BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

EILEEN JENN-FALLS, Claimant, vs. DELTA GAMMA FRATERNITY, INC., Employer, and THE PHOENIX INSURANCE CO., Insurance Carrier, Defendants.	File No. 20014528.01 ARBITRATION DECISION Head Note Nos.: 1402.40, 1803, 2501, 2907

STATEMENT OF THE CASE

Claimant, Eileen Jenn-Falls, filed a petition in arbitration seeking workers' compensation benefits against defendants Delta Gamma Fraternity, Inc., employer, and The Phoenix Insurance Co., insurer. In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on April 7, 2023, via Zoom.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record consists of Joint Exhibits 1 through 6, Claimant's Exhibits 1 through 9, and Defendants' Exhibits A through F. Claimant testified on her own behalf. No other witnesses were called to testify. The evidentiary record closed at the conclusion of the evidentiary hearing. All parties filed their post-hearing briefs on May 12, 2023, at which time the case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the alleged injury caused permanent disability and, if so, the nature and extent of claimant's entitlement to permanent disability benefits, if any;

2. The commencement date for permanent partial disability benefits, if any are awarded;

3. Whether claimant is entitled to payment of medical expenses; and

4. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

Eileen Jenn-Falls was a 70-year-old individual on the date of the evidentiary hearing. (Hearing Transcript, page 8) She graduated from Highland High School in 1970. (Hearing Transcript, p. 9) She subsequently attended Kirkwood Community College, but did not graduate. (Id.)

Jenn-Falls is a House Director or "House Mom" for the Delta Gamma sorority at the University of Iowa. (Hr. Tr., pp. 9-10; Claimant's Exhibit 4, p. 33) She has held this position for the past five years. As House Director, Jenn-Falls oversees the well-being of the sorority house and manages the day-to-day operations. This involves supervising cleaning staff, overseeing repairs and maintenance, overseeing meal preparation and service, and serving as a liaison between the sorority house and the sorority's administrative staff or chapter advisors. (See Hr. Tr., pp. 10-11) According to Jenn-Falls, the sorority can house over 50 girls. (Hr. Tr., p. 11)

On October 15, 2020, Jenn-Falls was engaged in decorating the chapter room of the sorority house for Halloween. (Ex. 4, p. 34) Immediately prior to the injury, she was standing on a three-step ladder hanging decorations in front of a window. At that moment, her cell phone started ringing, prompting her to step down from the stepladder to answer the call. Unfortunately, as she descended, she slipped and fell to the floor. (See Hr. Tr., p. 11) According to Jenn-Falls, she landed on her left shoulder and struck her head against the floor. (Hr. Tr., pp. 11-12)

After collecting herself, Jenn-Falls' granddaughter drove her to the emergency department at Mercy Hospital where she was evaluated by Daniel Ritter, M.D. (Hr. Tr., p. 12; Joint Exhibit 2, p. 71) Claimant described her injury to Dr. Ritter, noting she landed on her back and struck her head. (JE2, p. 71) She complained of neck and constant left shoulder pain. (Id.) She reported no hip, pelvic, or lower extremity pain. (Id.) Dr. Ritter prescribed hydrocodone and discharged claimant with an arm sling. (JE2, p. 72)

Five days later, claimant presented to Natalie Lanternier, M.D. (JE1, p. 52) She reported constant and severe left shoulder pain. (Id.) Dr. Lanternier assessed claimant with acute left shoulder pain and referred her to Steindler Orthopedics, per claimant's request. (JE1, p. 54)

Pursuant to Dr. Lanternier's referral, defendants authorized Austin Ramme, M.D., of Steindler Orthopedic Clinic. (See Joint Exhibit 3, p. 79)

Jenn-Falls presented to Dr. Ramme for an initial evaluation on October 29, 2020. (JE3, p. 79) She reported pain over her scapula and lateral shoulder, and difficulty elevating her arm without significant pain. (Id.) She denied numbness, tingling, and radicular pain. (Id.) Dr. Ramme felt claimant's presentation was concerning for occult fracture versus acute rotator cuff tear. (JE3, p. 81) Due to this concern, Dr. Ramme ordered an MRI of the left shoulder. (Id.)

The November 6, 2020, MRI revealed acute full-thickness tears involving the supraspinatus insertion completely and a majority of the subscapularis insertion, with medial dislocation of the long head biceps tendon, without appreciable biceps tendon tear or labral tear. (JE3, p. 83) No fractures or dislocations were identified. (Id.)

Based on the results of the MRI, Dr. Ramme performed a left shoulder arthroscopy with subacromial decompression, rotator cuff repair, subscapularis repair, and open biceps tenodesis on December 2, 2020. (JE4, p. 111) The surgery was successful at reducing claimant's complaints.

Two weeks after surgery, claimant reported that her pain was well controlled, and she was anxious to start physical therapy on December 16, 2020. (See JE3, p. 95; JE5, p. 114)

Claimant presented for her ninth physical therapy appointment on January 4, 2021. (JE5, p. 117) During the session, claimant reported an onset of low back pain. More specifically, claimant reported a constant ache in her lumbar spine near the sacrum. (Id.) The physical therapist felt claimant's low back pain seemed to be a significant complication that could cause her to be less active. (Id.)

On January 13, 2021, claimant returned to Dr. Ramme for her six-week post-op visit. (JE3, p. 96) Claimant continued to report that her left shoulder pain was well controlled, and she was making very good progress with physical therapy. Unfortunately, claimant also reported that she was now experiencing low back pain. (Id.) In fact, claimant characterized her low back pain as her biggest concern. (Id.) Dr. Ramme recommended claimant take ibuprofen for the low back pain and scheduled her for a follow-up appointment. (Id.)

Claimant continued to see improvement in her left shoulder through physical therapy. On February 24, 2021, claimant reported no pain and significant improvements with respect to her left shoulder range of motion. (JE3, p. 98) Her main focus at the time was improving her strength as she still demonstrated significant weakness. (Id.)

One week later, claimant reported to her physical therapist that the weakness in her left shoulder was limiting her ability to complete activities of daily living. (JE5, p. 118) At the same appointment, claimant reported that her low back pain had flared up

over the past weekend. (Id.) Claimant continued to report low back pain to her physical therapists on March 26, 2021, March 29, 2021, and April 5, 2021. (JE5, pp. 119-121)

Claimant presented for an evaluation with Dr. Ramme on April 7, 2021. (JE3, p. 100) While claimant continued to report left shoulder fatigue with lifting activities, she felt that her primary issue at the time was her low back pain. (Id.) Claimant told Dr. Ramme of her belief that the October 15, 2020, fall worsened her pre-existing low back condition. She further relayed her belief that her low back pain increased during the time in which she was utilizing a shoulder immobilizer. Claimant would later explain that she could not perform her normal low back stretching routine because of the shoulder immobilizer. (See Hr. Tr., p. 19) Following the April 7, 2021, appointment, Dr. Ramme referred claimant for an evaluation of her low back. (JE3, p. 101)

Defendants authorized an evaluation with Benjamin MacLennan, M.D. The evaluation occurred on April 23, 2021. (JE3, p. 102) Claimant presented with complaints of stabbing pain across the low back that were "pretty constant." (Id.) Claimant asserted that she had been trying to have her low back pain evaluated since the date of injury. X-rays of the lumbosacral spine were obtained and interpreted by Dr. MacLennan. While Dr. MacLennan did not see any indication for advanced imaging, he recommended claimant start non-operative therapies. He also explained to claimant that said therapies would likely be covered by workers' compensation. Dr. MacLennan referred claimant for physical therapy and an evaluation by the University of Iowa's pain clinic. (JE3, p. 104)

Dr. MacLennan subsequently produced a causation letter, dated April 24, 2021. (Defendants' Exhibit A, p. 1) Dr. MacLennan could not state within a reasonable degree of medical certainty that claimant's current low back complaints were causally related to the alleged work injury. (Id.) In support of this conclusion, Dr. MacLennan pointed to claimant's long history of chronic low back pain and the initial medical records, which do not document any complaints of low back pain. (Id.)

Following receipt of Dr. MacLennan's causation opinion, the defendants produced a letter to claimant, dated April 28, 2021, denying liability for her alleged low back condition. (Ex. B, p. 6)

Claimant subsequently sought chiropractic treatment for her low back condition with Ryan Bowman, D.C., on May 11, 2021. (JE6, p. 149) Claimant reported low back pain with intermittent radiation into her left posterior thigh. (Id.) She relayed that her physical therapist had added weight to her left shoulder rehab program to help with her overall strength and she believed the added weight was exacerbating her low back pain. (Id.)

Dr. Bowman's chiropractic records reflect that claimant's pain complaints varied greatly week-to-week and month-to-month between May 2021 and January 2023. (See JE6, pp. 152-206) For instance, at the beginning of May 2021, claimant was reporting a pain score of 8 out of 10, and noting that her pain was present 60 percent of the time. However, by the end of May 2021, claimant's pain score was down to 3 out of 10, and

she was reporting that her pain was present only 30 percent of the time. (JE6, pp. 152, 157)

While claimant's pain scores occasionally spiked, such increases typically followed a specific inciting event. For example, claimant's pain scores ranged from 2 to 3 out of 10 between June, 2021 and August, 2021. (See JE6, pp. 159-170) However, her pain score increased to 6 out of 10 on October 6, 2021, following a visit to the flea market, where she was on her feet for an extended period of time. (JE6, p. 174) Her pain score returned to a 2 out of 10 by November 8, 2021. (JE6, p. 176) Similarly, in March of 2022, claimant reported a pain score of 9 out of 10 after traveling to Florida and sleeping on a "bad bed." (JE6, p. 184) In August of 2022, claimant reported pain scores between 7 and 8 out of 10 after getting the sorority house ready for the new school year, cooking for 80 girls, and traveling to Chicago. (JE6, pp. 192-194) Following these flare-ups, claimant's pain score returned to 3 out of 10 in October and November 2022. (JE6, pp. 199-202)

It does not appear as though Dr. Ramme was aware that defendants denied causation for the low back condition, as Dr. Ramme addressed both conditions during his May 24, 2021, evaluation of claimant. (See JE3, pp. 105-107) Claimant expressed that her low back pain was limiting her ability to progress with her left shoulder at physical therapy. (JE3, p. 105) She further reported that additional weight and strength training for her shoulder had led to an increase in her low back pain. Nevertheless, it is noted that claimant had returned to all work activities. (Id.) Following his examination, Dr. Ramme continued claimant's physical therapy for both the left shoulder and low back. (JE3, p. 107)

During her final appointment with Dr. Ramme, claimant reported that her range of motion and strength had returned to baseline. (JE3, p. 108) Dr. Ramme placed Jenn-Falls at maximum medical improvement and discharged her from treatment on July 14, 2021. (JE3, p. 110) He assessed claimant with zero percent left upper extremity impairment. (Ex. 7, p. 43)

Jenn-Falls eventually sought an independent medical evaluation with Sunil Bansal, M.D. (Ex. 2) The examination occurred on August 12, 2022. Dr. Bansal agreed with Dr. Ramme that claimant reached MMI on July 14, 2021. (Ex. 2, p. 25) Using Figures 16-40 through 16-46 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Bansal assigned 10 percent upper extremity impairment as a result of the left shoulder injury. (Ex. 2, pp. 25-26) Using Table 16-35, Dr. Bansal assigned an additional 2 percent upper extremity impairment for strength deficits secondary to claimant's biceps dislocation with resultant biceps tenotomy surgery. (Ex. 2, p. 26)

Defendants produced Dr. Bansal's report to Dr. Ramme and asked him to comment on the impairment assessment. (Ex. C, p. 7) In particular, defendants wanted Dr. Ramme to address the additional impairment Dr. Bansal assigned as a result of the biceps tenotomy. (Id.) In response, Dr. Ramme acknowledged that the proximal long

head of the biceps tendon was tenotomized during surgery; however, he explained that he reattached the proximal long head of the biceps tendon in the subpectoral region and, as such, he would not assign an impairment rating for the same. (Ex. C, p. 8) Dr. Ramme further explained that he assigned zero percent impairment as claimant demonstrated full symmetric shoulder range of motion and full shoulder strength on examination. (Id.)

Defendants' letter to Dr. Ramme asserts that the additional 2 percent impairment rating was "because of the biceps tenotomy." As a result, Dr. Ramme addressed why he would not assign any additional impairment due to the biceps tenotomy. (See Ex. C, p. 8) However, as mentioned, Dr. Bansal utilized Table 16-35 when assigning the additional 2 percent impairment. (Ex. 2, p. 26) Table 16-35 is used to assign, "Impairment of the Upper Extremity Due to Strength Deficit From Musculoskeletal Disorders Based on Manual Muscle Testing of Individual Units of Motion of the Shoulder and Elbow." (AMA Guides, Fifth Edition, p. 510) Dr. Bansal did not assign additional impairment "because of the biceps tenotomy." He assigned the additional impairment as a result of claimant's 10 percent loss in strength. (Ex. 2, p. 26)

With respect to the left shoulder, I accept Dr. Bansal's opinions in this case as the most convincing and credible. Dr. Bansal's analysis is reasonable. He appears to have had access to all relevant medical records. I acknowledge that Dr. Ramme is claimant's authorized treating surgeon. I accept Dr. Bansal's impairment rating over the zero percent impairment rating of Dr. Ramme, in part, because Dr. Ramme's finding that claimant was pain free, with full range of motion and strength, is not consistent with claimant's testimony or the contemporaneous physical therapy records. (See JE5, pp. 118, 120-121)

Claimant continues to experience stiffness, weakness, and fatigue in her left shoulder. (See Hr. Tr., pp. 13-14) She testified, "My frustration with my shoulder is the fact that I don't – I can't raise it a long period of time without it tiring or bothering me. I mean, you know, I can put my hand over my head. I can put my arm behind my back. But to hold it up there for a long period of time or do a lot of the things that I used to, I feel like I've lost that." (Hr. Tr., p. 29) Claimant asserts that some of her job duties, like changing the battery in a smoke detector, are more difficult for her now. (Hr. Tr., p. 14) Additionally, there are some tasks she no longer completes at all, such as laundering the shower rugs or carrying big packages into the house. (Hr. Tr., p. 15)

For these reasons, I find Dr. Bansal's impairment ratings to be reasonable and more appropriate than the impairment rating of Dr. Ramme. I therefore find that Ms. Jenn-Falls sustained a permanent functional impairment rating equivalent to 12 percent of the left upper extremity.

The next issue to be addressed is whether claimant sustained a permanent aggravation of her pre-existing low back condition on October 15, 2020.

Defendants correctly point out that Jenn-Falls has a well-documented history of low back pain that pre-dates the October 15, 2020, work injury. While it is unknown when her low back complaints began, the evidentiary record suggests they started several years prior to 2001. On November 12, 2001, claimant presented to Joseph Chen, M.D., seeking an evaluation of her bilateral low back pain and posterolateral hip pain. (JE1, p. 1) She reported that her symptoms had been present for several years and attributed them to three separate falls. Previous treatments, including chiropractic adjustments and the utilization of a lift in her foot, did not provide any long-term benefit. (Id.)

An x-ray taken on July 5, 2002, revealed osteopenia of the left femoral neck and the lumbar spine. (JE1, p. 3)

On April 23, 2003, claimant fell while operating a vacuum cleaner and experienced sudden pain in her low back and shooting pain down her left leg. (JE1, p. 4) She lost her balance and fell to the ground, hitting her left flank on a toilet. As the day progressed, claimant experienced significant pain with walking, bending, moving from side to side, and taking deep breaths. She sought treatment from Melinda Johnson, M.D. at University of Iowa Health Care. X-rays collected during the appointment revealed no acute fractures of the ribs, spine, or pelvis. (Id.)

Several months later, claimant was involved in a motor vehicle accident. More specifically, claimant was rear-ended on November 24, 2003. (See JE1, p. 6) According to claimant, the impact was significant enough to break her bumper; however, she did not recall hitting her head or losing consciousness. (JE1, p. 6) Initially, claimant did not experience any pain; however, she eventually developed severe neck pain and headaches. X-rays of the cervical spine showed degenerative spondylosis at the lower cervical spine, most pronounced at C6-C7. Dr. Johnson diagnosed claimant with musculoskeletal pain and spasm of the neck, with no evidence of fracture or neurological compromise. (JE1, p. 7)

For the next several months, claimant pursued chiropractic treatment to address her complaints of neck pain. Unfortunately, claimant developed symptoms in her low back and left leg on or about April 14, 2004. (See JE1, p. 10) She was subsequently diagnosed with sciatica. (JE1, p. 10)

On April 19, 2004, claimant presented to Jeffrey Nicholson, P.T., and reported low back pain, left posterolateral hip pain, and lateral thigh and calf pain. (JE1, p. 11) She relayed that her back pain had increased three weeks prior, while her left leg had started bothering her one week prior. (Id.) She rated her low back and left leg pain 8 out of 10. (Id.) Mr. Nicholson diagnosed claimant with back and hip pain consistent with hip abductor pain syndrome. (JE1, p.12)

On March 3, 2005, claimant presented to Charles Clark, M.D., reporting neck and low back pain. (JE1, p. 16) She relayed that she had been dealing with low back problems for several years. Claimant further relayed that she had been treating her low

back issues with chiropractic manipulation and physical therapy, but she had not yet received treatment for her neck. She described her neck pain as constant and bothersome, with no pain, numbness, or weakness in her arms. (Id.)

Unfortunately, claimant was involved in a second motor vehicle accident in June 2005. (See JE1, p. 17)

Claimant presented to Dr. Johnson on October 17, 2005. (JE1, p. 17) She reported "very bothersome" low back pain attributable to the June 2005 motor vehicle accident. (Id.) She described her recent treatment to Dr. Johnson, including an MRI of her lumbar spine. According to claimant, the imaging revealed abnormal discs. Dr. Johnson suspected that claimant's severe low back pain was mostly related to core and pelvic musculature derangement. (JE1, p. 21) She recommended physical therapy with a focus on the gluteus medius and referred claimant back to Dr. Chen. (Id.)

Dr. Chen evaluated claimant on October 20, 2005. (JE1, p. 22) During the evaluation, claimant complained of low back pain and bilateral buttock pain, without radiation into her legs. (Id.) She also described, "clicking" in her back. Dr. Chen reviewed the MRI reports and observed degenerative changes and spondylolisthesis at the L4-L5 level. He assessed claimant with myofascial strain of the hip abductor musculature and trochanteric bursitis related to muscle imbalance. (JE1, p. 23) Dr. Chen recommended a home exercise program and scheduled her for a follow-up appointment. (Id.)

Initially, claimant's low back condition improved with the home exercise program. Unfortunately, she experienced a setback after vacationing in California. (JE1, p. 23) According to claimant, her back pain increased following several days of standing for multiple hours. (Id.) Dr. Chen instructed her to continue with the home exercise program and noted that a bursal injection could be considered if her condition did not improve. (JE1, p. 24)

On November 16, 2005, claimant returned to Dr. Chen's office, reporting that her low back pain was affecting several aspects of her life and making it difficult to continue with work activities. (JE1, p. 25) Dr. Chen diagnosed her with chronic mechanical and myofascial low back pain and discussed how he did not see any evidence of lumbar radiculopathy. (Id.) He recommended she be evaluated for participation in the spine rehabilitation program. (Id.)

As part of the initial assessment for the spine rehabilitation program, claimant underwent a series of psychological, functional activity, and cardiovascular evaluations. (JE1, pp. 26-30) Following the evaluations, claimant was given the opportunity to participate in the spine rehabilitation program. (JE1, p. 30) Claimant participated in the program from February 6, 2006, through February 17, 2006. (See id.; JE1, p. 30)

Dr. Chen placed claimant at maximum medical improvement as of April 24, 2006, and assigned a 5 percent impairment of the whole person. (See JE1, pp. 44-45)

Claimant continued to report low back pain, neck pain, and headaches when she presented to Dr. Johnson on March 7, 2007. (JE1, p. 34)

Claimant presented to Dr. Chen on June 8, 2007, for chronic issues with severe headaches and back pain. (JE1, p. 35) Dr. Chen recommended claimant present for 2-5 sessions of osteopathic manipulation with Jaclyn Anderson, M.D. (Id.; see JE1, p. 36)

Dr. Anderson performed osteopathic manipulation on claimant 10 times between July 18, 2007 and June 5, 2008. (See JE1, p. 45) Claimant felt that the treatments were helpful. (See JE1, p. 42)

Claimant returned to Dr. Chen on October 27, 2008, reporting worsening left lateral thigh pain over the prior six months. (JE1, p. 42) According to claimant, the pain was accompanied by constant burning and tingling. (Id.)

In 2016, claimant suffered a slip and fall injury to her low back while working for Griswold Home Care. (JE2, p. 64; see Ex. E, p. 15) Claimant presented to the emergency room on February 5, 2016, reporting that she slipped and fell on an icy surface. (Ex. 2, p. 13) She reported no radicular numbness or tingling; however, she did describe shooting pain down her left leg. (Id.) X-rays of the lumbar spine and pelvis did not return an identifiable pathology. (See Ex. 2, p. 14) Ultimately, claimant was assessed as having a sacral insufficiency fracture. (Ex. 2, p. 14)

Claimant presented to Ryan Bowman, D.C., of Bowman Chiropractic several times between February and March 2018 following a slip and fall injury on February 7, 2018. (See JE6, pp. 134-148) On February 15, 2018, claimant reported a “recent severe exacerbation” in the right low back with radiating pain to the right thigh. (JE6, p. 134) Claimant relayed that heat and over-the-counter pain medication had not provided much relief. (Id.) Dr. Bowman assessed claimant with intervertebral disc degeneration in the lumbar spine and recommended adjustment. (JE6, p. 135)

Claimant underwent another series of functional activity and cardiovascular evaluations in November 2019. (JE1, pp. 47-51) According to the evaluations, claimant was planning on attending the UI persistent pain program in February 2020. (See JE1, p. 47) On November 20, 2019, Pamela Lee, P.T., documented claimant’s history of low back, bilateral leg, and right knee pain. (JE1, pp. 47-48) She mentioned a spiral fracture in her tailbone from a fall three years prior, which caused flare-ups of pain. (JE1, p. 48) It is documented that claimant's activity level was limited, but she attempted to engage in sorority and volunteering activities. (Id.)

In his January 13, 2023, IME report, Dr. Bansal acknowledged claimant’s long history of chronic low back pain. Following his examination and review of the medical records, Dr. Bansal diagnosed claimant with an aggravation of lumbar facet arthropathy. (Ex. 2, p. 25) Barring any additional medical treatment, Dr. Bansal placed claimant’s low back condition at maximum medical improvement on August 12, 2022. (Id.) He opined

that claimant's condition warranted placement in DRE Category II and assigned 6 percent whole person impairment due to her radicular pain, loss of range of motion, and guarding. (Id.)

At hearing, claimant testified her back hurt "significantly" and she experienced shooting pain down her leg when she got out of bed on October 21, 2020. (Hr. Tr., pp. 15-16, 26) However, the contemporaneous medical records are silent as to any low back complaints. In fact, claimant did not report low back pain to any medical professional until approximately one month after her left shoulder surgery.

Aside from claimant's testimony and her complaints of ongoing low back pain, there is no objective medical evidence demonstrating a worsening of claimant's pre-existing condition. Instead, the medical records in evidence demonstrate that claimant has experienced chronic low back pain since at least 2001. The medical records in evidence further demonstrate that claimant's low back pain fluctuates with activity, but consistently returns to baseline.

Although it is entirely possible Dr. Bansal's 6 percent impairment assessment is accurate, he fails to distinguish claimant's current condition from her condition immediately prior to the date of injury. As mentioned in Dr. Bansal's report, Dr. Chen previously utilized Table 15-3 and assigned 5 percent whole person impairment to claimant's low back condition in 2006. (See Ex. 2, pp. 9-10) Dr. Bansal does not address how claimant's condition, following the October 15, 2020, work injury, warrants an additional 1 percent impairment. Given the lack of evidence demonstrating a worsening of her condition, and the lack of analysis in Dr. Bansal's report, I cannot accept Dr. Bansal's low back impairment rating. Instead, I find Dr. MacLennan's opinion persuasive. Therefore, I find claimant provided insufficient evidence that the October 15, 2020, work injury resulted in a permanent aggravation of her pre-existing low back condition.

Claimant next asserts entitlement to reimbursement of the medical expenses contained in Exhibit 8. All of the medical charges appear to be related to chiropractic care claimant received from Dr. Bowman. (Ex. 8, pp. 54-68) The charges stem from chiropractic care claimant received between May 11, 2021, and September 14, 2022. (Ex. 8, pp. 54-59) Defendants denied compensability for the low back condition on April 28, 2021. (Ex. B) As such, I find claimant received chiropractic care during a time period in which defendants were offering no care. While I found claimant provided insufficient evidence of a material aggravation, the parties stipulated that the claimant sustained an injury, which arose out of and in the course of employment, on October 15, 2020. (Hearing Report, p. 1) The only dispute as to the low back condition was whether or not claimant sustained a permanent aggravation of her pre-existing condition. Therefore, I find claimant is entitled to reimbursement for the medical charges contained in Exhibit 8.

Costs will be addressed in the Conclusions of Law section.

REASONING AND CONCLUSIONS OF LAW

The primary issue to be addressed in this decision is whether the October 15, 2020, work injury is a cause of permanent disability.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or for loss of earning capacity under section 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, 14 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity. Iowa Code section 85.34(2)(x).

Jenn-Falls' shoulder injury constitutes a scheduled injury under Iowa Code section 85.34(2)(n). Shoulder injuries are compensated on a 400-week schedule and are limited to the functional impairment rating. Iowa Code section 85.34(2)(n).

Having adopted the impairment rating assigned by Dr. Bansal, I found claimant proved a functional loss of 12 percent to the left upper extremity. Pursuant to Iowa Code section 85.34(2)(n), claimant is entitled to a proportional award equivalent to 12 percent of 400 weeks. Therefore, I conclude that claimant is entitled to an award of 48 weeks of permanent partial disability benefits, commencing on July 15, 2021. Iowa Code section 85.34(2)(n).

Jenn-Falls next asserts a claim for payment or reimbursement of past medical expenses.

In this case, defendants denied liability for any medical treatment relating to the low back condition following Dr. MacLennan's April 24, 2021, causation letter. When defendants declined to offer claimant medical treatment for her low back condition, she sought chiropractic care from Dr. Bowman. The care claimant received from Dr. Bowman was reasonable and provided a more favorable outcome than the care offered by defendants, which is nothing. I find claimant carried her burden of proving the care provided by defendants, which was no care, was unreasonable.

The medical mileage listed in Exhibit 8 from October 29, 2020, through August 30, 2021, was appropriate and reasonable. I conclude those medical mileage expenses are payable or reimbursable by defendants. Iowa Code section 85.27.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. Rule 876 IAC 4.33. I conclude that claimant was successful in her claim and therefore exercise my discretion and assess costs against the defendants in this matter.

Jenn-Falls seeks assessment of her filing fee ($100.00) as well as the cost of service upon defendants ($13.34). Both of these costs are reasonable and appropriate pursuant to 876 IAC 4.33(3), (7).

I assess costs against the defendants in this matter in the amount of $100.00 for the filing fee and $13.34 for service fees.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant forty-eight (48) weeks of permanent partial disability benefits commencing on July 15, 2020, at the stipulated weekly rate of four hundred fifty-two and 39/100 dollars ($452.39).

Defendants shall pay all accrued weekly benefits in a lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall be entitled to credit for any weekly benefits paid to date.

Defendants shall reimburse claimant's medical expenses and medical mileage for all medical treatment found to be causally related to the work injury at the applicable mileage rate applicable pursuant to 876 IAC 8.1(2). If the parties cannot agree as to the amount of medical expenses owed or the amount of medical mileage owed under this award, the parties shall file a timely request for rehearing, along with a brief setting forth each parties' calculations, for a specific and detailed entry of the amount of medical expenses and medical mileage owed.

Costs are taxed to defendants pursuant to 876 IAC 4.33, as set forth in the decision.

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

Signed and filed this 26th day of September, 2023.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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.