

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MANDY TRIPP,

Claimant,

vs.

SCOTT EMERGENCY  
COMMUNICATION CENTER,

Employer,

and

IMWCA,

Insurance Carrier,  
Defendants.

File No. 5066673

REMAND DECISION

Head Notes: 1402.20; 1402.40; 1402.60;  
1403.10; 1801.1; 1802; 1803;  
2204; 2501; 2701; 2907

## STATEMENT OF THE CASE

This matter is before the Iowa Workers' Compensation Commissioner on remand from the Iowa Supreme Court from a decision dated June 3, 2022.

This matter was initially heard in arbitration on October 21, 2019. An arbitration decision was filed on February 28, 2020. That decision found claimant failed to carry her burden of proof to establish she sustained an injury which arose out of and in the course of her employment.

The arbitration decision was appealed within the agency. That appeal decision affirmed the arbitration decision.

A petition for judicial review was filed. The district court affirmed the agency's decision and found claimant failed to carry her burden of proof to establish she sustained an injury which arose out of and in the course of her employment.

The Iowa Supreme Court reversed the decision and remanded the case back to the agency to determine the extent of claimant's disability. As the Iowa Supreme Court found claimant sustained a mental/mental injury that arose out of and in the course of her employment on September 30, 2018, that issue is not discussed in the remand decision.

## ISSUES ON REMAND

1. Whether the injury is a cause of temporary disability.

2. Whether the injury is a cause of permanent disability; and if so,
3. The extent of claimant's entitlement to permanent partial disability benefits.
4. Whether there is a causal connection between the injury and the claimed medical expenses.
5. Whether claimant is entitled to alternate medical care under Iowa Code section 85.27.
6. Whether defendants are entitled to a credit for sick pay.
7. Costs.

#### FINDINGS OF FACT

The findings of fact in the arbitration decision and the appeal decision adequately detail the record in this case. The findings of fact in this remand decision will only address facts relevant to the issues on remand.

Claimant was 40 years old at the time of the hearing. Claimant graduated from high school. Claimant has a BA in criminal justice. (Arbitration Decision, p. 2)

Claimant worked for United Parcel Service from 1998 through 2002. Claimant began with the Davenport Police Department as a 911 operator in 2002. When the Scott Emergency Communication Center (SECC) was created to consolidate all Scott County dispatchers, claimant began working with the SECC. (Arb. Dec., p. 2)

Claimant has undergone continued training as an emergency dispatcher since 2002. In 2003, claimant was certified to be a communicative training officer. Claimant has also received numerous certifications to work as an emergency dispatcher. (Arb. Dec., p. 2)

Claimant had a work-related injury on September 30, 2018, resulting from a call concerning a dead infant. Claimant's work-related injury was diagnosed as post-traumatic stress disorder (PTSD). (Arb. Dec., pp. 4-5; Joint Exhibit 4, pp. 59-60; Joint Exhibit 5, pp. 101-103; Joint Exhibit 3, pp. 5-7) As a result of her PTSD, claimant required the following time off work:

October 15, 2018 through October 16, 2018  
October 20, 2018 through October 29, 2018  
November 4, 2018  
November 8, 2018  
November 11, 2018  
November 13, 2018  
November 15, 2018  
November 19, 2018  
November 22, 2018 through November 23, 2018  
November 26, 2018 through November 30, 2018

December 7, 2018 through December 8, 2018  
December 12, 2018  
December 15, 2018  
December 19, 2018 through December 22, 2018  
December 27, 2018  
December 29, 2018  
December 30, 2018  
January 7, 2019  
February 20, 2019

(Claimant's Exhibit 7, p. 52)

Claimant also missed two hours of work on October 30, 2018, October 31, 2018, November 21, 2018, December 6, 2018, and December 13, 2018, due to her PTSD. (Ex. 7, p. 52)

Claimant testified at hearing she missed these dates of work due to PTSD. (Hearing transcript, pp. 57-58)

In a September 4, 2019, report, Martin Carpenter, M.D., gave his opinions of claimant's condition following an independent psychiatric evaluation. Dr. Carpenter is a board-certified psychiatrist. Dr. Carpenter assessed claimant as having PTSD. (Ex. 5, p. 32)

Dr. Carpenter opined claimant had a maximum medical improvement (MMI) date of May 30, 2019. Dr. Carpenter recommended continued treatment including pharmacotherapy and psychotherapy. He recommended claimant retain a board-certified psychiatrist to provide medication management. Dr. Carpenter also recommended claimant continue treatment with Robert Gillespie, Ph.D., and Lisa Beecher, M.S., L.M.H.C. (Ex. 5, p. 35)

Based on the AMA Guides to the Evaluation of Permanent Impairment (Fifth Edition), Dr. Carpenter rated claimant as falling into class 1 on activities of daily living, class 3 on social functioning, class 3 on concentration, and class 2 on adaptation. (Ex. 5, p. 36; Guides table 14-1, p. 363) Dr. Carpenter noted:

The AMA Guides to the evaluation of permanent impairment (5th edition) [sic] do not provide a specific percentage of impairment that can be assigned to mental health disorders. I have worked for the VA and have evaluated many veterans with PTSD. If Ms. Tripp were a veteran suffering with PTSD the federal government would utilize the general rating formula for mental disorders described in 38 CFR book C, available on the US department of veteran's affairs website. In combination with my education, training and experience as a board-certified psychiatrist, Ms. Tripp would qualify for a 30% impairment rating according to the federal guidelines used for our nation's military.

(Ex. 5, p. 36)

Claimant testified at hearing that after the September 30, 2018, work injury, she applied to the public library as she was seeking a job with a quieter environment. She testified she does not believe she could get another job as a 911 dispatcher given her PTSD symptoms. (Tr., pp. 59, 66-67) At the time of hearing, claimant was working full time as a 911 operator and planned to continue at that job. (Tr., pp. 83, 142; Arb. Dec. p. 7)

### CONCLUSIONS OF LAW

The first issue to be determined is whether the work injury resulted in temporary disability.

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

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (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. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

In the hearing report, claimant indicated she was seeking temporary benefits from February 15, 2019, through May 30, 2019. (Hearing Report) Claimant also contended in her brief that defendants stipulated that if they are liable for the alleged injury, claimant is entitled to benefits shown in Exhibit 7, p. 52. (Claimant's Arbitration Brief, p. 39) The hearing report indicates defendants did not make that stipulation.

Claimant indicated in answers to interrogatories she was off work for the following periods due to PTSD:

- October 15, 2018 through October 16, 2018
- October 20, 2018 through October 29, 2018
- November 4, 2018
- November 8, 2018
- November 11, 2018
- November 13, 2018
- November 15, 2018
- November 19, 2018
- November 22, 2018 through November 23, 2018
- November 26, 2018 through November 30, 2018
- December 7, 2018 through December 8, 2018
- December 12, 2018

December 15, 2018  
December 19, 2018 through December 22, 2018  
December 27, 2018  
December 29, 2018  
December 30, 2018  
January 7, 2019  
February 20, 2019

(Ex. 7, p. 52)

Claimant testified at hearing she was off work for the dates shown in Exhibit 7, page 52, due to work-related PTSD. (Tr., pp. 57-58) Defendants offered no evidence to dispute claimant's claim for temporary benefits. Given this record, claimant is due healing period benefits and temporary partial disability benefits for the periods as detailed in Exhibit 7, page 52.

The next issue to be determined is whether claimant's injury resulted in permanent disability. Claimant sustained a work-related injury on September 30, 2018. As of October 21, 2019, the date of hearing, and over one year after the injury, claimant still had symptoms from that injury that included, but were not limited to, problems with noise, problems with sleep, limitations in working as a 911 operator, issues with panic and anxiety, and headaches. (Ex. 7, pp. 47-48; Tr., pp. 65-66)

Dr. Carpenter opined claimant's PTSD resulted in permanent impairment. (Ex. 5, p. 36) There is no evidence contradicting Dr. Carpenter's opinion. Given the record as detailed above, claimant has carried her burden of proof to establish she sustained permanent impairment as a result of the September 30, 2018, work injury.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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

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

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

Iowa Code section 85.34(2)(v) (2017) now 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 functional impairment resulting from the injury, and not in relation to the employee's earning capacity. (emphasis added)

The record indicates claimant returned to work as a 911 operator. As a result, claimant's entitlement to permanent partial disability benefits is limited to her functional impairment rating.

Rule 876 IAC 2.4 indicates, in part:

The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association are adopted as a guide for determining permanent partial disabilities under Iowa Code section 85.34(2) "a" to "s." The extent of loss or percentage of permanent impairment may be determined by use of the Fifth Edition of the Guides and payment of weekly compensation for permanent partial scheduled injuries made accordingly. Payment so made shall be recognized by the workers' compensation commissioner as a prima facie showing of compliance by the employer or insurance carrier with the foregoing sections of the Iowa Workers' Compensation Act. **Nothing in this rule shall be construed to prevent the presentations of other medical opinions or other material evidence for the purpose of establishing that the degree of permanent disability to which the claimant would be entitled would be more or less than the entitlement indicated in the Fifth Edition of the AMA guides.** (Emphasis added)

The Fifth Edition of the Guides do not provide a specific percentage of impairment for mental health disorders. (Ex. 5, p. 36) However, the Guides do

acknowledge classes of impairments for mental health disorders ranging from no impairment to extreme impairment. Dr. Carpenter graded claimant's level of impairment from mild to moderate based upon aspects of impairment provided by the Guides. (Guides table 14-1, p. 363; Ex. 5, p. 36)

Dr. Carpenter also opined that using federal guidelines for rating a mental impairment, claimant would qualify for a 30 percent permanent functional impairment rating. (Ex. 5, p. 36) The rules of this agency do indicate that the Guides to the Evaluation of Permanent Impairment, Fifth Edition, are adopted as a guide for determining permanent partial disabilities. The rule also indicates that other medical opinions and material evidence can be used by this agency for the purposes of establishing a degree of permanent disability. (Rule 876 IAC 2.4)

There is no evidence disputing the opinions of Dr. Carpenter. Given the requirements of Iowa Code section 85.34(2)(v), Table 14-1 of the Guides, and the opinion of Dr. Carpenter, it is found that claimant is entitled to 150 weeks of permanent partial disability benefits. (30 percent x 500 weeks)

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant seeks medical expenses as detailed in Exhibit 7, pp. 49-51. Claimant testified the expenses detailed in Exhibit 7, pp. 49-51 relate to the care and treatment for her PTSD. (Tr., pp. 64-65) Dr. Gillespie, Dr. Carpenter and mental health counselor Beecher all opine that the expenses detailed in Exhibit 7, pp. 49-51, are reasonable and beneficial to treat claimant's PTSD. (Ex. 1, p. 4; Ex. 2, p. 9; Ex. 3, p. 14; Ex. 5, p. 36. There is no evidence contrary to claimant's testimony and the opinions of counselor Beecher, and Drs. Gillespie and Carpenter. Defendants are liable for the expenses as detailed in Exhibit 7, pp. 49-51.

The next issue to be determined is whether claimant is entitled to alternate medical care.

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997). Iowa Code section 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.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words "reasonable" and "adequate" appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective, and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

Dr. Carpenter opined that claimant should continue to treat with Dr. Gillespie and mental health care counselor Beecher. (Ex. 5, p. 35; Ex. 1, p. 4; Ex. 2) There is no opinion that contradicts Dr. Carpenter's opinion. Defendants offered no treatment for claimant's PTSD. Defendants' failure to authorize care for claimant's PTSD is found unreasonable. Given the record, claimant has carried her burden of proof to establish that she is entitled to alternate medical care consisting of continued treatment with Dr. Gillespie and mental health counselor Beecher.

The next issue to be determined is whether defendants are due a credit for paid sick leave received by claimant. Defendants indicated at hearing and in the hearing report they would supplement the amount of credit sought. (Hearing Report, Tr., p. 6)

Defendants bear the burden of proof to prove entitlement to a credit. SKW Biosystems/Degussa Health and Nutrition v. Wolf, No. 5-973/05-1214 (Iowa Ct. App. June 28, 2006) (unpublished 723 N.W. 448)(table); Albertsen v. Benco Manufacturing, File No. 5010764 (App., July 27, 2007); Damiano v. Universal Gym, File No. 1071309 (App., January 17, 2008); Miller v. Maintainer Corp., File No. 5020192 (App., December 2, 2009).

Defendants did not file a supplemental report regarding the amount of credit sought. Defendants offered no argument in post hearing briefs as to why they are due a credit in this case. Given this record, defendants have failed to carry their burden to prove they are entitled to a credit in this case.

The final issue to determine is costs. Costs are assessed at the discretion of the agency. As claimant has prevailed on all issues in this case, costs are awarded to claimant.

### ORDER

#### THEREFORE IT IS ORDERED:

Defendants shall pay claimant healing period benefits for the dates as detailed above at the rate of seven hundred seventy-three and 59/100 dollars (\$773.59) per week.

Defendants shall pay claimant temporary partial disability benefits for ten (10) hours of work missed on October 30, 2018, October 31, 2018, November 21, 2018, December 6, 2018, and December 13, 2018.

Defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits commencing on May 31, 2019, at the rate of seven hundred seventy-three and 59/100 dollars (\$773.59) per week.

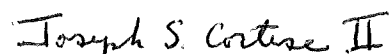
Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall pay medical costs as detailed in Claimant's Exhibit 7, pp. 49-51.

Defendants shall authorize and pay for treatment for claimant with Dr. Gillespie and mental health counselor Beecher.

Defendants shall pay costs as itemized in Claimant's Exhibit 12.

Signed and filed this 1<sup>st</sup> day of September, 2022



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JOSEPH S. CORTESE, II  
WORKERS' COMPENSATION  
COMMISSIONER

The parties have been served as follows:

Andrew Bribriesco (via WCES)

Jane Lorentzen (via WCES)

Joshua Duden (via WCES)