BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LORI OLSON, Claimant, vs. MIDAMERICAN ENERGY COMPANY, Employer, Self-Insured, Defendants.	:	File No. 5068768 ARBITRATION DECISION Head Note Nos.: 1402.20, 1802, 1803, 2907

STATEMENT OF THE CASE

Claimant, Lori Olson, filed a petition in arbitration seeking workers' compensation benefits from defendant MidAmerican Energy Company, a self-insured employer. The hearing occurred before the undersigned on June 23, 2020.

The parties filed a hearing report at the commencement of the hearing. In the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision, and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are bound by their stipulations.

The evidentiary record consists of: Joint Exhibits 1 through 15, Claimant's Exhibits 1 through 6, and Defendant's Exhibits A through F. Claimant testified on her own behalf. No other witnesses were called to testify. The evidentiary record closed on June 23, 2020, and the case was considered fully submitted upon submission of post-hearing briefs on July 10, 2020.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained temporary disability as a result of the January 19, 2018, work injury;
2. Whether claimant is entitled to temporary partial disability benefits from May 13, 2018, through August 9, 2019;
3. Whether defendant is entitled to credit for overpayment of temporary disability benefits;

4. Whether claimant sustained permanent disability as a result of the January 19, 2018, work injury and, if so, the extent of claimant's entitlement to permanent disability benefits;
5. The commencement date for permanent partial disability (PPD) benefits; and
6. Costs.

FINDINGS OF FACT

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

Lori Olson was born on April 22, 1962, making her 58 years old on the date of the evidentiary hearing. (Hearing Transcript, page 10)

Ms. Olson sustained a stipulated work injury on January 19, 2018. At the time of the injury, Ms. Olson was walking back to her vehicle when she slipped on a sheet of black ice, fell, and struck her right buttock, elbow and head on concrete. (See Hr. Tr., pp. 18-19) At the time of the injury, claimant was fulfilling her job duties as a meter utility person for MidAmerican Energy. Ms. Olson completed the remainder of her shift before reporting the work injury to her supervisor.

Claimant declined defendant's initial offer of medical treatment. (Hr. Tr., p. 19) She was not evaluated by a medical professional until several days later, on February 5, 2018, when she presented to defendant's onsite occupational health clinic. (See Joint Exhibit 9, p. 75)

According to claimant, she did not seek immediate treatment because she was hopeful her symptoms would resolve with time. It appears claimant was also unsure as to whether her symptoms were attributable to the January 19, 2018, slip and fall, or a cold she and her husband developed around the same time. (See JE9, p. 75) Claimant sought medical attention for her work injury when her headache, photophobia, and noise sensitivity did not resolve with the rest of her cold symptoms. (See JE10, p. 80)

At her initial evaluation on February 5, 2018, claimant reported a constant, dull headache that had been present since the date of injury. The medical notes detail how claimant decided to seek treatment because her family was becoming concerned. The notes also detail how claimant initially believed her headache was a symptom of the cold she was experiencing around the time of the fall. Claimant denied having experienced any dizziness, blurred vision, or cognitive changes. On examination, Michelle Mattas, RN, felt a small indentation where claimant asserted her head made contact with the concrete. (JE9, p. 75)

Defendant subsequently referred claimant to Dean Wampler, M.D. for additional treatment.

Claimant first presented to Dr. Wampler on February 6, 2018. (JE10, p. 80) She reported a persistent headache, as well as light and sound sensitivity. She denied experiencing any consistent dizziness or unsteadiness; however, she reported there had been times where she had to "catch herself" from momentary unsteadiness. She considered this to be a fleeting sensation. She did not report any true vertigo or feeling of movement, and Dr. Wampler did not observe a balance deficit on examination. Following his examination, Dr. Wampler diagnosed claimant with mild post-concussion symptoms and assured her that her symptoms would gradually improve with time. (JE10, pp. 80-81)

Prior to her second appointment with Dr. Wampler, claimant scheduled an appointment with her primary care provider, Tara Sands, ARNP. This appointment took place on February 16, 2018. Claimant presented with intermittent vertigo and dizziness. She reported her symptoms began after her February 6, 2018, appointment with Dr. Wampler. Ms. Sands diagnosed claimant with vertigo and anxiety, and considered referring claimant for vestibular therapy. (JE8, pp. 57-62)

Claimant presented to her chiropractor, Denise Woods, DC, on February 21, 2018. She reported headaches, episodes of dizziness, neck pain, upper back pain, and low back pain. (JE5, pp. 33-37) The February 21, 2018, medical report does not discuss any recent traumatic injuries. (Id.)

Claimant returned to Dr. Wampler's office on February 28, 2018. Claimant continued to report daily, persistent headaches, as well as light and sound sensitivities. On examination, Dr. Wampler did not appreciate any balance problems. At the appointment, claimant walked Dr. Wampler through a typical day of symptoms. According to claimant, she wakes with a posterior headache that seemingly improves with activity. She then develops a more globalized headache that worsens around 2:00 p.m. and continues until she returns home from work. Once at home, claimant puts an ice pack on her head, and relaxes in her recliner while watching television. According to claimant, the headache "eases up" during this time. (JE10, p. 83)

Dr. Wampler's notes from the February 28, 2018, appointment reflect his opinion that some of claimant's lack of improvement can be attributed to unrelated stressors. For instance, in late February, 2018, claimant was notified that a senior co-worker had bid into her then-current position. Claimant was disappointed by this news as she enjoyed the meter utility position and wanted to keep it. Claimant told Dr. Wampler that she was "not happy at all" about the alternative job positions that were being offered to her. Dr. Wampler opined the stress brought on by this job displacement was adversely affecting her recovery from the January 19, 2018, work injury. As will be detailed throughout this arbitration decision, external factors such as claimant being "bumped" from her regular job appear to play a significant role in claimant's delayed recovery.

Dr. Wampler returned claimant to full duty work following the February 28, 2018, appointment. (Id.)

At her March 19, 2018, follow-up appointment, claimant initially reported she did not believe her condition had improved since her last visit. However, after discussing her symptoms with Dr. Wampler, claimant acknowledged that her headaches were "probably" less severe and less intense, comparatively. Dr. Wampler's notes provide, "She does not really have any visual disturbance with blurriness or dizziness, but still has quite a bit of significant [light and sound sensitivity]." The two discussed ways in which claimant could mitigate the light/glare from her computer screen at work. Otherwise, Dr. Wampler did not adjust claimant's treatment plan. (JE10, p. 85) Claimant continued to express frustration with the fact that she was being "bumped" out of her meter utility position.

Shortly after this appointment with Dr. Wampler, claimant began presenting to a new Ear, Nose, and Throat specialist due to some sinus problems she recognized as distinctly different from her concussion headaches. (See JE10, p. 87)

Claimant presented to board-certified otolaryngologist Katherine Prinz, M.D., on March 23, 2018, with complaints of dizziness, vertigo, and chronic sinus problems. (See Ex. 4, p. 8) Claimant's nasal exam revealed valvular collapse and a large septal perforation. The medical record notes that claimant had previously undergone two sinus surgeries. Dr. Prinz referred claimant for vestibular rehabilitation. (See Ex. 4, p. 8)

A March 28, 2018, Vestibular Rehabilitation Report provides, "She has a history of previous migraine before having a fall in January, which has then caused more persistent and worsening headache and imbalance." (See Ex. 4, p. 8) The physical therapist taught claimant a number of exercises designed to improve her vestibular sensitivity. (See JE10, p. 87)

When claimant returned to Dr. Wampler on April 2, 2018, claimant acknowledged that her symptoms were slowly improving. Claimant reported that her most significant problem continued to be light and motion sensitivity. The two discussed claimant's recent appointments with Dr. Prinz and vestibular rehabilitation. (JE10, p. 87) Claimant would later report that she stopped performing the vestibular rehabilitation exercises because she did not like the way they made her feel. (JE10, p. 89)

Claimant returned to her primary care provider on April 25, 2018, with complaints of constipation, anxiety, and back pain. (JE8, p. 62) The medical record notes that claimant was recently "bumped" from her position at work to a lower paying position. The medical record also notes that claimant's daughter would be getting married in two weeks. Claimant expressed increased anxiety regarding her financial situation as a result. (JE8, p. 63) Following examination, Ms. Sands refilled claimant's anxiety medication. (JE8, p. 65) The medical record does not discuss claimant's work injury.

A CT scan of claimant's head, dated May 2, 2018, returned unremarkable. (JE11, p. 106)

Dr. Wampler reviewed the CT scan with claimant on May 8, 2018. (JE10, p. 90) During the examination, claimant reported that her photophobia was worsening. She also described feeling unsteady, particularly when walking down a hallway. Surprisingly, claimant did not feel unsteady while driving. In addition to her post-concussion symptoms, claimant reported that she was distressed about her daughter getting married in the near future and she did not know how she was going to get through the same. Dr. Wampler restricted claimant from working more than six (6) hours per shift. (See Ex. D, p. 32)

Due to claimant's persistent symptoms, Dr. Wampler recommended claimant pursue several specialty evaluations. More specifically, Dr. Wampler recommended claimant present to a neuro-ophthalmologist (Richard Legge, M.D.), a neuro-otologist (Britt Thedinger, M.D.), and a general neurologist (Hakam Asaad, M.D.). (JE10, pp. 90, 93-95) Defendant acquiesced in the recommendations and authorized the referrals. (Hr. Tr., pp. 23-24, 64-65)

Pursuant to Dr. Wampler's referral, claimant presented to Dr. Asaad of Omaha Neurological Clinic on June 5, 2018. (JE12, p. 107) Claimant's neurological examination was normal. (JE12, p. 110) Dr. Asaad opined claimant's headaches were consistent with post-concussion migraines. He recommended preventative and abortive therapy. (Id.) Unfortunately, claimant could not tolerate the medications prescribed by Dr. Asaad. (JE12, p. 111) Dr. Asaad's notes reflect that claimant's condition improved when she took 12 days off from work; however, her headaches returned once she was back in the office under fluorescent lights. (Id.) Following his examination, Dr. Asaad referred claimant to physical therapy. (JE12, p. 113)

Claimant began the recommended therapy at Excel Physical Therapy on July 11, 2018. (JE13, p. 114)

Dr. Thedinger opined claimant did not have any internal ear derangement or hearing loss from the January 19, 2018, work injury. (See JE10, p. 92-93)

On June 11, 2018, Kelly-Jo Balignasay, ARNP, conducted a records review and provided some commentary on post-concussion syndrome. (See Ex. B, p. 10) Ms. Balignasay opined, "Given the possibility that multiple factors may have contributed to Ms. Olson's symptoms, and because lack of object findings require the need to rely on subjective, retrospective accounts, it is difficult to definitively correlate the onset of her symptoms with the incident that occurred on January 19, 2018." (Ex. B, p. 10) She did not believe claimant's work event should be recorded on OSHA's work-related injuries and illnesses log. (Id.) While inconsequential to the matter at hand, it is worth noting that such a conclusion is objectively wrong. Work injuries that require medical treatment above and beyond first aid, and injuries that result in work restrictions, are required to be logged by OSHA standards.

I do not find Ms. Balignasay's report to be particularly helpful or convincing. Apparently neither did defendant as it continued to accept claimant's work injury as

compensable for a year thereafter. It should also be noted that Ms. Balignasay's report includes a notation that it is not intended for use regarding the determination of compensability through workers' compensation. (Ex. B, p. 11)

The undersigned is cognizant of the fact post-concussion syndrome is a controversial diagnosis. (See Ex. B, p. 10) That being said, I am not a medical expert, and the evidentiary record does not contain convincing medical evidence that would cast doubt on the veracity of the condition and its associated symptoms. While I appreciate Ms. Balignasay's citation to the research article, "Somatization in Post-Concussion Syndrome: A Retrospective Study" by Ken Perrine and James Gibald, this is a single article, from 2016, with a retrospective analysis, that utilized a sample size that is not statistically significant. (Ex. B, p. 11) I afford Ms. Balignasay's report little to no weight in this matter.

John Harbison, M.D., performed a revision septorhinoplasty, repair nasal vestibular stenosis, and rib cartilage autograft on June 21, 2018. (See Ex. 4, p. 9)

When claimant returned to Dr. Wampler's office on July 16, 2018, she continued to report headaches, light sensitivity, and stress. Claimant relayed that her stressors had diminished, but she continued to experience headaches. It is noted that claimant's physical therapist did not find any balance disorder to treat upon examination. Dr. Wampler continued claimant's 6-hour work restriction, and opined the restriction would remain the same until her headaches were under better control. (JE10, p. 92)

Claimant presented to ophthalmologist Richard Legge, M.D., of Nebraska Medical Center on August 8, 2018. (See Ex. 4, p. 13) Claimant presented with complaints of intermittent headaches, decreased visual acuity, and constant photophobia. Dr. Legge diagnosed claimant with severe post-concussion accommodative paresis. He opined this accounted for some, but not all, of claimant's headaches. Dr. Legge also diagnosed claimant with post-concussion photosensitivity, normal ocular sensorimotor evaluation, and mild cortical cataract unrelated to trauma. (See Ex. 4, p. 13) Dr. Legge recommended claimant wear lined trifocal glasses at all times, and wrap-around, tinted lenses over the trifocal glasses while indoors. (See Ex. 4, p. 13)

Claimant would not return to Dr. Wampler for a follow-up appointment until September 25, 2018. (JE10, p. 93) At the appointment, claimant reported she was "not doing well at all." Dr. Wampler opined the light and stimulation of dealing with customers at the cashier counter was undoubtedly challenging for a post-concussive person. It is noted that claimant finds a dark and quiet place to calm herself down once she returns home from work. Following his examination, Dr. Wampler suggested claimant undergo an evaluation at a concussion clinic. (Id.)

Prior to presenting to the concussion clinic, claimant returned to Ms. Sands, her nurse practitioner, on October 9, 2018. Claimant complained of persistent, daily headaches over the past 10 months. (JE8, p. 68) Claimant reported a worsening of

headaches over the last two weeks, with persistent sinus fullness and pressure. (Id.) In response to claimant's persistent headaches, Ms. Sands ordered an MRI of claimant's brain. (JE8, p. 73)

The MRI, dated October 22, 2018, returned unremarkable. (JE14, p. 115)

Defendant subsequently authorized a referral to Nebraska Medicine Concussion Clinic. (See JE10, p. 94) Claimant presented for her initial evaluations on October 17, 2018. (See Ex. 4, pp. 13-14) It appears claimant was evaluated by an occupational therapist and a speech therapist. (See Ex. 4, pp. 13-14) The evaluating occupational therapist concluded that claimant had enough of a balance challenge that she would benefit from additional physical therapy. The evaluating speech therapist concluded that claimant demonstrated cognitive communication deficits and would benefit from outpatient speech therapy and mental health support. (See Ex. 4, pp. 13-14)

Dr. Wampler discussed the findings of the occupational and speech therapists with claimant on October 26, 2018. (JE10, p. 94) Claimant told Dr. Wampler that her unsteadiness was relatively minimal and she was not concerned about the same. (Id.) However, claimant was fairly concerned with her vision, particularly when working on a computer screen. (Id.) Dr. Wampler opined, "There are mild cognitive deficits, memory lapses, and inconsistencies in awareness; but she definitely has high stress, high anxiety, and is getting more and more depressed." (Id.) Dr. Wampler urged claimant to participate in the concussion clinic programs with the exception of physical therapy, per claimant's request. Dr. Wampler also urged claimant to use her "medical bump" at work to obtain a different position within MidAmerican. (Id.)

Claimant participated in occupational therapy treatment at the concussion management clinic from October 17, 2018, through December 19, 2018. (See Ex. 4, p. 15)

Additionally, claimant began presenting to Joseph Poler, PsyD., for psychological evaluation and treatment of her post-concussion syndrome on November 29, 2018. (See JE15, p. 116) Dr. Poler's initial impression was that claimant suffered from mild depression and severe anxiety. Dr. Poler noted claimant's long-standing history of anxiety since childhood, and opined said anxiety appeared to interfere with claimant's ability to accurately perceive stressors. (JE15, p. 118) Dr. Poler expressed uncertainty with respect to whether claimant's feeling of being overwhelmed was attributable to post-concussive syndrome or her long-standing persistent anxiety. (Id.) Dr. Poler and claimant discussed the potential for misattribution of her current symptomatology toward concussion and/or other medical and/or psychological conditions. (JE15, pp. 118-119) Dr. Poler opined claimant's anxiety and depression would be the focus of his clinical attention. He further explained that he would continue to evaluate the extent to which post-concussive symptoms were present. (Id.)

Claimant presented to Dr. Poler for anxiety and depression on a monthly basis between November 2018 and April 2019. Claimant's reported stressors appear largely unrelated to the workplace injury. (See JE15, pp. 116-131)

For purposes of credibility, it is worth noting that claimant denied involvement in any pending litigation when she first presented to Dr. Poler. (JE15, p. 118) Dr. Poler's notes state, "[Claimant] alluded to difficulty maintaining honesty, which raises the possibility of secondary gain and/or under reporting of current symptoms." (JE15, p. 119) This is not the only piece of evidence that calls claimant's credibility into question. As referenced in defendant's post-hearing brief, claimant has also repeatedly denied having pre-existing issues with headaches, visual disturbances, and imbalance. (See Hr. Tr., pp. 41-42; JE9, pp. 75-79; Ex. A, p. 1) Contrary to claimant's assertions, the evidentiary record contains several examples of pre-existing conditions.

In 2003, for instance, claimant was diagnosed with vestibular system dysfunction and possible otolith dysfunction. (JE1, p. 1) At the time, claimant was also presenting with complaints of blurred vision. She was eventually diagnosed with unspecified visual disturbance. (JE2, pp. 8-9) In 2013, claimant again complained of blurred vision and was diagnosed with corneal dystrophy. (JE2, pp. 10, 12-13) In 2014, claimant was evaluated for blurred vision and difficulty with peripheral vision. Her physician at the time felt claimant's issues could be anxiety related. (JE2, pp. 14-15)

Claimant's medical history is also significant for migraine headaches. (See JE4, p. 23) In March 2015, claimant apparently struck her head on a garage door and required medical attention for headaches and neck pain. (See JE5, pp. 28-29) Claimant was diagnosed with a headache disorder in 2016. (JE6, p. 42) In December 2016, claimant was evaluated for complaints of imbalance, dizziness, and double vision. (JE4, p. 27) Two months later, she would present to Mercy Hospital with complaints of headaches and dizziness. The physician diagnosed claimant with anxiety. (JE7, pp. 43-44, 47, 49) Lastly, in November 2017, claimant presented to her primary care provider with complaints that included light-headedness. (JE8, pp. 51-52)

At hearing, claimant attributed her pre-existing symptoms to anxiety and depression. (See Hr. Tr., pp. 73-80)

Defendant asserts claimant's post-injury complaints lack objective medical evidence and are similarly anxiety-driven. I do not find this argument convincing. Claimant's pre-existing issues with anxiety do not preclude a finding of compensability. Moreover, the evidentiary record does not reveal a consistent level of anxiety, or a level of anxiety that would impact claimant's functional abilities, in the days, weeks, months, or even years leading up to the date of injury. To say claimant presented for infrequent treatment of her anxiety would be a fair summation of claimant's medical history prior to the date of injury.

Medical records reflect claimant demonstrated a brighter demeanor throughout the month of December 2018. Claimant reported a decrease in the frequency of her

headaches to Dr. Wampler at her December 7, 2018, follow-up appointment. (See Ex. 4, p. 5) By December 27, 2018, claimant was thinking about life after her treatment ends. (JE10, p. 96) Claimant told Dr. Wampler that she intended to utilize her medical bump to secure a new position at work. However, claimant needed to check in with her eye doctor to make sure her prescription was correct in case her new job required her to obtain a commercial drivers' license. Dr. Wampler was encouraged by claimant's progress. (Id.)

In January 2019, Dr. Wampler opined claimant's condition was improving, "a little bit more rapidly" without the stress of working in an office setting. (JE10, p. 97) Claimant reported that her headaches were only occurring two to three times per week, which is significant when considering she used to experience constant headaches while at work. She further reported that when her headaches occurred, they were only lasting a few hours at a time.

In February 2019, claimant reported that her headaches were a little bit more predictable and typically occurred after completing therapy and home exercises for vision. (See Ex. 4, p. 5)

In March 2019, claimant reported her belief that her visual therapy sessions had improved her condition the most when compared to other modalities. (See JE10, p. 99)

In a March 22, 2019, opinion letter, Dr. Wampler estimated that claimant would reach MMI "in the foreseeable future." (JE10, p. 100) Because claimant had not reached MMI, Dr. Wampler declined to speculate on claimant's permanent impairment; however, Dr. Wampler opined permanent restrictions could be expected. More specifically, Dr. Wampler anticipated claimant would require a limitation on her amount of exposure to computers and groups of people. (JE10, pp. 100-101)

Defendant worked with Dr. Wampler to formulate a set of restrictions for the position claimant intended to "bump" into. (See JE10, p. 104) Unfortunately, claimant's return to work was delayed due to another provider's recommendation that claimant remain off work while she continued her visual therapy. (See JE10, p. 102)

In a letter, dated May 24, 2019, optometrist Kerri Dietz-Pillen, O.D. opined claimant could return to work as either a meter utility person or a store room clerk. (See Ex. 4, p. 13) Dr. Dietz-Pillen diagnosed claimant with "Diplopia; Fusion with defective stereopsis; Unspecified disorder of binocular vision (oculomotor dysfunction); Visual distortions of shape and size […] Other diagnoses are headaches, glare sensitivity, disrupted visual oculomotor reflexes, nausea associated with body posture, and visual perceptual deficits with standardized testing." (See Ex. 4, p. 13) Dr. Dietz-Pillen opined claimant's conditions were consistent with post-trauma vision syndrome. (See Ex. 4, p. 13) Dr. Dietz-Pillen referenced claimant's desire to return to work. (See Ex. 4, p. 13)

On June 6, 2019, Dr. Wampler explained that claimant's headaches were becoming less frequent because she was proactively protecting against bright lights and

utilizing eye drops. According to claimant, if she is able to use the eye drops at the onset of a headache, many times the medicine will abort her headache. Dr. Wampler opined claimant's response to the eye drops implies her visual dysfunction is the source of her headaches. (See Ex. 4, p. 7)

Following the June 6, 2019, appointment, Dr. Wampler recommended the following permanent restrictions for claimant's condition:

- Must be able to wear special prescription eyeglasses with interchangeable lens tints depending upon type and intensity of work lighting or outdoors.
- Requires the ability to alternate or change tasks through the day.
- Requires the ability to take a short (5-10 minute max) break from computer use after 20-30 minutes using a computer screen. Any alternate task can be substituted. After the break she may return to computer use.
- Working alone or with only a few co-workers is desired.
- Must be able to complete the goal of an employee-to-employee interaction before starting the next interaction.

(See Ex. 4, p. 7)

In closing, Dr. Wampler recommended claimant continue her visual rehabilitation with Dr. Dietz-Pillen until she has maximized her benefit from the program, at which time she would attain MMI. Dr. Wampler suggested that claimant return for a follow-up appointment once she had secured a new job placement. (JE10, pp. 104, 105) Unfortunately, claimant would not return to Dr. Wampler's office.

Defendant scheduled claimant to undergo an independent medical examination (IME) with Joel Cotton, M.D., on June 11, 2019. (Ex. A, p. 1) At hearing, claimant testified that the IME lasted less than one hour. (Hr. Tr., p. 29) Dr. Cotton opined claimant's closed head injury was mild, temporary, and it did not result in any significant injury. Dr. Cotton further opined claimant did not suffer any damage or injury to her brain, nor was she concussed. He placed claimant at maximum medical improvement (MMI) as of February 16, 2018, and opined claimant did not sustain any permanent impairment. (Ex. A, p. 4) Dr. Cotton provides little to no explanation as to the significance of February 16, 2018, other than the fact claimant's medical records indicate she began reporting an increase in symptoms on February 28, 2018. (See Ex. A, p. 3)

On July 10, 2019, MidAmerican notified claimant's counsel that based on Dr. Cotton's IME report, it would be denying the January 19, 2018, work injury caused or significantly contributed to claimant's condition from and after February 16, 2018. (Ex. E, p. 34) The letter also notified claimant that temporary total disability benefits would terminate on August 10, 2019, 30 days from the date of the Auxier letter. Id.

Dr. Wampler was not asked to provide an updated opinion on claimant's medical status or permanent impairment following defendant's expert report.

Claimant exercised her "medical bump" and accepted the position of "storeroom warehouse clerk" on August 26, 2019. Claimant physically returned to work on August 28, 2019. (Hr. Tr., pp. 31-32) Claimant held this position until approximately October 2019, when her former position as a meter utility person became available. (Hr. Tr., p. 32) Claimant continued to work for defendant in the meter utility position on the date of the evidentiary hearing. (Id.) Claimant was able to successfully fulfill the job duties of both the storeroom warehouse clerk and meter utility positions. (Id.)

In response to Dr. Cotton's IME report, claimant presented to Sunil Bansal, M.D. for her own IME on October 11, 2019. (See Ex. 4, p. 1) Dr. Bansal opined Ms. Olson suffers from a constellation of neurological impairments classified under the general descriptor traumatic brain injury. More specifically, Dr. Bansal diagnosed claimant with a traumatic brain injury and resultant post-concussive syndrome, with "memory/concentration loss, headaches, and dizziness." (Ex. 4, p. 19) He opined claimant's symptoms are causally related to her work incident on January 19, 2018. He placed claimant at MMI as of October 11, 2019. (Ex. 4, p. 20)

With respect to permanent impairment, Dr. Bansal assigned six percent (6%) whole person impairment for claimant's cognitive impairment, and two percent (2%) whole person impairment for claimant's vertigo. (Ex. 4, p. 19)

Regarding permanent restrictions for claimant's cognitive issues, Dr. Bansal recommended she avoid jobs requiring intact cognitive functioning and tasks that require multi-tasking. For her light sensitivity issues, Dr. Bansal recommended claimant use tinted, prescription glasses and avoid computer work for more than 15 minutes at a time or "any task that requires either prolonged downgaze or alternating up and down gazes throughout the day." (Ex. 4, p. 20) Lastly, with respect to future treatment, Dr. Bansal suggested claimant receive ongoing vestibular therapy and medication management. (Id.)

Defendant requested that Dr. Cotton review and comment on Dr. Bansal's IME report. (See Ex. A, p. 6) In a pre-written report with pre-written medical conclusions, Dr. Cotton opined Dr. Bansal's report does not indicate that he conducted a comprehensive examination of the type that would be expected for the purposes of evaluating neurological conditions. (Ex. A, p. 6) He further opined Dr. Bansal's diagnoses are incorrect and it is inappropriate for Dr. Bansal to assign impairment ratings based upon dementia and vertigo. (Ex. A, p. 7) Lastly, Dr. Cotton opined the opinions expressed in his initial report remained constant. (Id.)

Claimant appears to concede the issue of whether she has sustained any permanent disability as a result of vertigo, as she is only requesting that the undersigned award six percent impairment. (See Claimant's Post-Hearing Brief, page 6)

Claimant did not seek any medical care after receiving defendant's denial letter. (Hr. Tr., p. 32) Claimant testified she did not have the financial means, or sick time at work, to seek medical treatment on her own. (Hr. Tr., pp. 32-33) Claimant would like to present for additional visual therapy, given her ongoing issues with balance. (Hr. Tr., p. 35)

With respect to her current symptoms, claimant testified she continues to experience headaches and/or migraines on a daily basis. (Hr. Tr., p. 34) According to claimant, the headaches make it difficult for her to concentrate. She has difficulty tolerating loud noises, crowds, and bright lights. (Id.) She also has issues with balance. (Hr. Tr., pp. 35-36) Since returning to work, claimant has not missed any time as a result of her ongoing symptoms. (Hr. Tr., p. 35)

When comparing the competing medical opinions, I note the credentials of Dr. Cotton. Dr. Cotton is highly qualified as a board certified neurologist. His credentials bolster his overall credibility. That being said, Dr. Cotton's opinions are not supported by the evidentiary record as a whole. For instance, Dr. Cotton is the only medical professional to find claimant's work injury did not result in post-concussion syndrome. Moreover, Dr. Cotton opined, "[T]his patient suffered a bump to one of her elbows, buttock, and a slight bump to her head." (Ex. A, p. 4) The only evidence providing claimant sustained a "slight bump" to her head is the first report of injury, which was drafted by a representative of the defendant employer. (See Ex. C, p. 13) Claimant's written statement is devoid of such language. (Ex. C, p. 16) Claimant's initial medical records with the onsite occupational nurse are also devoid of such language. (See JE9, p. 75)

Additionally, Dr. Cotton's ultimate opinion is inconsistent with applicable law. Where an accident occurs to an employee in the usual course of his or her employment, the employer is liable for all consequences that naturally and proximately flow from the accident. Additionally, the employer takes the employee "as is" and, therefore, takes them subject to any active or dormant health impairment. While claimant's anxiety and depression may not be causally related to the January 19, 2018, work injury, the evidentiary record makes it abundantly clear that claimant's anxiety and depression prolonged claimant's recovery from the work injury. The overwhelming majority of medical records support a finding that claimant experienced post-concussive symptoms as a result of her work injury, such symptoms were prolonged – not caused – by a personal condition. The work injury remains the proximate cause of claimant's post-concussive symptoms.

Although his credentials may not be equivalent to a neurologist, I ultimately accept the medical opinions of Dr. Bansal as the most credible and convincing in this situation. Unlike with Dr. Cotton, Dr. Bansal's examination findings and opinions are consistent with the majority of the medical records in evidence. Claimant's treating physicians and Dr. Bansal alike provide a consistent account of the symptoms claimant has experienced since the date of injury. (JE8, p. 68; JE10, pp. 80-105; JE12, pp. 107-113; JE15, pp. 116-131) Ideally, claimant or defendant would have obtained final

reports from claimant's treating physicians to bolster their respective position. Unfortunately, that did not happen. While Dr. Bansal may not be a board certified neurologist, his diagnoses are consistent with the overall findings of Dr. Wampler, claimant's authorized treating physician, and Dr. Asaad, a board certified neurologist. Defendant offers no critique of Dr. Asaad's qualifications or his neurological evaluation of claimant.

The undersigned is cognizant of the fact post-concussion syndrome is a controversial diagnosis. (See Ex. B, p. 10) That being said, I am not a medical expert, and the evidentiary record does not contain convincing medical evidence that would cast doubt on the veracity of the condition or its associated symptoms. What the evidentiary record does contain, is a consistent diagnosis of post-concussion syndrome, or its associated symptoms, from multiple medical professionals. (See JE10, pp. 100-101; JE12, p. 109; Ex. 4, pp. 12-13, 19)

Having accepted the expert opinions of Dr. Bansal, I find claimant carried her burden of proving the January 19, 2018, work injury is a cause of both temporary and permanent disability. I find claimant reached maximum medical improvement on October 11, 2019. I further find claimant sustained six percent whole person impairment as a result of the January 19, 2018, work injury.

For injuries occurring on or after July 1, 2017, the commencement date for permanent partial disability benefits is the date of maximum medical improvement. Having found claimant reached MMI on October 11, 2019, I find that the proper date for the commencement of PPD benefits is October 12, 2019.

The next issue to be decided is claimant's entitlement to temporary disability benefits, and defendant's entitlement to credit, if any.

Claimant was off work during a period of recovery between October 31, 2018, and August 27, 2019. (See JE10, p. 95; Ex. F, pp. 39-41)

Defendant paid temporary partial disability benefits from May 13, 2018, through October 30, 2018, and temporary total disability benefits from October 31, 2018, through August 9, 2019. (Ex. F, pp. 39-43) Defendant discontinued TTD benefits following receipt of Dr. Cotton's IME report, wherein he opined claimant reached MMI on February 16, 2018. (See Ex. A, pp. 3-4)

Defendant contends that because claimant reached MMI for her temporary injuries on February 16, 2018, the payment of temporary disability benefits from May 13, 2018, to August 9, 2019, represents an overpayment for which defendant is entitled to credit.

Having found claimant did not reach MMI until October 11, 2019, I reject defendant's argument that claimant is not entitled to temporary disability benefits. Having found claimant sustained permanent impairment as a result of her work injury, I

find claimant's healing period ended on August 28, 2019, when claimant returned to work. I find defendant is not entitled to a credit for the alleged overpayment of weekly benefits.

Lastly, because claimant was generally successful in her claim for workers' compensation benefits, I award claimant the costs set out in Exhibit 6, totaling $160.80.

CONCLUSIONS OF LAW

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

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

Having considered all of the competing medical opinions and lay testimony, I found that Ms. Olson carried her burden of proving she sustained temporary and permanent disability as a result of the January 19, 2018, work accident. Ms. Olson's injuries involved closed head injuries resulting in permanent changes in the frequency and intensity of her headaches, her short and long-term memory, and her ability to concentrate. (See Ex. 4, pp. 18-19)

Claimant's permanent disability is compensated pursuant to Iowa Code section 85.34(2)(v). An injured worker with an unscheduled injury who returns to work at the same or similar earnings with the same employer, is limited to permanency benefits based on their functional impairment rating. A review-reopening proceeding in the event the injured worker is terminated by the employer is allowed with no statute of limitations. Since claimant has returned to work for defendant, and she is earning at or above her pre-injury wages, claimant is not currently entitled to industrial disability benefits. Iowa Code section 85.34(2)(v)

Having accepted Dr. Bansal's impairment rating of six percent, I conclude claimant is entitled to thirty (30) weeks of permanent partial disability benefits at this time. Iowa Code section 85.34(2)(v)

The commencement date for permanent partial disability benefits is the date of MMI. Iowa Code section 85.34(2). In this case, I found that claimant achieved MMI on October 11, 2019. Therefore, I conclude that permanent partial disability benefits shall commence on October 12, 2019. Iowa Code section 85.34(2)

Defendant asserts it is entitled to a credit for the overpayment of TPD and TTD benefits from May 13, 2018, through August 9, 2019, or a period of 64.714 weeks. (Hearing Report, p. 3)

Iowa Code section 85.34 provides:

> 4. Credits for excess payments. If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due for an injury to that employee, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.
>
> 5. Recovery of employee overpayment. If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for any current or subsequent injury to the same employee.

Defendant's assertion is based on the belief that claimant reached MMI for her condition on February 16, 2018, and any payments made thereafter are to be considered an overpayment of benefits. Having found claimant did not reach MMI for her condition until October 11, 2019, I find that the weekly benefits that claimant received from October 31, 2018, through August 9, 2019, are correctly characterized as healing period benefits pursuant to Iowa Code section 85.34(1). I find defendant is not entitled to a credit under Iowa Code section 85.34(4).

Claimant submitted an itemization of costs as Exhibit 6. Exhibit 6 lists costs for claimant's filing fee and reporting services. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. In this instance, I exercise my

discretion and conclude that claimant is entitled to costs in the amounts shown in Exhibit 6.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant thirty (30) weeks of permanent partial disability benefits at the stipulated weekly rate of seven-hundred seven and 19/100 dollars ($707.19).

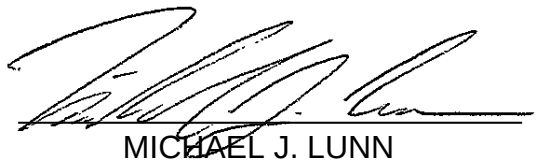
Claimant's entitlement to permanent partial disability benefits shall commence on October 12, 2019.

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

Defendant shall reimburse claimant's costs totaling one hundred sixty and 80/100 dollars ($160.80).

Defendant 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 _24th__ day of February, 2021.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Jacob Peters (via WCES)

Lori Brandau (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.