10:184). Dr. Segal opined that the sleep issues were ratable using subsection 13.3c on page 317 of the Guides. (CE 10:184). Dr. Segal opined that Ms. Tuttle fell into "the middle of class 1," and had a 5 percent whole person impairment for these issues. (CE 10:184).

Dr. Segal combined the 26 percent whole person impairment for the lumbar issues, with the 3 percent whole person impairment for trochanteric bursitis impairment rating, and the 5 percent whole person impairment for the sleep disturbance issues, to

arrive at a 32 percent whole person impairment rating that he attributed to the March 19, 2020, work injury. (CE 10:184).

Dr. Segal then combined the whole person impairment ratings from the July 24, 2019, work injury, and the March 19, 2020, work injury to arrive at a 42 percent whole person impairment. (CE 10:184).

The report continued with Dr. Segal's recommendations for permanent restrictions on Ms. Tuttle. (CE 10:184-185). These were listed as follows:

- Sitting: 60 minutes cushioned chair, 15-20 minutes in a straight and/or hard chair
- Standing: 10 minutes (with shifting or leaning on a cart), total 4 hours per day
- Walking: 10 minutes unassisted (causes right hip pain) with leaning on cart, longer, total 3 hours per day
- Bending, one bend: Rarely (one bend a struggle)
- Bending, repetitive: Never
- Reaching Overhead: Occasionally
- Lifting 0-10 pounds; Frequently (if conveniently positioned)
- Lifting 11-20 pounds: Occasionally (if conveniently positioned)
- Lifting over 20 pounds: Never
- Carrying: 0-20 pounds: Occasionally
- Pushing/Pulling 0-10 pounds of force: Frequently
- Pushing/Pulling 11-24 pounds of force: Occasionally
- Pushing/Pulling 25-30 pounds of force: Rarely
- Stairs, 1 flight: Occasionally, needs handrail
- Stairs, 2+ flights: Rarely (may need to stop partway)
- Kneeling: Never
- Crouching/Squatting: Rarely
- Ladders: Never
- Stooping: Rarely
- Kneeling: Rarely

(CE 10:185).

Dr. Segal concluded the IME report with a discussion of his opinions on Ms. Tuttle's disc injury as a result of a cumulative trauma from her work performed at ADM. (CE 10:185-187). The doctor mentioned the generally accepted concept in medicine that "repetitive manual labor accelerates and causes breakdown and degeneration of the spine and joints…" (CE 10:186). Dr. Segal discussed various microtraumas and sources of cumulative injuries. (CE 10:186-187). He opined that the mechanism of injury for Ms. Tuttle was "the performance of repetitive and/or forceful tasks that may include tissue injury or compression and tissue reorganization." (CE 10:187). According to Dr. Segal, the continued exposure to these issues caused chronic inflammation, which led to "fibrotic changes" within tissues. (CE 10:187). Dr. Segal

continued by noting, that once the damage began, the continued motion and forceful work accelerated arthritic changes in Ms. Tuttle's joints. (CE 10:187).

Ms. Tuttle had a psychiatric evaluation with Mark Mittauer, M.D., at Associates for Behavioral Healthcare in Hiawatha, Iowa, on July 23, 2021. (JE 13:311-315). Ms. Tuttle reported her chief complaint of "I am stressed." (JE 13:311). She noted her current stressors of "a back condition" and filing a grievance at work because she felt "badgered." (JE 13:311). Ms. Tuttle had persistent depression dating back to her early twenties, which was more significant around the time of the appointment. (JE 13:311). She described feeling overwhelmed at times causing her to cry. (JE 13:311). She also described insomnia due to pain and symptoms of restless leg syndrome and sleep apnea. (JE 13:311). Dr. Mittauer noted that Ms. Tuttle ambulated using a cane. (JE 13:313). Dr. Mittauer found Ms. Tuttle to have a depressed, restricted, though appropriate, mental affect. (JE 13:313). Dr. Mittauer diagnosed Ms. Tuttle with major depressive disorder and generalized anxiety depression. (JE 13:313). Dr. Mittauer provided her with prescriptions for her psychiatric issues and recommended that she arrange psychotherapy. (JE 13:314-315).

Dr. Mittauer checked-in on Ms. Tuttle again on August 13, 2021. (JE 13:316-317). Ms. Tuttle still felt depressed and cried easily. (JE 13:316). She described stress as she was losing her job due to a back surgery. (JE 13:316). Dr. Mittauer provided refills for certain medications and requested that Ms. Tuttle return in one month for additional follow-up care. (JE 13:317).

On August 23, 2021, Ms. Tuttle returned to Dr. Mathew's office, requesting additional injections. (JE 3:228-230). Dr. Mathew observed that Ms. Tuttle ambulated with an antalgic gait but had fair balance and coordination. (JE 3:229). She displayed tenderness in her paraspinal lumbar and left hamstring regions. (JE 3:229). She also continued to have limited passive range of motion in her lumbar spine and left hamstring due to pain or stiffness. (JE 3:229). Dr. Mathew's diagnoses did not change. (JE 3:230). He again provided Ms. Tuttle with six trigger point injections, which provided a 70 percent pain relief. (JE 3:230). Dr. Mathew recommended that Ms. Tuttle taper off her gabapentin and Flexeril in favor of a trial of a Medrol dosepak. (JE 3:230). Dr. Mathew provided a referral to pain psychology and reiterated his previously provided restrictions. (JE 3:230).

Ms. Tuttle first sought vocational rehabilitation services with Iowa Vocational Rehabilitation Services ("IVRS") on September 7, 2021. (DE L:149). She told the counselor that she had a number of physical issues and had yet to receive restrictions from her physicians. (DE L:149). Ms. Tuttle expressed a desire to explore wine making or selling home-made crafts as self-employment options. (DE L:149).

Ms. Tuttle had more chiropractic care on September 8, 2021. (JE 9:267). She noted an inability to visit "due to several complications" including her surgery and "legal battle for workers comp [*sic*] and disability." (JE 9:267). Because of her past medical history, the chiropractor only treated C1-T12 in the claimant's spine. (JE 9:267).

On September 10, 2021, Ms. Tuttle saw Dr. Mittauer again via telehealth. (JE 13:318-319). She told Dr. Mittauer she was "okay." (JE 13:318). Ms. Tuttle relayed worries about "how she will be able to function in the future and about the fact that she will not be able to get her job back." (JE 13:319). Dr. Mittauer opined that improving her sleep apnea may help improve her depression. (JE 13:319). Dr. Mittauer recommended that Ms. Tuttle continue her prescribed medications and offered an additional medication. (JE 13:319).

On September 17, 2021, Ms. Tuttle was scheduled to be seen by Dr. Schmitz for an IME. (DE H:76). Her husband attempted to join her for the IME but was reminded by Dr. Schmitz that only Ms. Tuttle was allowed in the room for the IME. (DE H:76). Both Mr. and Ms. Tuttle began complaining and "saying it's not against the rules." (DE H:76). Mr. Tuttle returned to the front desk area, but according to Dr. Schmitz became abusive towards staff. (DE H:76). At that time, Dr. Schmitz concluded the IME. (DE H:76).

The claimant also returned to IVRS on September 17, 2021, to complete an ONET assessment. (DE L:149). Her highest scoring areas on the assessment were investigative, artistic, and enterprising. (DE L:149). Ms. Tuttle "seemed very open and honest during the assessment," and "asked appropriate questions for clarification." (DE L:149). Ms. Tuttle complained of pain. (DE L:149).

Ms. Tuttle returned to Dr. Mittauer's office on September 22, 2021, for a "medication check." (JE 13:320-321). Ms. Tuttle felt as though she was having a "nervous breakdown." (JE 13:320). She described being treated poorly by an orthopedic surgeon who accused her of being uncooperative. (JE 13:320). Her depression symptoms were significant and included crying. (JE 13:320). Dr. Mittauer again recommended she take medications and asked that she return in one month or sooner if needed. (JE 13:321).

On September 29, 2021, Ms. Tuttle finished her assessment results with IVRS. (DE L:148-149). She indicated that she had no desire to work in the medical field and refused to work in schools due to a perceived threat from COVID. (DE L:148). Ms. Tuttle expressed an interest in being a paralegal or crime scene investigator. (DE L:148). She also expressed an interest in working in a restaurant or selling arts and crafts products from her home. (DE L:148).

Ms. Tuttle returned to IVRS on October 7, 2021, and met with a team to discuss an employment plan. (DE L:148). Ms. Tuttle again expressed an interest in working from home and either upscaling items for resale or taxidermy. (DE L:148). Ms. Tuttle outlined her concerns about her health and her need to sit or stand as needed. (DE L:148). She also told the team that she had very limited computer skills, and the team discussed taking a computer class through several different providers. (DE L:148).

At the request of ADM's counsel, Martin Carpenter, M.D., completed a psychiatric IME on the claimant on October 25, 2021. (DE F). Dr. Carpenter is a board-certified psychiatrist. (DE F). Following the IME, Dr. Carpenter issued a report outlining

his findings. (DE F). Dr. Carpenter began his report by reviewing a number of records regarding Ms. Tuttle's medical treatment. (DE F:32-36). Ms. Tuttle reported her history of several work injuries, including the ones at issue in these matters. (DE F:36). Ms. Tuttle told Dr. Carpenter that she was badgered at work for "not reporting her injury." (DE F:36). Ms. Tuttle recounted being first diagnosed with severe depression in the 1980's after the birth of her first son. (DE F:37). At the time, Ms. Tuttle was "in a bad, abusive marriage…" which caused her depression to worsen. (DE F:37). Her depression again worsened after her diagnosis with GBS. (DE F:37). At the time of her IME, she reported crying easily and feeling depressed. (DE F:37). She recounted an incident during a recent defense medical examination where she began to cry uncontrollably. (DE F:37). She told Dr. Carpenter that she had not felt normal since her injuries began, and became teary when she told him that there were things she could no longer do due to her pain. (DE F:37). Ms. Tuttle denied having any mood swings, OCD behaviors, panic attacks, or angry outbursts. (DE F:37). However, she felt anxious, and attending so many appointments was "really wearing on [her]." (DE F:37). She had no history of developmental delays. (DE F:37).

Dr. Carpenter noted Ms. Tuttle's past diagnoses of major depressive disorder, generalized anxiety disorder, alcohol use disorder, and binge eating disorder. (DE F:37). Ms. Tuttle told Dr. Carpenter that she previously saw a counselor for family therapy. (DE F:37). Dr. Carpenter noted a number of recommendations made in past medical records for counseling. (DE F:37). Ms. Tuttle told Dr. Carpenter that she enjoyed woodworking, ceramics, hunting, fishing, and camping; however, she no longer engaged in those activities due to her pain. (DE F:39).

Dr. Carpenter performed an examination of Ms. Tuttle. (DE F:40). He noted that she wore a spine brace during the evaluation. (DE F:40). Ms. Tuttle "seemed uncertain of why she was present for this interview…" and noted difficulty recalling information due to memory problems since "the COVID stuff." (DE F:40). Dr. Carpenter found Ms. Tuttle to be slightly suspicious and concerned about what he was writing down, but also that she was willing to answer questions. (DE F:40). Ms. Tuttle became tearful when discussing activities that she could no longer perform due to her pain. (DE F:40). Dr. Carpenter found Ms. Tuttle's thought process to be "occasionally tangential" and noted her to have "difficulty providing direct responses to questions." (DE F:40). Dr. Carpenter did not perform formal memory testing, but Ms. Tuttle noted difficulty recalling certain information. (DE F:40).

Dr. Carpenter diagnosed Ms. Tuttle with major depressive disorder, generalized anxiety disorder, somatic symptom disorder, and an unspecified personality disorder. (DE F:40-41). Dr. Carpenter felt that somatic symptom disorder was an appropriate diagnosis, as the condition occurs "when sufferers focus on physical symptoms to a degree that causes significant distress and decreased function…" and Ms. Tuttle's records contained numerous mentions of chronic pain and distress surrounding the same. (DE F:41). Dr. Carpenter justified his diagnosis of unspecific personality disorder based upon the records indicating strong borderline personality traits, such as a hospitalization for suicidality, and "a tendency for conflict in romantic relationships and with employers." (DE F:41). Dr. Carpenter continued that, Ms. Tuttle suffered abuse in

previous relationships, which "is also frequently present in those suffering with personality disorders." (DE F:41). Dr. Carpenter documented that Ms. Tuttle had "intense emotion" and "a rather argumentative personality style" that was "suggestive of a personality disorder." (DE F:41). Dr. Carpenter also found Ms. Tuttle's claims to have a "subtext" of victimhood. (DE F:41). Dr. Carpenter opined that Ms. Tuttle's worsened psychiatric issues were not the result of her work injuries. (DE F:41-42). He recommended that she continue treatment for her pre-existing psychiatric issues. (DE F:42). He offered no work restrictions for her. (DE F:42).

On October 28, 2021, Ms. Tuttle had a meeting with the team at IVRS via internet-based video. (DE L:147-148). She indicated that she experienced a lot of personal issues recently, including her health, a home invasion and theft, and an issue with her attorney. (DE L:147). These assorted issues caused Ms. Tuttle to feel overwhelmed. (DE L:147). Ms. Tuttle noted that the personal issues precluded her from seeking computer or keyboarding classes as previously discussed. (DE L:147). The team encouraged her to attend an upcoming keyboarding class and request a personal accommodation via a lumbar support chair. (DE L:147-148).

Ms. Tuttle called IVRS on November 9, 2021, for information pertaining to basic computer training through Iowa Workforce Development or Goodwill. (DE L:146-147). IVRS counseled her on the classes available and how to sign up for the same. (DE L:146-147).

The claimant filed a complaint with the Iowa Civil Rights Commission in November of 2021. (DE BB:20-26). She alleged that she was discriminated against due to her work injury. (DE BB:20-26). After performing an investigation and analysis, a civil rights specialist at the Iowa Civil Rights Commission determined that the matter should be administratively closed. (DE BB:26). As part of this complaint, Ms. Tuttle indicated that she was willing to return to work at ADM at the time of her termination. (Testimony).

On November 29, 2021, Ms. Tuttle told IVRS that she was taking keyboarding classes, and practiced keyboarding in her off time. (DE L:146). She also expressed an interest in expanding her computer skills through other classes. (DE L:146). The plan was for Ms. Tuttle to continue completing the keyboarding classes. (DE L:146).

On December 7, 2021, Dr. Mittauer wrote a response to a letter from claimant's counsel that contained a number of questions surrounding the claimant. (CE 8:67-68). Dr. Mittauer felt that Ms. Tuttle's hamstring injury "both aggravated and exacerbated her depression," as her depression was "not significant" at the time of her injury. (CE 8:67). However, Dr. Mittauer noted that after her injury, she was "required to continue working," which "caused her to feel very depressed" due to the physical difficulties she experienced. (CE 8:67). Dr. Mittauer also opined that the "sequelae" to the hamstring injury also aggravated and exacerbated her pre-existing depression due to the same difficulties performing her work noted above. (CE 8:67). Dr. Mittauer recounted that Ms. Tuttle felt very depressed due to the injury causing her difficulty with sleeping, sitting, to pay bills, and difficulty completing housework. (CE 8:67). Dr. Mittauer also

found that Ms. Tuttle losing her job worsened her depression. (CE 8:67). Dr. Mittauer continued his response to claimant counsel's letter by opinion that the persistence of back and right hip pain exacerbated Ms. Tuttle's depression. (CE 8:67). Finally, Dr. Mittauer concluded by opining that Ms. Tuttle's pain significantly interfered with her "cognitive functioning and capabilities," including her concentration and retention of information. (CE 8:68). Dr. Mittauer also attributed Ms. Tuttle's difficulty recounting people's names, remembering appointments, and completing paperwork as evidence of her cognitive issues. (CE 8:68).

Ms. Tuttle returned to IVRS on December 22, 2021. (DE L:145-146). She expressed that she had not been doing well and was struggling to get into keyboarding. (DE L:145). She noted issues with her hands and indicated that she was diagnosed with carpal tunnel. (DE L:145). Ms. Tuttle told IVRS that she looked at jobs, but realized she needed to work at home due to her physical limitations. (DE L:145). IVRS reviewed general requirements for working at home. (DE L:145). IVRS also connected Ms. Tuttle with a former client who worked from home and discussed job requirements with her. (DE L:145). Ms. Tuttle was encouraged to continue to build her typing and computing skills. (DE L:145). Ms. Tuttle retorted that she was unable to attend computer classes in-person due to her "current disabilities." (DE L:145).

Dr. Pospisil examined Ms. Tuttle again on December 28, 2021, with regard to her left lower extremity. (DE G:52-53). She issued a letter to ADM's counsel outlining the findings of her examination. (DE G:52-53). Dr. Pospisil recounted the claimant's medical history surrounding the left lower extremity, including the September 20, 2019, MRI. (DE G:52). When Ms. Tuttle reported to Dr. Pospisil's office, she walked with a cane due to her right leg weakness. (DE G:52). Dr. Pospisil did not observe any muscular issues on the left side and documented that Ms. Tuttle could engage her hamstrings by bending at the knee. (DE G:52). Ms. Tuttle told the doctor that she had pain if she sat for a long time. (DE G:52). Dr. Pospisil diagnosed Ms. Tuttle with a hamstring strain. (DE G:52). She placed Ms. Tuttle at MMI effective January 16, 2020. (DE G:52). Based upon the Guides, Dr. Pospisil provided Ms. Tuttle with a 2 percent whole person impairment rating. (DE G:52). This rating was based solely on the pain experienced by Ms. Tuttle while she sat, as Dr. Tuttle noted that there was "no specific section that addresses this injury." (DE G:52).

On January 11, 2022, Dr. Flory referred the claimant to Dr. Sassman for an occupational medicine visit. (JE 2:76).

Dr. Sassman examined the claimant on January 14, 2022, for her left hamstring issues. (CE 9:92-103). Dr. Sassman again reviewed the pertinent medical history, as discussed herein. (CE 9:92-99). During various points in her treatment, Ms. Tuttle alleged that she had "a significant limp" due to her left hamstring symptoms. (CE 9:96). She told Dr. Sassman that, at times when she limped at work, coworkers would question what was wrong with her. (CE 9:96). Ms. Tuttle also outlined her job duties again for Dr. Sassman. (CE 9:100). At the time of the examination, Ms. Tuttle indicated that squatting or performing more activities irritated the area of her left hamstring injury

causing her to have a dull or nagging pain. (CE 9:99). She also had more pain when she sat. (CE 9:99).

Dr. Sassman then performed a physical examination of the claimant. (CE 9:100-101). Dr. Sassman used a two-inclinometer method to measure range of motion in the lumbar spine. (CE 9:100). Using this method, Dr. Sassman observed that the claimant had 20 degrees of lumbar flexion, 10 degrees of lumbar extension, 20 degrees of right lumbar lateral motion, and 10 degrees of left lumbar lateral motion. (CE 9:100-101). Ms. Tuttle displayed tenderness to palpation over the left buttock and right hip, along with decreased sensation in the right lower extremity along the L2 and L3 dermatomes. (CE 9:101). The right trochanteric bursa and the origin of the left hamstring also showed tenderness. (CE 9:101). Dr. Sassman measured range of motion in each hip. (CE 9:101). In the left hip, Ms. Tuttle displayed 60 degrees of flexion, 20 degrees of extension, 20 degrees of abduction, 30 degrees of adduction, and no measurements were made for internal or external rotation. (CE 9:101). In the right hip, Ms. Tuttle displayed 90 degrees of flexion, 0 degrees of extension, 50 degrees of abduction, 30 degrees of adduction, 40 degrees of internal rotation, and 30 degrees of external rotation. (CE 9:101).

Based upon her examination, and review, Dr. Sassman diagnosed Ms. Tuttle with a left hamstring tear, and placed her at MMI as of December 14, 2021. (CE 9:101). Dr. Sassman then endeavored to provide an impairment rating for the left partial hamstring tear. (CE 9:101-102). Dr. Sassman opined that "it was evident on examination that she had residual weakness of the left hamstring," which was ratable according to Table 17-8 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (CE 9:101-102). Dr. Sassman placed Ms. Tuttle at grade 4 with weakness on the flexion of the knee, which resulted in a 12 percent lower extremity impairment. (CE 9:102). Dr. Sassman indicated that this converted to a 5 percent whole person impairment rating based upon Table 17-3 of the Guides. (CE 9:102).

Dr. Sassman recommended that the claimant only occasionally stand, sit, and walk. (CE 9:102). The doctor recommended that Ms. Tuttle be allowed to change positions frequently. (CE 9:102). Dr. Sassman further limited the claimant to lifting, pushing, pulling, and carrying 10 pounds on a rare basis to waist height. (CE 9:102). The doctor also recommended that Ms. Tuttle not lift, push, pull, or carry from the floor to the waist, or over her shoulders. (CE 9:102). Dr. Sassman also restricted Ms. Tuttle from using ladders, and only using stairs as a rarity. (CE 9:102).

Ms. Tuttle met with a team at IVRS on January 25, 2022, to discuss her current status. (DE L:144-145). Ms. Tuttle reported doing well, and that she performed research and would like to perform embroidery and design using technology from Viking Sewing Machine. (DE L:144). Ms. Tuttle believed that this could be effective for her because the sewing machine only required programming and would perform the sewing on its own. (DE L:144). Due to the expense of the machine, IVRS indicated that they could not purchase the Viking Sewing Machine for Ms. Tuttle. (DE L:144). They also encouraged her to do more research on the business model and alternatives to the expensive sewing machine. (DE L:144).

On February 2, 2022, Andrew Zelby, M.D., F.A.A.N.S., a board-certified neurosurgeon, provided ADM's counsel with an IME report based upon an IME completed on the same date. (DE J:107-118). Ms. Tuttle reported to Dr. Zelby that she experienced low back problems for at least five years prior to March of 2020; however, she began to experience severe lower back pain that radiated into her right buttock, groin, and thigh, on March 19, 2020. (DE J:107). She opined that her back "was worn down from her work," as she constantly tweaked her back with work activities such as bending, twisting, lifting, pulling, shoveling, and using tools. (DE J:107). She told Dr. Zelby that she periodically went to a chiropractor, but that the nature of the pain in March of 2020 as wholly different. (DE J:107). Ms. Tuttle had some improvement following her initial surgery, but then had worsening pain after the incision and drainage of the wound infection. (DE J:107). She also noted that her right leg began to give out on her. (DE J:107). Ms. Tuttle recounted having COVID in October of 2019, and told Dr. Zelby that she experienced memory issues following her COVID hospitalization. (DE J:107). She also testified to the same. (Testimony).

At the time of the examination, Ms. Tuttle had constant pain in her low back that extended to her right buttock and right groin. (DE J:107). She fell four times since May of 2020. (DE J:108). She had no pain from her low back into her left leg but had pain in the back of her left thigh from her torn hamstring. (DE J:107). Ms. Tuttle experienced pain when sitting or standing still for more than 10 minutes, if she walked less than a block, bended over, or lifted. (DE J:108).

Upon physical examination, Dr. Zelby did not find any muscle spasms or trigger points in the claimant's lumbar spine. (DE J:109). Dr. Zelby measured Ms. Tuttle's ranges of motion in her lumbar spine finding her to have 60 degrees of forward flexion, 10 degrees of hyperextension, 15 degrees of right lateral flexion, and 20 degrees of left lateral flexion. (DE J:109). Dr. Zelby observed the claimant to have a slow, cane-assisted, gait. (DE J:109). Ms. Tuttle could not toe walk, or heel walk, and could squat and rise to some extent. (DE J:109). With encouragement, Ms. Tuttle displayed normal strength in the lower extremities. (DE J:109). Dr. Zelby then reviewed imaging studies, as well as considerable medical records. (DE J:110-117).

Based upon his examination and review of the medical documentation, Dr. Zelby diagnosed Ms. Tuttle with a resolved lumbar disc disorder with radiculopathy, a history of lumbar microdiscectomy, a history of a lumbar fusion, lumbar degenerative spondylosis without radiculopathy, and morbid obesity. (DE J:117). Dr. Zelby opined that Ms. Tuttle had no objective reason for any ongoing radiculopathy. (DE J:117). He further opined that Ms. Tuttle's diagnostic studies showed that her L3-4 fusion healed well, and that they otherwise showed only mild degenerative changes without persistent neural impingement. (DE J:117). Dr. Zelby felt that Ms. Tuttle's belief that her condition was related to repetitive work activities was "a medically inaccurate concept." (DE J:117-118). He opined that there existed no medical basis to suggest that Ms. Tuttle's condition was caused or aggravated by any work injury, as "[l]umbar disc disease and lumbar spine disease are not conditions of repetitive trauma." (DE J:118). He related the claimant's lower back issues to "manifestations of her long-standing degenerative lumbar condition in the context of her morbid obesity." (DE J:118). The doctor

continued by discussing the strain that obesity places on a spine, "in a manner that the spine is not designed to withstand…" (DE J:118). Dr. Zelby related all of Ms. Tuttle's spine problems to a manifestation of her degenerative issues along with her obesity. (DE J:118). He also opined that Ms. Tuttle's subjective complaints were not supported by the objective medical findings and seemed to him to be an exaggeration. (DE J:118). Dr. Zelby felt that Ms. Tuttle could work in a medium physical demand level and lift up to 50 pounds occasionally and 25 pounds frequently based upon her objective medical condition. (DE J:118). Dr. Zelby concluded by recommending that Ms. Tuttle lose weight and engage in daily stretching exercises. (DE J:118).

On February 14, 2022, Dr. Pospisil issued another letter addressed to ADM's counsel outlining her response to certain criticism from Dr. Sassman. (DE G:54). Dr. Pospisil agreed with Dr. Sassman that the Guides provide for ratings for muscle injuries on page 532. (DE G:54). Dr. Pospisil did not mention this rating, as she did not find Ms. Tuttle to have any weakness. (DE G:54). She outlined the tests that she ran in order to determine this during her examination. (DE G:54). During her examination with Dr. Pospisil, Ms. Tuttle only complained of pain in her left lower extremity while sitting. (DE G:54). If Dr. Pospisil thought muscle testing to be appropriate, she would have assessed Ms. Tuttle with a grade 5 description of muscle function, according to page 531, Table 7-17 in the Guides. (DE G:54). A grade 5 muscle function is "active motion against gravity with full resistance." (DE G:54). Dr. Pospisil also clarified that the 2 percent whole person impairment still stood, but that she assessed Ms. Tuttle with a 6 percent impairment to the left lower extremity based upon Table 17-3 on page 527 of the Guides. (DE G:54).

At the arrangement of the claimant and/or her attorneys, Michael D. Freeman, M.D., Ph.D., M.P.H., an associate professor of forensic medicine at the University of Maastricht Medical Center in the Netherlands, issued a report including his "analysis of the causal connection between Ms. Michelle Tuttle's left hamstring injury occurring on July 24, 2019 while working…" at ADM and "her subsequent sequelae, including her altered gait, the worsening of her hip and low back symptomatology, and cumulative workplace exacerbations…" which caused "multiple tears in her right hip muscles, multiple surgeries and physical disability," dated February 15, 2022. (CE 1:1-42). Dr. Freeman is a consultant in the field of forensic medicine and completed a fellowship in the field of forensic pathology in Sweden. (CE 1:1-2). He is a fellow of the American Academy of Forensic Sciences and the American College of Epidemiology. (CE 1:2). Dr. Freeman is a prolific expert witness, having testified in "more than 400 civil and criminal trials in state and [f]ederal courts throughout the United States, Canada, Australia, and Europe." (CE 1:2).

Dr. Freeman began his report by noting the plethora of evidence which he reviewed. (CE 1:3). His report preparation included one hour and fifteen minutes of telephonic interviews with the claimant and her husband. (CE 1:3). Ms. Tuttle recounted her fall on July 24, 2019. (CE 1:3-4). She recalled stepping forward with her left leg when her right foot caught on a curb. (CE 1:4). Her left foot then extended forward as though she were "doing the splits". (CE 1:4). She caught herself but felt pain in her left posterior hip and buttock. (CE 1:4). She told Dr. Freeman that she did

not tell the mill superintendent but did tell the foreman on the same day. (CE 1:4). Dr. Freeman's report then reviews Ms. Tuttle's medical treatment for her left hamstring issue. (CE 1:4-6). Dr. Freeman then notes "[i]njury 2" and begins a medical record review of Ms. Tuttle's medical care following her alleged March 20, 2020, injury. (CE 1:6-8). Finally, Dr. Freeman reviewed Ms. Tuttle's pre-injury medical records. (CE 1:8-10).

Dr. Freeman then described portions of his interview with Ms. Tuttle. (CE 1:10). During this interview, he asked Ms. Tuttle to rate how her low back and hip problems affected her physical condition. (CE 1:10). Ms. Tuttle indicated that, after her 2011 surgery, she was functioning at 90 percent to 100 percent. (CE 1:10). She then noted having "small back injuries from time to time" after starting at ADM in 2015. (CE 1:10). These injuries resolved on their own, leaving her with 90 percent functionality, "until the October 2017 car-deer incident." (CE 1:10). Following that accident, she reported increased back pain that "was then exacerbated by her repetitive work activities." (CE 1:10). The result was a drop in physical function to a self-described 70 percent to 80 percent. (CE 1:10). She opined that she remained at that extent until after her July of 2019 incident, at which time she rated her physical function as dropping "below 50 [percent]" along with worsening due to "workplace exacerbations." (CE 1:10).

Dr. Freeman opined that Ms. Tuttle's July 24, 2019, hamstring injury and her "post-July 24, 2019 workplace exacerbations" were "substantial factors in causing her post-incident sequelae." (CE 1:10). Dr. Freeman criticized Dr. Schmitz's opinion that Ms. Tuttle "did not, in any way whatsoever, affect her physical health, and that after the incident she was in precisely the same condition as she was prior to the incident." (CE 1:10). Dr. Freeman continued by calling Dr. Schmitz's claim "obviously false" on its face, as Dr. Freeman felt that Ms. Tuttle sustained an injury associated with a new diagnosis and that her condition was "exacerbated by her work and other activities from that point in time forward." (CE 1:10). Dr. Freeman opined that the medical records supported his position. (CE 1:10).

Dr. Freeman then used a "3-step injury causation [method] used in forensic medicine for assessing such injuries." (CE 1:10). He claimed to apply his expertise and knowledge from "several disciplines … nearly always including medicine and epidemiology." (CE 1:10). Dr. Freeman further claimed that the methods are "generally accepted by US Courts, and described as part of case law in the United States." (CE 1:11). Dr. Freeman opined:

> The three fundamental elements of an injury causation analysis are as follows:
>
> 1) Whether the injury mechanism had the potential to cause the injury in question (general causation), and if known, the magnitude of that potential (risk);
> 2) The degree of temporal proximity between the injury mechanism and the onset of the symptoms reasonably indicating the presence of the injury; and

3) Whether there is a more likely alternative explanation for the occurrence of the injury at the same point in time, versus the investigated cause (also known as a differential etiology/diagnosis). This alternative or competing cause is quantified for the individual, given their predictive characteristics and the temporal relationship quantified in step 2.

(CE 1:12). Dr. Freeman continued that the result of the above analysis is "a comparison of risks; the risk of injury from the harmful exposure…versus the risk of the same injury or condition occurring at the same time in the specific individual, but in the absence of the harmful exposure." (CE 1:12). Dr. Freeman concluded, "[i]f the risk from the exposure is greater than the risk in the absence of the exposure, then the exposure is the most probable cause of the injury or disease." (CE 1:12).

Dr. Freeman continued his report by analyzing the causation of Ms. Tuttle's condition(s) based upon the foregoing factors. (CE 1:12-16). First, Dr. Freeman recounted Ms. Tuttle's fall and injury to her left hamstring. (CE 1:12). He noted that, "even though she had not completely recovered from her July 24, 2019[,] left hamstring and lower back injuries, she continued working at ADM and performed strenuous physical work duties…" (CE 1:13). Dr. Freeman opined that the hamstring injury most often occurred via a sudden, forceful, eccentric contraction of the hamstring. (CE 1:13). He also noted the function of the hamstring muscles. (CE 1:13). Dr. Freeman concluded that the "strenuous physical work duties" conducted by Ms. Tuttle at ADM exacerbated her condition along with her history of hip and low back problems. (CE 1:13). Dr. Freeman opined that the aforementioned hip and low back problems "continued to progress and evolve" until her diagnosis with an L3-4 radiculopathy and disk herniation requiring her surgery. (CE 1:13). Dr. Freeman also opined that Ms. Tuttle's right hip condition was "more likely than not" associated with her chronic hip condition that preceded the July 24, 2019, incident. (CE 1:13).

Dr. Freeman also opined that Ms. Tuttle faced a risk of recurrent hamstring injury, which "can result in structural…and neurological…maladaptation with the injured muscle." (CE 1:14). The result of the maladaptation, according to Dr. Freeman was an altered gait that then produced increased "biomechanical stresses" on the lower back. (CE 1:14). Dr. Freeman opined that it was "reasonable to conclude that after [the] July 24, 2019[,] incident, Ms. Tuttle did not heal completely, but continued to cause her to have the ongoing symptoms that are described throughout her post-injury medical records and history." (CE 1:14). Dr. Freeman felt that the chronic right hip issue, and the degenerative changes in Ms. Tuttle's lower back demonstrated "the fragility of her condition prior to the July 2019 incident." (CE 1:14). Dr. Freeman felt that Ms. Tuttle sustained a cumulative trauma that resulted in her low back injury due to the persistent exacerbation to her condition by her work duties at ADM. (CE 1:14).

Dr. Freeman continued by evaluating Ms. Tuttle's issues as they related to causation between the July 24, 2019, injury and her "post-injury sequelae." (CE 1:14). Dr. Freeman noted the initial, immediate, pain felt by Ms. Tuttle, and again opined that Ms. Tuttle's job, and the repetitive tasks required therein following her injury exacerbated her injury, "and contributed to the pre-existing problems in her right hip and

low back." (CE 1:15). These provided, in Dr. Freeman's view, "a strong temporal relationship between the July 24, 2019[,] left hamstring injury and post-injury worsening of Ms. Tuttle's low back and hip conditions that pre-existed the incident." (CE 1:15).

Dr. Freeman moved on to the "last step of the injury causation analysis," which involved "the assessment of the probability of the same symptoms, injuries, diagnoses, and need for treatment occurring at the same point in time, but in the absence of the investigated injury incident." (CE 1:15). Dr. Freeman opined that the only source of trauma to Ms. Tuttle was the incident in which she injured her left hamstring. (CE 1:15). Dr. Freeman also opined that, without the July of 2019 work incident, there existed "no medical or historical evidence that Ms. Tuttle's pre-existing low back and hip symptoms were progressively worsening…" (CE 1:15). Dr. Freeman pointed to Ms. Tuttle's own assessment that her physical function dropped from 70 percent or 80 percent to below 50 percent following her July 24, 2019, incident as evidence that the workplace incident of July 24, 2019, was a substantial factor or contributing cause to her low back issues. (CE 1:15-16).

Dr. Freeman then spends time further critiquing Dr. Schmitz's IME report. (CE 1:17-18). Dr. Freeman opined that Dr. Schmitz's conclusions regarding Ms. Tuttle's obesity contributing to her medical issues following her July of 2019 work incident was "beyond speculative…" and "entirely fabricated." (CE 1:17). Dr. Freeman claimed that there were no medical, scientific, or factual bases for these opinions by Dr. Schmitz. (CE 1:17). Dr. Freeman seemed to opine that obesity was not a risk factor at all for chronic low back or hip pain, and that linking Ms. Tuttle's low back and hip issues to her "stable lifetime condition of obesity" defied "common sense." (CE 1:17). Dr. Freeman alleged that Dr. Schmitz misrepresented Ms. Tuttle's pain and restrictions. (CE 1:18). Dr. Freeman further alleged that Dr. Schmitz's approach failed "to account for the strong temporal relationship between the acute injury and Ms. Tuttle's worsened condition…" and that Dr. Schmitz did not "provide a factual basis for believing that this 55-year-old woman was going to spontaneously develop progressive worsening of her back and hip problem at the same time as the July 2019 incident…" (CE 1:18).

Dr. Freeman concluded his report by opining that his report provided "strong and reliable evidence that the July 24, 2019[,] hamstring injury incident and the post-incident workplace exacerbations and aggravations were substantial factors in causing, aggravating, exacerbating, and accelerating Ms. Tuttle's progressively worsened low back and hip condition…" and that they were the cause of her need for low back surgery. (CE 1:19).

It should be noted that Dr. Freeman relied on a job description provided by Ms. Tuttle in writing. (CE 1:22-38). Ms. Tuttle's notes are hand-written and are difficult to read. (CE 1:22-38). They also include pictures. (CE 1:22-38). I will attempt to summarize what appear to be her major job duties at ADM. Ms. Tuttle was required to climb upwards of eight flights of stairs to deal with issues on screens. (CE 1:22). Sometimes this included carrying ladders. (CE 1:24). She also had to use a pressure washer at times. (CE 1:22). She carried lumber and supplies left behind by contractors. (CE 1:22). She fixed sump pumps, which required moving heavy items.

(CE 1:23). She shoveled and moved corn in wheelbarrows. (CE 1:24). She replaced "cyclonettes," fixed nozzles, and maintained certain machinery. (CE 1:24). The remainder of the document is highly technical, and largely irrelevant to this proceeding.

In a decision dated February 19, 2022, the Social Security Administration determined that Ms. Tuttle was disabled. (CE 22:400-403). The Social Security Administration found Ms. Tuttle to be disabled effective March 20, 2020. (CE 22:404).

On February 22, 2022, Ms. Tuttle met with IVRS again. (DE L:143). Ms. Tuttle had questions about how income from employment would affect her entitlement to SSDI benefits. (DE L:143).

Ms. Tuttle returned to Summit Orthopedics for a one-year post-surgical follow-up visit, on March 9, 2022. (JE 12:301-302). Ms. Tuttle felt that she was "initially healing well until about [three] months ago [when] she had worsening right leg pain … into the groin." (JE 12:301). Ms. Tuttle noted the pain began around the time that she fell onto her bed on her right side. (JE 12:301). Imaging did not show osteoarthritis. (JE 12:301). The provider recommended that Ms. Tuttle follow-up with a hip specialist at Summit. (JE 12:301).

On March 11, 2022, Ms. Tuttle met again with a team from IVRS. (DE L:143). Ms. Tuttle indicated that she did not perform any of the previously discussed follow-ups. (DE L:143). The team at IVRS noted to Ms. Tuttle that they could not assist in her purchase of her desired sewing machine, as it was expensive, and IVRS had no idea whether her business was viable. (DE L:143).

On March 18, 2022, Ms. Tuttle met with a hip specialist at Summit Orthopedics due to her recurrent right hip and groin symptoms. (JE 12:303-305). The hip doctor was concerned that there may be a low back component to the issue due to her prior history. (JE 12:303). The provider reviewed imaging, which showed hip arthritis and a degenerative labral tear, which "could be possibly contributing to her groin discomfort;" however, the provider did not expect those issues to cause the symptoms described by Ms. Tuttle. (JE 12:303). The provider expressed concern around damage to the gluteal tendon insertions seen on a prior MRI. (JE 12:303). It was recommended that the claimant undergo another hip MRI to see if there were any surgical repair options for the right hip. (JE 12:303).

In a letter dated March 23, 2022, Dr. Schmitz responded to the criticisms and report of Dr. Freeman. (DE H:72-74). Dr. Schmitz felt that Dr. Freeman did not review all of the records which Dr. Schmitz reviewed in arriving at his opinions. (DE H:72). Dr. Schmitz outlines the records which Dr. Freeman seemed to ignore. (DE H:72). Dr. Schmitz noted that these records outlined the "longstanding history of severe low back pain and hip injuries' suffered by Ms. Tuttle prior to the work injuries. (DE H:72). Dr. Schmitz was also critical of Dr. Freeman, as he made no mention of Ms. Tuttle's treatment for her right hip immediately preceding the alleged work injury. (DE H:72). Dr. Schmitz recounted notes from May 28, 2019, and May 30, 2019, wherein Ms. Tuttle mentioned a one-year history of right lateral hip pain, along with pain radiating down her

right side. (DE H:72). On January 25, 2019, Ms. Tuttle noted pain in her back. (DE H:72). On April 23, 2019, Ms. Tuttle had throbbing right hip pain that elicited a referral to an orthopedic provider. (DE H:72-73).

Dr. Schmitz clarified his opinion and disagreed with Dr. Freeman's characterization of his report. (DE H:73). Dr. Schmitz opined that he felt that Ms. Tuttle injured her left hamstring on July 24, 2019; however, he did not feel that she had any significant right hamstring or any low back injury as a result of that injury. (DE H:73). Dr. Schmitz would not relate the right hip and back issues to the July 24, 2019, injury and resulting altered gait because of Ms. Tuttle's previous longstanding right hip bursitis and issues predating the work injury. (DE H:73).

Ms. Tuttle followed-up with Summit Orthopedics again on March 30, 2022. (JE 12:306). She was provided with a cortisone injection into her right hip. (JE 12:306). It provided her with a marginal pain relief. (JE 12:306).

On April 11, 2022, Ms. Tuttle had another visit with the team at IVRS. (DE L:142). She continued to express an interest in self-employment through an embroidery business. (DE L:142).

Ms. Tuttle had another meeting with IVRS to review potential benefits. (DE L:142). Ms. Tuttle opined that her health worsened, as she was having ongoing back and leg issues. (DE L:142). Ms. Tuttle was unsure what she could do for employment, as it was difficult for her to sit for any amount of time without pain. (DE L:142). IVRS placed her on "Interrupted Status" until she had more answers about her health. (DE L:142).

In a letter dated April 26, 2022, Dr. Strothman replied to a letter from claimant's counsel requesting his opinions on certain issues. (CE 6:56-57). Dr. Strothman recounted the claimant's visits and that imaging during her visit "demonstrated persistent right L3-4 foraminal stenosis with extensive epidural fibrosis and at least partial resection of the descending right L3 articular process. (CE 6:56). He then outlined her surgical history and proceeded to answer questions posed by claimant's counsel. (CE 6:56-57). First, Dr. Strothman opined that during her March of 2020 surgery, a large portion of the descending articular process of L3 was resected. (CE 6:56). According to the doctor, "this can lead to instability of the facet joint and create further pain…" (CE 6:56). Additional imaging demonstrated increased foraminal stenosis with right L3 nerve root compression. (CE 6:56). Dr. Strothman concluded that it was "more likely than not that resection of the descending L3 articular process led to partial instability within the right L3-4 facet complex and was directly related to the need for further surgical care." (CE 6:56). Dr. Strothman then provided a "Minnesota partial permanent disability rating," which is irrelevant to the proceedings in this case, as this case is governed by Iowa law. (CE 6:56). Dr. Strothman felt that Ms. Tuttle was not yet fully recovered and noted that Ms. Tuttle could return to "all activities without restriction" once she was able to do so. (CE 6:57). He recommended an FCE. (CE 6:57). Dr. Strothman opined that Ms. Tuttle achieved maximum medical improvement ("MMI") for her lumbar spine surgery despite "some ongoing pain" and her hip issues.

(CE 6:57). Dr. Strothman noted that Ms. Tuttle may require additional low back treatment, such as physical therapy, injections, pain management, and "even future surgery," as there was a 30 percent risk for adjacent segment disease following a lumbar fusion. (CE 6:57).

On May 10, 2022, Ms. Tuttle returned to Summit Orthopedics for continued care to her right trochanteric bursitis and spinal surgeries. (JE 12:307). She recounted having no relief from the cortisone injection. (JE 12:307). An MRI was reviewed, which showed no residual nerve root compression. (JE 12:307). An additional injection was recommended, and the provider no longer believed that there was any ongoing spinal pathology causing her hip issue. (JE 12:307). However, the provider opined that her lumbar issues could be causing her right lower back pain. (JE 12:307).

Ms. Tuttle had an ultrasound guided cortisone injection of the right trochanteric bursitis on May 20, 2022, at Summit Orthopedics. (JE 12:308). Prior to the procedure, she rated her pain 6 out of 10. (JE 12:308). After the procedure, she rated her pain 2 out of 10. (JE 12:308).

On May 24, 2022, Ms. Tuttle had therapy at Summit Orthopedics. (JE 12:309). She had "fair" rehabilitation potential due to the issues being chronic. (JE 12:309).

Dr. Pospisil was deposed on April 19, 2022. (JE 15). Dr. Pospisil testified that she found Ms. Tuttle to be credible, truthful, and that her subjective symptoms were supported by objective testing. (JE 15:328). She also felt that Ms. Tuttle was motivated to get well. (JE 15:328). Dr. Pospisil admitted in her deposition that the 2 percent impairment rating was essentially an estimation, as she felt that Ms. Tuttle "deserved something for not being able to sit, and [she] could not find an area that said specifically sitting pain or something that's even mildly close." (JE 15:343).

On July 19, 2022, IVRS reached out to Ms. Tuttle via phone. (DE L:141). She did not answer, nor did she return any messages. (DE L:141).

Ms. Tuttle scheduled an appointment with the team at IVRS on August 17, 2022. (DE L:141). She apologized for missing prior appointments, as her husband was sick. (DE L:141).

On September 19, 2022, Ms. Tuttle had another visit with IVRS, although she did not remember the appointment. (DE L:140). Ms. Tuttle noted limitations with employment, as her husband experienced a traumatic brain injury. (DE L:140). Ms. Tuttle was provided with information on medical care for people in need, as she lost health insurance when her husband lost his job. (DE L:140). There was no further discussion of Ms. Tuttle seeking employment in this note. (DE L:140).

Ms. Tuttle met with the team at IVRS on September 23, 2022, as she wished to connect with someone about enrolling in Medicaid. (DE L:140). Ms. Tuttle noted she was having a difficult time due to her husband's health conditions and found herself crying "quite often." (DE L:140). Ms. Tuttle reiterated a desire to pursue self-employment and told the team that she was exploring the art field. (DE L:140). She

was encouraged to connect with another team at IVRS to discuss the viability of her business proposal in the community. (DE L:140).

On November 8, 2022, Ms. Tuttle had another meeting with IVRS. (DE L:139). She recounted that her husband continued to have "all kinds of issues," and that she was concerned about her husband's status. (DE L:139). Ms. Tuttle noted that she attempted to work with other aspects of IVRS, but that she had not heard anything back from them. (DE L:139). Ms. Tuttle expressed an interest in taxidermy during this meeting, and the team from IVRS informed her that she needed to narrow down a prospective job field. (DE L:139).

Dr. Strothman wrote a note again on December 22, 2022. (JE 12:310). He placed Ms. Tuttle at maximum medical improvement ("MMI"), and noted that he could not provide an impairment rating pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, as he had no familiarity with the Fifth Edition. (JE 12:310). Dr. Strothman recommended that Ms. Tuttle see Robin Sassman, M.D. for an impairment rating pursuant to applicable Iowa law. (JE 12:310).

In January of 2023, Ms. Tuttle canceled several appointments with IVRS. (DE L:138-139).

Dr. Mathew examined Ms. Tuttle on January 17, 2023, for her improving chronic low back pain. (JE 3:231-233). Ms. Tuttle still walked with an antalgic gait. (JE 3:231). She also still had tenderness in her lumbar and left hamstring regions. (JE 3:232). Dr. Mathew provided the claimant with another six trigger point injections, which again reduced her pain by 70 percent. (JE 3:233). He reiterated his previously provided restriction, and again recommended a consultation with pain psychology. (JE 3:233).

Ms. Tuttle had another meeting with the team at IVRS on February 13, 2023. (DE L:138). Ms. Tuttle indicated that her health had yet to improve since their last meeting. (DE L:138). Her husband's health also worsened, and she became his main caretaker. (DE L:138). Ms. Tuttle represented that she wished to pursue a "ragging" business or taxidermy. (DE L:138). The plan was to meet again on March 29, 2023, and for Ms. Tuttle to explore her desired occupations. (DE L:138).

On March 29, 2023, Ms. Tuttle called IVRS and told them that she could not attend the meeting, as she was ill. (DE L:138). She became emotional, cried, and stated that she was unsure where her health was heading, and that she did not know if she could take care of herself or her husband. (DE L:138).

Dr. Flory saw Ms. Tuttle again on April 25, 2023, as a follow-up for her depression treatment. (JE 2:77-80). Ms. Tuttle told Dr. Flory that she needed a note "about why she can't [*sic*] work." (JE 2:77). Dr. Flory continued, "Michelle can't work because she has chronic leg and back pain and she uses a cane. She is unable to walk for long periods of time…and she can't sit for long periods of time." (JE 2:77). Ms. Tuttle came in because she wanted to discuss her therapy, and to begin aquatic therapy at a hotel near her house. (JE 2:77). Dr. Flory opined that Ms. Tuttle was "just kind of

down in the dumps about all of the medical conditions she has and that she is not able to get up and do as much." (JE 2:77). Ms. Tuttle noted fatigue since her COVID diagnosis. (JE 2:77).

Lana Sellner, M.S., C.R.C., C.E.A.S. II, R.E.A.S., of Paradigm, issued an "Employability Analysis" addressed to ADM's attorney on May 12, 2023. (DE K:125-133). In preparing her report, Ms. Sellner had a telephone call with Ms. Tuttle over several segments on October 12, 2021, as Ms. Tuttle "had to eat breakfast and use the restroom" along with needing to get into a vehicle with her son. (DE K:125). Ms. Sellner found Ms. Tuttle to provide short answers during their interview. (DE K:125). During the interview, Ms. Tuttle told Ms. Sellner that she could complete household chores, provided she broke them up over the course of a day. (DE K:125). She used to fish, hunt, perform crafts, woodwork, and "upcycle" items, but she could not perform any of these tasks after her injury. (DE K:126). Additionally, Ms. Sellner reviewed a number of medical records in preparing her report. (DE K:125). Ms. Sellner reviewed Ms. Tuttle's educational history. (DE K:126). Ms. Tuttle indicated that she could use e-mail and the internet, but that her computer skills were "horrible" overall. (DE K:126). Ms. Sellner concluded that this was not entirely accurate, as Ms. Tuttle previously had an online business selling products and could perform basic computer functions. (DE K:132). Ms. Sellner also reviewed Ms. Tuttle's employment history and included the job duties for each role held by Ms. Tuttle. (DE K:126).

During their interview, Ms. Tuttle divulged that she was not searching for work, as she was "looking for home-based work and/or starting a home-based business." (DE K:126). She indicated a desire to pursue taxidermy or "ragging" for employment. (DE K:127). Ms. Tuttle also divulged that she had memory issues since having COVID, and that her GBS caused her to have no feeling in her fingers and feet. (DE K:127). The lingering GBS symptoms caused her to have balance issues. (DE K:127). The report continued with Ms. Sellner listing the various work restrictions from the various medical providers. (DE K:127-129).

Ms. Sellner noted that it was outside of her scope of practice to determine which set of restrictions should be applied, so instead she used the Dictionary of Occupational Titles when "utilizing the medical provider's imposed restrictions." (DE K:129). Based upon her review of Ms. Tuttle's work history and the definitions provided in the Dictionary of Occupational Titles, Ms. Sellner felt that Ms. Tuttle worked in positions that were generally in the light to heavy demand, and in the unskilled to skilled realm. (DE K:129). Ms. Sellner opined that Ms. Tuttle possessed certain hard skills, soft skills, and knowledge, that made her a "valuable candidate for alternative employment." (DE K:129). These skills were noted in a chart as follows:

Active Listening	Critical Thinking	Mechanical	Customer/Personal Service
Operations Monitoring	Medical Terminology	First Aid Basics	Production/Processing
Social Perceptiveness	Time Management	Attention to Detail	Basic Computers skills
Service Orientation	Mathematics	Design	Judgment/Decision Making
System Analysis	Coordination	Writing/Reading	Quality Control Analysis
Negotiation/Persuasion	Learning Strategies	Instructing/Speaking	Complex Problem Solving

(DE K:130). Based upon the restrictions provided by Drs. Pospisil, Segal, Sassman, and Mathew, Ms. Sellner placed the claimant in a sedentary to light work demand level with various nonmaterial handling limits. (DE K:130). Based upon the restrictions of Dr. Zelby, Ms. Sellner placed the claimant in a medium work demand level. (DE K:130).

Based upon the foregoing analysis, Ms. Sellner conducted a labor market analysis to find jobs within the Center Point, Iowa, area within the sedentary to light work demand fields. (DE K:130). Ms. Sellner identified nine jobs in her analysis. (DE K:130-131). The first job was as an after-hours vehicle reliability coordinator at CRST in Cedar Rapids, Iowa. (DE K:130). This job required working 10:00 a.m. to 7:00 p.m. on Tuesdays and Thursdays and 7:00 a.m. to 8:00 p.m. on Friday and Saturday. (DE K:130). It earned eighteen and 50/100 dollars ($18.50) per hour plus a two thousand four hundred and 00/100 dollars ($2,400.00) per year shift differential. (DE K:130). The job required an individual to coordinate with drivers to route equipment to proper places, answer phone calls, perform customer service duties, and check invoices. (DE K:130). There is no mention of the physical requirements for this position. (DE K:130).

The next position mentioned was as a front desk receptionist at MainStay Inn & Suites in Cedar Rapids, Iowa. (DE K:130). The position earned at least twelve and 00/100 dollars ($12.00) per hour, on either a full time or part time basis. (DE K:130). It required customer service, problem resolution, computer work, and attention to detail. (DE K:130).

The next position outlined was a customer service position with ProIT in Cedar Rapids, Iowa. (DE K:130). The position paid seventeen and 00/100 dollars ($17.00) per hour. (DE K:130). The employee would handle inbound calls from customers, identify their needs, resolve their issues, provide solutions, and document conversations. (DE K:130).

The fourth position was a hybrid work environment position as a customer service representative with Grainger in Jesup, Iowa. (DE K:130-131). The position paid fifteen and 80/100 dollars ($15.80) per hour with three automatic raises over the first year to bring hourly wages to seventeen and 00/100 dollars ($17.00) per hour. (DE K:130). The position would be full-time, and Grainger provided training in Waterloo, Iowa, for eight weeks. (DE K:130). The customer service position took inbound calls from Grainger customers. (DE K:131).

Another position listed was a full-time front desk receptionist at America's Best in Cedar Rapids, Iowa. (DE K:131). The receptionist would provide customer service, ensure a smooth flow of customers, handle mail delivery and sorting, answer phone calls, schedule appointments, and file patient records. (DE K:131). There is no information as to a rate of pay or other physical requirements for the position. (DE K:131).

The sixth position was a front office clerk or receptionist with an apartment management company. (DE K:131). The full-time position paid twelve and 00/100 dollars ($12.00) per hour, and required phone etiquette, computer skills, filing, and working with members of the public. (DE K:131).

The next position listed by Ms. Sellner is a client services specialist at LimoLink in Marion, Iowa. (DE K:131). The position pay for a full time employee started at fifteen and 00/100 dollars ($15.00) per hour. (DE K:131). The worker would interact with various individuals by phone and e-mail to arrange ground transportation for customers around the world. (DE K:131). The position required basic computer experience and typing skills, and the capability to multi-task. (DE K:131).

Another position was a part-time weekend receptionist at Meth-Wick in Cedar Rapids, Iowa. (DE K:131). The position paid thirteen and 00/100 dollars ($13.00) per hour to work at a front desk greeting visitors and residents. (DE K:131). The receptionist would also answer phones and perform general administrative tasks. (DE K:131).

The penultimate position listed by Ms. Sellner was a clinic office specialist at Tanager Place in Cedar Rapids, Iowa. (DE K:131). The position would help coordinate services with families and clients, as well as serve as administrative and clerical support to front office staff. (DE K:131). The position paid between fifteen and 00/100 dollars ($15.00) per hour and seventeen and 00/100 dollars ($17.00) per hour. (DE K:131).

The tenth and final position discussed by Ms. Sellner was a front desk position at an AmericInn, in Cedar Rapids, Iowa. (DE K:131). This was a part time position which

required the employee to assist with check in and out, answer phones, made reservations, fold laundry, and help with guest questions. (DE K:131). The position pay started at twelve and 00/100 dollars ($12.00) per hour. (DE K:131).

Ms. Sellner mentioned Ms. Tuttle's need for postural changes, and that using a stool or chair and a headset would allow for her to make any necessary modifications. (DE K:131). Ms. Sellner also noted that these are common ergonomic solutions for employees. (DE K:131).

Ms. Sellner concluded that Ms. Tuttle continued to be employable and a viable candidate to pursue employment. (DE K:132). According to Ms. Sellner, the positions which she listed were within the restrictions provided by various physicians, as they allow for a variety of tasks and postural changes. (DE K:132). Ms. Sellner concluded that Ms. Tuttle could work in a particular light duty category. (DE K:132). Ms. Sellner urged Ms. Tuttle to register with a temporary employment agency and Iowa Workforce Development for assistance in finding work. (DE K:132).

Kent Jayne, M.A., M.B.A., C.R.C., C.L.C.P., C.C.M., a diplomate of the American Board of Vocational Experts, and part of Worklife Resources, Inc. issued a "preliminary vocational economic assessment" on May 14, 2023. (CE 11:276-303). Mr. Jayne began his report by reviewing 40 different items, including Ms. Tuttle's medical records. (CE 11:276-277). Mr. Jayne also conducted an interview with Ms. Tuttle on October 20, 2021. (CE 11:288-290). At that time, she used a quad cane to ambulate, as she reported falling "on occasion." (CE 11:288). Ms. Tuttle needed to take a break and stand every 30 to 45 minutes during the interview. (CE 11:288). At the time of the interview, she rated her back pain between 3 and 7-8 out of 10. (CE 11:288). She also had right hip pain when she walked. (CE 11:288). Her pain woke her two times per night. (CE 11:288). As part of the interview, Mr. Jayne had Ms. Tuttle complete a Functional Capacity Checklist questionnaire. (CE 11:289). Ms. Tuttle opined that there were a number of daily living activities that were "very difficult to impossible to perform," or were only performed with "great pain." (CE 11:289). Ms. Tuttle also completed a Pain Disability Questionnaire, which Mr. Jayne noted was a "peer reviewed instrument" as published by the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition. (CE 11:289-290). The results of that questionnaire showed that pain interfered with a number of Ms. Tuttle's daily activities, including traveling, her ability to sit or stand, her ability to walk or run, and her normal work inside and outside of her home. (CE 11:290). Since Ms. Tuttle reported sleep issues secondary to chronic severe pain, Mr. Jayne provided Ms. Tuttle with a Cognitive Symptom Checklist to evaluate her attention, concentration, memory, and executive functions. (CE 11:290). Based upon the results of this subjective survey, Ms. Tuttle felt she could only concentrate on certain tasks for a few minutes before losing concentration. (CE 11:290). She also expressed difficulties with fatigue, headache, pain, whiteouts, blackouts, dizziness, panic, fear, anger, depression, stress, and simultaneous attention. (CE 11:290). She also reported difficulty with processing speed or reaction time, as well as planning and reasoning. (CE 11:290).

Mr. Jayne continued his report by discussing various vocational factors. (CE 11:290-293). Mr. Jayne cited to the Social Security Administration's determination that Ms. Tuttle was "incapable of substantial gainful activity," and thus totally disabled. (CE 11:290). He recounted Ms. Tuttle's last day of work at ADM on March 20, 2020, and noted that she was terminated by ADM on March 21, 2021. (CE 11:290). Mr. Jayne summarized Ms. Tuttle's employment with ADM, and her previous employment history. (CE 11:291). Prior to working for ADM, she worked at John Deere, she prepared parts for a manufacturing company, performed soldering and assembly work at Rockwell Collins, and worked in a meat packing plant for a time. (CE 11:291). Ms. Tuttle's educational history was also noted. (CE 11:291). Mr. Jayne provided Ms. Tuttle with various standardized tests for her to complete. (CE 11:291). Ms. Tuttle ranked in the 61st percentile for math computation. (CE 11:291). She could not complete a few tasks due to pain. (CE 11:291). Mr. Jayne ran a "Realistic-Investigative Holland Interest Code," which had results consistent with Ms. Tuttle's work history and training; however, the results were "too low to be interpreted into a standard score." (CE 11:293). Certain scores suggested "constricted interests and depression," which Mr. Jayne opined was consistent with treatment. (CE 11:293).

Mr. Jayne provided his opinions in a concluding portion of the report. (CE 11:293-303). He found that Ms. Tuttle had average results on a test of nonverbal reasoning capacity, a low average score for verbal reasoning, and below average for clerical perception. (CE 11:294). Based upon the results of the standardized testing and Ms. Tuttle's reported pain levels, Mr. Jayne found that Ms. Tuttle was not capable of competitive work in the labor market. (CE 11:294). Mr. Jayne opined, "Ms. Tuttle has clearly suffered a catastrophic loss in her ability to be employed as well as a loss of efficiency in instrumental activities of daily living." (CE 11:294). Mr. Jayne continued his report by citing to various studies that he claims support his position. (CE 11:295-302). Mr. Jayne further opined that Ms. Tuttle had low clerical perception scores and an inability to complete dexterity testing due to pain. (CE 11:302). Based upon these results, Mr. Jayne concluded that Ms. Tuttle could not perform entry level clerical work, nor could she perform light or sedentary bench assembly work. (CE 11:302). Mr. Jayne concluded his report by stating that Ms. Tuttle was incapable of employment in any reasonable branch of the labor market. (CE 11:303).

On May 18, 2023, Mr. Jayne wrote a letter to claimant's counsel outlining his response to, and criticisms of, Ms. Sellner's employability analysis. (CE 11:304-307). Essentially, Mr. Jayne opined that all of Ms. Sellner's opinions were incorrect, and that her observations actually supported Mr. Jayne's opinions. (CE 11:304-307). Mr. Jayne felt that Ms. Sellner ignored pain and tolerance in her opinions and recommendations. (CE 11:307). Mr. Jayne was also critical of Ms. Sellner's report in that he felt she "administered no testing of her own to determine Ms. Tuttle's full range of residual worker trait function levels." (CE 11:307).

On May 19, 2023, Dr. Segal issued several supplemental medical records reviews. (CE 10:208-256). Some of these reports appeared to be duplicated in the exhibits. He reviewed additional medical records not provided during the first IME. (CE 10:208). Importantly, Dr. Segal begins his reports by concluding, "I continue to hold all

conclusions as stated in my IME report of June 14, 2021, to a reasonable degree of medical certainty." (CE 10:208). Dr. Segal concluded that pre-existing disease and pre-injury records were consistent with his prior conclusions. (CE 10:209). Dr. Segal concluded that there were several salient points pointing to the causation of, and need for, the lumbar surgeries of March 23, 2020, and February 25, 2021. (CE 10:209). Namely, Dr. Segal concluded the following:

- The need for surgery [was] based on Ms. Tuttle's symptoms.
- Ms. Tuttle had no symptoms (or at most mild symptoms) in the period of time prior to the work injuries.
- The work injuries had a sufficient mechanism of injury to permanently aggravate Ms. Tuttle's condition.
- The medical records as well as my IME show that the aggravation caused by the work injuries has been permanent.
- The permanent aggravation caused by the work injuries is NOT the natural progression of the preexisting disease, as with natural progression, there is typically not a sudden severe, substantial increase in symptoms such as Ms. Tuttle had with the work-related injuries.
- Ms. Tuttle's complaints are consistent and correspond to the pathology seen on the imaging, and are credible.
- The work injuries are clearly at least ONE factor in the permanent aggravation of Ms. Tuttle's condition and the need for the lumbar surgeries, as well as any future procedures in the lumbar spine.

(CE 10:209-210). Dr. Segal provides various comments on medical records, but the records included in evidence speak for themselves. Dr. Segal discusses, at length, the issues caused by altered gait, and how various studies support his conclusion that Ms. Tuttle's antalgic and compensatory gait were a substantial factor in her work injuries. (CE 10:214).

Dr. Segal also provided criticism of Dr. Zelby's report. (CE 10:216-217). Dr. Segal was critical of Dr. Zelby's position that cumulative trauma from repetitive work activities was "not a real thing." (CE 10:216). Dr. Segal characterized Dr. Zelby's position as "an extreme position." (CE 10:216). Dr. Segal also felt that, "[w]hile obesity is a risk factor for disc herniation and pathology, it does not 'cause' disc herniation." (CE 10:217). Dr. Segal disagreed with Dr. Zelby insofar as Dr. Segal felt that Ms. Tuttle's symptoms, presentation, and responses to various treatments were "completely consistent with her injury." (CE 10:217). Finally, Dr. Segal felt that Dr. Zelby's proposed restrictions were "inconsistent with the medical records and the SSDI determination…" and in fact were "grossly inadequate." (CE 10:217).

Dr. Segal proceeds to criticize the opinions of Dr. Schmitz. (CE 10:218-220). Dr. Segal felt that Dr. Schmitz's characterization of Ms. Tuttle's pre-injury conditions was inaccurate. (CE 10:218). Dr. Segal also believed that Dr. Schmitz' confused the issues shown in the medical records. (CE 10:218-219). Dr. Segal reiterated his opinion that medical literature supports his positions. (CE 10:219-221).

Ms. Tuttle met with a representative from Iowa Vocational Rehabilitation Services on May 23, 2023. (JE 14:322). Ms. Tuttle had "multiple work restrictions" and was unsure what kind of work was available to her. (JE 14:322). The vocational rehabilitation counselor reviewed the claimant's medical history. (JE 14:322). Considering the results of a meeting with Ms. Tuttle, and the opinions of Dr. Flory and Dr. Mittauer, the vocational rehabilitation counselor opined that Ms. Tuttle was "incapable of performing any jobs [*sic*] functions even on [a] part time basis." (JE 14:322). Based upon this opinion, the counselor closed Ms. Tuttle's file. (JE 14:322).

On May 26, 2023, following the receipt of Dr. Flory's April 23, 2023, office note, and Mr. Jayne's report, Ms. Sellner issued an addendum to her employability analysis report. (DE K:134-135). Ms. Sellner reviewed the two records noted above and continued to opine that Ms. Tuttle was employable. (DE K:134). While IVRS assisted Ms. Tuttle in returning to work, Ms. Sellner noted that Ms. Tuttle was unable to attend timely appointments and complete meetings with local resources due to her husband's medical issues and her own appointments. (DE K:134).

Ms. Sellner provided helpful clarification in noting that an individual designated as "significantly disabled" by IVRS is an individual who has "three or more serious impediments to employment and whose vocational rehabilitation is expected to require multiple services over an extended period (defined as more than six months." (DE K:134). Ms. Sellner clarified that this designation existed so that IVRS can prioritize which individuals require immediate services and to allow IVRS to serve all individuals that apply for IVRS services in the event of financial difficulties at IVRS. (DE K:134). Ms. Sellner further noted that "[t]his does not mean she is totally disabled from returning to work, but these categories are for serving individuals due to the IVRS financial limitations." (DE K:134). The report continued by noting that the standard to be considered disabled according to the Social Security Administration differs from the standard under private plans or government agencies. (DE K:134).

Ms. Sellner again noted that she had no knowledge of any medical providers that provided restrictions precluding Ms. Tuttle from competitive employment, and that she could work within a light work physical demand level. (DE K:135). Ms. Tuttle scored on the low average of the Minnesota Clerical Test, but Ms. Sellner opined that this did not preclude her from all clerical work. (DE K:135).

Dr. Mittauer drafted a missive on May 16, 2023, in response to a follow-up request from claimant's counsel that the doctor review the report of Dr. Carpenter. (CE 8:70-72). Dr. Mittauer opined that, if Ms. Tuttle had somatic symptoms disorder, it was present prior to her work incident, and that the work injury or injuries exacerbated or worsened her condition. (CE 8:70). Dr. Mittauer also disagreed with Dr. Carpenter's diagnosis of unspecified personality disorder, as a single evaluation was not adequate to provide this diagnosis. (CE 8:70-71). Dr. Mittauer found that Dr. Carpenter failed to reference or administer testing results supporting his diagnosis of personality disorder. (CE 8:70). Dr. Mittauer was also critical of Dr. Carpenter's methodology of examination in noting that Dr. Carpenter did not refer the claimant for psychological testing, nor did he use any "suitable screening instruments" ahead of the examination. (CE 8:71). Dr.

Mittauer further disagreed with Dr. Carpenter that Ms. Tuttle had no work restrictions due to her psychiatric conditions. (CE 8:72). Dr. Mittauer felt that Ms. Tuttle's conditions limited "her ability to work," and that her continued pain issues resulting from her work injury worsened her psychiatric condition which in turn worsened her pain. (CE 8:72). Dr. Mittauer opined that, "[a]s a result of her psychiatric conditions, she is unable to work full time, or perform tasks requiring a persistence [*sic*] pace or concentration for extended periods." (CE 8:72). Of note, Ms. Tuttle made a remark during the hearing that she experienced memory issues or fatigue issues following a COVID-19 diagnosis. (Testimony).

Again, at the request of claimant's counsel, Dr. Sassman issued a third report containing her evaluations of Ms. Tuttle's physical condition, on May 18, 2023. (CE 9:104-144). This report is based upon an IME performed by Dr. Sassman on Ms. Tuttle on March 13, 2023. (CE 9:104). Dr. Sassman also noted the July 1, 2020, telemedicine evaluation, a July 20, 2021, visit from which no report was generated, and January 14, 2022, at the request of Dr. Flory. (CE 9:104). Dr. Sassman reviewed over eight thousand pages of medical records in preparing her report. (CE 9:105-108). She indicated that, between all of the examinations and record reviews, she spent upwards of 25.25 hours in preparing various reports. (CE 9:107-108).

Dr. Sassman begins her report by outlining the claimant's medical records and history. (CE 9:108-135). Many of these records are reviewed herein, and as such will not be reviewed in depth in this recounting of the IME. (CE 9:108-135).

At the time of the IME, Ms. Tuttle complained of a sharp, aching sensation across her lower back, which radiated into her right lower extremity and right groin. (CE 9:135). This pain or sensation limited the distance which Ms. Tuttle could walk. (CE 9:135). At times, Ms. Tuttle wore a back brace, especially on long car rides. (CE 9:135). Sitting, standing, or bending forward, aggravated the claimant's low back pain. (CE 9:135). Her left hamstring pain had "improved" since her last visit, but Ms. Tuttle told Dr. Sassman that if she sat for too long, her pain increased. (CE 9:135). Ms. Tuttle opined that she did not have right groin pain until her low back injury. (CE 9:135). Ms. Tuttle also recounted symptoms of depression, which worsened due to the stress of her lawsuit and activity limitations. (CE 9:136). Ms. Tuttle also noted difficulties sleeping and performing everyday tasks. (CE 9:136). In particular, Ms. Tuttle had difficulty showering, rising from the toilet, putting on shoes and socks, and doing other housework. (CE 9:136). She also had difficulties performing hobbies which she used to enjoy such as crafting, woodworking, canning, fishing, and gardening. (CE 9:136). Ms. Tuttle used a cane. (CE 9:136).

Dr. Sassman reviewed Ms. Tuttle's job duties at ADM, which appear to be the same as noted elsewhere in this decision. (CE 9:137). The only significant change noted is that Ms. Tuttle was terminated from ADM on March 20, 2021. (CE 9:137). Ms. Tuttle alleges this was "due to not being able to do her job." (CE 9:137).

The doctor then performed a physical examination on Ms. Tuttle. (CE 9:138). Dr. Sassman observed that Ms. Tuttle was tender to palpation over the spinous

processes in her lumbar spine, and over the bilateral sacroiliac joints. (CE 9:138). As with the previous impairment rating, Dr. Sassman used a two-inclinometer method to measure the range of motion in her lumbar spine. (CE 9:138). Dr. Sassman's report noted that Ms. Tuttle had 20 degrees of lumbar flexion, 10 degrees of lumbar extension, 20 degrees of right lateral spinal motion, and 10 degrees of left lateral spinal motion. (CE 9:138). Dr. Sassman also observed decreased strength in the claimant's bilateral lower extremities. (CE 9:138). Dr. Sassman also performed range of motion testing to the claimant's hips. (CE 9:138). The left hip showed 120 degrees of flexion, 0 degrees of extension, 50 degrees of abduction, 20 degrees of adduction, 25 degrees of internal rotation, and 50 degrees of external rotation. (CE 9:138). The right hip showed 105 degrees of flexion, 0 degrees of extension, 50 degrees of abduction, 20 degrees of adduction, 20 degrees of internal rotation, and 40 degrees of external rotation. (CE 9:138). Her bilateral knees and ankles had normal ranges of motion. (CE 9:138).

Dr. Sassman diagnosed Ms. Tuttle with several issues that she related to the injuries that "occurred on or about" March 19, 2020. (CE 9:139). The first was low back pain with radicular symptoms, including several surgeries. (CE 9:139). The second was right hip pain with "MRI evidence of a focal tear and strain of the right gluteus medius muscle and an associated, high-grade, partial tear of the right gluteus medius insertion with a small, partial tear of the gluteus minimus insertion and a superior right acetabular labral tear." (CE 9:139). With regard to the July 24, 2019, injury date, Dr. Sassman diagnosed Ms. Tuttle with a left hamstring tear. (CE 9:139). Dr. Sassman deferred to the opinions of Dr. Mittauer as they related to mental health issues. (CE 9:139).

Dr. Sassman opined, again, that the July 24, 2019, work incident caused the claimant's left hamstring tear. (CE 9:140). She further opined that, following the left hamstring injury, Ms. Tuttle walked with an altered gait "for an extended period of time." (CE 9:140). Ms. Tuttle recalled instances of low back pain at work, that resolved with time. (CE 9:140). These issues culminated in a low back injury manifesting on, or about March 19, 2020, which, according to Dr. Sassman were symptoms that were "substantially aggravated" by Ms. Tuttle's work at ADM. (CE 9:140). Dr. Sassman also restated her previous opinion that the claimant's right hip issues were aggravated or caused by the gait abnormalities following the left hamstring injury and the subsequent low back pain. (CE 9:140). Based upon this opinion, Dr. Sassman opined that the right hip symptoms were caused by the left hamstring injury and low back injury. (CE 9:140).

The report goes on to outline Dr. Sassman's opinions on permanent impairment to the claimant's various body parts. (CE 9:141-143). Dr. Sassman restated her impairment rating for the left lower extremity, as previously provided to Dr. Flory in February of 2022. (CE 9:141). Dr. Sassman moved on to discuss the claimant's lumbar spine. (CE 9:141). Dr. Sassman felt that the range of motion method was appropriate to evaluate Ms. Tuttle's lumbar spine given her surgical history. (CE 9:141). Dr. Sassman used Figure 15-8 on page 407 of the Guides for flexion and extension and assigned a 6 percent whole person impairment for Ms. Tuttle's maximum lumbar flexion of 20 degrees, and a 5 percent whole person impairment for Ms. Tuttle's lumbar extension. (CE 9:141). Dr. Sassman then used Table 15-9 on page 409 of the Guides

and assigned a 3 percent whole person impairment for the 10 degrees of left lateral bending displayed by Ms. Tuttle, and a 1 percent whole person impairment for the 20 degrees of right lateral bending displayed by Ms. Tuttle. (CE 9:141). Dr. Sassman added the whole person impairment ratings for the low back and arrived at a 15 percent impairment of the whole person. (CE 9:141). Dr. Sassman then assigned Ms. Tuttle a 12 percent whole person impairment from Table 15-7 on page 404 of the Guides because of her spinal fusion. (CE 9:141). Dr. Sassman also assigned a 2 percent whole person impairment for the second surgery and a 1 percent whole person impairment for the third surgery, again citing Table 15-7. (CE 9:141-142). The total whole person impairment due to Ms. Tuttle's surgeries was 15 percent. (CE 9:142).

Dr. Sassman continued by assigning impairment ratings for sensory deficits with the L3 dermatome based upon Table 15-15 on page 424. (CE 9:142). Dr. Sassman assigned Ms. Tuttle a grade 3 and used a 60 percent modifier, which she multiplied by the maximum 5 percent loss of function to arrive at a 3 percent lower extremity impairment. (CE 9:142). Dr. Sassman assigned Ms. Tuttle a grade 4 impairment due to strength deficits in the L3 nerve dermatome, which provided a 25 percent modifier. (CE 9:142). This was multiplied by the maximum loss of function in Table 15-18 for a total of 5 percent lower extremity impairment. (CE 9:142). Dr. Sassman then used the combined values chart on page 604 of the Guides to arrive at an 8 percent lower extremity impairment based upon the foregoing. (CE 9:142). This lower extremity impairment converted to a 3 percent whole person impairment. (CE 9:142).

The doctor then rated the right hip trochanteric bursitis based upon Table 17-33 on page 546 of the Guides, to assign Ms. Tuttle a 7 percent lower extremity impairment. (CE 9:142). She converted this to a 3 percent whole person impairment. (CE 9:142). Dr. Sassman assigned a 5 percent lower extremity impairment based upon range of motion deficits. (CE 9:142). However, the Guides do not allow for combining the bursitis impairment rating with the range of motion impairment, so without further explanation, Dr. Sassman chose the higher impairment rating. (CE 9:142).

Dr. Sassman took the 15 percent whole person impairment due to issues with range of motion, combined it with the 15 percent whole person impairment due to the surgical procedures, and with the 3 percent whole person impairment due to the L3 dermatomal issues, to arrive at a 30 percent whole person impairment. (CE 9:142). She then took the 3 percent whole person impairment for the right hip issues and arrived at a 32 percent whole person impairment that she attributed to a March 19, 2020, date of injury. (CE 9:143). Finally, Dr. Sassman combined the impairments from the March 19, 2020, injury, and the July 24, 2019, injury, and arrived at a 37 percent whole person impairment. (CE 9:143).

The IME report concluded with Dr. Sassman's recommended restrictions for Ms. Tuttle. (CE 9:143). Due to her use of a cane, it was recommended that Ms. Tuttle limit pushing, lifting, and pulling to 5 pounds at the waist. (CE 9:143). Dr. Sassman also recommended that Ms. Tuttle avoid using ladders and limit her use of stairs. (CE 9:143). Dr. Sassman continued by recommending that Ms. Tuttle limit her sitting, standing, and walking to an occasional basis with the ability to change positions

frequently. (CE 9:143). Finally, Dr. Sassman recommended that Ms. Tuttle avoid walking on uneven surfaces and avoid kneeling, crawling, squatting, or working at heights. (CE 9:143).

On May 22, 2023, Dr. Freeman issued a rebuttal report to the opinions of Dr. Zelby. (CE 1:39-42). Dr. Freeman summarized the report of Dr. Zelby and began his criticism by asserting that Dr. Zelby "did not comment on whether the conditions could be made symptomatic or worsened by such trauma." (CE 1:39). Much like with Dr. Schmitz's opinions regarding Ms. Tuttle's obesity, Dr. Freeman felt that Dr. Zelby's opinions that Ms. Tuttle being obese was the only cause of her low back and hip issues was "medically unfounded and lacking in logical reasoning." (CE 1:39). Dr. Freeman felt that Dr. Zelby oversimplified the "complex nature of spinal disorders." (CE 1:40). Dr. Freeman was also critical of Dr. Zelby not addressing "the close temporal relationship between Ms. Tuttle's symptoms and her work activities and reported incidents." (CE 1:40). Dr. Freeman cited several studies which he alleged "established the fact that work activities, including repetitive motions and physical strain, [could] contribute to developing or [*sic*] aggravation of spinal disorder." (CE 1:40). Dr. Freeman alleged that Dr. Zelby was ignorant to a "substantial body of scientific knowledge…" (CE 1:41). Dr. Freeman concluded that both Dr. Schmitz and Dr. Zelby began their analysis with a conclusion as to Ms. Tuttle's condition and then worked back to "obviate the readily apparent causal association between Ms. Tuttle's work-related activities and incidents and her diagnosed injuries, in favor of speculation and baseless assertion." (CE 1:41).

In a report dated June 26, 2023, Mr. Jayne again responded to a report from Ms. Sellner. (CE 25:414-430). Mr. Jayne cited to several medical records; however, the purpose of allowing Mr. Jayne's report into evidence after the hearing was to rebut the report of Ms. Sellner. (Transcript). Therefore, I am limiting my review to those opinions relating to Ms. Sellner's report. Mr. Jayne felt that Ms. Sellner made incorrect statements in her report. (CE 25:417). Specifically, Mr. Jayne noted that Ms. Tuttle was placed on a "most significantly disabled list," which allowed her to receive state services in an expedited manner. (CE 25:417). Mr. Jayne also felt that Ms. Sellner's opinions were "not supported by most of the medical and psychiatric evidence…" (CE 25:417). Mr. Jayne felt that the limitations provided by two doctors would preclude Ms. Tuttle "from more than 90% of the labor market." (CE 25:417). Mr. Jayne felt that Ms. Tuttle was at an advanced age from a vocational standpoint, and that she was not capable of transferring her skills to other areas of work. (CE 25:418). He also was critical of Ms. Sellner for not performing a "transferable skills analysis." (CE 25:418).

Mamonate Nyane, a vocational rehabilitation counselor for IVRS testified at the hearing. (Testimony). She holds a master's degree in vocational rehabilitation counseling from the University of Iowa. (Testimony). She has worked with IVRS for eighteen years. (Testimony). According to Ms. Nyane, IVRS examines a worker's skills and abilities, their physical limitations, and their cognitive abilities, in order to evaluate how they might perform various job functions. (Testimony). If a worker lacks certain skills, IVRS provides some form of training to help them acquire those skills. (Testimony).

Ms. Nyane was Ms. Tuttle's vocational rehabilitation counselor at IVRS. (Testimony). Ms. Nyane and Ms. Tuttle testified that Ms. Tuttle sought out the services of IVRS on her own, and that it appeared that Ms. Tuttle wanted to work. (Testimony). Ms. Nyane worked with Ms. Tuttle to find employment and noted that Ms. Tuttle did not apply for any jobs while receiving services from IVRS, as they "focused more on what she wanted to do, which she wanted to be self-employed." (Testimony). Ms. Nyane confirmed the contents of the IVRS records, namely that Ms. Tuttle was interested in pursuing embroidery work, and that in order to do so, she needed to buy a sewing machine. (Testimony). Ms. Tuttle then planned to sell her embroidery online "or something." (Testimony). The other option, as discussed in the IVRS records, was taxidermy. (Testimony). Ms. Tuttle felt she could not do this, as it required "a lot of work." (Testimony). IVRS does not "force" a person to apply for jobs when they have a stated goal of self-employment. (Testimony). Instead, they focus on pursuing that goal. (Testimony).

Ms. Nyane eventually closed Ms. Tuttle's file after asking her questions such as "[d]o you think you can work?" (Testimony). Ms. Nyane testified that Ms. Tuttle responded that she could not work "because [she] [had] so much going on." (Testimony). According to Ms. Nyane, what Ms. Tuttle meant by this was that she had ongoing chronic pain, depression due to her pain, and family issues. (Testimony). She also made the decision to close Ms. Tuttle's file because of Dr. Flory's note indicating that Ms. Tuttle could not sit for more than 10 to 15 minutes without needing to lie down. (Testimony). She also testified that IVRS found Dr. Mittauer's opinions as to Ms. Tuttle's psychiatric issues to be persuasive in her decision to close the file. (Testimony). Ms. Nyane testified, "[i]f the doctor says the person cannot work, we *automatically* close the file." (Testimony)(emphasis added.). Shortly after testifying as noted in the previous sentence, Ms. Nyane contradicted herself in testifying that, if she felt that Ms. Tuttle could work, she would have kept her file open. (Testimony). She then testified that her decision was based upon the opinions of Dr. Flory. (Testimony).

Ms. Tuttle opined that she never "got over" her left hamstring injury. (Testimony). She indicated that continuing to work at ADM after her injury aggravated her left hamstring. (Testimony). She also testified that her right hip pain worsened and appeared in another spot after her alleged back injury in March of 2020. (Testimony).

Ms. Tuttle testified that she always had dull and aching pain and had good days and bad days. (Testimony). Some days, she had to take prescription pain medications such as oxycodone, or non-prescription medications such as Tylenol and ibuprofen. (Testimony). Some days she also needs to lay down during the day. (Testimony). Ms. Tuttle testified during the hearing that she had difficulties completing housework, such as doing the dishes, vacuuming, and sweeping. (Testimony). She now has to take breaks as she "can't just do it all at once." (Testimony). She recounted the 20-pound weight restriction, as well as the restriction of not climbing ladders provided by Dr. Flory. (Testimony). She also testified that her children told her that she could not keep her house up, so she should not expect to be able to find gainful employment. (Testimony). At the time of the hearing, Ms. Tuttle used a cane on a full-time basis.

Ms. Tuttle recounted a desire to have a garage sale during the summer of 2022. (Testimony). She testified that she could not sort through all of the things that she wished to sell. (Testimony). She also testified that she could not carry boxes, as she was using a cane. (Testimony).

Ms. Tuttle responded in the affirmative when asked if she would like to return to work; however, she felt that she could not return to any physically demanding jobs. (Testimony). She attributed this inability to her continued pain and her restrictions. (Testimony).

CONCLUSIONS OF LAW

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 Rule of Appellate Procedure 6.904(3).

There are three different original notices and petitions filed in this matter. One petition alleges that the claimant suffered a left hamstring injury on July 24, 2019. Another petition alleges that the claimant suffered an injury on March 19, 2020, June 19, 2020, or July 8, 2020. The final petition alleges that the claimant suffered an injury on March 19, 2020, or March 20, 2020. The facts and evidence in this case are all seemingly intertwined to the extent that it does not make sense to discuss each of these cases in the context of their dates of injury or file numbers. I will attempt to note, where possible, the different dates of injury.

Arising Out Of and In the Course Of…

The parties stipulated that the July 24, 2019, left hamstring injury arose out of, and in the course of the claimant's work at ADM. Therefore, I will not discuss that particular injury in this portion of the decision. There are, however, allegations that the left hamstring injury may have caused sequela injuries to the claimant in the context of a low back injury, a right hip injury, and a mental health injury. A discussion of the left hamstring injury in conjunction with the aforementioned injuries is necessary. Additionally, ADM asserted an affirmative defense regarding at least one of these dates of injury. Before I can discuss the affirmative defense, I must first determine whether the claimant sustained an injury (or injuries) that arose out of, and in the course of, her employment with ADM.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, that 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). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place and circumstances of the injury. Id. An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler

Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held that 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. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

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 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 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). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

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). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a

substantial factor, or even the primary or 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).

It is well established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> [A] disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause or whether the employment was a proximate contributing cause.

Musselman v. Ce. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

It is well settled in Iowa that an employer is liable for all consequences that naturally and proximately flow from an accident to an employee in the usual course of their employment. Oldham v. Scofield & Welch, 222 Iowa 764, 767-68, 266 N.W. 480, 482 (1936). Further disability is compensable when the further disability is the proximate result of the original injury. Id.

The claimant alleges that she suffered a low back injury on March 19, 2020, or March 20, 2020. It is important to note that Ms. Tuttle has a long history of previous lower back issues. This included a prior microdiscectomy in the early 2010s to fix a herniated disk at L5-S1. For years following this surgery, Ms. Tuttle reported various back pain issues and treatment with a chiropractor. For example, in April of 2019, Ms. Tuttle threw her back out while helping her son move.

Immediately prior to this alleged injury date, Ms. Tuttle was off work for about one week due to an illness. She returned to work, and worked March 18, 2020, and March 19, 2020. On March 18, 2020, she had a discussion with her supervisor about her concerns about working in a production facility and the burgeoning COVID-19 pandemic. Her supervisor had no recollection of the claimant mentioning anything about work causing her any back pain or issues since returning to work. Ms. Tuttle indicated in her testimony and some of the medical records that she still felt sore around this time.

Ms. Tuttle worked full shifts on March 18, 2020, and March 19, 2020. She left work on March 19, 2020, and returned home. There is at least one mention in the record that Ms. Tuttle felt sore upon leaving work on the evening of March 19, 2020. It

is not clear whether this is the residual soreness from her personal illness, or from performing her job at ADM. Ms. Tuttle reported that she went to bed upon arriving home. She awoke on the morning of March 20, 2020, with what she described as severe low back pain. Ms. Tuttle arose from her bed and attempted to walk down the hall. She testified to extreme pain during this time and required assistance to move from a kitchen bar to a sofa in her living room.

Ms. Tuttle then went to the chiropractor seeking care. She told the chiropractor that she felt that she over did it at work over the last week, and that she now had severe back pain. The chiropractor recommended that she seek emergent care. Ms. Tuttle returned home and called her long-term physician, Dr. Flory, who recommended that she report to the emergency room. Based upon the urging of her chiropractor and primary care physician, Ms. Tuttle reported to the emergency room, where she told providers that she began having low back pain two weeks prior, and that it progressively worsened. Ms. Tuttle was then admitted to the hospital with a diagnosis of intractable lower back pain. She eventually had a right L3-4 foraminal microdiscectomy and decompression of the right L3 exiting nerve root on March 25, 2020.

Following her discharge from the hospital, Ms. Tuttle had an infection in her lower back that required another surgery and additional treatment to clear the infection. She continued to have follow-up care into June of 2020, when she began to complain of additional low back pain. Eventually, Dr. Flory referred Ms. Tuttle to Dr. Mathew for pain management. Ms. Tuttle also began treating with Summit Orthopedics in Minnesota. The providers at Summit Orthopedics eventually recommended a revision right L3-4 transpedicular decompression posterior spinal fusion transforaminal lumbar interbody fusion at L3-4. This surgery was eventually performed.

There are a number of medical opinions as to the cause of Ms. Tuttle's lower back injury. The first is an opinion solicited by claimant's counsel from Dr. Mestad, the claimant's chiropractor. Dr. Mestad opined, on May 20, 2020, that Ms. Tuttle "suffered a severe disc herniation/rupture complicated by prolapse and sequestration due to a combination of factors that exacerbated a probably underlying previously undiagnosed chronic condition." Dr. Mestad further opined that Ms. Tuttle's illness preceding her reported injury caused her discs to accumulate fluid, making them more prone to rupture, and that the issue was not recognized by Ms. Tuttle until the next morning because the disc swelled again after she laid down at night. Dr. Mestad later responded to a letter from claimant's counsel indicating an opinion that Ms. Tuttle's work at ADM played a role in "aggravating her disc condition in more than slight and not insignificant or inconsequential nature." While Dr. Mestad is a chiropractor, I give little, to no, credence to his opinions, as other experts are much more qualified to provide opinions as to the cause of Ms. Tuttle's low back injury.

The next opinion solicited by claimant's counsel came in the form of a telemedicine evaluation performed on July 1, 2020, by Dr. Sassman. Dr. Sassman is board certified in occupational and environmental medicine. She is also a certified independent medical examiner. Ms. Tuttle provided a description of her work to Dr. Sassman, along with what appears to be a four-page job description. It is unclear if this

included the handwritten notes as provided in claimant's exhibit 1. I would note that, if it did, it included information that contained Ms. Tuttle's subjective opinions about her position with ADM. Ms. Tuttle recounted to Dr. Sassman that she had a physically demanding job. She indicated further that on March 18, 2020, and March 19, 2020, she performed "her usual physically demanding work" as described in the job description, and that "some nights were easier than others," because she did not have to perform any pushing, pulling, or heavy lifting. Ms. Tuttle did not specify what duties she specifically performed on March 18, or March 19, 2020.

Based upon her review, Dr. Sassman opined that Ms. Tuttle walked with an altered gait for an extended time while working at ADM. Since Ms. Tuttle undertook no additional activity, but for work, which Dr. Sassman opined was physically demanding, Dr. Sassman concluded that Ms. Tuttle's low back issues were "substantially aggravated by the work she did at ADM." She also opined that Ms. Tuttle's altered gait due to her left hamstring injury was a cause of the low back injury.

Without providing much detail, Dr. Flory opined that Ms. Tuttle's work at ADM was a contributing factor towards her orthopaedic issues, and that she supported the conclusions of Drs. Sassman and Mestad.

Dr. Mathew issued a causation opinion in response to a request from claimant's counsel. Dr. Mathew opined that Ms. Tuttle had an altered gait due to her left hamstring injury. Dr. Mathew concluded that Ms. Tuttle's altered gait, along with her work at ADM caused her low back pain. Specifically, Dr. Mathew felt that the altered gait "played a contributing role in significantly aggravating her previous low back symptoms as well as her L3 disc injury which resulted in low back history."

Dr. Segal provided a voluminous IME report in response to a request from claimant's counsel. Ms. Tuttle told Dr. Segal that "most nights her back pain was 2-5/10" after completing a shift at ADM. Ms. Tuttle told Dr. Segal that her back pain progressively worsened over the years and then plateaued in 2019. Dr. Segal opined that Ms. Tuttle experienced left-sided low back pain following the July 24, 2019, injury. This is essentially the only place that this is mentioned, and on this particular issue I find Dr. Segal's opinion to be less than reliable. Dr. Segal continued by concluding that Ms. Tuttle experienced a cumulative injury to her low back and right hip based upon her work at ADM. He also opined that Ms. Tuttle's altered gait following her hamstring issue contributed to her low back issues. Dr. Segal opined that the July 24, 2019, slip and fall incident caused Ms. Tuttle's spine to rotate and injure the discs, joints, and exiting nerve roots. Dr. Segal's report continued by attributing Ms. Tuttle's low back issues to certain repeated work activities.

Essentially, Dr. Segal's opinion is a kitchen sink approach. He outlined several different possibilities for how Ms. Tuttle's lower back injury occurred. Unlike other doctors, Dr. Segal could not commit to one possible explanation. Because of this, it appears as though he tried to craft an opinion to meet a conclusion rather than provide a helpful explanation for this Deputy to review. As such, Dr. Segal's causation opinion is given no weight on this issue.

Dr. Freeman, an associate professor of forensic medicine, and epidemiologist, issued an interesting report in February of 2022. In preparing his report, Dr. Freeman recounted the results of his interview with Ms. Tuttle, and certain medical reports. Dr. Freeman opined that the July 24, 2019, hamstring injury resulted in "workplace exacerbations" that were "substantial factors in causing her post-incident sequelae." Dr. Freeman proceeded to lay out a three-element causation analysis. While this analysis in, and of, itself, is not binding, it is helpful in illustrating a potential cause for Ms. Tuttle's low back issues.

Dr. Freeman opined that Ms. Tuttle never completely recovered from her July 24, 2019, fall, as she continued to work light duty at ADM. Dr. Freeman concluded that Ms. Tuttle's strenuous duties at ADM exacerbated her condition including her pre-existing low back problems, which continued to evolve until her becoming symptomatic. Dr. Freeman also felt that there was a "strong temporal relationship between the July 24, 2019[,] left hamstring injury and post-injury worsening of Ms. Tuttle's low back and hip conditions that pre-existed the incident." Dr. Freeman noted that there was no medical evidence that Ms. Tuttle's low back symptoms were progressively worsening. Dr. Freeman's report cited to a number of scientific and medical studies that reinforced his position.

Defendants obtained an opinion from Dr. Abernathey, who opined that Ms. Tuttle's work activities on March 19, 2020, were consistent with her presentation of an acute right L3-4 disc extrusion "assuming the veracity of the patient's oral history." Dr. Abernathey noted the alternate timeline of events provided by ADM, as documented earlier in this decision. Dr. Abernathey made no indication as to his belief of the validity of said timeline.

Dr. Abernathey clarified his opinion in a subsequent letter, wherein he opined that he could not state within a reasonable degree of medical certainty when the herniated disc occurred. He again noted that causation was "very dependent" on Ms. Tuttle's history, and that she told him that her symptoms started after working at ADM in March of 2020. Dr. Abernathey again indicated an unawareness to any other event that would have caused this issue.

Dr. Zelby performed an IME of the claimant and opined that Ms. Tuttle's condition was not related to her repetitive work activities. He opined that there was no medical basis to suggest that Ms. Tuttle's lumbar issues were caused by or aggravated by any work injury. Instead, Dr. Zelby felt that Ms. Tuttle's condition was a manifestation of her long-standing degenerative lumbar condition in the context of her morbid obesity. Dr. Zelby concluded that Ms. Tuttle's subjective complaints were not supported by objective medical findings and seemed to him to be an exaggeration.

While the job descriptions included in the record include extensive notation by Ms. Tuttle, she admitted that she did not perform all of the tasks listed in the job descriptions all of the time. Some of the heavier, or more labor intensive, tasks were only performed on a weekly or biweekly basis. There are not definitive answers in the

record as to whether Ms. Tuttle performed any of the more labor-intensive tasks during her two days back at work.

While the claimant had some back symptoms prior to the incident, her treatment records show that she was not having anything more than chiropractic maintenance. Her statements that she was having low back issues in the week or two prior to the work incident is not dispositive considering her prior maintenance back care with Dr. Mestad. Ms. Tuttle also testified that she periodically walked with an altered gait prior to the July 25, 2019, work incident, and that after that date she limped constantly until March of 2020. After the July of 2019 injury incident, it was noted in medical records that Ms. Tuttle walked with an altered gait. For example, Ms. Tuttle reported walking differently during a therapy appointment in early August.

I find the opinions of Dr. Freeman to be especially persuasive as they relate to the claimant's lower back injury being a sequela of her left hamstring injury. In addition to Dr. Freeman, Drs. Sassman and Mathew opined that Ms. Tuttle's altered gait caused her subsequent low back injury. Dr. Abernathey and Dr. Zelby did not provide persuasive explanations as to why Ms. Tuttle's low back injury was not caused as a sequela of her July 24, 2019, work injury. Ms. Tuttle returned to work and worked some light duty following her left hamstring injury. She then returned to full duty work in November of 2019. This would mean that she was working and performing some of the heavier duties that she described in her testimony and the supporting evidence for almost four months before the March 19, 2020, aggravation. This low back injury was a consequence that proximately flowed from the July 24, 2019, hamstring injury. Therefore, I conclude that the low back injury was a sequela of the July 24, 2019, work injury. This injury arose out of, and in the course of, Ms. Tuttle's employment with ADM.

Ms. Tuttle also claims that her right hip issues are a sequela of the July 24, 2019, work injury, and/or a separate and distinct injury that arose out of, and in the course of her employment with ADM.

Ms. Tuttle testified that she began having right hip issues after she began working for ADM in 2015. In April of 2019, Ms. Tuttle told her primary care provider Dr. Flory that she experienced right hip pain for the previous two years. She described her pain as dull and throbbing, and Dr. Flory expressed concerns about arthritis. An x-ray in late April of 2019 showed amorphous soft tissue calcification along her greater trochanter.

Dr. Paynter began seeing Ms. Tuttle for right lateral hip pain that she developed over the previous year. Dr. Paynter opined that the claimant's systems were consistent with trochanteric bursitis. Ms. Tuttle undertook a course of physical therapy for her right hip issues in May of 2019. She experienced difficulty with walking distances, and a therapist diagnosed her with trochanteric bursitis. This therapy continued through June and July of 2019.

Unfortunately, when she injured her left hamstring, it appears that treatment for the right hip ceased. Following her low back surgery and hospitalization in March of 2020, Ms. Tuttle continued to have "a little…right hip pain."

Dr. Sassman opined in her IME report that the claimant's right hip issues were present at the time of the July of 2019 left hamstring injury and were "substantially aggravated" by Ms. Tuttle's gait change.

Dr. White examined Ms. Tuttle in July of 2020. He recounted the claimant's right hip pain dating back to 2018. Dr. White diagnosed Ms. Tuttle with pain in the right hip, along with a strain of the right gluteus medius. In spite of this, Dr. White concluded that it was not clear whether the strained right gluteus medius was the main source of her pain. He opined that the L2-3 chronic radiculopathy appeared to be more consistent as an explanation for her pain.

During therapy in July of 2020, Ms. Tuttle showed weakness and pain with flexion in her right hip. By September of 2020, Ms. Tuttle was observed walking with a Trendelenburg gait and an abnormal tandem gait. Summit Orthopedics advised Ms. Tuttle that there was no surgical treatment for her right hip issue.

Dr. White eventually responded to a check-box letter from claimant's counsel opining that Ms. Tuttle's work at ADM played a "substantial factor" in aggravating her preexisting right hip symptomatology. Dr. White noted his diagnoses of tears to the gluteus medius, gluteus minimus, and right acetabular labrum, were not previously diagnosed until after the July 24, 2019, work incident. Of note, Dr. White added no comments to his report. A simple check-box letter in this context is not convincing evidence when contrasted to the claimant's considerable complaints prior to her work incidents.

Dr. Flory issued a blanket medical opinion indicating that Ms. Tuttle's "current orthopaedic medical conditions" were caused by her work at ADM. Dr. Flory also supported the conclusions of Drs. Sassman, White, and Mestad.

Dr. Abernathey opined that some of the claimant's pain issues were related to her prior right hip issues and residual spine related sciatica. Dr. Abernathey provided no opinions beyond this as they relate to the right hip.

At the request of ADM, Dr. Schmitz issued opinions regarding the claimant's right hip. He could not relate any right hip issues to the work incident. He noted that she treated for right hip issues immediately prior to the work incident and related the right hip complaints to Ms. Tuttle's obesity and personal health issues. Dr. Schmitz recounted records indicating that Ms. Tuttle walked with an altered gait prior to her injury date.

Dr. Segal examined the claimant, during which time she complained of "very intense pain" into her right hip that also radiated to her groin. Ms. Tuttle told the doctor that she could not pull herself up with her right leg due to pain and weakness. Dr. Segal located this pain in the right greater trochanter and found Ms. Tuttle to have extreme

tenderness in that area. Dr. Segal opined that the July of 2019 and March of 2020 work injuries damaged Ms. Tuttle's bilateral hips and permanently exacerbated her preexisting hip issue. Dr. Segal also opined that Ms. Tuttle's right hip injury was a cumulative injury "over the years at her job…" Dr. Segal attributed Ms. Tuttle's trochanteric bursitis to her "repetitive heavy labor in awkward and difficult positions, multiple injuries where Mrs. Tuttle hurt her low back and hips but continued working, and damage to the low back and hips due to altered gait." Dr. Segal also opined that, when Ms. Tuttle's legs went in opposite directions on July 24, 2019, she experienced rapid stressors in her bilateral hips. This caused aggravation to the right greater trochanteric bursa and the tendons of the gluteus medius and minimus. Dr. Segal later opined that the claimant suffered a permanent aggravation to her right hip, and not a natural progression.

Dr. Freeman opined that Ms. Tuttle's right hip issues following her July 24, 2019, work injury and post-injury sequela and post-injury worsening of her right hip issues contributed to her right hip injury. Dr. Freeman opined that Ms. Tuttle's obesity played no role in her developing hip issues, as it was a stable lifetime issue. Dr. Freeman also opined that Ms. Tuttle's hip condition worsened at the time of the July of 2019 incident and used this temporal relationship as further proof of causation. Dr. Schmitz was critical of Dr. Freeman's report, as Dr. Freeman does not appear to have reviewed records that discussed Ms. Tuttle's right hip treatment immediately prior to her July 24, 2019, work injury. This included notes from May of 2019 in which Ms. Tuttle discussed a one-year history of throbbing right hip pain.

A doctor at Summit Orthopedics later examined Ms. Tuttle and opined that she had hip arthritis and a degenerative labral tear which potentially contributed to groin discomfort. The provider also expressed a concern that there was a low back component to her hip issues.

Based upon the record in this case, Ms. Tuttle's right hip injury was not an acute injury that arose out of, and in the course of her employment with ADM. I find that the claimant failed to carry her burden of proving that the right hip injuries were a sequela of her July 24, 2019, fall, as well. In 2019, the claimant reported right hip pain dating back to at least two years prior. She had a diagnosis of trochanteric bursitis prior to her alleged work injuries. She also sought treatment for hip complaints prior to her work injuries. During a May of 2019 follow-up visit, Ms. Tuttle had problems walking for two blocks, performing heavy activities at home, and "a little bit of difficulty" performing activities like lifting bags of groceries or getting into and out of a vehicle. During the May 30, 2019, visit, she was diagnosed with trochanteric bursitis with secondary piriformis syndrome and ITB syndrome. It was recommended that Ms. Tuttle complete additional therapy. It appears that prior to Ms. Tuttle's injuries, she was just beginning a course of treatment for her hip. Of note, Ms. Tuttle also had bilateral hip pain dating back to 2007. The claimant was not a very accurate historian, and it was unclear from her testimony, how, if at all, her hip pain differed following her work injury. There is a mention of pain into her right groin, but it is unclear how this pain is connected to her right hip and not her low back. In fact, providers such as Dr. Segal attempt to connect Ms. Tuttle's low back issues to her hips. The record is not clear enough to prove by a

preponderance of the evidence that the claimant's right hip issues arose out of, and in the course of her employment with ADM. While the claimant provides the reports of several physicians to support her claim, ADM also provides conflicting reports. When taken into context with the claimant's burden, her lengthy history of right hip pain predating her alleged work injuries, and her failure to adequately describe how the nature of her pain changed in her hip (if at all) following her injury, I find that the claimant did not provide adequate evidence to uphold her burden of proof as to her right hip.

The claimant may assert that her right hip injury is a cumulative injury, as discussed by Dr. Segal. The evidence in the record is not sufficient to prove that the claimant suffered a cumulative trauma to her hip that manifested at a later time. The claimant sought medical care in early 2019 that she noted began in early 2017.

The next injury that the claimant alleges arose out of, and in the course of her employment with ADM was a mental health sequela. The claimant has a significant mental health history prior to her work injuries. She complained of worsening depression following her GBS diagnosis in 1999. She followed-up with providers in 2000 with ongoing depression issues. Ms. Tuttle's depression flared-up in 2004 due to issues with her home, finances, and family in 2004. This flare-up led to suicidal ideations in Ms. Tuttle. In 2007, Ms. Tuttle displayed difficulty coping and increased depressive symptoms following a flare-up of her GBS. In 2012, Ms. Tuttle had difficulty with forgetfulness and concentration. A provider felt that Ms. Tuttle experienced adult ADHD, and recommended neuropsychological testing, as Ms. Tuttle told them that it was a long-term issue. Dr. Flory gave Ms. Tuttle a psychiatric referral for treatment of her depression.

By September of 2020, Ms. Tuttle indicated that her mental health was fair, but that her quality of life was poor. In November of 2020, Dr. Strothman mentioned that a surgical procedure was necessary in order to improve Ms. Tuttle's quality of life and prevent "further psychosocial impacts on her life." During her IME with Dr. Segal, Ms. Tuttle described a reduction in her social activities and a generally "crabby" attitude.

Dr. Mittauer began treating Ms. Tuttle for psychiatric issues on July 23, 2021. She recounted her psychiatric history, including persistent depression dating to her early twenties. She told him that she recently experienced stress caused by her back condition and filing a grievance at work after feeling "badgered." At times, she felt so overwhelmed that it caused her to cry. She recounted sleep disturbance due to reckless leg syndrome, sleep apnea, and pain. Dr. Mittauer observed Ms. Tuttle to have a depressed, restricted, though appropriate, mental affect. He diagnosed her with major depressive disorder and generalized anxiety and depression. In an effort to treat her conditions, the doctor prescribed medications and recommended she arrange for psychotherapy.

Dr. Mittauer continued to treat Ms. Tuttle in August of 2021, when she reported continued depression and that she cried easily. She also continued to have stress due to her job loss. Dr. Mittauer prescribed medications, and asked Ms. Tuttle to return in

one month. In September of 2021, Ms. Tuttle saw Dr. Mittauer via telehealth. She expressed worries about her physical functioning in the future and her inability to get her job back. Dr. Mittauer felt that treating her sleep apnea may help her depression. He offered additional prescription medications for her condition. By late September of 2021, Ms. Tuttle felt as though she was having a nervous breakdown and exhibited significant signs of depression including crying. Dr. Mittauer requested that she return in one month.

Dr. Mittauer wrote a report in response to various questions from claimant's counsel. He concluded that Ms. Tuttle's hamstring injury aggravated and exacerbated her depression, as her symptoms at the time of her July 24, 2019, incident were "not significant." Her physical difficulties following the injury combined with her continued work at ADM "caused her to feel very depressed." Losing her job, along with Ms. Tuttle's difficulties with sleeping, sitting, her ability to pay bills, and complete housework, following her work injury increased her depression symptoms. Dr. Mittauer also attributed the increase in depression symptoms to the persistence of lower back and hip symptoms. The doctor concluded that Ms. Tuttle had difficulties with functioning and cognitive capabilities, such as concentration and retention of information.

At the request of ADM, Ms. Tuttle saw Dr. Carpenter for a psychiatric IME. Ms. Tuttle documented a history of severe depression dating back to the birth of her son in the 1980s. Her depression again worsened due to being in an abusive marriage. Her depression worsened after her GBS diagnosis. Since her work injuries, Ms. Tuttle described no longer feeling normal, including crying easily and feeling depressed. She noted an incident wherein she became teary at a doctor's visit and that her attending so many appointments left her feeling anxious. During her interview with Dr. Carpenter, as with her testimony, Ms. Tuttle recounted being forgetful due to "the COVID stuff." Dr. Carpenter found Ms. Tuttle to be suspicious of what he was documenting and noted that she became tearful when she discussed activities that she could no longer perform. She also displayed an "occasionally tangential" thought process and difficulty recalling certain information. Of note, Dr. Carpenter did not perform formal memory testing on Ms. Tuttle.

Based upon his examination, Dr. Carpenter diagnosed Ms. Tuttle with major depressive disorder, generalized anxiety disorder, somatic symptom disorder, and an unspecified personality disorder. Dr. Carpenter justified his diagnosis of somatic symptom disorder by noting that Ms. Tuttle displayed chronic pain and distress surrounding her pain. He noted that the condition occurs when an individual focuses on physical symptoms to such an extent that it caused significant distress and decreased function. Dr. Carpenter indicated that the diagnosis of unspecified personality disorder was justified based upon records that indicated Ms. Tuttle had strong borderline personality traits, such as her hospitalization for suicidality and her tendency for conflict with her employers. Dr. Carpenter also suggested that Ms. Tuttle displayed intense emotion and "a rather argumentative personality style" as symptoms of borderline personality disorder. Dr. Carpenter further opined that Ms. Tuttle's claims had a subtext of victimhood. He concluded that Ms. Tuttle's worsening psychiatric issues were not a

result of any work injury, and that she should continue to treat for her pre-existing psychiatric issues.

Dr. Mittauer eventually drafted a letter reviewing and offering criticism of Dr. Carpenter's report. If Dr. Carpenter's diagnosis of somatic symptom disorder was accurate, Dr. Mittauer felt that it pre-existed the work injury and was aggravated by the work injury. Dr. Mittauer felt strongly that Dr. Carpenter's diagnosis of unspecified personality disorder was not supported by the record, and further, that one evaluation was not adequate to arrive at that diagnosis. The doctor was further critical of Dr. Carpenter's methodology of examination; namely, that Dr. Carpenter did not order psychological testing, nor did he use any "suitable screening instruments" before he examined Ms. Tuttle. Dr. Mittauer reinforced his prior opinion that Ms. Tuttle's conditions limited her ability to work and that her pain issues worsened her psychiatric condition, which in turn worsened her pain.

During a March 2023 visit with IVRS, Ms. Tuttle became emotional, cried, and expressed concern over the direction of her health. Dr. Flory saw Ms. Tuttle in April of 2023. During that visit, Ms. Tuttle was "just kind of down in the dumps about all of the medical conditions she has and that she is not able to get up and do as much." Ms. Tuttle also recounted fatigue since her battle with COVID.

The evidence in the record indicates that Ms. Tuttle had certain mental health problems that predated her work injury at ADM. Her depression appears to wax and wane depending upon events in her personal life. I previously determined that Ms. Tuttle had certain injuries that arose out of, and in the course of, her employment with ADM. The evidence in the record shows that Ms. Tuttle's depression symptoms worsened following her work injury on July 24, 2019, and the development of her low back pain. I find the opinions of Dr. Mittauer, when taken in conjunction with other evidence in the medical records, to be more persuasive than the opinions of Dr. Carpenter. While Dr. Carpenter is qualified, he simply conducted one evaluation. He did not do any testing, as noted by Dr. Mittauer, nor did he do any formal memory testing. Therefore, Ms. Tuttle's depression was exacerbated, or lit up, by her work injuries.

Notice Under 85.23

The defendant-employer asserted an affirmative defense of failure to provide notice pursuant to Iowa Code section 85.23. This affirmative defense is only asserted as it relates to File Number 22700262.01, which is an alleged date of injury of June 19, 2020, July 8, 2020, or March 19, 2020. The asserted injuries in the petition were "BAW; [r]ight hip and sequela." I previously found that the right hip issues did not arise out of, and in the course of the claimant's employment with ADM. Therefore, the asserted affirmative defense issue is moot.

Since the petition pleads "BAW," which means body as a whole, and could be construed to include injuries to the claimant's lower back, which I previously determined arose out of, and in the course of the claimant's employment with ADM as a sequela of

her left hamstring injury, I will engage in a brief examination of whether proper notice was given to ADM regarding the claimant's alleged low back injury.

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

Iowa Code section 85.23 provides that an injury is not compensable unless, within ninety (90) days of the "date of the occurrence of the injury," either (1) the employer had actual knowledge of the occurrence of an injury, or (2) notice of the occurrence of an injury was provided to the employer. On July 1, 2017, "date of the occurrence of the injury" was defined to mean "the date that the employee knew or should have known that the injury was work related." Iowa Code section 85.23.

The purpose of this rule is to give the employer an opportunity to timely investigate the facts surrounding the injury. Defendants often read this to strictly require the defendants to have actual notice rather than constructive or imputed notice. However, the second part of Iowa Code section 85.23 allows for something less than actual notice. When an employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related meets the actual notice alternative to notice. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Dept. of Transp., 296 N.W.2d 809 (Iowa 1980). Actual knowledge must include information that the injury might be work connected but does not require claimants to include the specific body parts injured or the specific word "injury." Robinson, 296 N.W.2d at 811.

Ms. Tuttle alleges that her low back injury was lit up, or became symptomatic, on March 20, 2020. On March 24, 2020, her attorney sent ADM a letter informing them of the injury and the claimant's subsequent medical treatment. Mr. Schewe asserted that Ms. Tuttle did not abide by the injury reporting requirements of ADM, and that ADM did not receive the letter from claimant's counsel until it was presented to him some time later by ADM's counsel.

The information in the record indicates that claimant's counsel sent a letter to ADM on March 24, 2020. While ADM prepared their own timeline of events, and Mr. Schewe himself did not receive the letter until sometime later, this is not adequate evidence to prove that the claimant did not provide ADM with notice of her injury within the proper period of time pursuant to Iowa Code section 85.23. Additionally, there are no other pieces of evidence presented by ADM to support their burden of proof on the asserted affirmative defense. Therefore, the affirmative defense fails.

Temporary Disability

The claimant alleges three different periods of temporary disability. With regards to her left hamstring injury, she alleges that she is entitled to temporary disability benefits, and that she was off work from July 24, 2019, through December 14, 2021.

She further alleges that she is entitled to temporary disability benefits from March 20, 2020, through April 26, 2022, as a result of her low back issues. Finally, she alleges that she was off work from March 20, 2020, through July 14, 2020, as a result of her right hip injury, and/or body as a whole injury. The parties' briefing on this issue was lacking, so the undersigned attempted to sort out the various dates.

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 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 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). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

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). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or 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).

It is well established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> [A] disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our

> Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause or whether the employment was a proximate contributing cause.

Musselman v. Ce. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

It is well settled in Iowa that an employer is liable for all consequences that naturally and proximately flow from an accident to an employee in the usual course of their employment. Oldham v. Scofield & Welch, 222 Iowa 764, 767-68, 266 N.W. 480, 482 (1936). Further disability is compensable when the further disability is the proximate result of the original injury. Id.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefits depends on whether or not the employee has a permanent disability. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury.

Iowa Code 85.33(1) provides:

> ...the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the first employment in which the employee was engaged at the time of injury, whichever occurs first.

Temporary total disability benefits cease when the employee returns to work, or is medically capable of returning to substantially similar employment.

Iowa Code 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until: (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or, (3) the worker has achieved maximum medical recovery. The first of the three items to occur ends a healing period. See Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Evenson v. Winnebago Indus., 881 N.W.2d 360 (Iowa 2016); Crabtree v. Tri-City Elec. Co., File No. 5059572 (App., Mar. 20, 2020). The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent.

Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Compensation for permanent partial disability shall begin at the termination of the healing period. Id.

Following her fall on July 24, 2019, she continued to work. Then, the claimant went to the emergency room on July 30, 2019. She met with a therapist on July 25, 2019, but no restrictions were provided. On July 30, 2019, the emergency room provider allowed Ms. Tuttle to continue working provided she could alternate walking, sitting, and standing, as tolerated for comfort. She also was to avoid climbing. On August 5, 2019, Dr. Pospisil provided the claimant with work restrictions of no climbing ladders, climbing only one flight of stairs per hour, avoiding forceful pulling or pushing, alternating walking, standing, and sitting as tolerated, and working a maximum of eight hours per day. Dr. Pospisil reiterated these restrictions during several subsequent visits. On October 29, 2019, Dr. Paynter allowed the claimant to return to work activities as tolerated. Ms. Tuttle testified that it was difficult for her to perform her duties at ADM during these times. Overall, the claimant performed about four months of light-duty office work. She recounted scanning documents and "putting them in the computer where they belong." By November 26, 2019, Ms. Tuttle returned to regular work duties at ADM.

The first question is whether the claimant's various injuries that arose out of, and in the course of her employment with ADM caused a temporary disability. Ms. Tuttle received restrictions from the emergency room provider, and from Dr. Pospisil. Defendant's Exhibit C shows that the claimant worked 40 hours per week on a consistent basis. A few times she worked 32 hours, but the records indicate that she took one day of vacation during that pay period. She also worked overtime on several occasions between July 24, 2019, and her return to regular work duties on November 26, 2019. There is no basis to award the claimant temporary disability benefits during this time period, as she returned to work.

The claimant then worked full duty until March 19, 2020. Shortly prior to that time, the claimant was off work due to personal reasons, as she had the flu. The claimant's low back sequela then developed or became aggravated with a manifestation date of March 20, 2020. Ms. Tuttle then had a spinal surgery in March of 2020. While the record is silent as to her initial restrictions, it is reasonable that Ms. Tuttle would be off work following her surgeries in March of 2020, and April of 2020. By July of 2020, Dr. Flory opined that Ms. Tuttle could not work. Of note, Ms. Tuttle did not return to work at ADM, or anywhere, following her last day of work on March 19, 2020. A more extensive discussion of Ms. Tuttle's work capabilities is undertaken below. As noted below, I found that Ms. Tuttle sustained permanent disability due to her left hamstring and lower back injuries. Therefore, the claimant is entitled to healing period benefits. Since she never returned to work, the proper measurement of the termination of healing period benefits is when the claimant achieved maximum medical improvement. Dr. Strothman provided a note that the claimant achieved MMI on April 26, 2022. Dr. Segal opined that Ms. Tuttle achieved MMI on May 25, 2021, for her left hamstring and low back. I find the opinions of Dr. Segal to be most persuasive on this issue. Therefore, the claimant is entitled to healing period benefits from March 20, 2020, to May 25, 2021,

regarding her low back, as the declaration of MMI was the first of the three events that occurred during the healing period.

I previously found that the claimant's right hip issue did not arise out of, and in the course of her employment with ADM. Therefore, the claimant would not be entitled to temporary disability benefits for this injury.

Based upon my review of the record, it does not appear that any doctor attributed any time period that Ms. Tuttle should be off work due to her depression. Therefore, I do not find any reason to award the claimant temporary disability benefits due to her depression.

Permanent Disability

The claimant alleges entitlement to permanent disability benefits caused by the injury to her left hamstring, her low back sequela, her mental health sequela, and her right hip. I previously found that the claimant's right hip injury did not arise out of, and in the course of her employment with the defendant employer.

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 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 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). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

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). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a

substantial factor, or even the primary or 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).

With regard to the claimant's left hamstring, both Drs. Sassman and Pospisil agree that the claimant sustained permanent disability as a result of her July 24, 2019, work injury. They disagree as to the extent of that injury, which will be discussed further herein. There is also a disagreement as to whether this disability should be evaluated as a left lower extremity disability, or a body as a whole injury. The claimant injured her hamstring tendons at the ischial tuberosity. According to Dr. Sassman's report, Ms. Tuttle injured her left hamstring tendon at its origin. The origin of the hamstring tendon is the ischial tuberosity. Dr. Sassman's report contains diagrams of the anatomy of the hamstring. Of note, the ischial tuberosity is located on the bottom of the pelvis. It is on the socket side of the hip joint, as it is located on the pelvis. Dr. Sassman opined that the ischial tuberosity is not confined to the lower extremity, as it is located in the area of the buttocks. The diagrams in her report indicate that the hamstring originates at the ischial tuberosity, but that the musculature runs down the rear of the thigh to the rear of the knee.

There are some corollaries between the idea that a hip injury is generally an injury to the body as a whole, and not an injury to the lower extremity, and the arguments in this case. With regard to hip injuries, the lower extremity extends to the acetabulum or socket side of the hip joint. For a hip joint to be industrially ratable, disability in the form of actual impairment to the body must be present. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Both Drs. Pospisil and Sassman provided an impairment rating based upon an injury to the lower extremity. Dr. Sassman converted her impairment rating to a body as a whole impairment rating based upon her reasoning that the hamstring tendons were injured at the area of the ischial tuberosity. The hamstring is a leg muscle, based upon Dr. Sassman's report. The attachment at the ischial tuberosity is merely incidental, and the claimant did not prove that the hamstring injury in and of itself resulted in an impairment to the body as a whole. It did, however, result in the sequela injury to the low back. The low back injury clearly resulted in whole body impairment as provided by the opinions of Drs. Segal and Sassman. The extent of those impairments will be discussed further herein.

I previously found that the right hip injury did not arise out of and in the course of employment. Therefore, the claimant would not be entitled to permanent disability benefits for this issue.

Finally, the claimant alleges permanent impairment due to aggravation of her depression as caused by the July 24, 2019, work injury, and the low back sequela. There is no doctor that explicitly opined that this was a cause of permanent disability. Dr. Mittauer opined that the persistence of Ms. Tuttle's injuries aggravated and exacerbated her depression. He also opined that Ms. Tuttle's chronic pain "significantly interferes with her cognitive functioning and capabilities," and that her worrying and

depression interfered with her ability to sleep. Dr. Segal also provided an impairment opinion based upon Ms. Tuttle's reported sleep disruption and fatigue. Neither Dr. Mittauer, nor Dr. Segal provided opinions as to the interplay of Ms. Tuttle's pre-existing sleep apnea with her fatigue issues. In fact, during a treatment note, Dr. Mittauer found that treating her sleep apnea may help with her depression. Ms. Tuttle used a CPAP at the time of the hearing to manage her sleep apnea. There is also no discussion in the record of the effect of COVID-19 on Ms. Tuttle's cognitive functioning. Ms. Tuttle made mention during the hearing, as well as to Dr. Flory, Dr. Carpenter, Dr. Zelby, and Ms. Sellner, to having memory issues and fatigue following a bout with COVID-19. No doctor provided an opinion on whether this worsened her alleged cognitive or fatigue issues; however, her testimony, and the medical records indicated that it may have.

The record shows that Ms. Tuttle had bouts of depression in her past during times of hardship in her life. Once the difficulty resolved, her depression appears to return to a baseline level. Coupled with the lack of impairment opinion, and the issues regarding her post-COVID cognitive issues or fatigue, I find that the claimant's depression sequela was not a cause of permanent disability.

Considering the foregoing, the claimant sustained a permanent disability to her left lower extremity and to her body as a whole.

The claimant alleges that her disabilities have caused her to be permanently and totally disabled under the odd-lot doctrine.

In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtin, 674 N.W.2d 123, 126 (Iowa 2004) (discussing both theories of permanent total disability under Idaho law and concluding the deputy's ruling was not based on both theories, rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish that they are totally and permanently disabled if the claimant's medical impairment, taken together with nonmedical factors totals 100-percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100-percent disability but is so injured that the claimant is "unable to perform services other than 'those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.'" Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

"Total disability does not mean a state of absolute helplessness." Walmart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003) (quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform." IBP, Inc., 604 N.W.2d at 633. However, finding that the claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

In Guyton v. Irving Jensen, Co., 373 N.W.2d 101 (Iowa 1985) the Iowa Supreme Court formally adopted the "odd-lot doctrine." Under that doctrine, a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to provide evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of fact finds the worker does fall in the odd-lot category, then the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include: the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

At the time of the hearing, Ms. Tuttle was 59 years old. She earned a high school diploma, and an associate degree in environmental technology from Kirkwood Community College. The claimant appeared on the dean's list while earning her degree at Kirkwood Community College. The claimant also previously held a CNA license, as well as certification as an EMT. Her training and background appear to make her adaptable for retraining. She has some computer skills. Ms. Tuttle testified that she was not very familiar with computers and various programs; however, there is evidence in the record that Ms. Tuttle worked with her husband selling things on the internet for a period of time. This shows a knowledge of how to use computers and the internet.

Ms. Tuttle worked in a moderately physically demanding position for ADM. Prior to that she worked in the foundry at John Deere where she successfully trained on, and worked with, CNC machines. She also used cranes to move large items. Ms. Tuttle also worked at GMM assembling parts for other manufacturers. During the middle of her career she was out of the workforce helping her husband. She also worked at Rockwell assembling computer parts, at a woolen mill, as a turkey processor, and as a CNA. She demonstrated a diverse history of employment. While most of her jobs required her to perform physical labor, they did not all require heavy physical labor. Her diverse background of experience also indicates to me a propensity for retraining. The claimant cites to some comments on recommendations from IVRS with regard to her employability, but I will discuss my concerns with the IVRS process further below.

I am deeply concerned by the claimant's failure to search for any employment since March 20, 2020. Ms. Tuttle claims that she sought out the services of IVRS in order to find employment. However, she expressed no desire to them to search for any job with an employer. She continually expressed a desire to begin self-employment potentially in embroidery. IVRS talked to Ms. Tuttle about the steps she would need to take to pursue this line of employment. They encouraged her to form a business plan and explore the demand for the employment. They noted that they could assist her, to some extent, in procuring equipment. They also encouraged her to take computer classes, which she started, but quit. Ms. Nyane testified that IVRS "focused more on what she wanted to do, which she wanted to be self-employed." She further testified that if someone wanted to pursue self-employment, IVRS would not "force" that person to apply for jobs. Ms. Tuttle took no action to even pursue self-employment, nor did she pursue any positions with employers. In spite of her significant restrictions, it appears that Ms. Tuttle has no motivation to look for employment since leaving ADM. Ms. Tuttle's efforts could, in no way, be considered a reasonable effort to find steady employment.

Of note, IVRS indicated that they automatically closed Ms. Tuttle's file because a doctor told her she could not work. IVRS also considered Ms. Tuttle's responses to questions like, "[d]o you think you can work?" Ms. Tuttle responded to this question by informing Ms. Nyane that she could not work "because [she][had] so much going on," which was apparently a reference to her pain, depression, and ongoing family issues.

I turn next to Ms. Tuttle's impairment. Several providers opined as to Ms. Tuttle's capability to work, her physical restrictions, and her impairment. In October of 2020, Mr. Glawatz used the Guides to provide a 10 percent whole person impairment rating, "secondary to her significant radicular pain in a dermatomal pattern with a herniated disc for which she underwent surgery." Mr. Glawatz noted the left hamstring injury, but did not provide any opinions as to this issue. There is also no discussion of restrictions provided to the claimant.

Dr. Segal provided an in-depth discussion of the application of the Guides to Ms. Tuttle's various injuries. Dr. Segal provided diagnoses including left lumbar radiculopathy with L3 and L4 nerve root issues, which resulted in a DRE category III impairment. Based upon these issues, he provided a low back impairment and a left hip impairment for the claimant as they related to the July 24, 2019, work incident. He provided her with a 14 percent whole person impairment. However, Dr. Segal's rating including nerve root issues and left hip issues for this particular condition cast doubt on Dr. Segal's opinions.

Dr. Segal provided a provisional impairment rating for the March of 2020, low back injury. He qualified Ms. Tuttle for the "ROM" method of evaluation due to certain symptoms and issues. The ROM method considers the specific disorder, the range of motion, and the nerve disorder. Based upon his interpretation of the Guides, and the claimant's spinal conditions, Dr. Segal assigned a 14 percent whole person impairment rating. He assigned a 12 percent whole person impairment rating for range of motion impairments in the lumbar spine. Dr. Segal opined that there were four nerve roots

involved in the claimant's issues, which resulted in a 40 percent grade 3 sensory impairment, or a 2 percent lower extremity impairment. Dr. Segal also provided a 5 percent lower extremity impairment for a grade 4 motor impairment. These combined to a 7 percent lower extremity impairment, or a 3 percent whole person impairment. Dr. Segal combined the three ratings to arrive at a 26 percent whole person impairment rating for the lumbar spine sequela in March of 2020.

Dr. Segal provided impairment for sleep disturbance or fatigue, but he is the only doctor to provide an impairment rating based upon these issues. I am not including Dr. Segal's ratings for these issues, as I have concerns about Dr. Segal's evaluation and inclusion of these issues. As I noted above, Ms. Tuttle has sleep apnea. She also has issues with depression. She also noted fatigue based upon her COVID-19 diagnosis. There is no evaluation as to the effect that the post-COVID issues played on these issues.

Dr. Segal provided Ms. Tuttle with the following permanent restrictions:

- Sitting: 60 minutes cushioned chair, 15-20 minutes in a straight and/or hard chair
- Standing: 10 minutes (with shifting or leaning on a cart), total 4 hours per day
- Walking: 10 minutes unassisted (causes right hip pain) with leaning on cart, longer, total 3 hours per day
- Bending, one bend: Rarely (one bend a struggle)
- Bending, repetitive: Never
- Reaching Overhead: Occasionally
- Lifting 0-10 pounds; Frequently (if conveniently positioned)
- Lifting 11-20 pounds: Occasionally (if conveniently positioned)
- Lifting over 20 pounds: Never
- Carrying: 0-20 pounds: Occasionally
- Pushing/Pulling 0-10 pounds of force: Frequently
- Pushing/Pulling 11-24 pounds of force: Occasionally
- Pushing/Pulling 25-30 pounds of force: Rarely
- Stairs, 1 flight: Occasionally, needs handrail
- Stairs, 2+ flights: Rarely (may need to stop partway)
- Kneeling: Never

- Crouching/Squatting: Rarely
- Ladders: Never
- Stooping: Rarely
- Kneeling: Rarely

These restrictions are substantial. They appear to preclude her from working in her previous position with ADM.

Dr. Pospisil provided Ms. Tuttle with a 2 percent whole person impairment rating for the left hamstring. Dr. Pospisil amended this impairment rating to include a 6 percent impairment to the left lower extremity. She later contradicted herself in her deposition and admitted that her impairment ratings were essentially a best guess, as there was "no specific section that addresses this injury."

Dr. Sassman issued impairment ratings for the claimant's left lower extremity based upon the standards applied by the Guides. Specifically, Dr. Sassman felt that Ms. Tuttle had residual weakness in her left hamstring, along with weakness on flexion at the knee. This resulted in a 12 percent lower extremity impairment. She converted this to a whole person impairment rating of 5 percent. In January of 2022, Dr. Sassman recommended restrictions of occasional standing, sitting, and walking. She also recommended that Ms. Tuttle be allowed to change positions frequently. Ms. Tuttle was also restricted to lifting, pushing, pulling, and carrying 10 pounds on a rare basis. Finally, Dr. Sassman provided restrictions of not lifting, pushing, pulling, or carrying from the floor to the waist, or over her shoulders, and she restricted Ms. Tuttle from using ladders and only using stairs on a rare basis.

Dr. Sassman later issued a third, and final report on Ms. Tuttle's condition. Dr. Sassman opined that the claimant's low back issues should be rated based upon the range of motion method. Based upon the range of motion impairment, Dr. Sassman provided the claimant with a 15 percent whole person impairment due to each of her spinal surgeries and range of motion measurements. She assigned the claimant a 3 percent whole person impairment due to her sensory deficits. Dr. Sassman combined the 15 percent impairment with the 15 percent impairment, and the 3 percent impairment to arrive at a 30 percent whole person impairment for the lumbar issues. Dr. Sassman then included an impairment measurement for the right hip issues and combined the ratings to assign a 37 percent whole person impairment rating. In considering the evaluations for this, I would not include the impairment for the right hip issues. The result is a slightly lower whole person impairment.

Dr. Sassman provided Ms. Tuttle with rather stringent permanent restrictions. Because Ms. Tuttle used a cane, Dr. Sassman wanted her to limit her pushing, lifting, and pulling, to 5 pounds at the waist. Dr. Sassman recommended that Ms. Tuttle avoid climbing ladders and limit how often she used stairs. She further recommended that Ms. Tuttle limit sitting, standing, and walking, to only an occasional basis with the ability

to change positions frequently. Finally, Dr. Sassman recommended that Ms. Tuttle avoid walking on uneven surfaces, kneeling, crawling, squatting, or working at heights.

In response to a request from Ms. Tuttle for a note "about why she can't [*sic*] work," Dr. Flory provided the claimant with restrictions including not walking or sitting for "long periods of time."

In April of 2021, Dr. Mathew provided the claimant with restrictions that included no bending, no twisting, and no lifting more than 20 pounds. Dr. Mathew reiterated these restrictions several times.

Dr. Zelby did not provide any impairment rating but felt that Ms. Tuttle could work in a medium physical demand level and lift up to 50 pounds occasionally and 25 pounds frequently based upon her objective medical conditions.

Finally, there are competing vocational expert reports from Ms. Sellner and Mr. Jayne. Ms. Sellner, who has a master's degree and possesses a number of certifications prepared an employability analysis. As part of this analysis, Ms. Sellner conducted an interview with Ms. Tuttle. She reviewed her job history, her hobbies, and her educational history. She also reviewed Ms. Tuttle's various work restrictions provided throughout her course of treatment, including the work restrictions of Drs. Segal, Sassman, Pospisil, Mathew, and Zelby.

During the interview portion of the evaluation, Ms. Tuttle indicated that she had "horrible" computer skills. Ms. Sellner found this odd considering Ms. Tuttle also reported having an online business selling products. Ms. Tuttle told Ms. Sellner that she was not searching for work at all, and instead was looking to start some type of home-based business.

Since Ms. Sellner, admittedly, was not qualified to determine which physician supplied restrictions should apply to Ms. Tuttle, she used the Dictionary of Occupational Titles in referencing the various positions and restrictions. Ms. Sellner opined that, based upon the provided history, Ms. Tuttle worked in positions that were considered light to medium demand, and semi-skilled to skilled. Ms. Sellner opined further that Ms. Tuttle had certain hard skills, soft skills, and knowledge, which made her a "valuable candidate for alternative employment." Ms. Sellner listed these various skills in a chart in her report. Ms. Sellner then examined the restrictions provided by Drs. Segal, Pospisil, Sassman, Mathew, and Zelby. Based upon the restrictions of Drs. Segal, Pospisil, Sassman, and Mathew, Ms. Sellner concluded that Ms. Tuttle could work in the sedentary to light work demand level with certain nonmaterial handling limits. Based upon the restrictions of Dr. Zelby, Ms. Sellner opined that Ms. Tuttle could work in a medium demand level.

Based upon her opinions, Ms. Sellner conducted a labor market analysis in the Center Point, Iowa, area within the sedentary to light work demand fields. She identified at least nine jobs, mostly in customer service, within these parameters. Some of these included hybrid positions which could include certain, common ergonomic solutions.

Ms. Sellner concluded that Ms. Tuttle was an employable and viable candidate for positions. Ms. Sellner urged Ms. Tuttle to register with a temporary employment agency, and Iowa Workforce Development for assistance in finding further employment.

Ms. Sellner later issued an addendum to her report after reviewing Dr. Flory's April 23, 2023, office notes. She continued to opine that Ms. Tuttle was employable, and that Ms. Tuttle missed several visits with IVRS and that their designation of Ms. Tuttle as "significantly disabled" was only a designation to allow IVRS to prioritize services should funding become scarce. She concluded that, even though Ms. Tuttle scored low on certain testing, this would not preclude her from performing all clerical work.

Kent Jayne, the claimant's vocational expert, issued a vocational economic assessment. Mr. Jayne performed a number of tests and provided Ms. Tuttle with various questionnaires in order to determine her capabilities. Mr. Jayne concluded that Ms. Tuttle was average to below average among a number of categories. Mr. Jayne opined that Ms. Tuttle was not capable of competitive work in the labor market based upon her test results and reported pain levels. Mr. Jayne was critical of Ms. Sellner's report insofar as he felt that she did not take into consideration pain and/or tolerance, nor did she complete any testing to determine Ms. Tuttle's "full range of residual worker trait function levels." Mr. Jayne issued a supplemental report and opined that limitations provided by several doctors precluded Ms. Tuttle from working "more than 90% of the labor market." He also was critical of Ms. Sellner for not performing a "transferable skills analysis."

I do not mention IVRS' records in this portion of my analysis because a representative of IVRS indicated that they automatically close a file when any physician deems someone unable to work. This, plus their stance that they would not guide Ms. Tuttle towards gainful employment outside of her home if she did not express a desire for it, greatly hurt IVRS' credibility in my review.

The Social Security Administration also found Ms. Tuttle to be disabled. It should come as no surprise to the parties, as it is well known that disability determinations of the Social Security Administration are not binding on this Agency. Therefore, I find no relevance in this determination.

Ms. Tuttle sustained injuries to her left hamstring with a sequela to her lower back. She is of average intelligence, and based upon her education and relatively diverse employment history, appears to have a good possibility of retraining. Her argument that she is permanently and totally disabled is severely weakened by her lack of effort to seek additional employment. She appears to have no motivation to find another job. She worked with IVRS in an attempt to pursue self-employment, but continually failed to attend recommended classes or trainings in computer use and business planning.

I would first note that Dr. Zelby's restrictions, much like his causation opinions, are out of line with a number of other providers. Ms. Tuttle had relatively stringent

restrictions provided by Drs. Pospisil, Segal, Sassman, and White. However, I found the opinions of Ms. Sellner to be most persuasive in arriving at this decision. While Mr. Jayne performed testing, it is unclear whether these tests provided an objective result, or were based upon subjective factors. Additionally, Mr. Jayne did not perform any labor market analysis. He simply relied on the results of his testing and Ms. Tuttle's subjective reports of pain to arrive at his conclusion that she was precluded from 90 percent of the labor market. Ms. Sellner, on the other hand, performed a labor market analysis. She identified a number of open positions that Ms. Tuttle qualified for based upon the restrictions of Drs. Pospisil, Mathew, Segal, and Sassman. She also provided analysis as to the positions for which Ms. Tuttle may qualify, such as those in the sedentary to light duty category.

Based upon the foregoing, and the evidence in the record, I find that Ms. Tuttle did not prove that she is permanently and totally disabled under the odd-lot doctrine.

Considering I found that the claimant was not permanently and totally disabled, it is appropriate to then consider the extent of the claimant's permanent disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of aftereffects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Iowa Code 85.34(2)(v) provides:

> In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs 'a' through 't' hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for

> compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's function impairment resulting from the injury, and not in relation to the employee's earning capacity.

Ms. Tuttle has a permanent impairment to her left lower extremity, as well as to her lower back. Therefore, Ms. Tuttle has an impairment to the body as a whole, and an industrial disability has been sustained. Industrial disability was defined Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "[i]t 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).

A loss of earning capacity due to voluntary choice or lack of motivation to return to work is not compensable. Malget v. John Deere Waterloo Works, File No. 5048441 (Remand Dec. May 23, 2018); Rus v. Bradley Puhrmann, File No. 5037928 (App. December 16, 2014); Gaffney v. Nordstrom, File No. 5026533 (App. September 7, 2011); Snow v. Chevron Phillips Chemical Co., File No. 5016619 (App. October 25, 2007); Copeland v. Boone's Book and Bible Store, File No. 1059319 (App. October 14, 1997); See also Brown v. Nissen Corp., 89-90 IAWC 56, 62 (App. 1989)(no prima facie showing that claimant is unemployable when claimant did not make an attempt for vocational rehabilitation).

As noted above, Ms. Tuttle was 59 years old at the time of the hearing. This makes her a bit of an older worker. She obtained a high school diploma and an associate degree. While earning her degree, she made the dean's list on several occasions. She also obtained a certification as a CNA and worked for a time as an EMT. Ms. Tuttle's employment history generally involved factory work but was not limited to one industry. For a time, she learned how to use a CNC, she also worked in a forge, and worked assembling computer parts. While working at ADM, Ms. Tuttle sustained an injury to her left hamstring. This injury in, and of, itself, was not a severe injury. However, the result of the injury was the aggravation and sequela to her lower back. This injury resulted in more severe injury, necessitating several surgeries to treat.

Ms. Tuttle's medical treatment and injuries resulted in relatively significant restrictions, from Drs. Segal, White, Sassman, and Pospisil, as reviewed above. This

did not result in a permanent and total disability, but it did result in a reduction in the positions available to Ms. Tuttle in the open labor market. The restrictions would preclude her from working her former job with ADM. It also would preclude her from working a number of her prior positions. Even the positions found by Ms. Sellner in her labor market analysis appear to be lower paying than Ms. Tuttle earned at ADM.

As noted elsewhere in this decision Ms. Tuttle appears to lack the desire or motivation to return to the workforce. However, this is not significant enough to preclude her from compensation for her permanent disability.

Based upon the foregoing, I find that Ms. Tuttle sustained a 60 percent industrial disability. This results in an award of 300 weeks of compensation (60 percent x 500 weeks = 300 weeks). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Iowa Code section 85.34.

Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code section 85.34. I previously determined that the claimant's healing period concluded on May 25, 2021. Accordingly, benefits for permanent disability should commence on that date.

Second Injury Fund

Iowa Code 85.64 governs Second Injury Fund liability. Before any liability of the Fund is triggered, three requirements must be met. These requirements are: 1. The employee must have lost or lost the use of a hand, arm, foot, leg, or eye; 2. The employee must sustain a loss or loss of use of another specified member or organ through a compensable injury; and, 3. Permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual, as if the individual had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015). While the Second Injury Fund may be entitled to a credit for the compensable value of the previously disabled scheduled member, the Second Injury Fund is not entitled to credit for any prior unscheduled injuries. See e.g. Second Injury Fund of Iowa v. Kratzer, 778 N.W.2d 42 (Iowa 2010).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Iowa Code 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich Coal Co., 274 N.W.2d 300 (Iowa 1979). The second injury may be a bilateral injury. Second Injury Fund of Iowa v. George, 737 N.W.2d 141 (Iowa 2007).

The claimant alleged a first injury to her eye dating back several decades. She presented no evidence at hearing that this injury caused a loss of use of the claimant's

eye. Because the record contains no evidence of the claimant losing the use of her eye, I find that the claimant has not proven entitlement to Fund benefits.

Rate

I previously determined that the claimant's alleged right hip injury related to file number 22700262.01, did not arise out of and in the course of her employment. Therefore, any rate issue stemming from that file is moot.

There is a dispute as to the March 20, 2020, lower back injury; however, I previously found that this was a sequela of the left hamstring injury on July 24, 2019. Therefore, the stipulated rate from that date of injury would apply. Accordingly, there is no dispute as to the proper rate of compensation, as the parties stipulated that the proper rate for that date of injury is eight hundred fifty-seven and 00/100 dollars ($857.00) per week.

Medical Expenses and Mileage

The claimant is requesting reimbursement for certain medical expenses, and mileage incurred in proceeding to certain appointments.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, I Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellon v. Iowa S. Util., 91-92, IAWC, 266-273 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodward State Hospital School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Motor Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v. Veith Construction Corp., File No 5044438 (App. May 27, 2016)(Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v. Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills).

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

Ms. Tuttle presents a document from Central States Health and Welfare Fund indicating that certain insurance payments were made by the claimant's personal insurance. In reviewing the bills involved, I would remove any for treatment to the right hip since that was determined to not have arisen out of and in the course of her employment. Insurance paid one hundred eight thousand four hundred ninety-eight and 58/100 dollars ($108,498.58) for treatment incurred by Ms. Tuttle. I reviewed the information included in the claimant's exhibits and removed four thousand four hundred forty-five and 92/100 dollars ($4,445.92) in charges related to treatment to the right hip. The final amount is therefore one hundred four thousand fifty-two and 66/100 dollars ($104,052.66). The defendant-employer shall reimburse the health insurer for these amounts.

There is also a bill for anesthesia services related to the February 26, 2021, medical services. The defendant-employer is responsible for the five thousand one hundred forty-nine and 20/100 dollars ($5,149.20) bill for these services.

The claimant also presented claims for mileage incurred in transporting herself to various medical appointments. The claimant asserts entitlement to reimbursement for 550 miles of travel in 2019, 300 miles of travel in 2020, 3,032 miles of travel in 2021, 3,977 miles of travel in 2022, and 506 miles in 2023. Unfortunately, I do not have the claimant's address, so I cannot check the exact accuracy of these claims. I am concerned that the claimant simply indicated everything was 50 miles from her home. That indicates a lack of accuracy in the mileage claimed. However, the defendants did

not present any argument that the distances alleged are inaccurate. Therefore, I will base my decision upon what is in the record.

All mileage reimbursement shall be at the rate allowed by the federal Internal Revenue Service ("IRS") for the applicable time periods.

For 2019, I find that the defendant-employer shall reimburse the claimant for four hundred fifty (450) miles in medical travel. I excluded several visits because there was no corresponding medical record in the record to prove work-relatedness of those visits. It is still the claimant's burden of proof to meet, and she failed to meet her burden as to those charges.

For 2020, I find that the defendant-employer shall reimburse the claimant for two hundred fifty (250) miles in medical travel. I excluded one visit with Dr. Flory because of a lack of corresponding medical record to prove work-relatedness of that visit. It is still the claimant's burden of proof to meet, and she failed to meet her burden as to that visit.

For 2021, I find that the defendant-employer shall reimburse the claimant for two thousand nine hundred thirty-two (2,932) miles in medical travel. I excluded several visits due to a lack of evidence to support awarding the same.

For 2022, I find that the defendant-employer shall reimburse the claimant for one thousand eight hundred one (1,801) miles. I removed mileage for appointments related to the right hip since I found that injury unrelated to her work at ADM. I also removed mileage for appointments with Dr. Flory which did not have corresponding records, and I removed mileage for blank lines.

For 2023, I find that the defendant-employer shall reimburse the claimant for three hundred twenty-two (322) miles. I removed several appointments based upon the claimant failing to carry her burden to show their relation to the injuries at issue.

Alternate Medical Care

The parties indicated that there was a dispute as to whether or not the claimant is entitled to alternate medical care. Neither party briefed on the issue.

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care…. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care,

> the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez, 878 N.W.2d at 770-771 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Food, File No. 866389 (Declaratory Ruling, May 18, 1988). Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision, June 17, 1986).

The employer must furnish "reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003)(emphasis in original). Such employer-provided care "must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Iowa Code section 85.27(4).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 6.904(3)(e); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the

question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

It is unclear what alternate medical care Ms. Tuttle is seeking. There is no argument in the post-hearing briefing as to this issue. Therefore, I find that the claimant did not meet her burden, and I decline to award alternate medical care.

IME Reimbursement Pursuant to Iowa Code section 85.39

Iowa Code 85.39(2) states:

> 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.

Iowa Code section 85.39(2).

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. The 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). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

Mr. Glawatz issued an impairment rating regarding the claimant's low back issues on October 2, 2020. ADM sent the claimant for an IME with Dr. Abernathey on October 14, 2020. Dr. Abernathey made no opinion as to either causation or impairment during this examination. Dr. Schmitz issued a records review on November 19, 2020.

Subsequent to this examination and reports, Dr. Segal conducted an IME on June 14, 2021. The claimant included an invoice for this IME in their exhibits for four thousand five hundred and 00/100 dollars ($4,500.00). Dr. Segal's June 14, 2021, report is wide ranging, and includes evaluations and permanent impairment ratings regarding the right hip and sleep disturbance. I previously found that the right hip issue did not arise out of, and in the course of, the claimant's employment. Therefore, forcing ADM to pay the entire cost of the report would be inappropriate. I find that ADM shall reimburse the claimant three thousand five hundred and 00/100 dollars ($3,500.00) for the costs of Dr. Segal's first report.

Dr. Sassman then provided an IME report on July 20, 2021.

An IME with Dr. Schmitz was cancelled on September 17, 2021.

Dr. Carpenter completed a mental health IME at the request of ADM on October 25, 2021.

Dr. Pospisil issued additional opinions as to the claimant's condition on December 28, 2021. This included an impairment rating based solely on the left hamstring issue.

Dr. Sassman issued an invoice for her July 20, 2021, and March 13, 2023, IMEs. Dr. Sassman did not break down the difference in costs for each of these reports. She simply provided an invoice for sixteen thousand six hundred sixty-five and 00/100 dollars ($16,665.00). Considering Dr. Pospisil opined as to the claimant's left hamstring issue, it would be appropriate for ADM to reimburse claimant for the reasonable cost of a report regarding the same. However, Dr. Sassman's reports contained impairment ratings that do not pertain to the left hamstring issue. Therefore, I only award the claimant three thousand five hundred and 00/100 dollars ($3,500.00) for the cost of the July 20, 2021, IME.

Dr. Segal issued an amended report on May 19, 2023. He charged the claimant two thousand five hundred thirty-one and 67/100 dollars ($2,531.67) for this report. There is no invoice in the record for this report. I do not find a reason to order reimbursement of this report pursuant to Iowa Code section 85.39.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 10. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 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, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. Dec., September 27, 2019).

The claimant seeks reimbursement for costs consisting of the following:

Dr. Sassman's July 20, 2021, and March 13, 2023, IME reports: $16,665.00

Dr. Segal's June 14, 2021, IME report: $4,500.00

Dr. Segal's 2023 addendum IME: $2,531.67

Kent Jayne's Reports: $5,475.00

See CE 23.

I previously awarded the claimant costs for the June 14, 2021, IME. Moving to the addendum report, I decline to award any costs for Dr. Segal's IME addendum in 2023. The only evidence provided in support of this is a check. That is not sufficient to break down the costs of the report pursuant to the ruling in Young.

I also decline to award the remaining costs of Dr. Sassman's reports. Dr. Sassman's invoice only breaks down the costs into "[e]xam [t]ime" and "[r]ecord review and report preparation time." As the court noted in Young, only the costs of the report are taxable. Dr. Sassman's line items in her invoice are not sufficient, in my view, to separate the record review from the report preparation time.

Finally, the claimant requests reimbursement for the costs of Mr. Jayne's reports. The Commissioner previously applied the logic of Young to reports generated by vocational experts. Mr. Jayne's invoices contain a number of references to phone

conferences with Attorney Currell and reviewing new materials. I award the claimant costs for the preparation of Mr. Jayne's two reports in the amount of three thousand one hundred and 00/100 dollars ($3,100.00).

I decline to award any other costs to the claimant. The defendant requests reimbursement for transportation expenses pertaining to an IME. I decline to award any expenses for this issue to ADM.

Sanctions

I previously issued a sanction to the claimant for inappropriate conduct towards an expert. That ruling is in the record of this case. It is currently on appeal to the district court. It would be inappropriate for me to issue a ruling on this issue pending the decision of the district court.

ORDER

THEREFORE, IT IS ORDERED:

That the claimant's right hip injury did not arise out of, and in the course of, her employment with ADM.

That ADM's affirmative defense failed.

That ADM shall pay the claimant healing period benefits at the stipulated rate from March 20, 2020, to May 25, 2021.

That ADM shall pay the claimant three hundred (300) weeks of permanent partial disability benefits at the stipulated rate of eight hundred fifty-seven and 00/100 dollars ($857.00) per week commencing on May 25, 2021.

That the claimant has no entitlement to benefits from the Fund.

That ADM shall reimburse the claimant and/or her insurer for medical expenses and mileage as noted herein.

That the claimant's request for alternate medical care is denied.

That ADM shall reimburse the claimant seven thousand and 00/100 dollars ($7,000.00) for certain IME expenses.

That ADM shall reimburse the claimant three thousand one hundred and 00/100 dollars ($3,100.00) for costs.

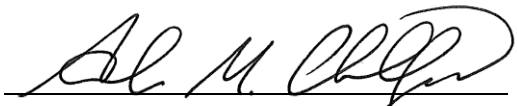
That there shall be no assessment of sanctions.

That ADM shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal

reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

That ADM shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this ___6th___ day of November, 2023.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Dennis Currell (via WCES)

Jeff Carter (via WCES)

Peter John Thill (via WCES)

Sarah Timko (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.