BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUANITA WELLS, Claimant, vs. HOME GOODS, INC. c/o THE TJX COMPANIES, INC., Employer, and AMERICAN ZURICH INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File No. 5057007 ARBITRATION DECISION Head Note Nos.: 1108, 1402.30, 1402.40, 1402.50, 1403.30, 1802, 1803, 2206, 2209, 2401, 2500, 2802, 3001

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WORKERS COMPENSATION

Claimant Juanita Wells filed a petition in arbitration on September 23, 2016, alleging she sustained an injury to her bilateral shoulders while working for the defendant, The TJX Companies, Inc. ("Home Goods"), on March 11, 2015. Home Goods and its insurer, the defendant, American Zurich Insurance Company ("American Zurich"), filed an answer on October 27, 2016, denying Wells sustained a work injury.

An arbitration hearing was held on September 20, 2017, at the Division of Workers' Compensation, in Des Moines, Iowa. Attorney Gregory Taylor represented Wells. Wells appeared and testified. April Latimore appeared and testified on behalf of Wells. Attorney Richard Book represented Home Goods and American Zurich. William Rehm, Andrew Schlemme, and Curtis Smith appeared and testified on behalf of Home Goods and American Zurich. Joint Exhibits ("JE") 1 through 3, Exhibits 1 through 16, and Exhibits A through O were admitted into the record. The record was held open through November 22, 2017, for the receipt of Exhibit 17, and post-hearing briefs. Exhibit 17 and the briefs were received and the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided. Home Goods and American Zurich raised the affirmative defense of lack of timely notice under Iowa Code section 85.23, and waived all other affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Home Goods and Wells at the time of the alleged injury.

2. Although entitlement to temporary benefits cannot be stipulated to, Wells was off work from October 3, 2016 through April 1, 2017.

3. If the injury is found to be the cause of permanent disability, the disability is an industrial disability.

4. At the time of the alleged injury Wells was single and entitled to one exemption.

5. Costs have been paid.

ISSUES

1. Did Wells sustain an injury on March 11, 2015, which arose out of and in the course of her employment with Home Goods?

2. If Wells sustained an injury arising out of and in the course of her employment with Home Goods, is the alleged injury a cause of temporary disability during a period of recovery?

3. If the alleged injury is a cause of temporary disability, is Wells entitled to a running award of healing period benefits from January 1, 2016, or is she entitled to temporary benefits from October 3, 2016 through April 1, 2017?

4. If Wells sustained an injury arising out of and in the course of her employment with Home Goods, is the alleged injury a cause of permanent disability?

5. If the alleged injury is a cause of permanent disability, what is the extent of disability?

6. If the alleged injury is a cause of permanent disability, what is the commencement date for permanent partial disability benefits?

7. What is the rate?

8. Is Wells entitled to payment of medical expenses?

9. Is Wells entitled to alternate medical care?

10. Is Wells entitled to recover the cost of an independent medical examination?

11. Should costs be assessed to either party?

FINDINGS OF FACT

Wells lives in Des Moines and is the mother of three adult children. (Exhibit J, pages 2, 16) At the time of the hearing she was fifty-one. (Transcript, p. 64)

Wells attended high school through the tenth grade and obtained a general equivalency diploma ("GED") in 1996. (Exs. 8, p. 57; J, pp. 6-7; Tr., p. 64) Wells obtained a certified nurse aide ("CNA") certificate from a community college as a teenager. (Exs. 8, p. 57; J, p. 7; Tr., p. 65) Wells testified her ability to read is excellent, and her mathematical ability is fair, noting she can add, subtract, multiply, and divide numbers. (Ex. J, p. 16) Wells uses a computer at home, and she has used Excel spreadsheets in the past at work. (Ex. J, p. 16)

Wells is a smoker and she is right-hand dominant. (JE 1, p. 5; Ex. J, p. 14) While she is right-hand dominant, Wells testified she uses her left hand "for everything." (Ex. J, p. 14) At the time of the hearing Wells did not have a driver's license and she has been involved in criminal matters involving substance and alcohol use not involving crimes of dishonesty. (Ex. J, p. 3)

Wells has experienced severe child abuse, domestic abuse assault, and assault resulting in multiple injuries, including a fracture to the orbit of her eye, a closed head injury with a parietal subgaleal hematoma, contusions, and a cervical strain. (JE 1, pp. 1-2, 6; JE 2, p. 67; Ex. J, p. 6) Wells has a preexisting history of Graves' disease, chronic low back pain, disk disease, hypothyroidism, anxiety, lumbago, obesity, and post-traumatic stress disorder. (JE 1, p. 5; JE 2, pp. 12) Wells also has a history of using crack cocaine "[o]ff and on for 30 years." (Ex. J, p. 5; JE 2, pp. 54, 63) Wells stopped using in June 2011, and resumed using crack cocaine again in March or April 2015. (Ex. J, p. 5) Wells discontinued using cocaine before she received surgery in October 2016.

Since 1999, Wells has held twenty positions with various employers. (Ex. 8, pp. 59-60) She has worked as a CNA, provider of consumer directed care, grill operator in a restaurant, warehouse worker, cleaner, banquet server, cook, donut maker, deli associate, front desk worker, merchandise coordinator, cashier, and concessions worker. (Ex. 8, pp. 59-63)

I. Employment with Home Goods

Home Goods hired Wells as a part-time employee on September 30, 2014. (Ex. H, pp. 82-83; Tr., p. 123) After approximately two weeks, Home Goods promoted Wells to a full-time merchandise coordinator position. (Tr., p. 66; J, p. 17) Wells worked for Home Goods for nearly six months. (Ex. H, pp. 72, 79) Wells received progressive

discipline for tardiness, and absenteeism, and she was terminated on March 24, 2015. (Ex. H, pp. 72-79)

Home Goods is organized into different departments. Wells testified there were four departments, each of which had a merchandise coordinator. (Ex. J, p. 23) All of the merchandise coordinators worked full-time, 36.5 hours per week. (Tr., p. 143) Wells initially worked in Soft Home, which is located in the back of the store. (Tr., pp. 69-70) Management moved Wells to the Infield area, which is located in the middle of the store. (Tr., pp. 69-70)

During her employment with Home Goods, Wells performed a variety of tasks, including stocking shelves, building displays, switching out end caps, assisting customers, making signs, cashiering, and getting down rugs. (Tr., pp. 67-68, 130-31; J, p. 17) Merchandise coordinators assisted with other departments in the store and helped with stocking in other departments and cashiering. (Tr., p. 68; J, p. 17) Wells reported when the store first opened she stocked product all day in between building displays and serving customers. (Tr., p. 68)

The goods sold in Soft Home are softer and lighter than the goods sold in the Infield. (Tr., pp. 70-71, 146) When she worked in Soft Home Wells worked with sheets, comforters, towels, and bathroom items. (Ex. J, p. 18) Wells reported in the Infield she worked with heavy vases, Buddha doll heads, heavy flower pots, Christmas items, Halloween items, pet items, children's items, picture frames, and stationary. (Tr., pp. 70-71; Ex. J, p. 18) Wells testified some of the heavier items she would lift included candles, vases, and other home décor items, and furniture. (Tr., p. 71)

As noted above, the goods in Soft Home are located in the back of the store. (Tr., p. 146) Rehm, the store manager, reported the shelving had a top notch of five feet and eleven inches on the top notch. (Tr., p. 147) Photographs of Soft Home area document the shelving is five feet and five inches high. (Tr., pp. 148-49) The Infield the shelving is shorter, at four feet and ten or eleven inches off the floor so customers can look throughout the store. (Tr., pp. 147, 150) Rehm testified the merchandise was not placed at four feet ten inches or higher because it could tip. (Tr., pp. 150-51) Most of the shelving in the Infield is made of glass, and most of the shelving in Soft Home is made of metal. (Tr., p. 151)

Wells stocked the Infield area with items she transported with tanks or flatbed carts, that were stocked with items by employees working in the back of the store. (Tr., p. 71) The tanks are metal shelving units with wheels. (Tr., p. 71) Wells is five feet and five inches tall and reported the tanks are taller than she is. (Ex. J, p. 5; Tr., p. 74) Rehm is five feet and eight inches tall. (Tr., p. 152) Rehm testified, given his height, he believes the top shelf of a tank is approximately five feet and five inches high. (Tr., p. 152)

Wells would begin each day by taking five tanks to the floor to stock merchandise. (Tr., pp. 71-75) While stocking from the tanks, Wells would reach below her head or use a step stool to reach high items, and she had to reach below her knees. (Tr., p. 74, 129-30) Wells moved large and heavy merchandise that would not fit on a tank on a flatbed cart. (Tr., p. 75) Wells testified she did a lot of heavy lifting. (Tr., p. 68) Wells testified before her work injury she could lift 100 to 150 pounds. (Tr., p. 127)

Latimore worked as the customer care experience coordinator for Home Goods in the front of the store by the cashiers during Wells's employment. (Tr., pp. 22-23, 50-51) Latimore worked for Home Goods for approximately one year. (Tr., pp. 22-23, 50-51) Latimore testified she has not done things socially with Wells outside of work. (Tr., p. 23)

Latimore testified she observed Wells move glass shelving she believed was "pretty heavy," and stock shelving with heavy items, including heavy vases. (Tr., pp. 40-41) Latimore reported Wells was primarily handling items weighing more than ten pounds. (Tr., pp. 34-35)

Wells believes she injured her left shoulder while carrying heavy rugs at Home Goods. The rugs are clipped onto ten foot racks. (Tr., pp. 124-25) Wells testified when removing a rug:

> [y]ou take the rug tool and you use – magnetic tool to take the price tag off the rug, set it to your side, take the hooks or pins that come out with the tool, go to the closet, rug closet, get out the rug tool, which is a big drill about this long.
>
> . . . .
>
> And you use it to drill the rug – it makes the rack come down from the ceiling so it gets to your eye level. Once it gets to your eye level you stop drilling, you take the rug hooks off. As you take the hooks off the rug, it's going to fall to the ground.
>
> You make the display as open as you can and straighten out the rug on the ground. There's some print on the rug that tells you pricing, different things on the back of the rug. That is supposed to be rolled on the side you can visualize it. You get down, you roll that rug up on your knees and then you pull it back and keep rolling, pull it back and keep rolling until you're at the end.
>
> Then you take a roll of tape. You tape it around three areas, both ends and the middle. You tape the price tag on the end of the rug.

> Then you pick the rug up and carry it to the front for the customer, and then you get called again when the customer is ready to go to their car to help load it into the their car.

(Tr., pp. 82-83) Wells reported she would use the rug tool four days per week, she would use the rug tool between one to six times per day, and once she took down five rugs "in not much more than an hour." (Tr., p. 83) During her deposition Wells testified she believed the heavier rugs weighed 200 pounds. (Ex. J, p. 19) She also testified during her deposition she had the rug tool a "[c]ouple hours a day maybe." (Ex. J, p. 21)

During her deposition, when questioned whether the rugs were the heaviest things she had to lift Wells replied, "[n]o. Well, I would say the rugs are 99 percent of the time the heaviest thing I have to lift, but I had some really heavy items in the carts as well," including "[s]tatues, all kinds of concrete things" that were seasonal. (Ex. J, p. 21) Wells estimated the heaviest items she had to lift weighed 300 pounds, but reported she rolled the heaviest items and did not lift them. (Ex. J, p. 22)

Rehm works mostly on the floor, assisting customers, building furniture, stocking merchandise from tanks, training employees, and assisting with the rugs. (Tr., p. 154) Rehm testified the store typically sells two-thirds of the smaller rugs and one-third of the larger rugs, but that fluctuates. (Tr., pp. 155, 164) Some of the rugs are five by seven feet, and some are eight by ten feet. (Tr., pp. 128, 141) Rehm testified a five by eight foot wool rug averages thirty-six pounds, a five by eight foot rug made with manmade materials weighs around fourteen pounds, and a typical eight by ten foot shag rug weighs fifty pounds. (Tr., p. 142) Rehm testified none of the rugs weighs 100 pounds. (Tr., p. 142) Rehm weighed the rugs for the hearing. (Tr., p. 170) I find Rehm's testimony reasonable and consistent with the other evidence I believe. Wells did not independently weigh the rugs, and provided an estimate of the weight of the rugs. I find Wells exaggerated the weight of the rugs.

Home Goods assigned a man to work as the rug coordinator during Wells's employment. (Tr., pp. 128-29, 143) The rug coordinator worked all three shifts, opening, closing, and mid-shift, full-time. (Tr., p. 143) Wells testified she assisted customers in the rug area when the rug coordinator was not there. (Tr., p. 129)

Home Goods did not assign Wells as the primary back up for the rug coordinator. (Tr., p. 144) Rehm testified the store has twenty-eight employees, so for the remaining forty-six hours the store was open, other employees would use the rug tool. (Tr., p. 168) Rehm reported the rug tool was distributed to all the employees, and he disputed that she had it three or four days per week. (Tr., p. 169) Rehm also disputed Wells would assist up to five or six customers per day with rugs. (Tr., p. 169) Rehm testified he would love the store to sell five or six rugs per day, but it does not. (Tr., p. 169) Rehm reported the store sells between sixteen and twenty rugs per week. (Tr., p. 170) Latimore reported the store sold four to five rugs per day during the week, and double

that during the weekend. (Tr., p. 60) I find Rehm's testimony most persuasive. As the store manager he is most familiar with inventory and sales.

Latimore testified the rugs are "enormous" and "heavy," and noted she would not lift the rugs herself. (Tr., p. 25) Latimore relayed Wells had the rug tool more than some of the other employees. (Tr., p. 28) Latimore testified there was a shortage of staff and when she could call for assistance with a rug, often no one was available to help. (Tr., pp. 30, 37) Latimore did not know how much the rugs weighed. (Tr., p. 30) Latimore has filed a workers' compensation claim against Home Goods. (Tr., pp. 49-50) Latimore testified something weighing twenty-five pounds is heavy to her, and something weighing fifteen pounds could be heavy. (Tr., p. 59) Latimore did not watch Wells all day long because she was busy with her own duties. (Tr., p. 59) I believe Wells used the rug tool more than other employees, but I again believe she exaggerated the amount of time she had the rug tool each week and the number of rugs she moved each day.

Rehm testified the store is open from 9:30 a.m. to 9:30 p.m. Monday through Saturday, 11:00 a.m. to 8:00 p.m. on Sundays, and the hours are expanded during the holidays. (Tr., p. 144) Wells reported toward the end of her employment she would come at 6:00 a.m. in the morning and had until 10:00 a.m., when the store opened to stock and empty her tanks. (Tr., pp. 68, 136) Wells testified she spent approximately fifty percent of her time stocking. (Tr., p. 69) The attorney for Home Goods and American Zurich questioned whether Wells could be confused about the start time, and she said no, three employees came in at 6:00 a.m. (Tr., pp. 136-37) Rehm relayed if the manager is not there, the store cannot open and none of the managers were scheduled before 7:00 a.m. (Tr., p. 145) I find his testimony reasonable and consistent with the other evidence I believe. I do not believe Wells started work before a manager was present.

II. Alleged Injury and Notice

Wells testified she started feeling "pains and aches" in her shoulders approximately three months after she started working for Home Goods. (Tr., p. 84) Wells reported, "[i]t began in my left shoulder and I felt it mostly when I was putting those carpets on my shoulder. And so what I did after it got very intolerable, I began to use the other shoulder." (Tr., p. 75) Wells stated she used both of her arms while reaching or lifting, and she primarily used her right arm, unless an item was heavy and then she would use both arms. (Tr., pp. 76-77) Wells testified she never had any shoulder problems before she started with Home Goods. (Tr., p. 67; Ex. J, p. 18)

Wells testified she started experiencing pain and problems with her left shoulder in December 2014. (Tr., p. 102) Wells reported she had not been taking hydrocodone regularly for several years before August 2014. (Tr., p. 101) This is inconsistent with her medical records, discussed below. Wells's hydrocodone prescription was not discontinued until March 2015. During her deposition Wells reported she started using

her right shoulder more in February 2015, and noticed it was hurting as well. (Ex. J, p. 25)

Wells reported she would try Team Lift, but there were not enough people to help. (Tr., pp. 78-79) Wells testified, "I have on occasion done five carpets in not much more than an hour, where it was that busy of an area that particular day." (Tr., p. 80) Wells reported the larger, eight by ten foot rugs were more popular than the smaller five by seven foot rugs. (Tr., p. 80) Wells reported she normally carried the rugs by herself. (Tr., p. 80)

Wells testified at hearing she told Rehm, Schlemme, and Smith her shoulders were "killing" her from lifting carpets. (Tr., p. 81) During her deposition Wells reported she mentioned her shoulders were hurting several times to Rehm, Schlemme, and Smith during her employment. (Ex. J, p. 27) Wells relayed she told them "[t]hese carpets are killing me. You guys have really got to stop giving me this rug tool. Somebody else needs to take a turn." (Ex. J, p. 27)

Schlemme worked for Home Goods as an assistant manager from August 2014 through January 2017. (Tr., pp. 172-73) At the time of the hearing she was working for Wells Fargo full-time, and part-time for TJ Maxx. (Tr., p. 173) Wells reported directly to Schlemme. (Tr., pp. 173-74; Ex. J, p. 27) Schlemme is in a relationship with Smith, but reported the relationship started after she and Smith left Home Goods. (Tr., p. 173)

Wells testified in January or February 2015 she spoke with Schlemme, and

> [Schlemme] said if I wanted to go in the back room and talk for a minute. We talked in the room. She asked if I wanted to make a report or call her doctor. I'm pushing 50 years old at this time. Jobs are not easy to come by. You don't quit because you want to quit. If you don't get another one – if you don't get another one, you don't eat, you don't live. I was afraid of losing my job so I told her no. I told her if it persisted I would see my own doctor.

(Tr., pp. 84-86) Wells reported she told Schlemme "the work that I was doing was causing me tremendous pain in my shoulders. I may have mentioned my back, but I explained I'm sure that my back is a reoccurring injury, but the shoulder pain is something I had never experienced," that it hurt when she went home at night and when she was sleeping. (Tr., p. 85) Wells testified, "I'm sure that I probably mentioned the rugs because that's where I got the most pain is when I would put one of those rugs over my shoulder. I would be willing to bet that the majority of those rugs weighed 75-plus, 100 pounds." (Tr., p. 86) During her deposition Wells testified if Schlemme denied she complained to her about her shoulders she would be a "liar." (Ex. J, p. 27)

Schlemme testified Wells never reported an injury to her and she never complained about her shoulder or shoulders to her. (Tr., p. 176) Schlemme relayed

she could not recall Wells reporting she injured her shoulders at work. (Tr., p. 175) Schlemme testified if Wells reported a work injury she would have called American Zurich, as she had on two occasions during her employment with Home Goods to report work injuries. (Tr., pp. 175-77) Schlemme recalled Wells complained about work and being short-staffed, she complained about aches and pains, and "basically everything." (Tr., pp. 175-76)

Smith worked for Home Goods from August 2014 through May 2015. (Tr., p. 184) Smith did not directly supervise Wells. (Tr., p. 185) Wells testified, "I don't know exactly what I told Curtis. It's been a while, but I'm sure that I made it very clear it was my work, it was something in my work." (Tr., p. 88) Smith testified Wells discussed having aches and pains at work, but she did not tell him she was injured at work. (Tr., p. 186) Smith testified he never overheard Wells complaining that her shoulder was hurting or that she had been injured at Home Goods. (Tr., p. 187) Smith reported that if Wells complained to him she had been injured at work, or if he overheard her complaining of being hurt at work, "I would have filed something." (Tr., p. 187)

Wells testified a couple weeks before she was terminated Rehm showed her a different way to move the rugs with a grocery cart, after she "complained enough, cried enough" and "when I moaned and told him how much it was hurting me." (Tr., pp. 80, 89) Counsel for Wells inquired whether she "specifically told Bill that it was [her] shoulder that was hurting," and Wells replied, "I'm sure I specifically told Bill it was my shoulder." (Tr., p. 89) Wells testified if Rehm denied she told him about her shoulder, "I would say he's not telling the truth." (Tr., p. 89)

Rehm testified he did not recall Wells mention or overhear Wells complain to others that her shoulder or shoulders were hurting during her employment with Home Goods. (Tr., pp. 155-56) Rehm recalled telling Wells to use a shopping cart, as he instructed all employees to do, but denied she discussed her shoulders with him at that time. (Tr., p. 157) Rehm recalled Wells complaining about social issues, family issues, and aches and pains, but he did not recall that she complained about her shoulders hurting or that she had injured her shoulders at Home Goods. (Tr., p. 165)

Latimore testified one occasion she observed Wells was in "a lot of pain" at work. (Tr., p. 43) Latimore asked Wells what was wrong, and Wells responded, "I can't keep lifting this stuff. I am in so much pain," and Latimore asked if she had reported her pain to Home Goods. (Tr., pp. 43-44) Latimore testified Wells replied she said something to Schlemme, but not to Rehm, and Latimore told her to tell Rehm. (Tr., p. 44) Latimore reported she called Rehm over, and told him Wells had been complaining she was in a lot of pain, and he responded, "[y]ou go ahead and go home." (Tr., p. 44)

Latimore testified Wells told her that her pain was being caused by picking up flower pots, and Latimore asked why she was doing that, and Wells replied Schlemme or Smith told her she could use a flatbed, or have someone else help her. (Tr., p. 45)

Latimore stated Wells was complaining about her arms and shoulders hurting because of lifting at work. (Tr., p. 45)

Latimore testified she overheard Wells talk to Schlemme and state, "Andrea, I can't keep lifting this stuff. This stuff got my shoulders hurting like crazy. This is too heavy." (Tr., p. 46) Latimore reported she recalled Wells telling Smith, "this stuff is hurting my back" and he replied she should call him and he would help. (Tr., p. 47)

III. Treatment and Evaluation

Wells receives primary care through Broadlawns Medical Center ("Broadlawns"). During an appointment with Chad Bradshaw, PA on March 11, 2015, Wells complained of left shoulder pain for several weeks, and she denied an injury. (JE 2, p. 91) Bradshaw listed an impression of shoulder pain and back pain, and prescribed Relafen. (JE 2, p. 92)

On March 16, 2015, Wells attended an appointment with Rebecca Bollin, D.O., her primary care provider, at Broadlawns. (JE 2, p. 93) Dr. Bollin documented Wells had started a physical job as a merchandise coordinator in September 2014, where she carried rolled carpets upstairs. (JE 2, p. 93) Wells relayed she had low back pain before when she started her job, but it had gotten worse, and she also complained of shoulder pain. (JE 2, pp. 93-95) Dr. Bollin documented Wels declined physical therapy because she thought the physical therapy she had received in the past made her worse. (JE 2, p. 95) Dr. Bollin ordered a left shoulder x-ray, which the reviewing radiologist noted was "negative." (JE 2, p. 96)

Wells received progressive discipline for tardiness and absenteeism during her employment with Home Goods. (Ex. H, pp. 72-79) Home Goods terminated Wells's employment on March 24, 2015. (Ex. H, pp. 72-79)

On March 28, 2015, Wells returned to Broadlawns, reporting she had discontinued her psychiatric medication for one week, and after resuming her medication her anxiety and depression improved. (JE 2, p. 88) Wells did not report a problem with her shoulders, and her medical provider documented Wells "loves [her] retail job and 'works hard.'" (JE 2, p. 88)

Wells attended an appointment with Dr. Bollin on December 10, 2015, complaining of left shoulder pain radiating along the length of her arm. (JE 2, p. 99-103) Dr. Bollin ordered an x-ray, and the reviewing radiologist found Wells had mild degenerative changes in the left acromioclavicular joint, with no change from the previous x-ray from March 16, 2015. (JE 2, p. 104)

Wells underwent magnetic resonance imaging of her left shoulder on January 8, 2016. (JE 2, p. 105) The reviewing radiologist diagnosed Wells with a "[f]ull-thickness tear of the distal rotator cuff involving the supraspinatus tendon at its insertion on the

greater tuberosity" and noted "[t]here is extensive arterial tearing of the distal rotator cuff seen more proximally." (JE 2, p. 105) The radiologist noted she had a five millimeter gap in the supraspinatus tendon at the site of the full-thickness tear. (JE 2, p. 105) On January 20, 2016, Wells returned to Dr. Bollin to discuss the imaging results, and relayed she had an appointment in orthopedics on February 2, 2016. (JE 2, p. 111)

On February 4, 2016, Wells attended a follow-up appointment with Dr. Bollin, complaining of right shoulder pain that "[f]eels the same as the left." (JE 2, p. 113) Dr. Bollin documented there was "[n]o known trauma, insidious onset" with respect to her right shoulder, diagnosed her with right shoulder pain, and ordered an x-ray, which the reviewing radiologist noted was negative. (JE 2, pp. 113, 116)

During her appointment on February 12, 2016, Wells relayed she had missed her orthopedics appointment due to a family issue, her left shoulder was "quite problematic," she had trouble lifting and carrying anything with her left shoulder, she could not comb her hair without pain, and her right shoulder was exhibiting the same symptoms. (JE 2, p. 117)

On February 17, 2016, Wells attended an appointment with Scott Neff, D.O., an orthopedic surgeon at Broadlawns, complaining of burning and radiating bilateral shoulder pain. (JE 2, p. 118) Dr. Neff diagnosed Wells with a rotator cuff degenerative tear of the supraspinatus insertion of the left shoulder, and recommended an arthroscopy and a mini lateral rotator cuff repair, and noted he had not examined her right side. (JE 2, pp. 120-21)

Dr. Bollin ordered magnetic resonance imaging of Wells's right shoulder. (JE 2, p. 123) The reviewing radiologist listed an impression of "[t]endinopathy within both the supraspinatus and infraspinatus tendons," a "[s]mall amount of fluid within the subacromial/subdeltoid bursa," a "possible small partial tear of the long head of biceps tendon at its insertion on the biceps anchor" and tendinopathy, and moderate degenerative changes in the acromioclavicular joint. (JE 2, p. 124)

During a preoperative visit at Broadlawns on March 10, 2016, Wells admitted she had used cocaine the day before. (JE 2, p. 129) Hospital staff notified anesthesia, and Wells's surgery was cancelled. (JE 2, p. 129)

On May 6, 2016, Wells attended a follow-up appointment with Dr. Bollin. (JE 2, p. 125) Wells requested prescription narcotics and Dr. Bollin documented she told Wells she would not prescribe narcotic medication given her recent drug use and her surgery would not be scheduled until she had three clean drug screens. (JE 2, p. 125)

On August 23, 2016, Wells attended an appointment with Dr. Neff. (JE 2, p. 135) Dr. Neff noted Wells was not using drugs and he would schedule a left shoulder outpatient arthroscopy with mini-lateral rotator cuff repair. (JE 2, p. 135)

Wells sent Dr. Bollin a letter asking her to check "agree" or "disagree" with prepared statements. (Ex. 1, pp. 1-2) Dr. Bollin responded on September 1, 2016, agreeing Wells first complained she was having left shoulder pain on March 16, 2016. (Ex. 1, p. 1) Dr. Bollin further agreed based upon her knowledge of Wells's medical history and understanding of Wells's work for Home Goods, she believes "it is more likely than not that [Wells's] overhead work activities at HomeGoods were a substantial contributing factor in the development of her left shoulder condition for which you have provided treatment," and that her work activities at Home Goods "accelerated the need for the left shoulder surgery that Dr. Neff is recommending, and . . . were a material contributing factor which led to [Wells's] current left shoulder condition." (Ex. 1, p. 2)

Dr. Neff performed a left shoulder arthroscopy with impingement decompression and mini-lateral rotator cuff repair on October 6, 2016. (JE 2, p. 138) Dr. Neff restricted Wells from working, instructed Wells on home exercises, and ordered physical therapy. (JE 2, pp. 142, 146, 158-64)

William Jacobson, M.D., an orthopedic surgeon, performed an independent medical examination for Wells on November 3, 2016. (Ex. 2) Dr. Jacobson reviewed Wells's medical records. (Ex. 2, p. 6) Dr. Jacobson opined, based on the records he reviewed, that Wells's "left shoulder condition was either caused or materially aggravated by her work activities at Home Goods," noting he did not have any records indicating she had any prior left shoulder problems. (Ex. 2, p. 7) Dr. Jacobson further opined, with respect to her right shoulder, he "cannot state with any reasonable medical certainty whether this is a result of the left shoulder condition." (Ex. 2, p. 7)

Wells's counsel sent Dr. Jacobson a letter on December 6, 2016, regarding his opinion, as follows:

> 1. Ms. Wells' job at Home Goods involved lifting and stocking merchandise on shelves. Many of the items she would stock involved reaching above shoulder height, and she spent about 6 to 8 hours per day stocking shelves. In addition to stocking shelves, Ms. Wells would assist customers with rugs that were 8 feet x 5 feet in length. Assisting customers with rugs involved unclipping the rugs from racks, rolling the rugs up on the floor, and carrying the rugs out to a customer's vehicle.

(Ex. 2, p. 8) Dr. Jacobson initialed, yes "this was my understanding of Ms. Wells' job duties at Home Goods when I wrote my 11/3/16 report, and I continue to believe her left shoulder injury and need for surgery were causally related to her work at Home Goods." (Ex. 2, p. 8)

Home Goods and American Zurich provided Dr. Neff with a job description and affidavits from Rehm and Schlemme, and requested an opinion letter from him regarding Wells on December 15, 2016. (Ex. A) On December 20, 2016, Dr. Neff responded to questions from counsel, as follows:

> [i]n question #1, you asked about whether or not she had an injury to her left and/or right shoulders as a result of her work activities at Home Goods. The information you provided does not show that she does repetitive heavy activity at or above the height of the shoulder on a regular or intensive basis and I did not find any evidence in the records or in this patient's history of a specific injury at work, such as a fall on the outstretched hand or something which could cause rotator cuff pathology.
>
> Consequently, it is my opinion that she did not injure her left or right shoulder as a result of her work activities for Home Goods. She did have a degenerative rotator cuff tear of the right shoulder.
>
> In my opinion, the work activity that Ms. Wells did for Home Goods was not a substantial cause or was not a substantial cause of the subsequent need for surgery on her rotator cuff. She had degenerative changes in the rotator cuff, delaminated tear consistent with chronicity, and has had other circumstances in her life which unfortunately could have been very contributory to her overall circumstance. Most recently when I saw her, she had a black eye secondary to being drunk and falling down.

(Ex. A, p. 17)

Wells applied for Social Security Disability Benefits. (Exs. I, 7) The Social Security Administration denied her application. (Exs. I, 7)

During an appointment with Dr. Neff on March 22, 2017, Wells relayed she had recently rolled over in bed or did something and "felt a painful snap deep in her right shoulder." (JE 2, p. 148) Dr. Neff performed an injection into the subacromial space. (JE 2, p. 148)

Dr. Jacobson conducted an independent medical examination of Wells on May 16, 2017. (Ex. 2, p. 10) Dr. Jacobson reviewed additional medical records and he examined Wells. (Ex. 2, p. 10) Dr. Jacobson opined:

> [i]t does not appear that the job directly caused [Wells's] rotator cuff tear, as this was noted to be a chronic tear. It does appear that her shoulder was materially aggravated by her job at Home Goods. It is my opinion that this led to the need for surgery. This is based on the fact that Ms. Wells denies any previous history of left shoulder problems. There are apparently no records indicating any previous left shoulder problems. Her job description falls into the heavy demand level.

(Ex. 2, p. 11) Dr. Jacobson placed Wells at maximum medical improvement on April 1, 2017, six months after she received surgery. (Ex. 2, p. 11) Using the Guides to the

Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Jacobson assigned a three percent upper extremity impairment, or a two percent body as a whole impairment, noting "[t]here is a discrepancy between her active and passive range of motion. There is some concern about her giving maximal effort. As such, I would place her at a typical recovery rating." (Ex. 2, p. 11) With respect to restrictions, Dr. Jacobson recommended a five pound lifting restriction for overhead work, and to limit repetitive overhead work. (Ex. 2, p. 12) Dr. Jacobson did not recommend any additional restrictions.

On May 23, 2017, Wells returned to Dr. Neff, reporting her left shoulder was better, but she did not have much overhead strength, and she was experiencing aching in both shoulders. (JE 2, p. 150) Dr. Neff relayed he did not have anything additional to offer surgically, and noted Wells was "disabled for other reasons and does not do any type of repetitive overhead activity." (JE 2, p. 150) Dr. Neff documented radiographs revealed a normal relationship of the glenohumeral joint with a well-maintained subacromial space, and noted Wells could follow up as needed with respect to her left shoulder. (JE 2, p. 150)

Wells requested treatment and imaging of her right shoulder. (JE 2, p. 151) Wells underwent an x-ray of her right shoulder, and the reviewing radiologist listed an impression of "[m]ild osteoarthritis of the right AC joint with a small subacromial spur which could predispose to external impingement of the rotator cuff." (JE 2, p. 152)

On June 14, 2017, Wells attended an appointment at Broadlawns for treatment of anxiety and depression and reported she had returned to using 'crank' and she was not taking her psychiatric medication regularly. (JE 2, p. 154)

Joshua Kimelman, D.O., an orthopedic surgeon, performed an independent medical examination of Wells for Home Goods and American Zurich on July 12, 2017. (Ex. 3) Dr. Kimelman examined Wells and reviewed her medical records. (Ex. 3) Dr. Kimelman took a very detailed history from Wells. (Ex. 3, p. 21) Dr. Kimelman listed an impression of "[s]tatus post left rotator cuff tear with tendinosis of the right shoulder with impingement." (Ex. 3, p. 23) Dr. Kimelman opined:

> [b]ased on her history, I believe she has sustained an injury to her shoulder. The mechanism of resting carpet on her left shoulder would not be a typical mechanism for causing rotator cuff tears, and the fact that she is right-handed and her left shoulder was the one that bothered her the most, again, would be atypical for rotator cuff tear. An additional issue based on job description, Ms. Wells describes work that exceeded what her job description was written as.

(Ex. 3, p. 23) Dr. Kimelman noted he believed her diagnosis is likely preexisting rotator cuff tear with impingement of the left shoulder and he did not "believe that her right

shoulder injury is because she was favoring the left shoulder." (Ex. 3, p. 23) With respect to causation of the left shoulder surgery, Dr. Kimelman opined,

> [t]here are several issues there. Certainly, as we age, the incidence of rotator cuff with tears, which are often asymptomatic, increases. Additionally, the delay in her initial indication for surgery until surgery was performed because of Ms. Wells' use of illegal drugs certainly could have increased the amount of pathology at the time of surgery. She did complain of left shoulder problems while she was working, so I believe that would result in the left shoulder impingement, which ultimately was the cause for her surgery.

(Ex. 3, pp. 23-24) Using the AMA Guides, Dr. Kimelman assigned a ten percent impairment of the left shoulder. (Ex. 3, p. 24)

Counsel for Home Goods and American Zurich sent Dr. Bollin a letter requesting her opinion concerning Wells's work injury after reviewing Dr. Neff's December 20, 2016, the affidavits from Rehm and Schlemme, and Wells's job description. (Ex. C, p. 32) Dr. Bollin responded she agreed with the statements made by counsel on August 15, 2017, agreeing Wells did not injure her left or right shoulder as a result of her work activity for Home Goods, nor was her work activity a substantial cause of her left shoulder rotator cuff tear or need of surgery. (Ex. C, pp. 33-34)

Counsel for Home Goods and American Zurich sent Dr. Neff a letter on August 27, 2017, asking for his opinion concerning Wells. Dr. Neff answered a series of questions, providing yes and no answers. (Ex. B, pp. 20-21) Dr. Neff agreed Wells's job activities for HomeGoods did not substantially and materially aggravate the underlying and preexisting conditions in her shoulders, her long-term use of hydrocodone could have masked her pain caused by her chronic preexisting rotator cuff tears and degenerative conditions in her left shoulder, there was no sign of an acute or traumatic injury to either shoulder when he first examined her, her left shoulder imaging did not show any signs of impingement, and he agreed with Dr. Jacobson's impairment rating of three percent. (Ex. B, pp. 20-21)

Counsel for Home Goods and American Zurich sent Dr. Kimelman a letter enclosing pages 55 through 59 of Wells's deposition, and records concerning the discontinuation of her prescriptions for Vicodin and Norco. (Ex. D, p. 35) Dr. Kimelman responded on August 31, 2017, as follows:

> 1. Dr. Kimelman, would the long-term use of Vicodin (acetaminophen-hydrocodone) by Ms. Wells have masked her pain caused by her chronic preexisting rotator cuff tear and degenerative conditions in her left shoulder?
>
> Answer: yes

> 2. As it appears that the onset of Ms. Wells' shoulder pain coincided with her discontinuing the use of Vicodin aka Norco (acetaminophen-hydrocodone) does that make it unlikely that her work activities for HomeGoods substantially and materially aggravated her preexisting rotator cuff tear with impingement syndrome in her left shoulder that you diagnosed causing her shoulder to be symptomatic but rather it is more likely that Ms. Wells' symptoms became apparent to her upon discontinuing the use of Vicodin aka Norco and that her work activities exacerbated those symptoms?
>
> Answer: yes

(Ex. D, p. 36)

Dr. Bollin responded to a request from Wells's counsel on September 12, 2017, as follows:

> Ms. Wells first came under my care in 05/2013. She first mentioned left shoulder pain to me during office visit on 3/16/2015. Though she has had other pain complaints in the past, she had never before mentioned pain in her left shoulder.
>
> I have had the opportunity to review the ergonomics evaluation of the patient's job duties as well as the testimony of Ms. Wells' colleagues at HomeGoods. That information had previously not been available to me.
>
> In light of the new information, it is my opinion that that patient's job duties significantly contributed to her left shoulder pain. The onset and progression of symptoms coincided with her time working at HomeGoods. The severity of her symptoms resulted in the need for further evaluation and treatment by an orthopedic specialist.

(Ex. 1, p. 5)

On September 25, 2017, Dr. Bollin responded to a letter from Wells's counsel agreeing that on October 13, 2011, Wells reported she was only using three hydrocodone pills per day, her prescription was discontinued on June 20, 2012, and she received "a new prescription for 10-500" with thirty tablets and five refills, and another prescription on August 14, 2014, for thirty tablets with no refills. (Ex. 17, p. 2) Dr. Bollin further agreed the quantity of hydrocodone Wells was taking "was of insufficient quantity to 'mask' the pain she would have experienced had she had symptomatic chronic degenerative conditions in her left shoulder," and she did not believe the discontinuation of her hydrocodone had anything to do with the onset of her shoulder pain. (Ex. 17, pp. 2-3)

Wells testified she cannot lift a half gallon of milk with her left arm without having to use the right. (Tr., p. 102) She relayed it is painful for her to lift something "to the second and top shelf of [her] kitchen cabinets at home" and she tries not to use her left arm to lift anything but very light groceries. (Tr., p. 102) Wells reported she has problems lifting in general, not just over her head. (Tr., p. 102)

Wells reported she cannot vacuum or carry laundry, and she attempts to do dishes every now and then, but "[t]he problem is I've developed carpal tunnel in both hands, so now I'm really limited. I can't peel potatoes and onions without the fingers going numb. There's something new going on." (Tr., p. 105)

Wells testified Dr. Neff has indicated he will perform right shoulder surgery after she has carpal tunnel surgery. (Tr., p. 105) Wells reported her symptoms in her left shoulder are better since she had surgery as long as she follows her restrictions. (Tr., p. 115) Well relayed that prior to her work she had no problem lifting fifty pounds, and that she could lift 100 to 150 pounds. (Tr., pp. 126-27)

Wells testified at hearing she does not have any restrictions for her right shoulder. (Tr., p. 135) Wells reported her shoulder still hurts if she goes "overboard," but stated "I can still do most of the stuff I used to do." (Tr., p. 135)

Wells testified after Home Goods terminated her employment she was unemployed for six weeks to two months, until she secured a position with Microtel Inn and Suites. (Ex. J, p. 12) Wells worked the front desk and in housekeeping, cleaning rooms and preparing breakfast for the customers. (Ex. J, p. 12) Wells reported changing the beds was very difficult with her shoulder pain, and she quit because the pain was unbearable. (Ex. J, p. 12)

Wells testified she obtained a position as a cashier for Git-N-Go in 2015, where she ran the cash register and stocked shelves with food items, chips, and cigarettes. (Ex. J, p. 13) Wells stated she left her employment because the pain was unbearable and the store had been robbed when she was not working. (Ex. J, p. 13) She then worked for Ovations Food Services at Hy-Vee Hall, as a cashier in concessions. (Ex. J, p. 13) Wells reported the position required her to lift forty pounds of meat on a stand ladder, which she could not perform due to the pain. (Ex. J, p. 17)

IV. Vocational Analysis

Phil Davis, M.S., provided a vocational opinion for Wells and Ted Stricklett, M.S., provided a vocational opinion for Home Goods and American Zurich. (Exs. 5; F) Wells lives in the Des Moines metropolitan area, a large urban area.

Davis opined Wells's duties as a merchandise coordinator fall within the heavy physical demand level. (Ex. 5, p. 34) Considering the restrictions imposed by Dr. Jacobson, Davis noted Wells's physical abilities fall "more consistently within the

sedentary to light physical demand category according to the US Department of Labor's definition." (Ex. 5, p. 34) Davis opined of the 12,761 occupations noted within the Dictionary of Occupational Titles ("DOT"), 89 percent of all occupations listed in the DOT require the full use and range of motion of an individual'[s] upper extremities, and opined Wells is precluded from 89 percent of all occupations within the competitive labor market in the United States. (Ex. 5, p. 35) Davis did not perform a labor market analysis of the Des Moines area. (Ex. 5)

Stricklett noted Wells's current restrictions would preclude her from returning to her past relevant work as a consumer directed care provider, warehouse worker, and CNA. (Ex. F, p. 50) Stricklett conducted labor market research and determined without further training Wells could work as a cashier, automobile detailer, hotel clerk, fast food worker, food service worker, retail sales associate, and cleaner/housekeeper. (Ex. F, p. 50) Stricklett examined the Des Moines labor market, and opined Wells could expect to earn median wages in the $351.20 to $504.00 range in those positions. Stricklett noted that Wells's weekly wage was $362.96 prior to her work injury, and the positions she is capable of engaging in she would expect to sustain an initial wage loss of zero to three percent.

Wells provided Davis with a copy of Stricklett's opinion. (Ex. 5, pp. 36-39) Davis responded that he believed Wells would be precluded from working as a cashier and auto detailer because the positions require full use and range of motion of the upper extremities. (Ex. 5, p. 38) He further opined while she could perform many of the functions of a hotel clerk, she could not perform housekeeping or janitorial duties or fold laundry, noting she had worked in this capacity from April to June 2015. (Ex. 4, p. 38) Davis opined cleaner/housekeeper positions fall within the medium to heavy physical demand level, which are outside of her ability. (Ex. 5, p. 38) Davis opined retail sales clerk, fast food worker, and food service worker positions require overhead lifting beyond Wells's restrictions. (Ex. 5, p. 38) Davis then opined Wells has incurred a fifty-five percent loss of access to unskilled occupations, and a fifty-four percent loss of access to semi-skilled occupations based upon her injury and restrictions. (Ex. 5, p. 39)

Stricklett received a copy of Davis's report and supplemental report. (Ex. F, p. 53) Stricklett opined it appeared Davis had misinterpreted Dr. Jacobson's restrictions, and noted Dr. Jacobson did not provide any restrictions below shoulder height or provide any range of motion restrictions for her upper extremities other than he recommended overhead work activity restrictions. (Ex F, p. 54) Stricklett did not otherwise modify his opinion.

CONCLUSIONS OF LAW

I. Arising Out of in the Course of Employment

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course

of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

> it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. *An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of the employer.*

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (emphasis in original).

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, [i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

Wells contends she sustained a cumulative injury while working for Home Goods. Cumulative injuries are occupational diseases that develop over time. Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 681 (Iowa 2015). A cumulative injury results from repetitive trauma in the workplace. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842, 851 (Iowa 2009); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368, 372-74 (Iowa 1985). "A cumulative injury is deemed to have occurred when it manifests – and 'manifestation' is that point in time when 'both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person.'" Baker, 872 N.W.2d at 681.

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The deputy commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

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

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

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

Four physicians have provided causation opinions in this case, Dr. Bollin, Wells's family medicine physician, Dr. Neff, an orthopedic surgeon selected by Wells who performed her left shoulder surgery, Dr. Jacobson, an orthopedic surgeon who performed an independent medical examination for Wells, and Dr. Kimelman, an orthopedic surgeon who performed an independent medical examination of Wells for Home Goods and American Zurich.

No physician has causally related Wells's alleged right shoulder condition to her employment with Home Goods. Wells has not met her burden of proof that she sustained an injury to her right shoulder arising out of and in the course of her employment with Home Goods. Based on this finding, Wells is not entitled to a running award of temporary total disability or healing period benefits based on the alleged right shoulder injury.

Home Goods and American Zurich contend Wells's use of hydrocodone over the course of many years masked her left shoulder symptoms, and contend her shoulder

condition and need for surgery are unrelated to her employment with Home Goods. Wells disagrees and avers her work activities at Home Goods aggravated, accelerated, worsened or "lighted up" her left shoulder condition and need for surgery.

Drs. Bollin, Jacobson, and Kimelman initially agreed Wells's work aggravated, accelerated, or worsened her preexisting left shoulder condition. Dr. Neff's opinion has not changed. He opined Wells's shoulder condition and need for surgery was unrelated to her employment with Home Goods. I find Dr. Jacobson's opinion to be the most persuasive.

Wells's medical records show she took hydrocodone for a preexisting back injury over the course of many years. (JE 2; Ex. J, p. 15) Wells moved to Des Moines from Colorado and began receiving medical treatment at Broadlawns in August 2011. (JE 2, p. 8) Wells's records document she received hydrocodone prescriptions from Broadlawns from August 2011 through March 9, 2015. (JE 2, pp. 8-89)

During her June 22, 2017, deposition Wells relayed she took hydrocodone or Vicodin for many years, but her longstanding prescription was discontinued "with the new insurance laws and stuff." (Ex. J, p. 15) Wells testified the change occurred three or four years ago. (Ex. J, p. 15) Wells's medical records from March 9, 2015, document she had an active prescription for acetaminophen-hydrocodone or Norco, to be taken as needed. (JE 2, p. 87) During her appointment on March 11, 2015, Broadlawns discontinued Wells's Norco prescription noting the reason was "Dose Complete." (JE 2, p. 90) During that same appointment Bradshaw, who treated Wells documented Wells was complaining of left shoulder pain for several weeks, and noted she denied an injury. (JE 2, p. 91) Bradshaw listed an impression of shoulder pain and back pain, and prescribed Relafen. (JE 2, p. 92)

Dr. Neff relied on the affidavits of Rehm and Schlemme in reaching his conclusions. The affidavits provide that Wells worked primarily in the Soft Home section of the store, and that she worked with items generally weighing up to ten pounds. (Ex. A, pp. 6, 9) The attorney for Home Goods and American Zurich sent the same affidavits to Dr. Bollin and she modified her opinion, which she later revised, after receiving additional information from Wells's counsel. The evidence presented at hearing does not support Wells primarily worked in the Soft Home section of the store, she primarily worked in the Infield. The evidence does not support she worked with items generally weighing up to ten pounds. Dr. Neff's opinion relies on an incorrect history concerning Wells's employment. I do not find it persuasive.

Home Goods and American Zurich retained Dr. Kimelman to conduct an independent medical examination of Wells. Dr. Kimelman acknowledged Wells's age and delay in receiving surgery due to illegal drug use could have increased the amount of her pathology at the time of surgery, but noted, "[s]he did complain of left shoulder problems while she was working, so I believe that would result in the left shoulder impingement, which ultimately was the cause for her surgery." (Ex. 3, pp. 23-24)

Home Goods and American Zurich sent a form letter to Dr. Kimelman and supplied him with additional medical records. After receiving information concerning Wells's Vicodin use, Dr. Kimelman answered he agreed her Vicodin use could have masked her pain caused by her preexisting rotator cuff tear and degenerative conditions in her left shoulder. (Ex. D, p. 36) Dr. Kimelman agreed to the following statement:

> [a]s it appears that the onset of Ms. Wells' shoulder pain coincided with her discontinuing the use of Vicodin aka Norco (acetaminophen-hydrocodone) does that make it unlikely that her work activities for HomeGoods substantially and materially aggravated her preexisting rotator cuff tear with impingement syndrome in her left shoulder that you diagnosed causing her shoulder to be symptomatic but rather it is more likely that Ms. Wells['] symptoms became apparent to her upon discontinuing the use of Vicodin aka Norco and that her work activities exacerbated those symptoms?

(Ex. D, p. 36) Dr. Kimelman agreed the fact that Wells discontinued Vicodin at the same time she experienced shoulder pain makes it unlikely her work activities substantially and materially aggravated her preexisting pathology, but then also agreed the combination of discontinuing Vicodin and "her work activities exacerbated those symptoms." (Ex. D, p. 36)

Dr. Jacobson acknowledged Wells had a rotator cuff tear that was chronic, but opined it was materially aggravated by her work activities at Home Goods. (Ex. 2, p. 11) During her appointment with Bradshaw at Broadlawns on March 11, 2015, Wells complained of shoulder symptoms for several weeks. (JE 2, pp. 90-91) This is also the date her hydrocodone was discontinued. (JE 2, pp. 90-91) The record does not support Wells complained of any shoulder discomfort or received treatment for left shoulder pain before her employment with Home Goods, consistent with Dr. Jacobson's opinion. Wells reported having shoulder symptoms related to her employment with Home Goods while she was taking hydrocodone; she did not begin reporting symptoms after her prescription was discontinued.

Wells has met her burden of proof that she sustained an injury to her left shoulder arising out of and in the course of her employment. Based on Dr. Jacobson's opinion, she reached maximum medical improvement on April 1, 2017. (Ex. 2, p. 11)

II. Notice

Home Goods and American Zurich contend Wells failed to provide timely notice of her work injury under Iowa Code section 85.23. Wells avers Home Goods received timely notice of her work injury because she reported her injury to her managers, Schlemme, Rehm, and Smith.

Iowa Code section 85.23 requires an employee to provide notice to his or her employer within ninety days of the occurrence of an injury, unless the employer or the employer's representative has actual knowledge the occurrence of the injury. The purpose of the notice provision is to afford the employer the opportunity to investigate the circumstances of the injury when the information is fresh. Johnson v. Int'l Paper Co., 530 N.W.2d 475, 477 (Iowa Ct. App. 1995). "Actual knowledge must include information that the injury might be work related." Id. The employer bears the burden of proving the affirmative defense. DeLong v. Iowa State Highway Comm'n, 299 Iowa 700, 703, 295 N.W. 91, 92 (1940).

Wells and her coworker, Latimore, testified Wells complained of her shoulder hurting to Schlemme, Rehm, and Smith. Schlemme, Rehm, and Smith deny receiving notice of her injury. The notice dispute raises issues of credibility. When assessing witness credibility, the trier of fact "may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of the facts, and the witness's interest in the [matter]." State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990).

Wells has a definite interest in the outcome of this case. Rehm has an interest in the outcome of his case because he continues to work for Home Goods. Smith and Schlemme no longer work for Home Goods. Schlemm's current employer, TJ Maxx, is a related company of Home Goods.

Schlemme was Wells's direct supervisor. Wells testified in January or February 2015 she spoke with Schlemme, and

> [Schlemme] said if I wanted to go in the back room and talk for a minute. We talked in the room. She asked if I wanted to make a report or call her doctor. I'm pushing 50 years old at this time. Jobs are not easy to come by. You don't quit because you want to quit. If you don't get another one – if you don't get another one, you don't eat, you don't live. I was afraid of losing my job so I told her no. I told her if it persisted I would see my own doctor.

(Tr., pp. 84-86) Wells reported she told Schlemme "the work that I was doing was causing me tremendous pain in my shoulders. I may have mentioned my back, but I explained I'm sure that my back is a reoccurring injury, but the shoulder pain is something I had never experienced," that it hurt when she went home at night and when she was sleeping. (Tr., p. 85) Wells testified "I'm sure that I probably mentioned the rugs because that's where I got the most pain is when I would put one of those rugs over my shoulder. I would be willing to bet that the majority of those rugs weighed 75-plus, 100 pounds." (Tr., p. 86)

When questioned during the hearing Schlemme reported she could not recall Wells reporting she injured her shoulders at work. (Tr., p. 175) Schlemme reported if Wells had reported a work injury, she would have notified American Zurich, which she did when two employees notified her they had been injured while working for Home Goods. (Tr., pp. 175-77)

Latimore testified she overheard Wells talk to Schlemme and stated, "Andrea, I can't keep lifting this stuff. This stuff got my shoulders hurting like crazy. This is too heavy." (Tr., p. 46) Latimore's statement supports Wells testimony. While Latimore has filed a workers' compensation claim against Home Goods, there is no evidence Latimore has a social relationship or other motivation to help Wells, or to harm Home Goods. (Tr., pp. 49-50) I conclude Home Goods has not proven its affirmative defense.

III. Medical Expenses

Wells seeks to recover medical expenses and medical mileage for treatment she received for her left and right shoulders. (Exs. 14; 16) Home Goods and American Zurich denied both claims and contend Wells is not entitled to medical treatment.

Under Iowa Code section 85.27, "[t]he employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services." Rule 876 Iowa Administrative Code 8.1(2) provides "transportation expense" includes "[a]ll mileage incident to the use of a prior auto" at the rate allowed by the Internal Revenue Service for the business standard mileage rate in effect on July 1 of each year. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.; Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 436 (Iowa 1997).

As analyzed above, Wells has not established her right shoulder condition is related to her work injury. Therefore, she is not entitled to recover the cost any medical bills for her right shoulder. Wells is entitled to recover the cost of all medical bills and medical mileage set forth in Exhibits 14 and 16 causally related to her work injury to her left shoulder.

IV. Rate

On the Hearing Report the parties stipulated that at the time of the alleged injury Wells was single and entitled to one exemption. Wells asserted that at the time of her work injury she received gross earnings of $402.46 per week and that her weekly rate is $259.50. Home Goods and American Zurich argued Wells received gross earnings of $319.07 per week, and that her weekly rate is $211.60. Home Goods and American Zurich submitted Exhibit O in support of their rate calculation.

Wells avers any weeks where she worked less than thirty-two hours are not representative of her customary earnings and should be excluded. Home Goods and American Zurich did not address the rate issue in their post-hearing brief.

Iowa Code section 85.36 sets forth the basis for determining an injured employee's compensation rate. Mercy Med. Ctr. v. Healy, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011). The basis of compensation shall be the "weekly earnings of the injured employee at the time of the injury." Iowa Code § 85.36.

> Weekly earnings means gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed . . . rounded to the nearest dollar.

Id. The term "gross earnings" is defined as "recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits." Id. § 85.61.

Pages three and four of Exhibit O contain Wells's weekly earnings over the course of her employment with Home Goods. Exhibit O documents that Wells worked less than 32 hours per week eleven of the twenty-three weeks listed, or nearly half of the time. I conclude Home Goods and American Zurich properly included the thirteen weeks prior to Wells's work injury in calculating the rate. Wells's weekly rate is $211.60.

V. Extent of Disability

"Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Indus., Inc., 818 N.W.2d 360, 370 (Iowa 2016).

As discussed above, I find Dr. Jacobson's opinion most persuasive in this case. Using the AMA Guides Dr. Jacobson assigned a three percent upper extremity impairment, which he converted to two percent to the body as a whole. (Ex. 2, p. 11) Dr. Jacobson imposed a lifting restriction of five pounds for overhead work, and recommended Wells limit repetitive overhead work, but he did not recommend any additional restrictions. (Ex. 2, p. 12)

At the time of the hearing Wells was fifty-one. (Tr., p. 64) Wells has not graduated from high school, but she obtained a GED in 1996. (Exs. 8, p. 57; J, pp. 6-7, Tr., p. 64) While Wells's education is limited, Wells testified her ability to read is excellent, and her mathematical ability is fair, noting she can add, subtract, multiply, and divide numbers. (Ex. J, p. 16) Wells uses a computer at home, and she has used Excel spreadsheets in the past at work. (Ex. J, p. 16)

Wells has worked sporadically and held twenty positions with various employers since 1999. (Ex. 8, pp. 59-60) Wells has worked as a CNA, provider of consumer directed care, grill operator in a restaurant, warehouse worker, cleaner, banquet server, cook, donut maker, deli associate, front desk worker, merchandise coordinator, cashier, and concessions worker. (Ex. 8, pp. 59-63)

Davis and Stricklett provided vocational opinions concerning Wells's loss of earning capacity and residual capacities. (Exs. 5; F) I find Stricklett's opinion most persuasive. Davis's opinion relies on labor market research for the United States. He did not examine available positions in the urban area of Des Moines where Wells lives. (Ex. 5)

Stricklett noted Wells's current restrictions would preclude her from returning to her past relevant work as a consumer direct care provider, warehouse worker, and CNA. (Ex. F, p. 50) He then conducted labor market research in the Des Moines area and determined without further training Wells could work as a cashier, automobile detailer, hotel clerk, fast food worker, food service worker, retail sales associate, and cleaner/housekeeper. (Ex. F, p. 50)

Stricklett noted that Wells's weekly wage was $362.96 prior to her work injury, and the positions she is capable of engaging in she would expect to sustain an initial wage loss of zero to three percent. Stricklett examined the Des Moines labor market, and opined Wells could expect to earn median wages in the $351.20 to $504.00 range in those positions. Davis criticized Stricklett's opinion, noting Wells was unsuccessful in working as a hotel clerk, but that occurred before she underwent left shoulder surgery. Davis also opined Wells could not perform the positions noted by Stricklett, based on his interpretation of restrictions beyond those recommended by Dr. Jacobson. I do not find his opinion persuasive.

Considering all of the factors of industrial disability I find Wells has sustained a fifteen percent industrial disability. Wells is awarded seventy-five weeks of permanent partial disability benefits at the rate of $211.60 per week, commencing on April 2, 2017.

VI. Healing Period Benefits

Wells seeks to recover a running award of healing period benefits for her right shoulder. As analyzed above, Wells has not established she sustained an injury to her right shoulder arising out of and in the course of her employment with Home Goods. Wells also seeks healing period benefits for her left shoulder condition.

Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for loss of earnings" during a period of recovery from the condition. Id. An award of healing period benefits or total temporary disability benefits is not dependent on a finding of permanent impairment. Dunlap, 824 N.W.2d at 556. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Id.

"[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). "Stabilization of the employee's condition 'is the event that allows a physician to make the determination that a particular medical condition is permanent.'" Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57. Wells has sustained a permanent impairment to her left shoulder. Therefore, if she is entitled to temporary benefits, the benefits would be healing period benefits.

Iowa Code section 85.34(1) governs healing period benefits, as follows:

> [i]f an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to

> employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Under Iowa Code section 85.33(6), "'employment substantially similar to the employment in which the employee was engaged at the time of the injury' includes, for purposes of an individual who was injured in the course of performing as a professional athlete, any employment the individual has previously performed."

Wells seeks healing period benefits for her left shoulder. Home Goods terminated Wells's employment on March 24, 2015, for poor attendance, under its progressive discipline policy. After her termination, from April 2015 through January 2016, Wells worked at the Microtel Inn and Suites as a front desk worker, for a Git-N-Go gas station as a cashier, and as a concessions worker for Ovations at Wells Fargo Arena. (Ex. 5, p. 32) Wells testified she quit her jobs because her symptoms were unbearable. (Ex. J, pp. 48, 51, 53) Wells did not present any medical documents supporting she had any work restrictions during this period of time.

Broadlawns cancelled Wells's scheduled left shoulder surgery on March 10, 2016 because Wells had admitted using cocaine the day before. (JE 2, p. 129) Dr. Neff performed the left shoulder surgery on October 6, 2016, after Wells established she was not using drugs. (JE 2, p. 138) Dr. Jacobson placed Wells at maximum medical improvement on April 1, 2017. Wells is entitled to healing period benefits from October 6, 2016, the date of surgery, through April 1, 2017, the date Wells was placed at maximum medical improvement, at the rate of $211.60 per week.

VII. Costs

Wells seeks to recover the $2,500.00 cost of Dr. Jacobson's May 16, 2017, independent medical examination, the $100.00 filing fee, the $1,000.00 cost of Dr. Jacobson's November 3, 2016 report, the $250.00 cost of Dr. Jacobson's December 16, 2016, supplement report, the $800.00 cost of Dr. Bollin's report, the $1,557.60 cost of Phil Davis's report, the $625.00 cost of Phil Davis's supplemental report, the $45.00 subpoena fee for Andrew Schlemme, and the $45.00 subpoena fee for Curtis Smith. (Ex. 15)

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and

practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

A. Independent Medical Examination

After receiving an injury, the employee, if requested by the employer is required to submit to examination at a reasonable time and place, as often as reasonably requested to a physician, without cost to the employee. Iowa Code § 85.39. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes the evaluation is too low, the employee "shall, upon application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choosing." Id.

On December 20, 2016, Dr. Neff sent an opinion letter to Home Goods and American Zurich, opining Wells's left shoulder condition was not causally related to her work activities for Home Goods. (Ex. A, p. 17) Wells seeks to recover the cost of Dr. Jacobson's May 16, 2017, independent medical examination, which occurred before the independent medical examination conducted by Dr. Kimelman on July 12, 2017. (Ex. 3)

Home Goods and American Zurich denied Wells's claim. Wells selected Dr. Neff as her treating physician. He was not retained by Home Goods and American Zurich in this case. Dr. Neff's opinion does not afford Wells entitlement to payment of an independent medical examination. Cf. IBP, Inc. v. Harker, 633 N.W.2d 322, 326 (Iowa 2001) (declining to award the cost of an independent medical examination when the employer acquiesced to the claimant's physician of choice and paid for the treatment because the physician was not "retained by the employer") Home Goods and American Zurich selected Dr. Kimelman to conduct an independent medical examination of Wells, which he performed in July 2017, after Dr. Jacobson conducted his independent medical examination of Wells. Wells is not entitled to recover the $2,500.00 cost of Dr. Jacobson's May 16, 2017, independent medical examination.

B. Filing Fee and Subpoenas

Wells seeks to recover the $100.00 filing fee, the $45.00 subpoena fee for Schlemme, and the $45.00 subpoena fee for Smith. (Ex. 15) Rule 876 IAC 4.33(6) provides for the recovery of witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72. Iowa Code section 622.69 governs lay witness fees, as follows: "witnesses shall receive ten dollars for each full day's attendance, and five dollars for each attendance less than a full day, and mileage expenses pursuant to section 602.1509 for each mile actually traveled." The invoices attached by Wells are for service of process on Schlemme and Smith, costs that are not afforded under Iowa

Code section 622.69. Wells is not entitled to recover the $90.00 subpoena service costs for Schlemme and Smith. The administrative rule expressly allows for the recovery of the $100.00 filing fee. 876 IAC 4.33(6). The $100.00 filing fee is assessed to Home Goods and American Zurich.

C. Reports

Wells seeks to recover the $1,000.00 cost of Dr. Jacobson's November 3, 2016 report, the $250.00 cost of Dr. Jacobson's December 16, 2016, supplement report, the $800.00 cost of Dr. Rebecca Bollin's report, the $1,557.60 cost of Phil Davis's report, the $625.00 cost of Phil Davis's supplemental report. The administrative rule allows for the recovery of the reasonable costs of obtaining no more than two doctors' or practitioners' reports. 876 IAC 4.33(6). The rule only affords the recovery of the cost of two reports.

The bills submitted by Davis include costs beyond the reports. In LaGrange v. Nash Finch Co., File No. 5043316 (App. July 1, 2015), the Commissioner declined to award the cost of a functional capacity evaluation and a vocational evaluation because only the cost of the reports can be taxed, and the costs were not itemized. The bill for Davis's first report is itemized. (Ex. 15) Davis charged Wells $1,050.00 for his report. (Ex. 15) Wells is entitled to recover the $1,000.00 cost of Dr. Jacobson's November 3, 2016 report, and the $1,050.00 cost of Davis's first report.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay the claimant seventy-five (75) weeks of permanent partial disability benefits, at the rate of two hundred eleven and 60/100 dollars ($211.60) per week, commencing on April 2, 2017.

Defendants shall pay the claimant healing period benefits, from October 6, 2016 through April 1, 2017, at the rate of two hundred eleven and 60/100 dollars ($211.60) per week.

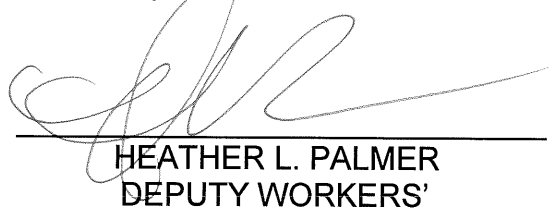
Defendants shall pay accrued benefits in a lump sum with interest on all weekly benefits provided by law.

Defendants are responsible for all medical bills and medical mileage set forth in Exhibits 14 and 16 causally related to the left shoulder injury.

Defendants are assessed one hundred and 00/100 dollars ($100.00) for the filing fee, one thousand and 00/100 dollars ($1,000.00) for Dr. Jacobson's November 3, 2016 report, and one thousand fifty and 00/100 dollars ($1,050.00) for the cost of Davis's first report.

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

Signed and filed this 8th day of February, 2018.



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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.