

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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NICOLE K. LEDGER,

Claimant,

vs.

ROEDERER TRANSFER & STORAGE,

Employer,

and

VANLINER INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

MAY 03 2018

WORKERS COMPENSATION

File No. 5052690

ARBITRATION DECISION

Head Note Nos.: 1803, 2500

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STATEMENT OF THE CASE

Claimant, Nicole Ledger, filed a petition in arbitration seeking workers' compensation benefits from Roederer Transfer & Storage, employer, and Vanliner Insurance Company, insurance carrier, both as defendants, as a result of a stipulated injury sustained on February 14, 2014. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on June 28, 2017, in Des Moines, Iowa. The record in this case consists of Joint Exhibits 1 through 10, Claimant's Exhibits 1 through 10, Defendants' Exhibits A through G, and the testimony of the claimant and Thomas Mizer. The parties submitted post-hearing briefs, the matter being fully submitted on August 14, 2017.

ISSUES

The parties submitted the following issues for determination:

1. Whether the February 14, 2014 work injury is a cause of permanent disability;
2. The extent of claimant's industrial disability;
3. Whether defendants are responsible for claimed medical expenses;
4. The extent of defendants' credit for payment of indemnity benefits; and

5. Specific taxation of costs.

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.

FINDINGS OF FACT

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

Claimant's testimony was clear and consistent as compared to the evidentiary record. Her demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 43 years of age at the time of hearing. She is married and the mother to two children. Claimant graduated high school and subsequently earned a bachelor's degree in early childhood with special education. (Claimant's testimony; DEC, p. 5; DEE, p. 9) Claimant's work history includes sales associate, stay at home mother, substitute teacher, and her work for defendant-employer. Claimant originally worked for defendant-employer as a packer, part time, from 2001 to 2003. Defendant-employer packs and moves contents of houses, as well as stores written documents for clients, such as medical and legal offices. Claimant opted to leave this employment in search of full time work. In 2011, claimant returned to work at defendant-employer full time in the position of packer and record management. Claimant testified her duties included packing houses, as well as organization and management of records stored in the warehouse. Her starting wage was \$12.00, the highest hourly wage of her working career. By the time of her stipulated work injury on February 14, 2014, claimant earned \$13.00 per hour. (Claimant's testimony; DEC, p. 5; DEE, pp. 10-11; DEF, pp. 16, 23)

Claimant testified she was involved in a motor vehicle accident in 1996 or 1997, when her vehicle was struck after another driver ran a stop sign. Claimant testified she experienced low back and hip pain, both of which resolved with chiropractic treatment. (Claimant's testimony)

On February 22, 2010, claimant was involved in another motor vehicle accident; on this occasion, a driver from the opposite direction crossed the center line and struck claimant's vehicle. (Claimant's testimony) Claimant was not wearing her seatbelt and the airbag in her vehicle deployed. Claimant was evaluated in the Genesis West Emergency Department by Phillip Zimmerman, M.D. Due to complaints of neck and upper back pain, claimant was placed in an immobilization collar during triage. (JE1, p. 1) Dr. Zimmerman performed a physical examination and ordered x-rays of the

thoracic and cervical spine, which revealed no osseous abnormalities. (JE1, pp. 1-3) Dr. Zimmerman assessed a cervical sprain and prescribed cyclobenzaprine. (JE1, pp. 3-4)

Thereafter, claimant sought chiropractic care at Shipman Chiropractic. On February 27, 2010, claimant complained of pain of her neck, upper mid back, low back, knees, and wrist, with severities of 7 to 8 on a 10-point scale. (JE2, p. 13) Claimant continued to present for chiropractic care periodically following the February motor vehicle accident. Claimant presented to the chiropractor approximately twice per week in March and once per week in April. (JE2, pp. 14-20) At a visit on April 28, 2010, claimant denied neck pain. (JE2, p. 20) In May, claimant presented for care approximately once per week, with intermittent complaints of neck and upper back soreness. (JE2, pp. 20-22) Intermittent neck and upper back complaints continued in June, during biweekly chiropractic appointments. (JE2, pp. 22-23) Thereafter, the frequency of claimant's visits to Shipman Chiropractic became more sporadic and with varied complaints. At the sole visit in July, claimant made no mention of neck or upper back complaints. During the only August visit, claimant relayed upper mid back pain, but only when cleaning dishes. (JE2, p. 24) Claimant presented on one occasion in September, with complaints of "normal aches and pains." Claimant returned for one visit in October and complained of occasional right lower neck and right wrist pain. (JE2, p. 25) At the final visit in November, the chiropractor described claimant as "doing well." (JE2, p. 26) Claimant testified her complaints resolved following chiropractic care. (Claimant's testimony)

Claimant denied experiencing any neck, left shoulder, or left shoulder blade pain prior to the stipulated February 14, 2014 work injury. (Claimant's testimony)

While at work on February 14, 2014, claimant slipped on snowy and icy stairs near the loading dock. Claimant testified the incident happened so quickly that she was uncertain the position in which she fell, other than striking her left side and ending up at the bottom of the stairs. Claimant testified she was unable to rise unassisted due to the slippery conditions; a coworker helped her up. Claimant testified she felt sore throughout many areas of her body, worst in the left shoulder and left side. She reported the injury, but did not immediately seek medical care. Claimant's symptoms continued to worsen over the following days, prompting her to request medical care. (Claimant's testimony)

At the referral of defendant-employer, claimant presented to Quad City Occupational Health on February 18, 2014 and was examined by Camilla Frederick, M.D. Claimant complained of pain of her left shoulder and left ribs, following a fall, with a pain level of 8 on a 10-point scale. (JE3, p. 29) Dr. Frederick performed a physical examination and ordered x-rays of the left shoulder and ribs, which yielded normal results. (JE3, pp. 31, 58-59) Dr. Frederick assessed a work-related contusion of the left ribs and sprain/strain of the left shoulder. She prescribed Relafen and

imposed work restrictions of a maximum lift of 20 pounds occasionally and 10 pounds frequently, as well as no over shoulder level work with the left arm. (JE3, pp. 28, 31)

Claimant returned to Dr. Frederick on February 25, 2014, with complaints of left shoulder soreness and spasms. Claimant reported improvement of her left shoulder, to a pain level 4 out of 10, and resolution of left rib complaints. (JE3, p. 34) Dr. Frederick ordered a course of physical therapy and imposed work restrictions of a maximum lift of 30 pounds occasionally and 20 pounds frequently, and no over shoulder work with the left arm. (JE3, p. 33)

On March 11, 2014, claimant returned to Dr. Frederick and reported an estimated 50 percent improvement in left shoulder complaints, with a pain level of 5 out of 10. Dr. Frederick noted the ordered physical therapy had just been approved and appointments were being scheduled. (JE3, p. 39) Dr. Frederick again ordered physical therapy and imposed work restrictions of a maximum lift of 30 pounds frequently and no over shoulder work with the left arm. (JE3, pp. 38, 42)

Claimant testified she began experiencing pain complaints in her neck and shoulder blade after she began physical therapy. (Claimant's testimony; DEF, p. 20)

Claimant returned to Dr. Frederick on March 25, 2014. Claimant reported significant improvement to an estimated 80 percent of baseline, with level 2 pain. (JE3, p. 44) Dr. Frederick continued orders for physical therapy and Relafen; she left claimant's work restrictions intact. (JE3, pp. 43, 47)

On April 8, 2014, claimant presented to Dr. Frederick. Despite overall improvement, Dr. Frederick noted decreased range of motion on examination. In order to rule out rotator cuff involvement, Dr. Frederick ordered an MRI arthrogram of claimant's left shoulder. (JE3, pp. 48-49, 51-52)

Claimant underwent the left shoulder MRI arthrogram on April 22, 2014. The radiologist read the results as revealing a SLAP lesion, but no rotator cuff tear. (JE5, p. 60)

Following the MRI arthrogram, claimant returned to Quad City Occupational Health on April 28, 2014. On this occasion, claimant was evaluated by Sarah Von Harz, M.D., and reported worsening of left shoulder complaints. Dr. Von Harz opined claimant's MRI arthrogram was abnormal and revealed a SLAP lesion. Dr. Von Harz issued a referral for orthopedic evaluation. (JE3, pp. 53-54, 56-57)

Pursuant to Dr. Von Harz's recommendation, on May 15, 2014, claimant presented to Abdul Foad, M.D., of Quality Care Clinic. Dr. Foad reviewed claimant's x-rays and MRI, and performed a physical examination. Dr. Foad opined claimant suffered a left shoulder injury consistent with a SLAP tear. Claimant and Dr. Foad discussed potential surgical options. (JE10, pp. 85-86)

Following evaluation by Dr. Foad, claimant's care was directed to another provider. (Claimant's testimony) On June 25, 2014, claimant presented to ORA Orthopedics for evaluation by Richard Ripperger, M.D. Claimant expressed complaints of pain and popping of the left shoulder. Dr. Ripperger noted the locations generally in the left shoulder region at the anterolateral aspect of the shoulder and proximal lateral aspect of the arm, as well as some pain in the posterior scapular region. (JE6, p. 61) Dr. Ripperger performed a physical examination and ordered x-rays, which revealed no significant abnormalities. Dr. Ripperger also reviewed claimant's MRI results. Following examination and imaging review, Dr. Ripperger assessed left shoulder impingement syndrome with partial thickness rotator cuff tear, as well as a possible SLAP lesion. Dr. Ripperger recommended arthroscopic intervention. (JE6, pp. 62-63)

Claimant underwent surgery with Dr. Ripperger on August 4, 2014. The procedure consisted of left shoulder arthroscopy with limited joint debridement, biceps tenotomy, and subacromial decompression. Dr. Ripperger noted a postoperative diagnosis of left shoulder impingement syndrome and a SLAP lesion. (JE6, pp. 64-65)

Following surgery, claimant followed up periodically with Dr. Ripperger. On August 12, 2014, Dr. Ripperger recommended gradual weaning from the sling, light progressive use, and performance of range of motion exercises. He imposed work restrictions, effective August 18, 2014, consisting of sedentary-type work and no lifting with the left upper extremity. (JE6, p. 66) On September 9, 2014, Dr. Ripperger added a course of physical therapy and altered claimant's restrictions to no repetitive or overhead lifting, and no lifting over 3 to 5 pounds. (JE6, p. 67)

Following arthroscopy, claimant testified the condition of her shoulder joint improved as she regained strength. However, her left shoulder blade and neck conditions persisted unchanged. (Claimant's testimony)

Claimant returned to Dr. Ripperger on October 7, 2014. Dr. Ripperger performed a physical examination and described claimant's evaluation as generally within the anticipated range, but with noted moderate tenderness medial to the mid-left scapular border. Dr. Ripperger performed a trigger point cortisone injection at the area of maximum tenderness, at the medial border of the left scapula. Dr. Ripperger ordered additional physical therapy and recommended increase in activities as tolerated. He also imposed restrictions of no repetitive or overhead lifting, and no lifting over 5 to 10 pounds. (JE6, p. 68)

Following the trigger point injection, claimant returned to Dr. Ripperger on October 21, 2014. She reported partial temporary relief of scapular region pain after the trigger point injection. Examination revealed continued moderate tenderness at the mid-left medial scapular border. Dr. Ripperger performed a repeat left medial scapular region trigger point injection. (JE6, p. 69)

On November 25, 2014, claimant returned to Dr. Ripperger in follow up. Claimant reported approximately 100 percent relief of left medial scapular region pain for approximately two weeks after the trigger point injection on October 21, 2014. Thereafter, pain returned to the medial border of claimant's scapula. With respect to the medial scapula pain, Dr. Ripperger recommended additional evaluation by a spine physician, should claimant's symptoms be severe enough. Dr. Ripperger ordered continued physical therapy and increased activities as tolerated, with restrictions of no repetitive or overhead lifting, and no lifting over 20 to 25 pounds. (JE6, p. 71)

On January 6, 2015, claimant returned to Dr. Ripperger for evaluation. Dr. Ripperger released claimant to return to work without restrictions, effective January 7, 2015. He ordered completion of a physical therapy program, with a gradual transition to a home exercise program. Dr. Ripperger again recommended evaluation by a spine physician, in the event claimant's scapular region symptoms were severe. (JE6, p. 72)

On March 19, 2015, per Dr. Ripperger's recommendation, claimant was evaluated by Myles Luszczyk, D.O. Dr. Luszczyk noted complaints of axial-based neck pain and pain that radiated down the base of the scapula. He noted the pain tended to radiate into claimant's arm and shoulder. (JE9, p. 78) Dr. Luszczyk performed a physical examination and reviewed x-rays of claimant's cervical spine, which revealed some mild degenerative changes. He ordered a cervical spine MRI. (JE9, pp. 78-79)

Claimant underwent the recommended cervical spine MRI on March 30, 2015. The radiologist opined the results revealed small disc/osteophyte complexes at C4-C5, C5-C6, and C6-C7; and mild central canal stenosis at C4-C5. (JE7, pp. 74-75)

Claimant returned to Dr. Ripperger on March 31, 2015 and reported she was generally doing well with respect to her left shoulder. Claimant reported continued neck pain, for which she had been evaluated by Dr. Luszczyk. Dr. Ripperger performed a physical examination. Thereafter, he recommended no additional evaluation or treatment and released claimant without restrictions. (JE6, p. 73) Dr. Ripperger subsequently opined claimant sustained a permanent impairment of 7 percent left upper extremity or 4 percent whole person with respect to her left shoulder. (DEA, pp. 1-2)

Claimant testified she and Dr. Ripperger discussed claimant's need for restrictions, but claimant expressed a preference not to have permanent restrictions imposed, due to fear of losing her job. Claimant admitted she and Dr. Ripperger did not discuss specifics of what, if any, restrictions he would recommend. (Claimant's testimony; DEF, p. 23)

On April 23, 2015, claimant returned to Dr. Luszczyk. Dr. Luszczyk reviewed the cervical spine MRI and opined it revealed some degenerative changes, especially at C4-C5, C5-C6, and C6-C7, but no evidence of critical stenosis. Dr. Luszczyk noted claimant's symptoms occasionally radiated down the left upper extremity and into the

parascapular region. He opined claimant's pain had potentially developed into a chronic condition, or may do so in the future. Dr. Luszczyk indicated he had very little to offer from a surgical standpoint, as he did not believe surgery was currently necessary and was not likely to improve claimant's neck pain. He noted the possibility claimant may require surgery at a future date, as claimant aged. Dr. Luszczyk indicated claimant may wish to consider an epidural injection and might benefit from physical therapy focusing on parascapular strengthening. He advised claimant to return as needed. (JE9, p. 80)

Defendants paid for claimant's medical expenses incurred in treatment of the scapular/neck complaints through April 23, 2015, including treatment with Dr. Ripperger and Dr. Luszczyk. (DEG, p. 26)

At the referral of claimant's counsel, on October 9, 2015, claimant presented to board certified occupational medicine physician, Sunil Bansal, M.D., for independent medical examination (IME). Dr. Bansal authored a report containing his findings and opinions dated November 6, 2015. (CE2, p. 4; CE3, p. 18) Dr. Bansal performed a medical records review and authored a summary of claimant's medical care, including following the 2010 motor vehicle accident. (CE2, pp. 4-11)

Dr. Bansal also interviewed claimant. Claimant expressed complaints of left arm weakness, difficulty with left shoulder range of motion, increased pain with activity, and occasional left shoulder pain, especially at times she experienced neck pain. Claimant also complained of neck pain at the center of her neck, which radiated across the tops of her bilateral shoulders and up into the jaw. The neck pain was not constant, but increased with turning of her neck to the left. Claimant described her shoulder blade pain as more problematic and also worse with activity. (CE2, pp. 11-12)

Claimant reported that after the work injury, she began to notice pain in her left scapular region during physical therapy sessions. She thereafter received trigger point injections and underwent evaluation by a spine physician, who had opined claimant was too young for surgery. Claimant reported she had been released with respect to her left shoulder, without restrictions, "as her job would be jeopardized by restrictions." (CE2, p. 11)

Dr. Bansal performed a physical examination. (CE2, pp. 12-13) Dr. Bansal assessed a superior labral tear, status post surgical intervention. He opined claimant sustained permanent impairment as a result of the left shoulder injury: 8 percent upper extremity or 5 percent whole person based upon decrements in range of motion. (CE2, p. 15) With respect to claimant's neck and shoulder blade complaints, Dr. Bansal opined the constellation of neck and shoulder blade pain was related to a cervical discogenic problem. Dr. Bansal indicated such discogenic pain could manifest as upper extremity pain and numbness, shoulder pain, and shoulder blade pain. He explained inflammation from discogenic disease could clinically manifest in surrounding musculature, including the trapezius which extends to the scapular spine. (CE2, p. 15)

Dr. Luszczyk authored a letter to defendants' attorney dated December 5, 2015. Thereby, Dr. Luszczyk opined claimant most likely suffered from neck pain which "may be as a result" of degenerative changes. He opined claimant had reached maximum medical improvement (MMI) and was not a surgical candidate. As claimant did not demonstrate appreciable deficits from the cervical condition with respect to weakness, Dr. Luszczyk opined claimant had not sustained permanent impairment and imposed no permanent restrictions with respect to claimant's neck condition. Dr. Luszczyk noted suspicion claimant would continue to suffer from neck pain, "most likely" due to degeneration. Accordingly, he noted claimant might require periodic physical therapy and in the event of radicular symptoms, may require injections or surgery in the future. He opined such treatment would most likely be unrelated to the work injury and would likely be related to degenerative changes. (JE9, p. 81; DEB, p. 3)

Dr. Bansal reviewed claimant's deposition and Dr. Luszczyk's records. (CE4, p. 19) After doing so, he authored a report dated July 12, 2016. Dr. Bansal opined the mechanism of claimant's fall on February 14, 2014 was consistent with development of a disc bulge or herniation and/or aggravation of cervical spondylosis/degenerative disc disease. Dr. Bansal opined such a fall could aggravate or light up a previously asymptomatic condition, by destabilizing the disc and/or damaging the intradiscal receptors. (CE4, p. 20) Given claimant's symptomatology, Dr. Bansal opined it was more likely than not that claimant's cervical condition was lit up by the fall on February 14, 2014. (CE4, p. 21)

Following Dr. Luszczyk's letter, defendants denied liability for further care of claimant's cervical/shoulder blade complaints. Accordingly, claimant utilized her personal health insurance to seek further evaluation with Dr. Luszczyk upon development of radiation into her left hand. (Claimant's testimony)

On January 10, 2017, claimant returned to Dr. Luszczyk for recheck of her cervical complaints. Claimant reported continued pain, radiating into the parascapular region of the left shoulder, as well as continued neck pain. Claimant also noted a new symptom of radiation of pain into her left arm. Dr. Luszczyk recommended an updated cervical spine MRI. (JE9, p. 83)

On January 16, 2017, claimant underwent a repeat cervical spine MRI per Dr. Luszczyk. The radiologist compared the films to the March 30, 2015 MRI and opined the results were overall unchanged, with multilevel degenerative disc osteophyte complexes at C4-C5, C5-C6, and C6-C7. (JE8, pp. 76-77)

Following the cervical spine MRI, claimant returned to Dr. Luszczyk on February 6, 2017. Dr. Luszczyk opined the MRI results were generally unchanged, but with some mild narrowing at C5-C6 and C6-C7 on the left. He opined this finding could account for some of claimant's left arm numbness. Dr. Luszczyk opined claimant was not a surgical candidate, but ordered a course of physical therapy. He again released claimant to return as needed. (JE9, p. 84)



Consistent with Dr. Luszczuk's recommendation for conservative measures, claimant presented to Nathan Meloy, D.O., on April 21, 2017. Claimant complained of left lower shoulder blade pain and tightness of the middle base of her neck, persisting for approximately three years. Claimant also reported development of tingling of the left hand, beginning in December 2016. (CE8, p. 28) Dr. Meloy reviewed claimant's January 2017 cervical spine MRI and performed a physical examination. Thereafter, Dr. Meloy assessed: cervicgia with left scapular referred pain, as well as left wrist/hand paresthesias; mild C5-C6 and C6-C7 neuroforaminal stenosis; and cervical stenosis. Dr. Meloy opined claimant's pain was multifactorial and he suspected a mononeuropathy. Accordingly, he referred claimant for a left upper extremity EMG/NCS study. In the meantime, Dr. Meloy recommended proceeding with a cervical epidural steroid injection. (CE8, p. 29)

Claimant underwent a cervical epidural steroid injection by Dr. Meloy on May 15, 2017. (CE8, p. 31) Claimant continued to follow up periodically with Dr. Meloy at the time of evidentiary hearing. (Claimant's testimony)

On May 19, 2017, claimant returned to Dr. Bansal for a repeat IME. Dr. Bansal interviewed claimant, who reported occasional left shoulder pain which she had learned to accommodate, constant neck and shoulder blade pain, decreased range of motion with turning her neck to the left, and headaches associated with neck pain. (CE5, p. 23) Following examination, Dr. Bansal opined his previously expressed opinions remained unchanged. He recommended continued pain management for claimant's neck complaints; in the event radiculopathy worsened, Dr. Bansal opined claimant might be a candidate for surgical decompression. (CE5, pp. 24-25) Dr. Bansal subsequently opined claimant fell within DRE Cervical Category II, with radicular complaints, spasms, and decreased range of motion. He assigned a permanent impairment rating of 5 percent whole person relative to cervical complaints. (CE7, p. 27) Dr. Bansal charged claimant \$986.00 for the IME examination and written report. (CE6, p. 26)

Thomas Roederer, sole owner of defendant-employer, provided deposition testimony on January 24, 2017. He testified Mike Ledger provided day-to-day management and oversaw employees. (CE9, p. 36) Mr. Roederer's testimony was clear and direct; the undersigned was presented with no reason to doubt his veracity. Mr. Roederer is found credible.

The same day, January 24, 2017, Mike Ledger provided deposition testimony. Mr. Ledger was a 38-year employee of defendant-employer and served as operations manager at defendant-employer. In this role, he acted as claimant's direct supervisor. He was also claimant's father-in-law. He testified claimant was a good employee and performed packing and file deliveries for defendant-employer. (CE10, pp. 42-43) Mr. Ledger's testimony was clear and direct; the undersigned was presented with no reason to doubt his veracity. Mr. Ledger is found credible.

Claimant testified to ongoing difficulties she relates to her left shoulder. Claimant testified she is unable to raise her left arm into a vertical position without using the right arm to push the left arm. She is also unable to reach behind her back. Additionally, claimant suffers with some pain in the shoulder joint with performance of significant physical work. As a result of her limitations, claimant testified she relies greatly upon her right arm, particularly with lifting boxes. Claimant testified her neck and shoulder blade complaints also impact her daily activities. Claimant testified the related pain is constant, but waxes and wanes. Following some of her work duties, claimant must rest these areas. (Claimant's testimony)

At the time of evidentiary hearing, claimant continued to work full time for defendant-employer. Her duties have changed somewhat, as she now spends the vast majority of her work hours handling written records. Claimant testified she also performs more frequent delivery of boxes of records and enters more record information in the computer. Claimant received raises following the work injury and earned \$14.50 per hour at the time of hearing. (Claimant's testimony)

Claimant's current supervisor, Thomas Mizer, testified at evidentiary hearing. He serves as dispatcher and operations manager for defendant-employer, following Mr. Ledger's retirement. He testified claimant continues to work as a packer and in records management. Mr. Mizer testified he has not observed claimant struggle with her work duties, but testified she had informed him of some problems lifting boxes. He testified in those instances, other employees assist claimant. (Mr. Mizer's testimony)

Mr. Mizer's testimony was clear and consistent as compared to the evidentiary record. His demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt his veracity. Mr. Mizer is found credible.

Defendants paid claimant temporary total disability/healing period benefits from August 4, 2014 through January 8, 2015 at the weekly rate of \$355.24. Defendants also paid 20 weeks of permanent partial disability benefits at the weekly rate of \$355.24. (DEG, p. 25)

### CONCLUSIONS OF LAW

The first issue for determination is whether the February 14, 2014 work injury is a cause of permanent disability.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

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).

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 suffered a stipulated work related injury on February 14, 2014. The parties stipulated claimant sustained an injury to her left shoulder on this date; however, defendants deny claimant sustained injuries to her back and/or neck which were causally related to the February 14, 2014 injury. As a threshold inquiry, it must therefore be determined if, in addition to the left shoulder injury, claimant sustained injuries to her neck and back on February 14, 2014.

Claimant credibly testified she began to notice neck and shoulder blade pain during physical therapy sessions prescribed by Dr. Frederick shortly following the work injury. Following an MRI, claimant was referred to Dr. Ripperger. At the initial visit on June 25, 2014, Dr. Ripperger noted pain and popping of claimant's left shoulder, located generally in the left shoulder region at the anterolateral aspect of the shoulder and proximal lateral aspect of the arm, as well as some pain in the posterior scapular region. Following left shoulder surgery, claimant's left shoulder joint pain improved, but the shoulder blade and neck pain persisted. Dr. Ripperger provided treatment of these conditions, including two trigger point injections of the left medial scapular region.

Dr. Ripperger ultimately referred claimant to a spine physician, Dr. Luszczyk. At claimant's initial evaluation with Dr. Luszczyk on March 19, 2015, Dr. Luszczyk noted complaints of axial-based neck pain and radiation to the base of the scapula. Claimant underwent a cervical spine MRI which revealed some degenerative changes. On April 23, 2015, Dr. Luszczyk opined claimant's pain could radiate down the left upper extremity and parascapular region. He further opined this pain could or had become chronic. Dr. Luszczyk opined claimant was not a surgical candidate at that time, but might benefit from an epidural steroid injection and/or physical therapy to focus on parascapular strengthening.

Claimant subsequently underwent an IME with Dr. Bansal, who opined claimant's constellation of neck and shoulder blade pain was related to a cervical discogenic problem. Thereafter, Dr. Bansal opined the mechanism of claimant's fall on February 14, 2014 was consistent with development of a disc bulge/herniation and/or aggravation of cervical spondylosis/degenerative disc disease, as a fall could aggravate or light up a previously asymptomatic condition by destabilizing the disc or damaging intradiscal receptors. Given claimant's symptomatology, Dr. Bansal opined it was more likely than not that claimant's cervical condition was lit up by the fall on February 14, 2014.

In December 2015, Dr. Luszczyk authored a letter opining claimant suffered from neck pain which might be a result of degenerative changes. He opined claimant would continue to suffer from neck pain, most likely due to degeneration. He also opined claimant may require periodic care, which he opined would most likely be unrelated to the work injury and would likely be related to degenerative changes. Thereafter, defendants denied liability for further medical care related to claimant's neck/scapular pain. Claimant has continued to seek medical treatment of her complaints through her personal health insurance.

Only two physicians have directly opined as to any causal relationship between claimant's neck/scapular symptoms and the work injury of February 14, 2014: Dr. Luszczyk and Dr. Bansal. Following review of the entirety of the evidentiary record, I provide greater weight to the opinion of Dr. Bansal. In order for claimant to prevail and establish a compensable injury to her neck/scapula in this case, she must prove by a preponderance of the evidence that she suffered with a preexisting condition that was materially aggravated, accelerated, worsened, or lighted up by the work injury. Dr. Luszczyk, quite simply, did not address the question of causation by this standard. Dr. Bansal utilized the proper legal standard in crafting his opinions. As Dr. Bansal's opinion in this respect is unrebutted, I adopt the opinion of Dr. Bansal with respect to causation of claimant's neck/scapular region pain. I find claimant has proven the work injury of February 14, 2014 also resulted in injury to claimant's neck/scapular region.

Claimant sustained injuries to her left shoulder and neck/scapular region as a result of the work injury of February 14, 2014. Both Drs. Ripperger and Bansal opined claimant sustained permanent impairment to her left shoulder; Dr. Bansal opined

claimant also sustained permanent impairment to her cervical spine. No physician imposed permanent restrictions. However, claimant credibly testified to ongoing difficulties which resulted in modification of her work duties; this testimony is supported by the testimony of claimant's supervisor, Mr. Mizer. On these facts, it is determined claimant has proven the work injury of February 14, 2014 is a cause of permanent disability.

The next issue for determination is the extent of claimant's industrial disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially.

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 43 years of age at the time of hearing. She is a high school graduate and earned a bachelor's degree in early childhood education. Claimant's work history consists of sales associate at retail stores, stay at home parent, substitute teacher, and her work at defendant-employer. Claimant's recent employment with defendant-employer began in 2011; she continued this employment on the date of hearing.

As a result of the work injury of February 14, 2014, claimant sustained injuries to her left shoulder and neck/scapular region. Claimant underwent surgical intervention upon her left shoulder, with positive results. Dr. Ripperger and Dr. Bansal provided consistent permanent impairment ratings relative to claimant's left shoulder of 4 percent

and 5 percent whole person, respectively. With respect to claimant's neck/scapular region, Dr. Luszczuk opined claimant did not sustain permanent impairment, due to a lack of appreciable deficits with respect to weakness. Dr. Bansal opined claimant fell within DRE Cervical Category II, with radicular complaints, spasms and decreased range of motion, warranting a permanent impairment rating of 5 percent whole person. Dr. Bansal's rating methodology is consistent with the medical records, as well as the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, as adopted by this agency via rule 897 IAC 2.4. I, therefore, adopt the opinion of Dr. Bansal with respect to the extent of permanent impairment resulting from the injury to claimant's neck/scapular region.

Despite injuries to claimant's left shoulder and neck/scapular region, no physician has imposed or recommended work restrictions as a result of the February 14, 2014 work injury. Claimant continues to work for defendant-employer in her pre-injury position; however, her duties have changed post-injury. Claimant's work duties now rest more in records management than in packing houses. She has taken on additional record management duties by entering additional information in the computer and performing small deliveries. Claimant credibly testified she has some difficulty lifting and maneuvering boxes. Claimant's supervisor, Mr. Mizer, testified she has informed him of such difficulties and other employees are available to assist claimant. Therefore, claimant is not performing the same duties, in the same manner, as she did pre-injury; it appears defendant-employer has accommodated claimant to some degree. Nevertheless, claimant remains employed full time at defendant-employer in a legitimate position, and now earns \$1.50 more per hour than at the time of her work injury. There is no evidence claimant's position is somehow in jeopardy as a result of the work injury.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 15 percent industrial disability as a result of the stipulated work-related injury of February 14, 2014. Such an award entitles claimant to 75 weeks of permanent partial disability benefits (15 percent x 500 weeks = 75 weeks), commencing on the stipulated date of January 7, 2015. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were \$480.00, and claimant was married and entitled to 4 exemptions. The proper rate of compensation is therefore, \$341.17.

The next issue for determination is whether defendants are responsible for claimed medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v.

Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Defendants objected to admission of claimed medical expenses as attached to the hearing report. The undersigned admitted the expense itemization into evidence and provided the defendants two weeks for review of the claimed expenses. Following review, defendants waived any right to submit rebuttal evidence regarding the claimed expenses.

Claimant seeks an order finding defendants responsible for medical care received relative to claimant's neck and scapular region conditions. Attached to the hearing report are medical expenses related to treatment of these conditions at ORA and Genesis Medical Center from January 2017 through May 2017, following defendants' denial of liability for these conditions. By this decision, the undersigned determined claimant's neck and scapular region complaints were causally related to the stipulated work injury of February 14, 2014. As defendants denied liability for these conditions and declined to provide treatment, defendants are properly held responsible for treatment claimant procured for these conditions. The treatment provided was reasonable and necessary in treatment of work-related conditions and the charges are fair and reasonable. Defendants are therefore responsible for the claimed medical expenses.

The next issue for determination is the extent of defendants' credit for payment of indemnity benefits. Defendants seek a credit for overpayment of the weekly benefit rate, as well as a credit for voluntary payment of permanent partial disability benefits.

Defendants paid claimant healing period benefits from August 4, 2014 through January 8, 2015 at the weekly rate of \$355.24. Defendants also paid 20 weeks of permanent partial disability benefits at the weekly rate of \$355.24. (DEG, p. 25) By this decision, claimant's proper weekly rate was identified as \$341.17. Defendants paid 20 weeks of healing period benefits and 20 weeks of permanent partial disability benefits at the rate of \$355.24. By post-hearing brief, claimant agreed defendants were entitled to credit resulting from overpayment of claimant's weekly compensation rate. By this decision, the undersigned awarded claimant 75 weeks of permanent partial disability benefits. Defendants are entitled to a credit against this award for the 20 weeks of permanent partial disability benefits previously paid, as well as a credit resulting from overpayment of the weekly rate.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33.

Iowa Code section 86.40 states:

**Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

**Costs.** Costs 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. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. Dec. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. Dec. December 8, 2010). The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. Dec. July 21, 2009).

Claimant requests taxation of the costs of three \$100.00 filing fees, for two petitions filed on June 26, 2015 and one petition filed on August 19, 2016, as well as four certified mail service fees. The costs of filing fee and service fees are allowable costs. Defendants are taxed with the cost of filing fee for the August 19, 2016 petition, as well as associated service fees.

Claimant requests taxation of medical record copy expenses at Genesis Medical Center, Quality Care, ORA, Rock Valley Physical Therapy, Midwest Therapy, and CIOX Health. The cost of copying medical records is not listed as a taxable cost under



rule 4.33; therefore, I decline to tax the cost of medical record copy procurement to defendants.

Claimant requests taxation of the costs associated with depositions of claimant, Mr. Roederer, and Mr. Ledger, totaling \$227.65. These transcription fees are allowable costs and are taxed to defendants.

Claimant requests taxation of costs associated with two practitioner's reports: Dr. Luszczyk (\$155.00) and Dr. Bansal (\$986.00). Rule 4.33 allows for taxation of the cost of two practitioner's reports. The cost of Dr. Luszczyk's report qualifies as such a practitioner's report and is taxed to defendants. Claimant also seeks taxation of Dr. Bansal's fee of \$986.00. Defendants object to taxation of fees associated with Dr. Bansal's physical examination, but accept taxation of fees associated with the written report. Claimant is not permitted to receive reimbursement for the full cost of Dr. Bansal's IME as a practitioner's report under rule 4.33. Rather, the Iowa Supreme Court has ruled only the portion of the IME expense incurred in preparation of the written report can be taxed. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). Dr. Bansal's bill itemization fails to identify what portion of the IME fee is attributable solely to report preparation. Therefore, consistent with the decision of LaGrange v. Nash Finch Co., File No. 5043316 (Appeal July 1, 2015), defendants are taxed with one-third of the total fee. Defendants are taxed with \$328.67 of Dr. Bansal's IME fee ( $33 \frac{1}{3}$  percent x \$986.00 = \$328.67).

#### ORDER

##### THEREFORE, IT IS ORDERED:

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant seventy-five (75) weeks of permanent partial disability benefits commencing January 7, 2015 at the weekly rate of three hundred forty-one and 17/100 dollars (\$341.17).

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall receive credit for benefits paid as set forth in the decision.

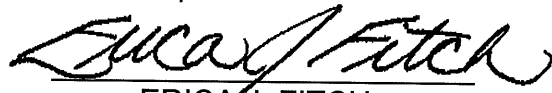
Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall pay claimant's prior medical expenses submitted by claimant at the hearing as set forth in the decision.

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

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

Signed and filed this 3<sup>rd</sup> day of May, 2018.

  
ERICA J. FITCH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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EJF/srs

**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.