BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CAMELLIA POHL,		
Claimant,		File Nos. 5057500, 5056430
vs.		ARBITRATION DECISION
CITY OF DAVENPORT,		
Employer, Self-Insured, Defendant.		Headnotes: 1402.20, 1801, 1803, 2500, 3000

FILED
JAN 07 2019
WORKERS' COMPENSATION

STATEMENT OF THE CASE

Camellia Pohl, claimant, filed a petition in arbitration seeking workers' compensation benefits from the City of Davenport (Hereinafter Davenport or City) a self-insured employer as a result of an injury she allegedly sustained on February 29, 2016 and March 31, 2016 that allegedly arose out of and in the course of her employment. This case was heard in Des Moines, Iowa and fully submitted on June 4, 2018. The evidence in this case consists of the testimony of claimant, Luann DeVol, Joint Exhibits 1 – 9, Defendant's Exhibits A – K and Claimant's Exhibits 1 – 9. Both parties submitted briefs.

ISSUES

For File No. 5056430 (d/o/i 2/29/2016 –right upper extremity)

1. Whether claimant sustained an injury on February 29, 2016 which arose out of and in the course of employment;
2. Whether the alleged injury is a cause of temporary disability and, if so, the extent.
3. Whether the alleged injury is a cause of permanent disability and, if so;
4. The extent of claimant's scheduled member disability to the right arm.
5. The claimant's gross earnings.
6. The claimant's temporary total disability rate.

7. The claimant's permanent partial disability rate.

8. The commencement date of permanent partial disability benefits.

9. Whether claimant is entitled to payment of medical expenses.

10. Whether claimant is entitled to payment of an independent medical examination (IME).

11. Whether claimant is entitled to medical mileage.

12. Assessment of costs.

For File No. 5057500 (d/o/i 3/31/2016- left index finger)

1. Whether the injury of March 31, 2016 is a cause of temporary disability and, if so, the extent.

2. Whether claimant's injury is to the left index finger or left arm.

3. Whether the alleged injury is a cause of permanent disability and, if so; the extent.

4. The claimant's gross earnings.

5. The claimant's temporary total disability rate.

6. The claimant's permanent partial disability rate.

7. The commencement date of permanent partial disability benefits.

8. Whether claimant is entitled to payment of medical expenses.

9. Whether claimant is entitled to payment of an independent medical examination.

10. Whether claimant is entitled to medical mileage.

11. Assessment of costs.

STIPULATIONS

The parties filed hearing reports at the commencement of the arbitration hearing. On the hearing reports, 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 deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Camellia Pohl, claimant, was 48 years old at the time of the hearing. Claimant graduated from high school. Claimant has taken courses at Kaplan University and a community college, but does have an associate or other degree. At one time claimant had been licensed as a certified nurse assistant (CNA), but she does not have a current CNA license. (Transcript page 10) Claimant currently has a CDL, class B, passenger coach license. (Tr. p. 14)

Claimant's vocational history includes fast food, dispatcher for a security company, CNA in a nursing home, travel agent, real estate agent, job coach and tour guide/driver. (Exhibit 7, p. 4)

Claimant started working for the City on November 17, 2015 as a bus driver. (Tr. pp. 11, 15) Claimant agreed she was hired as a part-time bus driver. (Tr. p. 17) Claimant was hired to work 29 hours a week, but there were weeks she worked over 40 hours. (Tr. p. 67) Claimant said that in the 13 weeks leading up to her injury claimant averaged 30.2 hours per week. (Tr. p. 18) Claimant was driving a bus for the City on February 29, 2016. Claimant said the bus lost power steering. Claimant said that she was coming off 7th Street, came to a complete stop and then proceeded with no power steering and had to get the bus off of oncoming traffic. (Tr. p. 15)

Claimant reported the low power steering fluid to a dispatcher at the beginning of her shift. Claimant said that on the fourth round of her route at 2:21 p.m. she lost power steering. The report is recorded as happening during hour 3:45:45 in the video, Exhibit K. Claimant went to the bus station and reported to the dispatcher the power steering loss and the dispatcher asked claimant to take another bus. Repair records from the City show that the bus claimant was driving lost power steering on February 29, 2016. (Ex. 6, p. 1) Claimant said she did not realize she had injured her wrist until she made it into the bus station. (Tr. p. 69) Claimant told the dispatcher that she could no longer drive because her arm felt weak. (Tr. p. 17)

Claimant said that when she was driving without power steering she would not come to complete stops, to keep the wheels moving, which according to claimant made it easier to steer the bus. (Tr. p. 21) The video of the claimant on February 29, 2016 shows claimant coming to stops for passengers and intersections after she reported losing power steering. (Ex. K at recorded hour 3:45 – 3:51) Claimant testified that she did tell doctors she hit a pothole and her wrist jerked, as the doctors wanted to know how she thought she was injured. (Tr. pp.71 – 73)

Claimant reported her right wrist was hurt. Claimant was taken by her supervisor to Genesis Occupational Health (Genesis) on February 29, 2016. (Tr. p. 21) Claimant

was told not to drive a bus and was given Naproxen. (Tr. p. 23) Claimant said that prior to the incident on February 29, 2016 she had not had any problems with her right arm and right wrist. (Tr. p. 23) Claimant was returned to work with restrictions on March 1, 2016. (Tr. p.73) Claimant was sent to physical therapy for her wrist for a couple of visits. (Tr. p. 26) Dr. Garrels released claimant from care for her right wrist on May 6, 2016. Dr. Garrels stated that after reviewing portions of the video of claimant he did not believe the video supported how claimant reported she sustained an injury and determined her condition was not work related. (JEx. 1, p. 25)

Claimant had an injury at work on March 31, 2016. Claimant was performing light duty. Claimant had stopped driving a bus after February 29, 2016. (Tr. p. 29) Claimant was putting a bag of garbage in a dumpster when she jammed her left index finger on the dumpster. (Tr. p 27) The City admits this injury, but denies it has caused any permanent impairment.

Claimant initially thought her finger would get better and did not immediately seek medical attention. (Tr. p. 30) Claimant went to Genesis on April 11, 2016. (JEx. 1, p. 18) Claimant was released from medical care for her left index finger on May 6, 2016. (Tr. p. 37; JEx. 1, p. 28) This is the last time claimant saw Dr. Garrels. (Tr. p. 49)

Claimant testified that the bus she was driving had three different cameras. Claimant said the video shown to Dr. Garrels did not have the best angel to show her driving. She said that the camera used in the video showed her head covering most of the steering wheel. (Tr. p. 34)

Claimant was terminated by the City on May 26, 2016 due to the restrictions of her right wrist, which the City did not believe was work related. (Tr. pp. 36, 43, 63; Ex. I, p. 22)

Claimant testified that her husband's insurance paid for her care after the City stopped providing care. The total amount of care is $30,727.90, with her husband's insurance paying $9,833, and $20,844 is unpaid and owing. (Tr. p. 57; Attachment to Hearing Report)

Since claimant was terminated by the City she has only worked a limited time period, part-time work, demonstrating pet food. (Tr. p. 58)

Claimant sought medical care on her own after being released from medical care by the City. (Tr. p. 38) Claimant went to Tyson Cobb, M.D. on May 9, 2016. (Tr. p. 39) Dr. Cobb recommended a carpal tunnel release surgery of claimant's right wrist, which claimant had on October 10, 2016. (Tr. p. 43) Claimant was released from care for the wrist surgery on February 8, 2017. (Tr. p. 47)

Dr. Cobb also performed surgery on claimant's left index finger. (Tr. p. 45) Claimant said Dr. Cobb told her that jamming her finger irritated the finger and that Dr. Cobb needed to fix the finger. (Tr. p. 80) The finger joint replacement surgery was on

January 26, 2017. (Tr. p. 47) Dr. Cobb released claimant from care for the finger surgery on May 15, 2017. (Tr. p. 48) Claimant acknowledged that Dr. Cobb did not provide her any permanent restrictions for either the wrist or finger injuries. (Tr. p.81)

Claimant said that she does not believe she can drive due to her symptoms. (Tr. p. 60)

Luann DeVol testified at the hearing. Ms. DeVol works for First Transit as the safety and training manager. (Tr. p. 87) First Transit has a contract with the City to manage bus service. (Tr. p. 85) Ms. DeVol states claimant was hired as a part-time transit driver. Ms. DeVol said that claimant never worked as a full-time transit driver. (Tr. p. 86) Ms. DeVol testified that full-time bus drivers work 40 hours per week. I find that the usual number of hours for a bus driver for the City is 40 hours per week.

Claimant was seen by Calene Woodhouse, ARNP, at Genesis on February 29, 2016. Claimant described the accident as, "Power steering went out and steering wheel jerked hand off steering wheel. Right wrist hurts." (JEx. 1, p. 1) Claimant was diagnosed with a right wrist sprain related to work activities and restricted duty was recommended. (JEx. 1, p. 2) An x-ray of February 29, 2016 showed,

1. Osteoarthritis 1st metacarpotrapezial joint.

2. No acute fracture.

(JEx. 2, p.1) Claimant was taken off bus driving. (JEx. 1, p. 5) On March 17, 2016 claimant was seen by Ms. Woodhouse. Claimant was tearful and concerned that she had no improvement in her wrist pain. Claimant had completed six physical therapy sessions. (JEx. 1, p. 8)

Claimant saw Richard Garrels, M.D. on March 28, 2016. Dr. Garrels noted that claimant was focused on the force used to get the bus to turn because of the power steering issue. (JEx. 1, p. 11) Dr. Garrels noted that claimant reported the injury mechanism involved forceful twisting of the wrist. (JEx. 1, p. 12)

An MRI of the right wrist showed,

1. No evidence for intrinsic ligament or TFCC injury.

2. Borderline prominence of the median nerve may be within normal limits.

(JEx. 4, p.1)

On April 11, 2016 claimant saw Cheryl Benson, PA-C, for her left index finger injury. PA Benson noted the finger was swollen and faintly ecchymotic. (JEx. 1, p. 15) PA Benson's plan of care was,

> The X-Ray ordered by the COD nurse for her apt today shows degenerative changes at the DIP joint, injury sprain to DIP joint causing an aggrevation [sic] of the OA. She will be on a MDP to address these symptoms as well as her right wrist sprain.

(JEx. 1, p. 19) An x-ray of claimant' s left index finger showed, "3 views of left hand index finger show osteoarthritis with narrowing and osteophytes of the DIPs and PIPs." (JEx. 2, p. 2)

On May 2, 2016 claimant saw Dr. Garrels for her right wrist. Dr. Garrels recommended nerve testing given the persistent symptoms. (JEx. 1, p. 22) The nerve testing was unremarkable. (JEx. 5, p. 1) On May 6, 2016 claimant saw Dr. Garrels and noted he visited the City's Risk Department the day before and watched the portion of the video showing claimant's last run a number of times. Dr. Garrels was unable to see anything in the video that showed claimant had to do anything different with the steering wheel. Dr. Garrels did not review the video with claimant.

Dr. Garrels stated

> In conclusion: The video does not substantiate the injury report made by the patient. Given the nature of her work and the clinical findings present currently her description of the injury does not make sense since there is not work activity that would produce the type of forces required to cause this type of condition. The clinical picture suggest [sic] a forceful repetitive mechanism.
>
> MEDICAL CAUSATION
>
> The cause of this problem does not appear to be related to work activities.

(JEx. 1, p. 25) Claimant was directed to her primary care physician and was restricted from bus driving and was to rarely use the right hand. (JEx. 1, p. 26)

Dr. Garrels also released claimant from care for the left index finger injury on May 6, 2016. His diagnosis was sprain of interphalangeal joint of the left index finger. (JEx. 1, p. 27)

On May 6, 2016 claimant went to UnityPoint Express clinic and saw James Henderson, M.D. Dr. Henderson wrote, "Drove a bus in February without power steering, since then hand wrist pain to fingers. Intractable." (JEx. 6, p. 1)

On May 9, 2016 claimant went to Orthopedic Specialists and saw Elizabeth Elander, PA-C for pain in the right wrist. PA Elander reported that claimant was complaining of pain after an episode of driving a bus without power steering. (JEx. 7, p. 1) Claimant was assessed with wrist pain and was informed about scheduled dosing of

NSAIDs and splinting. A cortisone injection to the carpal tunnel was performed. (JEx. 7, p. 3)

On May 31, 2016 claimant saw Dr. Cobb at Orthopedic Specialists, as claimant had jammed her left index DIP at work. Dr. Cobb did note claimant had received some improvement from the cortisone injection. (JEx. 7, p. 6) Dr. Cobb's examination showed, "Tinel's over the right carpal tunnel median nerve is positive. It is negative on the left. There is no atrophy, no weakness. She does have marked tenderness with palpation over the DIP, left index, which is swollen." (JEx. 7, p. 7) Dr. Cobb's plan was,

> Hand: Impression:
>
> 1. Right carpal tunnel syndrome with good response to cortisone injection.
>
> 1. [sic] Right wrist pain, with essentially negative MRI and negative electrical studies.
>
> 2. Left index DIP arthrosis status post jamming injury.
>
> For her carpal tunnel syndrome she will continue splinting. We discussed the possibility of surgical intervention if symptoms recur.
>
> I explained that there is a good chance that the pain in the DIP will settle down with an acute on chronic type of presentation with a cortisone injection. We discussed the possible need for surgical intervention which could include debridement vs. fusion. I think fusion will likely be her better option if surgery is required. I explained the treatment options, including the risks, benefits, and possible complications of each option. At this time, the patient would like to proceed with a cortisone injection of the left index DIP joint under fluoroscopic control.
>
> She will return in one month.

(JEx. 7, p. 8) Dr. Cobb performed an injection of claimant's left index finger at that appointment. (JEx. 7, p. 8) Dr. Cobb released claimant to return to work full duty on May 31, 2016. (JEx. 7, p. 9)

Claimant returned to Dr. Cobb on September 7, 2016. At that visit Dr. Cobb recommended surgery of claimant's right wrist. (JEx. 7, p. 11) On October 10, 2016 Dr. Cobb performed an ultrasound-guided right endoscopic carpal tunnel release. (JEx. 8, p. 1) On October 25, 2016 PA Elander examined claimant and restricted claimant from using her right hand for work and stated that if no one-handed work was available she could remain off work. (JEx. 7, pp. 17, 18)

On November 9, 2016 Dr. Cobb discussed with claimant surgery for her left index finger. (JEx. 7, p. 21) On January 26, 2017 Dr. Cobb performed a total joint arthroplasty. Dr. Cobb's postoperative diagnosis was, "Left index distal interphalangeal arthrosis." (JEx. 8, p. 2) Dr. Cobb returned claimant to work with no use of left hand on January 26, 2017. (JEx. 7, p. 23) Claimant was returned to light duty work using the left hand on February 8, 2017. (JEx. 7, p. 26) On March 15, 2017 claimant was allowed to work as tolerated. (JEx. 7, p. 33)

On February 13, 2017 Richard Kreiter, M.D. performed an independent medical examination (IME). Dr. Kreiter noted that prior to February 29, 2016 claimant had a completely normal right wrist, and had no carpal tunnel symptoms, or numbness of her right thumb, index or long finger. (Ex. 2, p. 3) Dr. Kreiter noted that claimant's hand had been jerked off the steering wheel on a couple occasions when claimant drove without power steering. (Ex. 2, p. 3) Dr. Kreiter wrote that claimant had no permanent impairment due to the carpal tunnel release. (Ex. 2, p. 1) Dr. Kreiter said that claimant's left index finger injury was an acute event superimposed on a chronic problem. (Ex. 2, p. 1) Dr. Kreiter's impression was,

> 1. Status post endoscopic carpal tunnel release of the right wrist with good result, resolution of the numbness.
>
> 2. Probable sprain of the distal radial ulnar joint of the right wrist with normal MRI arthrogram.
>
> 3. Status post joint replacement of the left distal joint of the left index finger.

(Ex. 2, p. 4) Dr. Kreiter recommended limitations to the right wrist to avoid excessive twisting and avoid any forceful use of a device like a screwdriver. Repetitive, firm grasping and impact tools should be avoided. (Ex. 2, pp. 1, 2)

Dr. Kreiter examined claimant again on August 15, 2017. Dr. Kreiter's impression was,

> 1) Painful distal right radioulnar joint status post twisting injury.
>
> 2) Silicone arthroplasty of the DIP joint of the left index finger with weakness of pinch and occasional pain.
>
> 3) Right carpal tunnel release with good result.

(Ex. 3, p. 4) Dr. Kreiter said,

> It is my opinion a forceful, twisting injury to the right wrist on 02/29/2016 with localized pain in the area of the distal radioulnar joint likely caused some disruption with chronic pain in this area, primarily with

> pronation and supination of the forearm, and some continued compromise of grip strength.

(Ex. 3, p. 1) Dr. Kreiter provided a 10 percent upper extremity rating for this impairment. For the left index finger injury and joint replacement he provided a 19 percent upper extremity impairment rating. (Ex. 3, p. 1) Dr. Kreiter did not change the restriction to claimant's right arm. For the left index finger he recommended no forceful pinch, and pushing and pulling should be avoided to prevent loosening of the prosthesis. (Ex. 3, p. 2)

On September 21, 2017 Dr. Garrels reviewed Dr. Kreiter's reports concerning causation and impairments. Dr. Garrels said the carpal tunnel syndrome is a cumulative condition that develops over years and that Dr. Kreiter's opinion that claimant's carpal tunnel syndrome was caused by some sort of trauma was wrong. (Ex. A, p. 1) Dr. Garrels stated that carpal tunnel is a common condition of ageing, and claimant's need for surgery was based upon a pre-existing condition. (Ex. A, p. 1) Concerning claimant's left index finger injury, Dr. Garrels said that her condition caused by the March 31, 2016 jamming of her finger had resolved and that the joint replacement was the result of a pre-existing condition. (Ex. A. p. 1) Dr. Garrels disagreed with Dr. Kreiter's rating of the wrist. Concerning the claimant's left index finger, Dr. Garrels said the correct rating was 14 percent to the left index finger. (Ex. A, p. 2)

On January 11, 2018 Teri Formanek, M.D. provided a letter to defendants. Dr. Formanek reviewed medical records and the video of claimant driving a bus. (Ex. C, pp. 5, 6) Dr. Formanek wrote,

> The current diagnoses for Mrs. Pohl is right wrist pain, status post right carpal tunnel release, and status post left index distal interphalangeal (DIP) silicone arthroplasty.
>
> After reviewing the records and the treatment, it is within a reasonable degree of medical certainty that there is no documented evidence that any of the above diagnoses have any relationship to her work activities. Furthermore, the patient did not have any documented evidence of carpal tunnel syndrome and the endoscopic carpal tunnel release procedure performed was not indicated and was not for documented evidence of carpal tunnel syndrome.

(Ex. C, p. 5) Dr. Formanek noted claimant had advanced degenerative arthritis in her finger and that a fusion instead of a joint replacement would have been a more appropriate medical procedure. Dr. Formanek noted that there was no documented objective evidence for claimant's right wrist pain. (Ex. C, p. 5) Dr. Formanek said that there was no evidence of significant injury to her wrist on February 29, 2016. (Ex. C, p. 6)

On March 26, 2018 Dr. Kreiter commented on Dr. Garrels' September 21, 2017 report. Dr. Kreiter said that his rating for the distal radial joint was provisional, as claimant had not received treatment. As to the left index finger, Dr. Kreiter wrote that claimant's finger injury aggravated and accelerated a pre-existing condition. (Ex. 4, p. 1)

Claimant calculated claimant's weekly wage using the 13 weeks preceding her injury. Claimant calculated claimant's weekly rate for permanent partial disability as $297.06 per week. (Ex. 9, p. 1) Claimant did not provide a calculation for healing period benefits. Defendant calculated claimant's rate by using all of claimant's earnings. Defendant's calculation for healing period benefits was $103.43 and permanent partial disability as $285.00. (Ex. F, p. 11) I find defendant's calculation of temporary total/healing period and permanent partial disability benefits to be accurate and adopt those figures for payment of indemnity benefits in these two claims.

Claimant has requested that the medical expenses for her right wrist and left finger surgeries be paid by defendant. The claimant identified $9,883.23 paid by health insurance, and the amount of $20,844.67 paid by or owed by claimant for a total of $30,727.90. (Attachment to Hearing Report) I find that the medical expenses are causally related to the February 29, 2016 and March 31, 2016 work incidents. I find the costs were reasonable and necessary and the fees are fair and reasonable.

Claimant is requesting medical mileage of $247.99. Claimant is requesting reimbursement for travel to various medical appointments from February 29, 2016 through August 15, 2017. (Attachment to Hearing Report) I find that this mileage is causally related to the February 29, 2016 and March 31, 2016 work incidents.

Claimant is requesting costs of the two filing fees of $100.00 apiece and two IME fees of $800.00 apiece, for a total of $1,800.00. (Attachment to hearing report)

RATIONALE AND CONCLUSIONS OF LAW

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

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

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

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

A wrist injury is an injury to the arm, not the hand. Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008).

In this case Dr. Cobb, the treating surgeon for both the wrist and finger, has not issued an opinion about causation for either injury. Dr. Garrels opined that claimant's carpal tunnel was preexisting and that it was not caused by claimant's hand jerking when the power steering failed. Dr. Garrels said that the carpal tunnel was pre-existing and not related to claimant's work with the City. Dr. Formanek stated claimant did not have carpel tunnel syndrome

I do not find Dr. Garrels and Dr. Formanek's opinions on causation of claimant's carpal tunnel to be convincing. There is no evidence claimant was having any symptoms in her right wrist until she reported her wrist hurting after the power steering went out. Claimant was asked to take another bus out when she returned the broken bus. Claimant could not drive due to right wrist symptoms.

The evidence is convincing that the claimant permanently aggravated her pre-existing carpal tunnel on February 29, 2016. Dr. Cobb found positive Tinel's over the right median nerve and positive Phalen's test. The surgery of Dr. Cobb on her wrist relieved claimant's numbness in her hand. The claimant reported symptoms in her right wrist immediately after returning the bus and experienced symptoms until her surgery. I find Dr. Kreiter's opinion convincing and most consistent with the medical evidence and treatment records.

Dr. Kreiter found that claimant had distal radial joint injury. He is the only physician that has identified this diagnosis. Significantly, Dr. Cobb, who performed two surgeries on the claimant, did not identify this as an injury. While there are times in the video when you cannot see claimant's right wrist/hand there is no obvious traumatic injury to claimant's wrist. Claimant has not proven that the distal radial joint symptoms arose out of and in the course of her employment with the City.

Both Dr. Garrels and Dr. Formanek do not adequately explain how the fact the medical evidence and claimant's credible testimony show that both claimant's wrist and left finger remained symptomatic after her injury and never returned to baseline. I did not find Dr. Garrels and Dr. Formanek's opinions convincing due to this lack of analysis.

It appears that, in part, Dr. Garrels and Dr. Formanek determined that since they did not see a traumatic incident when claimant was driving the bus on the video, claimant's opinion concerning causation of her carpal tunnel was incorrect. Claimant's incorrect self-diagnosis of causation does not mean that her injury was not work related. Based on the lack of any prior symptoms and Dr. Kreiter's opinions I find claimant has proven by a convincing preponderance of the evidence that the incident on February 29, 2016 permanently aggravated her carpal tunnel.

Dr. Kreiter stated that claimant had zero impairment for her carpal tunnel. No other physician has provided a permanent impairment for her carpal tunnel. Claimant is not entitled to any permanent partial disability for her carpal tunnel injury.

Claimant had pre-existing arthritis in her left index finger. Her left index finger was asymptomatic until she jammed it on March 31, 2016. The left index finger was symptomatic since the March 31, 2016 incident. I find Dr. Kreiter's opinion that there was a permanent aggravation to her left index finger due to her work injury most consistent with the medical evidence and course of treatment.

There is no evidence that claimant's injury to her left finger extends into the hand or left upper extremity. Claimant's injury is only to the left index finger.

I do not find that Dr. Kreiter's rating is correct. Claimant's injury is to the left index finger, not to the upper extremity. I find Dr. Garrels' rating is consistent with the AMA Guides 5th Ed. I find claimant has a 14 percent permanent impairment to the left index finger. Claimant is entitled to 4.9 weeks of permanent partial disability benefits for her March 31, 2016 finger injury (35 weeks x 14% = 4.9).

An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. An employee is temporarily, partially disabled when the employee is not capable medically of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability. Temporary partial benefits are not payable upon termination of temporary disability, healing period, or permanent partial disability simply because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury. Section 85.33(2).

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant has shown that she was off work and not able to work from the date of her surgery on October 10, 2016 (JEx. 8, p. 1) and was not released to work for substantial similar work until March 15, 2017. (JEx. 7, p. 33) I find that claimant is entitled to temporary total/healing period benefits for October 10, 2017 through March 15, 2017.

Defendant contends that, if awarded, benefits should be calculated using Iowa Code section 85.36(9).

Iowa Code section 85.36(9) provides:

> If an employee earns either no wages or less than the usual weekly earnings of a regular full-time adult laborer in the line of industry in which the employee is injured in that locality, the weekly earnings shall be one-fiftieth of the total earnings which the employee has earned from all employment during the twelve calendar months immediately preceding the injury.
>
> Before utilizing this methodology, however, the commissioner must make a preliminary factual finding that the employee either (1) earns no wages or (2) earns "'less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality.' " *King v. City*

> *of Mt. Pleasant,* 474 N.W.2d 564, 566 (Iowa 1991) (quoting Iowa Code § 85.36(10) (1987) (now § 85.36(9))).

Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 134 (Iowa 2010)

The convincing evidence is that claimant was a part-time employee for the City. I found claimant earned less than the usual weekly earnings. Claimant acknowledged she was hired part-time. The employment records and testimony of Ms. DeVol convincingly prove claimant worked part time. None of the other subsections of Iowa Code section 85.36 appear directly applicable or applied in a manner that would be more reasonable or easier than Iowa Code section 85.36(9). I conclude section 85.36(9) should be applied under the facts and circumstances of this case.

Claimant argues that the Worker's Compensation Rate Book, which states that employees working under 30 per week is generally considered part-time relying in part on the rate book which provides;

> If the employee worked part-time at the time of the injury, Iowa Code Section 85.36(9) provides that the gross weekly earnings equal the total earnings from all employment during the 12 months prior to the injury divided by 50. (Generally an employee who works less than 30 hours per week is considered part-time.)

Iowa Workers' Compensation Laws, Iowa Workers' Compensation Advisory Committee, Inc. July 1, 2017 Edition. The reliance on the rate book is misplaced in this case. The rate book is not the law, it is general guidance.

Defendant's calculation of rate is the correct calculation of rate for the claimant. I find claimant's healing period rate to be $103.43 and the rate for permanent partial disability to be $207.37.

Defendant is responsible for medical mileage related to the two work injuries. Claimant is entitled to medical mileage of $247.99.

The Iowa Supreme Court has specifically noted that PPD benefits commence whenever the first factor of Iowa Code section 85.34(1) is met. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016). In other words, once a claimant achieves one of the factors outlined in Iowa Code section 85.34(1), permanent disability benefits should commence.

The factors are whether (1) "the employee has returned to work," (2) "it is medically indicated that significant improvement from the injury is not anticipated" (MMI), or (3) "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." Iowa Code section 85.34(1). With respect to the second factor, the Iowa Supreme Court has described MMI as "stabilization of the condition or at least a finding that the condition is 'not likely to remit in the future despite medical treatment.'" Bell

Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citing Guides, Sixth Edition, p. 27). "[T]he persistence of [symptoms] may not itself prevent a finding that the healing period is over, provided the underlying condition is stable." Myers v. F.C.A. Servs., Inc., 592 N.W.2d 354, 359 (Iowa 1999) (citations omitted). When it is not likely that further treatment will decrease the extent of permanent industrial disability, then continued treatment does not prolong the healing period. See id. In other words, neither maintenance medical care nor a claimant's persistent symptoms will necessarily prolong the healing period when claimant's condition is stable.

Claimant returned to work on March 1, 2016. This is the date for start of permanent partial benefits for the February 29, 2016 wrist injury.

Claimant continued to work after her March 31, 2016 finger injury. Permanent benefits commence for this injury on April 1, 2016.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

I found *supra* that the medical costs were causally related to claimant's work injuries. Defendant shall pay to the health insurance carrier $9,883.23, and the amount of $20,844.67 to the claimant for her medical expenses.

The last issue is costs. Claimant has requested $1,600 for two IME reports. As claimant had two separate injuries and two distinct cases, I award claimant the cost for the IME for both cases pursuant to Iowa Code section 85.39. I find the costs to be fair and reasonable. I also award the filing fees totaling $200.00 pursuant to 876 IAC 4.33.

ORDER

For File No. 5056430 (d/o/i 2/29/2016)

The claimant will take no permanent partial disability benefits.

Defendant shall pay costs of nine hundred dollars ($900.00).

For File No. 5057500 (d/o/i 3/31/2016)

Defendant shall pay four point nine (4.9) weeks of permanent partial disability benefits at the weekly rate of two hundred seven and 37/100 dollars ($207.37) commencing April 1, 2016.

Defendant shall pay costs of nine hundred dollars ($900.00).

For Both Files

Defendant shall pay temporary total/healing period benefit from October 10, 2016 through February 8, 2017 at the weekly rate of one hundred three and 43/100 dollars ($103.43).

Defendant shall pay medical mileage in the amount of two hundred forty seven and 99/100 dollars ($247.99).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

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

Signed and filed this 7th day of January, 2019.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFE/sam

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.