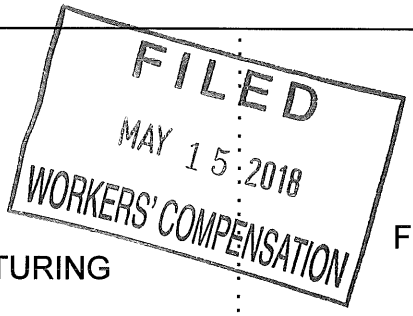
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



MELISSA NILES,

Claimant,

vs.

SCRANTON MANUFACTURING COMPANY, INC.,

Employer,

and

UNITED WISCONSIN INSURANCE CO.,

Insurance Carrier,
Defendants.

File Nos. 5052528, 5052529

ARBITRATION

DECISION

Head Note Nos.: 1803; 1402.20; 2501
2502

STATEMENT OF THE CASE

Claimant, Melissa Niles, filed petitions in arbitration seeking workers' compensation benefits from Scranton Manufacturing Company, Inc., (Scranton), employer, and United Wisconsin Insurance Company, insurer, both as defendants.

This matter was heard in Des Moines, Iowa, on March 6, 2018. The record in this case consists of Joint Exhibits 1 through 10, Claimant's Exhibits 11 through 16, Defendants' Exhibits A through E, and the testimony of claimant, and Debra Lord-Mauricio.

The parties filed a hearing report at the commencement of the arbitration hearing. On 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 now bound by their stipulations.

ISSUES

For File No. 5052528 (Date of Injury, February 25, 2014):

1. The extent of claimant's entitlement to permanent partial disability benefits.

2. Whether claimant is due reimbursement for an independent medical evaluation (IME), under Iowa Code section 85.39.

3. Whether claimant is entitled to alternate medical care.

4. Costs.

For File No. 5052529 (Date of Injury, October 20, 2014):

1. Whether claimant sustained an injury that arose out of and in the course of employment.

2. Whether claimant's claim for benefits is barred by application of Iowa Code section 85.23.

3. Whether claimant's injury is the cause of a permanent disability; and if so,

4. The extent of claimant's entitlement to permanent partial disability benefits.

5. Rate.

6. Whether claimant is due reimbursement for an IME.

7. Whether claimant has proven entitlement to alternate medical care.

8. Costs.

FINDINGS OF FACT

Claimant was 52 years old at the time of hearing. Claimant attended a community college for one year. Claimant has stuffed and bundled newspapers, done sewing, and worked as a CNA. Claimant began at Scranton in 2013. At the time of hearing, claimant was still employed with Scranton. (Exhibit 11, pages 169-171)

Claimant worked at Scranton as a Wire Technician. Claimant installed wire in garbage trucks and packers. Claimant said the job required her to lift between 40 and 50 pounds. Claimant said she also had to be able to climb into packers.

Claimant testified that prior to February 2014, she had a prior back injury. Claimant said she saw a chiropractor for this injury. There is no evidence in the record that claimant had any permanent restrictions or permanent impairment from this injury.

Claimant said that, on February 25, 2014, she climbed a step-stool to get in the back of a packer to do wiring. She said that when she completed work, the stepping stool was moved. Claimant said she jumped down approximately three feet from the packer to the ground. Claimant said when she landed on her heel, she felt immediate pain in the left side of her lower back radiating down to her left leg.

Claimant was seen at the Green County Medical Center on February 25, 2014. Claimant had pain and tingling in the left foot. She was assessed as having a lumbar sprain with radiculopathy on the left. (Jt. Ex. 1, pp. 2-3)

On April 21, 2014, claimant was seen by Constantine Panakos, D.O. Claimant had lower back pain radiating to the left leg. Claimant was assessed as having L4-L5 bulging disc with radiculopathy. (Jt. Ex. 4, p. 27)

Claimant was evaluated by Arnold Parenteau, M.D., on May 7, 2014. Claimant had ongoing left leg and lower back problems. A myelogram and a postmyelogram CT were recommended. (Jt. Ex. 3, pp. 18-19)

Claimant had myelogram and CT scans on May 15, 2014. Diagnostic testing showed evidence of a left lateral disc extrusion affecting the S1 nerve root and a severe compression at the L5-S1 levels. (Jt. Ex. 3, pp. 21-25)

Claimant was evaluated by Charles Mooney, M.D. He recommended claimant see an orthopedic surgeon. (Jt. Ex. 4, pp. 32-34)

On August 5, 2014, claimant was evaluated by Lynn Nelson, M.D., an orthopedic surgeon. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 5, pp. 48-49)

On September 5, 2014, claimant had lumbar surgery with Dr. Nelson consisting of a left L5-S1 decompression and discectomy. (Jt. Ex. 5, pp. 51-52)

Claimant returned to Dr. Nelson in follow up on September 16, 2014. Claimant reported a burning pain in the left buttocks and left lower extremity. She was given home exercises and work restrictions. (Jt. Ex. 5, pp. 54-55)

Claimant testified that on or about October 21, 2014, she was working and she could not take the pain. Claimant testified nothing specific happened to her on that particular date. (Ex. A, p. 6, Dep. pp. 23-24)

Claimant returned to Dr. Nelson on November 23, 2014. Claimant indicated worsening pain over the past week and a half. Claimant indicated she left work after working an hour as her pain was too severe. Diagnostic testing was recommended. (Jt. Ex. 5, pp. 57-58)

On December 4, 2014, claimant had a lumbar MRI. It showed a recurrent L5-S1 disc protrusion. (Jt. Ex. 5, pp. 62-63) Claimant returned to Dr. Nelson on the same date. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 5, pp. 60-61)

On December 27, 2014, claimant underwent a second lumbar surgery consisting of a left L5-S1 discectomy decompression. (Jt. Ex. 5, pp. 64-65)

Claimant returned to Dr. Nelson on January 6, 2015 with continued pain in the left buttock and left lower extremity. Claimant was again given a home exercise program and allowed to return to work only to do office work. (Jt. Ex. 5, pp. 67-68)

The record indicates claimant had continued lower back pain and left lower extremity symptoms. Further surgery was again discussed and chosen as a treatment option. (Jt. Ex. 5, pp. 74-75)

On May 27, 2015, claimant underwent a third surgery with Dr. Nelson consisting of a L5-S1 fusion. (Jt. Ex. 5, pp. 77-78)

Claimant returned to Dr. Nelson on July 21, 2015 with occasional low back and left calf pain. Claimant was returned to work in October 2015. (Jt. Ex. 5, pp. 82-83; Jt. Ex. 7, p. 138)

In an April 21, 2016 letter, Dr. Nelson found claimant was at MMI as of February 12, 2016. He found claimant had a 20 percent permanent impairment to the body as a whole based on the finding that claimant was best assessed under DRE Category IV Impairment, under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Jt. Ex. 5, p. 88)

On June 8, 2016, claimant had a lumbar MRI. It showed an L4-5 degenerative disc bulge. (Jt. Ex. 5, pp. 89-90)

Claimant returned to Dr. Nelson on June 28, 2016 with complaints of bilateral lower extremity pain. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 5, pp. 91-92)

In a July 11, 2016 report, John Kuhnlein, D.O., gave his opinions of claimant's condition following an IME. Claimant had right sided lower back pain. Dr. Kuhnlein recommended claimant be evaluated for a possible right S1 nerve root impingement. He opined claimant had a 23 percent permanent impairment to the body as a whole. (Jt. Ex. 7, pp. 133-144)

On August 19, 2016, claimant underwent a fourth lumbar surgery with Dr. Nelson consisting of an L4-5 decompression and discectomy, and removal of the L5-S1 instrumentation. (Jt. Ex. 5, pp. 97-98)

In a January 27, 2017 letter, Dr. Nelson attributed claimant's diagnosis of an L4-5 disc bulge to a work injury occurring on or about October 20, 2014. (Jt. Ex. 5, p. 113)

On February 15, 2017, claimant underwent a fifth lumbar surgery with Dr. Nelson consisting of decompression at the L4-5 levels. (Jt. Ex. 5, pp. 115a-115c)

On August 3, 2017, claimant saw Dr. Nelson with complaints of pain in the left mid and forefoot. Claimant did not have back pain. Claimant did not have thigh or leg

pain. EMG and nerve conduction velocity (NCV) studies were recommended to assess claimant's foot pain. (Jt. Ex. 5, p. 122)

On August 17, 2017, claimant underwent EMG/NCV studies performed by Donna Bahls, M.D. The studies were unremarkable. (Jt. Ex. 5, p. 124; Jt. Ex. 6, pp. 131-132)

Claimant returned to Dr. Nelson on October 6, 2017. Claimant had continued left foot and heel pain. Claimant was found to be at MMI. Dr. Nelson believed that claimant would require continued use of gabapentin. He limited claimant to lifting up to 35 pounds with no repetitive bending or twisting. (Jt. Ex. 5, p. 125)

In an October 13, 2017 letter, Dr. Nelson found that claimant had a 22 percent permanent impairment to the body as a whole. He recommended claimant would require continued use of gabapentin for pain. (Jt. Ex. 5, p. 128) Dr. Nelson also indicated claimant's ongoing foot pain was related to an S1 neuropathy. (Jt. Ex. 5, p. 130)

In a January 22, 2018 report, Dr. Kuhnlein gave his opinions of claimant's condition following a second IME. Claimant had back pain, left heel, and lateral foot numbness. Dr. Kuhnlein found that claimant's need for the August 2016 surgery was due to an October 14 incident which resulted in a material aggravation of a pre-existing condition. He found that claimant was at MMI as of October 6, 2017. Dr. Kuhnlein found claimant fit best in the DRE Lumbar Category V. He assessed claimant as having a 28 percent permanent impairment to the body as a whole. He limited claimant to lifting up to 35 pounds occasionally and indicated claimant should be allowed to sit, stand, or walk as needed. He also limited her to occasional stooping or squatting. (Ex. 8)

Claimant testified she still has left foot pain and some lower back pain. Claimant said that because of her restrictions, she can no longer get into the packers or pull wire. Claimant testified she needs coworkers to help her lift.

Claimant takes gabapentin and over-the-counter Aleve for pain.

Claimant has returned to work at Scranton. At the time of hearing, claimant was wiring cover sheets. Claimant works 40 hours per week. Claimant works some overtime. At the time of hearing, claimant earned more per hour than she did at the time of injury.

Claimant testified she could not return to work to any of her prior jobs given her pain and limitations.

Claimant testified she is unable to stand for a long period of time. Claimant has difficulty bending. Claimant has difficulty sleeping due to foot pain.

Debra Lord-Mauricio testified she is the human resource person at Scranton. Ms. Lord-Mauricio said that claimant is a full time employee. She said claimant earns more now at the time of hearing than she did at the time of injury. She said claimant still works some overtime.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant sustained an injury on October 20, 2014 that arose out of and in the course of employment.

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. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Claimant contends she sustained an injury to her back on October 20, 2014. Defendants accept liability for a February 25, 2014 back injury, but deny liability for the alleged October 20, 2014 injury.

In her petition, claimant alleges a date of injury, for her second back injury, of October 20, 2014. In deposition, claimant testified her injury actually occurred on October 21, 2014. (Ex. A, Dep. pp. 23-24)

Claimant testified that on October 21, 2014, her pain got to a point where she could no longer stand it. Claimant testified there was nothing specific about her job, on October 21, 2014, that caused her increase in pain. (Ex. A, Dep. pp. 23-24)

Two experts have opined regarding the alleged October 20, 2014 date of injury. Dr. Nelson indicated claimant's work on October 20, 2014 caused a recurrent L4-L5 disc herniation. (Jt. Ex. 5, p. 113)

Dr. Kuhnlein disagreed with Dr. Nelson regarding causation. Dr. Kuhnlein indicated that while Dr. Nelson found that claimant's October 20, 2014 incident caused a disc herniation, Dr. Kuhnlein believed that claimant's work on October 20, 2014 materially aggravated a pre-existing condition. (Jt. Ex. A, p. 154)

There is no evidence in the record that claimant had a traumatic injury on October 20, 2014 or October 21, 2014 at work. There is no evidence in the record that claimant was doing an activity October 20 or October 21, 2014 that materially aggravated her lower back condition. There is no evidence in the record what work claimant was specifically doing on October 20, or October 21, 2014 that may have led to an aggravation or caused her lower back condition. In deposition, claimant testified there was nothing specific about her job at Scranton that caused or aggravated a pre-existing condition. Claimant testified her pain got to a point, on that date, that she could no longer stand it.

I am empathetic to claimant's situation. She has had five back surgeries and continues to work at Scranton. Claimant's resilience is admirable. However, there is no evidence that claimant had a traumatic injury on October 20 or October 21, 2014. There is no evidence in the record that anything about claimant's work at Scranton on October 20, or October 21, 2014 caused or materially aggravated a pre-existing condition. Claimant alleges in her petition an injury date of October 20, 2014. Claimant testified in deposition that it was October 21, 2014 when she left work due to pain. Based on this record, it is found claimant has failed to carry her burden of proof that she sustained an injury on October 20, 2014 that arose out of and in the course of employment.

There is no evidence that claimant's lower back condition and numerous surgeries were caused by anything else other than her work at Scranton. As noted above, it is found claimant has failed to carry her burden of proof she sustained an injury on October 20, 2014 that arose out of and in the course of her employment. It is also found that claimant's back condition, and her five subsequent surgeries, all were caused by the February 25, 2014 date of injury.

As claimant has failed to carry her burden of proof that she sustained an injury that arose out of and in the course of employment on October 20, 2014, all other issues regarding that date of injury are moot, except for potential reimbursement of claimant's IME.

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., 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 the 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.

Claimant was 53 years old at the time of hearing. Claimant attended one year of community college. Claimant has worked stuffing and bundling newspapers, done sewing, and worked as a CNA.

Claimant has had five back surgeries. Dr. Nelson performed all of claimant's back surgeries. He opined claimant had a 22 percent permanent impairment to the body as a whole from her injuries and her back surgeries. (Jt. Ex. 5, p. 128) Dr. Kuhnlein evaluated claimant on two occasions for IME's. Dr. Kuhnlein found that claimant had a 28 percent permanent impairment to the body as a whole. (Jt. Ex. 8, p. 155) I have a great deal of respect for Dr. Nelson. However, Dr. Kuhnlein's opinions regarding permanent impairment are more detailed than those of Dr. Nelson. I can follow Dr. Kuhnlein's analysis and how he arrived at his figures for permanent impairment. I understand how he reached his conclusions of permanent impairment based on use of the Guides. Based on this, it is found that Dr. Kuhnlein's opinion, that claimant has a 28 percent permanent impairment to the body as a whole, is more convincing than Dr. Nelson's.

Dr. Nelson limited claimant to lifting no more than 35 pounds with no repetitive twisting or bending. (Jt. Ex. 5, p. 125) His restrictions are similar to those of Dr. Kuhnlein's. (Jt. Ex. 8, p. 155) Claimant testified she is no longer able to wire packers or pull wire. Claimant's unrebutted testimony is that she requires coworkers to help her lift at Scranton. Claimant's unrebutted testimony is that she is physically unable to return to any of her prior jobs.

Claimant still works full time at Scranton. The record indicates that claimant earns more per hour at the time of hearing than she did at the time of injury.

Claimant has a 28 percent permanent impairment to the body as a whole. She has lifting and bending restrictions. Claimant's restrictions limit her access to jobs. This is a limitation she did not have before the date of injury. Claimant's unrebutted

testimony is that she cannot return to any prior occupations. Claimant's unrebutted testimony is that she requires help with lifting at work. When all relevant factors are considered, it is found claimant has a 50 percent loss of earning capacity or industrial disability.

The next issue to be determined is whether claimant is due reimbursement for her IME's.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The supreme court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an IME, a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

In an April 21, 2016 letter, Dr. Nelson found that claimant had a permanent impairment for her February 25, 2014 date of injury. In a July 11, 2016 report, Dr. Kuhnlein gave his opinions of claimant's permanent impairment for the February 25,

2014 date of injury. Based on this chronology, it is found claimant is due reimbursement for Dr. Kuhnlein's July 11, 2016 report. (Jt. Ex. 5, p. 88; Jt. Ex. 8, p. 147)

On January 27, 2017, and October 17, 2017, Dr. Nelson gave his opinions regarding claimant's alleged October 20, 2014 date of injury. (Jt. Ex. 5, pp. 113-128) Dr. Kuhnlein gave his opinions of claimant's October 20, 2014 date of injury in a January 22, 2018 report. (Jt. Ex. 8) Based on this chronology, it is found claimant is due reimbursement for Dr. Kuhnlein's January 22, 2018 IME report.

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

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.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

In an October 6, 2017 record, Dr. Nelson, the authorized treating physician, indicated that claimant would require, "...ongoing medical maintenance, including ... gabapentin." Dr. Nelson did not limit ongoing medical maintenance only to use of gabapentin. Dr. Kuhnlein recommended claimant have ongoing pain management. The record indicates the claimant has pain in her foot and lower extremities that impact her ability to sleep. Claimant has ongoing lower back pain. Given this record, claimant has carried her burden of proof that she has proven entitlement to pain management as recommended by Dr. Kuhnlein's January 22, 2018 report. (Jt. Ex. 8, p. 154)

ORDER

THEREFORE, IT IS ORDERED:

For File No. 5052528, (Date of injury, February 25, 2014):

That defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at the rate of three hundred forty-seven and 07/100 dollars ($347.07) per week commencing on February 13, 2016.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall receive credit for benefits previously paid.

For File No. 5052529, (Date of injury October 20, 2014):

That claimant shall take nothing in the way of benefits from this file.

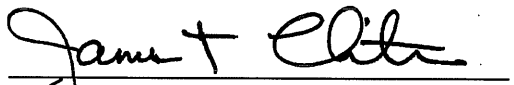
For both File Nos. 5052528 and 5052529:

That defendants shall reimburse claimant for both of Dr. Kuhnlein's IME's as detailed above.

That defendants shall pay costs.

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 15th day of May, 2018.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Corey J. L. Walker
Attorney at Law
208 N. 2nd Ave. West
Newton, IA 50208
corey@walklaw.com

Laura J. Ostrander
Attorney at Law
PO Box 40785
Lansing, MI48901-7985
Laura.ostrander@accidentfund.com

JFC/kjw

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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.