

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SEVDA KURDIC,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 5055279

A R B I T R A T I O N

D E C I S I O N

Head Note Nos.1803.1, 1804

STATEMENT OF THE CASE

The claimant, Sevda Kurdic, filed a petition for arbitration and seeks workers' compensation benefits from Tyson Fresh Meats, Inc., a self-insured employer. The claimant was represented by J. Richard Johnson. The defendant was represented by Brian Yung.

The matter came on for hearing on May 25, 2018, before Deputy Workers' Compensation Commissioner Joe Walsh in Waterloo, Iowa. The record in the case consists of joint exhibits 1 through 7; claimant's exhibits 1 through 9; and defense exhibits A through W. The claimant testified under oath at hearing, in addition to Nadina Topcagic and Jennifer Brustkern. Amy Pederson was appointed as court reporter for the proceeding. Ljupka Poleksic served as the Bosnian interpreter. The matter was fully submitted on July 9, 2018, after briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant is permanently and totally disabled under Iowa Code section 85.34(2)(s) (2015). If not, what is the extent of claimant's permanent functional disability?
2. Whether the claimant is entitled to alternate medical care.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. Claimant sustained an injury which arose out of and in the course of employment which manifested on December 4, 2012.
3. Temporary disability/healing period and medical benefits are no longer in dispute.
4. The commencement date for any permanent disability benefits is December 4, 2015.
5. The weekly rate of compensation is \$456.69.
6. Defendant has paid and is entitled to a credit of 45 weeks of compensation (permanent partial disability).
7. Affirmative defenses have been waived.

FINDINGS OF FACT

Claimant, Sevda Kurdic, was 53 years old as of the date of hearing. She was born in Bosnia in 1964. She moved to the United States in 1999. Her primary language is Bosnian. Her English language skills are significantly limited. She did testify that she can read and write "a little" in English, however, anything complicated she cannot. (Transcript, page 13) Since she stopped working, Sevda has undertaken reasonable efforts to learn English with no success.

Ms. Kurdic testified live and under oath at hearing. I find her to be a highly credible witness. Her testimony generally matches with the corresponding exhibits and there was nothing about her demeanor which caused the undersigned concern about her truthfulness. She was a good historian.

Ms. Kurdic arrived in the United States in 1999. She cleaned offices in Chicago for a couple of months before moving to Iowa and starting employment with Tyson on November 2, 1999. For all practical purposes, the only employment claimant has ever known is working in meatpacking. She is right handed. She primarily worked in a position called "mark tenders". The job summary for this position is in evidence. (Defendant's Exhibit C) The job involved the repetitive use of a straight knife. She would perform the work at approximately shoulder level and use both hands. She testified that she had to reach overhead at times and she used her left arm to remove the hooks.

In December 2012, Ms. Kurdic went to the Tyson Health office for bilateral wrist and arm pain. (Def. Ex. B, pp. 1-5) This injury report sets forth the mechanism of injury. Tyson accepted the injury and provided ice and pain relievers for claimant initially. Tyson set the manifestation date as the date the condition was reported, December 4, 2012. Eventually, medical care was established with several physicians,

including Robert Gordon, M.D., Thomas Gorsche, M.D., Frank Hawkins, M.D., Ben Paulson, M.D., and Peter Pardubsky, M.D. From the onset of her treatment in January 2013, Ms. Kurdic underwent several surgeries through October 2015, culminating in a three year period of recovery. The parties have stipulated that December 4, 2015, is the appropriate date for commencement of permanency benefits.

The first surgery occurred in July 2014, and was performed by Dr. Pardubsky at Physicians Clinic of Iowa (PCI). After several injections were attempted into both wrists (primarily the left), he performed an arthroscopic surgery of the left, described as left wrist triangular fibrocartilage complex tear with findings of synovitis, on July 1, 2014. (Jt. Ex. 1) Her symptoms, however, continued despite being off work or on restricted duty and attending occupational therapy. Dr. Gordon eventually referred Ms. Kurdic for a second opinion with Dr. Paulson. Dr. Paulson performed two surgeries, the first on claimant's left forearm for "ulnar shortening osteotomy", and the second on the right, described as de Quervain's release of the first dorsal department. (Def. Ex. Q, p. 3) In July 2015, Dr. Paulson signed a report indicating claimant also had left trigger finger symptoms and left elbow complaints (lateral epicondylitis) which he could not state were related to the original work injury since those problems were not initially reported in December 2012. (Def. Ex. Q, p. 3) A Tyson claims examiner noted she had not worked in some time and was engaged in a hobby of cake decorating. (Def. Ex. R, p. 1) In October 2015, Dr. Paulson performed an additional surgery, removing the hardware from Ms. Kurdic's left side. (Def. Ex. S, p. 2) He released her from care in December 2015. Dr. Paulson rated her functional disability at 9 percent of the right upper extremity and 7 percent of the left. (Def. Ex. J, p. 2) Dr. Paulson did not combine the ratings and he recommended a functional capacity evaluation to determine permanent restrictions.

Claimant underwent the functional capacity evaluation (FCE) on December 17, 2015. (Def. Ex. T) This was well before she had even received treatment for her left elbow condition deemed non-work related. The FCE concluded that the test was invalid due to inconsistent effort. "The overall classification of effort is invalid due to the client, Sevda Kurdic, performing inconsistently during a repeated measures protocol." (Def. Ex. T, p. 1) Tyson argues that this report demonstrates claimant is not credible and did not even try at her FCE. Based upon all the evidence before me, I give very little weight to this report. Ms. Kurdic had four relatively unsuccessful surgeries prior to the FCE and had untreated left lateral epicondylitis at the time of this testing. While the FCE evaluator documented her four prior surgeries, it is unclear from the report whether he understood that she suffered from untreated lateral epicondylitis. (Def. Ex. T, p. 4) I believe Ms. Kurdic that she was in significant pain. It is not surprising, under the circumstances, that the FCE results were invalid or that she did not give maximum effort.

On January 6, 2016, Dr. Gordon, Tyson's occupational medicine physician, examined Ms. Kurdic to determine her ability to return to work. (Def. Ex. K) He documented her treatment up to that point, however, made no mention of her ongoing difficulties with left lateral epicondylitis. It is unclear at this time whether he was unaware of the condition or simply chose not to address it. He reviewed the job

description, various medical records, the FCE, and took a history from the claimant. He noted that she had been off work since November 2014. He opined that she did not need restrictions and could return to the job of mark tenders.

Ms. Kurdic testified that none of the surgeries ultimately helped her condition. In particular, while some of the specific symptoms improved, her pain did not subside. In early January 2016, following her visit with Dr. Gordon, she attempted to return to her job, mark tenders. She testified credibly that she could not perform this work. She testified regarding the precise motions she could no longer perform, rotating with the knife. I find Ms. Kurdic's testimony to be quite compelling. She made a good faith effort to return to her job, but was unable, due to the pain caused. This is a key issue in the case.

Following her release from care, Ms. Kurdic was placed on a leave of absence from Tyson. Tyson is a large employer in Waterloo, with several different positions. On leave, Ms. Kurdic had the right to review open positions and attempt to bid into positions through a union contract based upon seniority which she felt she could perform. This process was called "bid walk." During the year she was on leave, the only position which came open she felt she may be able to perform was "pull casings." When she viewed the job as performed she realized it would be too much pulling and use of both of her arms. It is also noted that during this period of time, Ms. Kurdic was still under active treatment directed by Vinko Bogdanic, M.D., as set forth below.

At hearing, Ms. Kurdic testified that her arms are not particularly useful any longer. When she grasps, she has severe pain in her left elbow area. Tyson has denied this condition, contending it is not causally connected to her work injury. The medical notes document that her left elbow pain began right away after her ulna surgery. Ms. Kurdic has more pain on her right side now and described a locking sensation which occurs and causes her to lose strength when it occurs.

As mentioned previously, Ms. Kurdic also continued to seek treatment following her release by Dr. Paulson. She sought care with Dr. Bogdanic in October 2015. (Jt. Ex. 4) Dr. Bogdanic documented the following.

Pain—Been developing in the left wrist for years and this was reported to her worker's comp initially treated conservatively and then surgically in March 2015 with procedure done at Marshalltown with orthopedic surgeon with shortening of the ulna and placements of plate and screws, he simply [sic] the plates and screws were removed however she continues to have left elbow pain with swelling and the limited range of motion. She has been evaluated for that particular pain for her workers comp and the recent determination in a written form is that this is not according to their statement related to work activity, she was suggested to visit with primary care physician and be referred to orthopedic surgeon for evaluation of this left elbow pain- will refer to orthro [sic]

(Jt. Ex. 4, pp. 79-80) Thereafter, Ms. Kurdic was referred on to Gary Knutson, M.D., who performed injections.

She returned to Dr. Bogdanic in April 2016. He documented the following.

Pain—elbow-she has had surgery March 2015 at Marshalltown through her employment related to injury on her left wrist which shortening of ulna, and after the surgery started having left elbow pain almost immediately to the level and agreed that she couldn't finish physical therapy so she was seen by orthopedic surgeon at covenant Medical Center Dr. Knutson who did the MRI and indicated in his note that this was related to epicondylitis, she was given injections however with no relief, subsequently was seen by neurologist also at covenant Medical Center with EMG study positive for neuropathy of ulnar nerve. She continues to have left elbow pain which he has not had prior to surgery since majority of her symptoms related to left wrist, to point and intensity that she wakes up at night and is unable to move her left forearm in supination and pronation, very limited range of motion with extension and pain. This is no longer work-related injury as determined by her employer and she is interested in going to see pain specialist or orthopedic surgeon at UIHC for second opinion.

(Jt. Ex. 4, pp. 83-84) Ms. Kurdic was evaluated at UIHC thereafter. She had surgery in June 2016, described as "left elbow common extensor tendon percutaneous tenotomy" and followed up thereafter. (Jt. Ex. 5, p. 109) She was encouraged to avoid repetitive activities while recuperating. (Jt. Ex. 5, p. 113) In September 2016, she was referred to the pain clinic where she was diagnosed with anxiety among other problems. (Jt. Ex. 5, p. 118) She continued to receive treatment from UIHC through December 2016. (Jt. Ex. 5, p. 125) Through virtually all of 2016, Ms. Kurdic was under active medical treatment. Based upon this fact alone, it would have been extremely difficult for claimant to locate suitable employment within Tyson while on leave of absence through the "bid walk" process or assess her permanent restrictions or employment options.

In February 2017, claimant was terminated because she had not secured a new position within Tyson. (Def. Ex. F) In April 2017, Dr. Bogdanic referred Ms. Kurdic to Valentina Doumanian, M.D., a psychiatrist. Dr. Doumanian documented "crying spells, fatigue, social isolation, low energy and motivation and constant pain." (Jt. Ex. 6, p. 127) Dr. Doumanian diagnosed major depressive disorder, single episode, moderate, also anxiety and managed claimant's various antidepressant medications. (Jt. Ex. 67, p. 129) Claimant has continued to follow up with Dr. Doumanian and was also evaluated by a psychologist, Carroll Roland, PhD, who verified the diagnosis.

Claimant applied for and was denied Social Security Disability in August 2017. (Def. Ex. H) It appears this was appealed. Claimant has not made efforts to seek work in the competitive employment market. In November 2017, she prepared a functional

report describing her difficulties with her upper extremities for the Social Security Administration. (Def. Ex. I) This report is highly consistent with her hearing and deposition testimony. (Def. Ex. U)

In addition to the treatment records, there are several expert opinion reports in this record of evidence. Defendant obtained reports, primarily from its chosen treatment providers, including Dr. Paulson, Dr. Gordon, Dr. Gorsche, and Dr. Pardubsky. (Def. Exs. J, L, M, O, Q, R) These reports provided opinions on her functional impairment ratings and restrictions following each of her several surgeries, and include the opinions that her left elbow and trigger finger are not causally connected. The most significant of these reports is the opinion of Dr. Paulson who rated claimant's conditions in December 2015, when Tyson deemed her to be at maximum medical improvement from all of her accepted work-related conditions.

Claimant retained Marc Hines, M.D., for an independent medical evaluation in January 2016. (Cl. Ex. 1) Dr. Hines performed a meticulous review of the records, took a full, accurate medical history from Ms. Kurdic and performed a detailed medical examination. (Cl. Ex. 1, pp. 1-7) Dr. Hines described the following conditions.

This is a patient who has radial nerve entrapment in the upper forearm bilaterally, particularly in the posterior interosseous branch in the upper forearm. She also has left lateral epicondylitis. She still has residual of her right tenosynovitis/de Quervain's syndrome on the right and unfortunately she has hyperpathia and pain from her scar from her ulnar osteotomy.

(Cl. Ex. 1, p. 7) He characterized her pain in different terms than Dr. Paulson and opined that all of her conditions were causally connected to her December 2012 work injury. He specifically opined that the lateral epicondylitis is connected to her work injury. (Cl. Ex. 1, p. 9)

Based upon the foregoing diagnoses, Dr. Hines assigned impairment ratings using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. He essentially agreed with Dr. Paulson's range of motion assessment, however, he also rated her loss of strength and pain in both arms. When combining all of these functional deficits, he arrived at a rating of 38 percent of each arm. (Cl. Ex. 1, pp. 7-8) He converted these ratings to the whole body and then combined those, to arrive at a 41 percent whole person rating. (Cl. Ex. 1, p. 8) Regarding restrictions, he stated the following.

It seems clear at this time, unless we have further therapies or advantages that can be given to this patient, that this patient would not be able to repeatedly grasp and repeatedly twist her hands in either ulnar or radial deviation or repeated pronation or supination. The patient has no sensory loss. It would be possible if she could avoid these repetitive activities that

she might be able to manipulate small objects, but this would still more than likely cause some difficulties with the repetitive use of the forearms, the difficulty being stabilization of the wrist in partial extension aggravating the difficulties with the posterior interosseous insertional area, and on the left the lateral epicondylitis which continues, and on the right the right tenosynovitis that continues involving the thumb.

(Cl. Ex. 1, p. 8) He further recommended she avoid vibrations, extreme temperatures, ladder climbing, or use of her hands to sustain a position. "The best course of action would be to consider some type of vocational rehabilitation counseling and reeducation, please see below." (Cl. Ex. 1, p. 8) He specifically recommended she not return to "the type of work she is presently doing" and look for jobs which "do not require repetitive activities in her upper extremities." (Cl. Ex. 1, p. 8)

Dr. Gordon prepared an additional report in December 2017. (Def. Ex. K) He performed a thorough evaluation of the past medical file, including Ms. Kurdic's treatment for left lateral epicondylitis. At the time of his visit, he documented the following complaints.

Ms. Kurdic, at this time, does complain of the following symptoms of her left upper extremity: left shoulder girdle region pain, left ulnar wrist pain and numbness in the region of the scar from the ulnar shortening procedure; left lateral epicondylar region pain; left dorsal forearm pain, numbness, and tingling that begins proximally 8 cm distal to the lateral epicondylar region that extends down into her left hand index finger; left hand index finger triggering; and general weakness of her left upper extremity.

Ms. Kurdic, at this time, does complain of the following symptoms of her right upper extremity: right shoulder girdle region pain; right thumb triggering; pain of the right radial wrist region; right dorsal forearm pain, numbness, and tingling that begins proximally 8 cm distal to the lateral epicondyle and extends down into the right dorsal radial wrist and right radial dorsal hand; and general weakness of her right upper extremity.

(Def. Ex. K, p. 12) He went on to document her numerous diagnoses and conditions in her bilateral hands and arms. He opined that the lateral epicondylitis and trigger finger were not "work-related" based upon the fact that she first developed those symptoms during a period of time she was not working. He provided impairment ratings of 6 percent of the right upper extremity and 9 percent of the left upper extremity. (Def. Ex. K, pp. 23-25) He did not combine the ratings. Dr. Gordon further suggested that Dr. Hines used wrong sections of The AMA Guides for rating claimant's functional disabilities and otherwise criticized his ratings. (Def. Ex. K, p. 25) Regarding restrictions, Dr. Gordon recommended none, stating "there is no objective clinical basis for any restrictions." (Def. Ex. K, p. 26) He suggested that she "elected not to participate" in her functional capacity evaluation. (Def. Ex. K, p. 25)

Having reviewed all of the evidence, I find the opinions of Dr. Hines to be compelling. His opinions are based upon thorough analysis and a dispassionate, big picture view of the entire medical situation. While there may be issues with Dr. Hines precise use of the AMA Guides to arrive at his impairment rating, the bigger issue relates to restrictions. In essence, all of Tyson's doctors dismissed the notion of placing any restrictions upon the claimant as a result of the invalid FCE. Dr. Hines, on the other hand, looked at the entire picture. He opined that she has objective abnormalities in her bilateral hands and arms which cause significant strength loss and loss of range of motion. These conditions resulted in six numerous interventions and have rendered her unable to perform normal activities of daily living, such as cleaning her home. He explained her lack of effort on the FCE to be the result of inhibition from pain. He recommended significant work restrictions which essentially preclude her from working in a meatpacking plant, the only substantial, gainful occupation she has ever really known. All of these opinions, which are significantly supported by the opinions of Dr. Bogdanic, make sense given the record of evidence before the agency.

I would also note that the employer's defense in this case hinges heavily upon the invalid December 2015 FCE. (Def. Ex. T) The allegation is that Ms. Kurdic did not even attempt to cooperate with the assessment her permanent restrictions. The FCE evaluator, however, did not even acknowledge in the report that claimant had untreated lateral epicondylitis at the time of the FCE. These FCE results are given little or no weight. While I have adopted Dr. Hines' opinion that the condition of lateral epicondylitis is causally connected to the original work injury, this fact makes little difference in the determination of the validity of the FCE. Ms. Kurdic had active symptoms from an untreated condition in her bilateral upper extremities at the very point in time that the employer required an FCE to determine permanent restrictions. For this fact to be unknown or unacknowledged by the treatment providers during that timeframe taints the FCE itself and all of the expert opinions which relied upon it.

For all of these reasons, I find that the claimant's functional disabilities in her bilateral upper extremities render her unable to perform substantial, gainful work in the competitive job market.

CONCLUSIONS OF LAW

The primary question submitted revolves around the nature and extent of claimant's disability. Claimant contends she is permanently and totally disabled under Iowa Code section 85.34(2)(s) (2017). Defendant concedes that her disability falls under section 85.34(2)(s), however, contends that her disability is less than total, and therefore is evaluated functionally.

Since the location of the disability is her bilateral hands and arms, the compensation is dictated by Iowa Code section 85.34(2)(s) (2015). This section states:

The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five

hundred weeks and shall be compensated as such; however, if said employee is permanently and totally disabled the employee may be entitled to such benefits under subsection 3.

Id. Section 85.34(3) is the permanent total disability section.

Thus, if the claimant's resulting disability is less than permanent and total, the disability, and benefits awarded against the employer at the relevant time, is calculated using the functional method. If the resulting disability is permanent and total, then permanent total disability must be awarded against the employer. Therefore, the initial issue for determination is whether the extent of claimant's disability resulting from her admitted bilateral hands and arms condition is permanent and total. If it is, claimant is entitled to permanent total disability benefits. If not, she is merely entitled to functional disability compensation commencing upon the conclusion of her healing period.

Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 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.

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

Although claimant is closer to a normal retirement age than younger workers, proximity to retirement cannot be considered in assessing the extent of industrial disability. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). However, this agency does consider voluntary retirement or withdrawal from the work force unrelated to the injury. Copeland v. Boones Book and Bible Store, File No. 1059319 (App. November 6, 1997). Loss of earning capacity due to voluntary choice or lack of motivation is not compensable. Id.

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

Having found that Ms. Kurdic is permanently and totally disabled, I conclude that she is entitled to permanent total disability benefits commencing from the date of her injury forward. Defendant is entitled to a credit for all benefits paid, including periods of time when claimant was working.

The next issue is alternate medical care.

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

[T]he employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

[T]he words "reasonable" and "adequate" appear to describe the same standard.

[The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

The claimant seeks medical treatment for her mental health conditions which she developed following her work injury. The records in this case support a finding that claimant has experienced some depression since her work injury which is causally connected to her work injury. (Jt. Ex. 6) I find that claimant is entitled to ongoing reasonable and necessary medical treatment to cope with her mental health symptoms.

ORDER

THEREFORE IT IS ORDERED:

Defendant shall pay permanent total disability benefits at the rate of four hundred fifty-six and 69/100 (\$456.69) per week commencing from the date of injury.

Defendant shall pay accrued weekly benefits in a lump sum.

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 be given credit for the weeks previously paid. Defendant shall be given a credit for the weeks claimant worked following the injury.

Defendant shall authorize Dr. Doumanian for mental health treatment.

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

Costs are taxed to defendant.

Signed and filed this 30th day of August, 2019.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Delivered by WCES to all parties of record.