BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROSALIA CHAVEZ AMAYA, Claimant, vs. UNIVERSITY OF IOWA HOSPITALS AND CLINICS, STATE OF IOWA Employer, Self-Insured, Defendant.	File No. 20006866.02 ARBITRATION DECISION Headnotes: 1402.20, 2502

STATEMENT OF THE CASE

Claimant, Rosalia Chavez Amaya, filed a petition for arbitration against University of Iowa Hospitals and Clinics (UIHC), a self-insured employer. The hearing occurred before the undersigned on June 15, 2021. This case was scheduled to be an in-person hearing occurring in Des Moines, Iowa. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall.

The parties filed a hearing report at the commencement of the hearing. In 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 bound by their stipulations.

The evidentiary record consists of Joint Exhibits 1 through 5 and Claimant's Exhibits 1 through 13. Claimant testified on her own behalf with the assistance of an interpreter. Defendant did not call any witnesses. The evidentiary record closed at the conclusion of the evidentiary hearing on June 15, 2021. The case was considered fully submitted upon submission of post-hearing briefs on July 12, 2021.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury that arose out of and in the course of her employment with University of Iowa Hospitals and Clinics on April 23, 2020;

2. Whether the alleged injury caused temporary disability and, if so, the extent of claimant's entitlement to temporary disability or healing period benefits;

3. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits;

4. Whether claimant is entitled to an award of the past medical expenses contained in Claimant's Exhibit 5;

5. Whether claimant is entitled to reimbursement of an independent medical evaluation fee pursuant to Iowa Code section 85.39;

6. Whether claimant is entitled to alternate care under Iowa Code section 85.27;

7. Whether defendant is entitled to credit under Iowa Code section 85.38(2) for payment of medical expenses;

8. Whether costs should be assessed against either party, and, if so, in what amount.

FINDINGS OF FACT

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

Rosalia Chavez Amaya, a certified nursing assistant, asserts she sustained an injury to her neck, right shoulder, and right upper extremity on April 23, 2020. More specifically, Ms. Chavez asserts she sustained the injuries while she was assisting a co-worker in lifting an obese patient in order to reposition her to the middle of her bed. (Hearing Transcript, page 23) In the process of lifting the patient, Ms. Chavez heard a cracking noise in her neck and experienced immediate pain. (Id.) From there, Ms. Chavez assisted the same co-worker with moving the patient from her bed to a wheelchair. (Hr. Tr., pp. 23-24) When Ms. Chavez attempted to lift the patient's feet onto the wheelchair's base, she felt pain from the right side of her neck all the way down through her shoulder and arm. (Hr. Tr., p. 24)

Ms. Chavez did not report the injury to her employer until approximately May 25, 2020. (Ex. 6, p. 34; see Hr. Tr., p. 33) Ms. Chavez did not request or seek immediate medical attention for her alleged conditions. She did, however, present for medical treatment due to other ailments. In total, Ms. Chavez presented to five (5) different medical appointments before finally discussing a work-related injury on May 22, 2020.

On May 2, 2020, Ms. Chavez presented to UIHC with complaints of nausea, headache, vomiting, and some myalgia in the lower extremities. (JE1, p. 17) She did not report the alleged work injury or any complaints in her neck, right shoulder, or right upper extremity.

Ms. Chavez first reported symptoms in her right shoulder, elbow, and wrist on May 4, 2020. (JE1, p. 22) The record provides:

> Patient notes the right shoulder pain is chronic and started 3 years ago when she was working as [a housekeeper]. She notes after switching to nursing assistant job her right shoulder pain improved. She did do physical therapy in the past which helped. She notes the right shoulder pain is back and radiates into her right neck (trapezius muscle).

(JE1, p. 23) When speaking with Courtney Carr, PA-C, Ms. Chavez relayed that the right elbow pain was "new" and "started this past week." (Id.) According to Ms. Chavez, the new right elbow pain radiated into her forearm and caused intermittent tingling/numbness in the thumb, index finger, and middle finger. (Id.) Ms. Chavez also reported that her hand and wrist felt weak, secondary to pain, and she was having to change the way she opened doors and pushed objects at work. (Id.) On examination, Ms. Chavez exhibited tenderness to palpation over the right trapezius muscle from the insertion on the back of the neck all the way down the right side of the back. (JE1, p. 25) She also demonstrated a positive Tinel's sign on the right. (Id.)

Diagnostic imaging revealed no abnormalities in the right shoulder or elbow. (See JE1, p. 26) Ms. Carr diagnosed right elbow pain and chronic right shoulder pain. (JE1, p. 27) She opined, "Patient's pain sounds like an overuse injury due to work duties related to nursing assistant work[.]" (JE1, p. 27) Ms. Chavez was instructed to wear a tennis elbow brace at work, and a carpal tunnel brace at night. (Id.) She was taken off work from May 4, 2020, through May 10, 2020. (Id.)

Around this period of time, Ms. Chavez asserts she told her supervisor, Austin, that she was concerned about the pain she was experiencing in her hand. (Hr. Tr., p. 25) According to a letter from claimant's counsel, Ms. Chavez formally reported her carpal tunnel symptoms in her right hand as a work injury on May 4, 2020. (Ex. 1, p. 2; see Hr. Tr., pp. 33-34) The summary provides that Ms. Chavez developed pain in her right elbow, wrist, and hand as a result of her work activities. (See Ex. 2, p. 9)

On May 6, 2020, Ms. Chavez was examined for nausea and abdominal pain. (JE1, p. 29) She did not report the alleged work injury or any complaints in her neck, right shoulder, or right upper extremity at this appointment; however, Ms. Chavez's chronic right shoulder pain is noted under "History of Present Illness." (Id.)

Ms. Chavez returned to UIHC on May 18, 2020, with a chief complaint of right hand pain that went up her arm. (JE1, p. 33) The record provides,

> Today on interview, Patient presents with continued right shoulder pain. States this started 4 months ago with pain in her hands and tingling. She said she previously was sent to physical therapy which was helpful for her and reduced the pain from 6 out of 10 to 2 out of 10 but when she stopped physical therapy it came back. Notes tingling in her fingers, wrist, and elbow with a little bit of radiation into the upper arm.

(Id.)

Interestingly, the May 18, 2020, record also provides that Ms. Chavez, "brought some paperwork today from occupational health" which included, "an order for an MRI of the cervical spine for further evaluation." (Id.) The evidentiary record does not contain any medical records from occupational health. It's possible the medical records the physician is referring to come from the May 4, 2020, appointment with Ms. Carr, however, that appointment was with Family Medicine, and Ms. Carr did not order an MRI of the cervical spine. Rather, Ms. Carr ordered x-rays of the right shoulder and arm, and provided she would consider ordering an EMG for carpal tunnel at Ms. Chavez's next appointment. (JE1, p. 27) It is also possible, and more likely, that the medical records the physician is referring to stem from the previously alleged May 4, 2020, injury. If this is the case, it is concerning that the medical records were excluded from the evidentiary record.

The May 18, 2020, record concludes with an assessment of Ms. Chavez's right shoulder, chest, and right lower quadrant pain. (JE1, p. 37) Kelly Krei, D.O. reiterated that Ms. Chavez has a longstanding history of right shoulder pain over the course of three years. It is noted that the pain worsened acutely over the prior 4 months and then again over the preceding week. (Id.) Dr. Krei opined Ms. Chavez's symptoms were most consistent with cervical spine etiology. (Id.) More specifically, Dr. Krei opined Ms. Chavez's pain was most consistent with nerve pain. (Id.)

On May 21, 2020, Ms. Chavez presented to the emergency room at Mercy Hospital with complaints of headache and right upper extremity pain. (JE2, p. 114) Unfortunately, the discharge instructions are the only page of the medical record that is in evidence. (See Id.) According to the record, the attending physician was concerned that Ms. Chavez's right upper extremity pain stemmed from a pinched nerve in the neck. The attending physician told Ms. Chavez that she would likely need to obtain an MRI and undergo an evaluation with an orthopedic surgeon. She then instructed Ms. Chavez to follow-up with Steindler Orthopedic Clinic. (Id.)

Following this recommendation for an MRI and referral to an orthopedic surgeon, Ms. Chavez presented to Ashley Reed, PA-C, of Steindler Orthopedic Clinic, on May 22, 2020. (JE3, p. 115) This is the first instance in which Ms. Chavez described the alleged work injury to a physician. She relayed that she was lifting a patient when she felt pain on the right side of her neck, which radiated distally to her right upper extremity and into her fingers. (Id.) X-rays obtained on the date of the examination revealed good alignment with well-preserved disc spacing throughout the cervical spine. On examination, there was no cervical spine tenderness to palpation. Ms. Chavez demonstrated generalized weakness on the right, more severe with her triceps and wrist flexors. (JE3, p. 116) Ms. Reed diagnosed cervicalgia with right-sided radiculopathy and ordered an MRI of the cervical spine. (Id.)

The May 27, 2020, MRI revealed some mild disc degenerative changes at the C5-6 and C6-7 levels. There was no spinal canal stenosis or foraminal narrowing at any level. (JE4, p. 145; see JE3, p. 119)

After analyzing the diagnostic imaging, Ms. Reed opined it did not appear that Ms. Chavez had any pathologic neurologic impingement. (JE3, p. 119) As such, Ms.

Reed ordered a cervical epidural steroid injection for pain relief. (Id.) She further recommended that Ms. Chavez utilize formal physical or occupational therapy to work on her right upper extremity strength. (Id.)

In the last week of May 2020, Dr. Abou-Arab filled out paperwork for Ms. Chavez regarding FMLA. (See JE1, p. 42)

Ms. Chavez presented to family medicine physician, Emad Abou-Arab, M.D., on June 1, 2020, for abdominal pain. (JE1, p. 38) Dr. Abou-Arab noted that Ms. Chavez had been experiencing numerous medical issues over the past few weeks to months. (Id.) While she primarily presented for abdominal pain, "Her other main concern today is that she has missed work for the past month after a possible injury while at work." (Id.) After examining Ms. Chavez, Dr. Abou-Arab assessed pelvic pain, dysuria, fibromyalgia, and chronic neck pain. (JE1, p. 42) It is difficult to conclude whether the "possible injury while at work" refers to the alleged acute injury on April 23, 2020, the May 4, 2020, repetitive use injury, or both. Logically, it would make sense for the "possible injury" to be a reference to the May 4, 2020, injury, as Ms. Chavez presented to Dr. Abou-Arab with concerns about how much work she had missed over the past month, and May 4, 2020, was the date she was taken off work after being assessed with an overuse injury.

The C6-C7 interlaminar epidural steroid injection (ESI) was administered on June 11, 2020. (See JE3, p. 121) The ESI provided relief of Ms. Chavez's neck pain, however, she continued to experience right upper extremity pain and discomfort in her right anterior shoulder, along the bicipital region, in her elbow and forearm, and into all of her fingers. (JE3, p. 121)

Ms. Chavez followed-up with Dr. Abou-Arab on July 6, 2020. (JE1, p. 43) Dr. Abou-Arab's notes provide that Ms. Chavez had returned for a follow-up on her chronic musculoskeletal pain in the hip, neck, and right arm. (Id.) The medical record also provides that Ms. Chavez was starting to experience pain on the left side of her neck as well. (Id.) Despite the ESI, Ms. Chavez continued to describe pain and weakness in her right arm. (Id.) On examination, Ms. Chavez demonstrated weakness in the right arm when compared to the left. (JE1, p. 46) Dr. Abou-Arab assessed right hand weakness, chronic neck pain, and chronic musculoskeletal pain. (Id.) He ordered an EMG and opined Ms. Chavez also may be suffering from chronic musculoskeletal pain or fibromyalgia. (JE1, pp. 46-47)

On July 27, 2020, Ms. Chavez returned to Dr. Abou-Arab's office for a follow-up appointment regarding the weakness in her right hand. Despite having knowledge of an alleged work injury, the July 27, 2020, medical record is the first instance in which Dr. Abou-Arab documented the alleged April 23, 2020, acute work injury. (JE1, p. 52) I am troubled by the initial medical record's lack of any history of injury, coupled by the changing history of how the injury occurred (acute versus cumulative). Dr. Abou-Arab interpreted the May 27, 2020, MRI as showing degenerative disease at C5-7. (JE1, p. 55) Again, Dr. Abou-Arab opined that Ms. Chavez may be suffering from chronic musculoskeletal pain or fibromyalgia. (Id.)

Eventually, Ms. Chavez was referred to Fred Dery, M.D. for a pain management consultation. (See JE3, p. 123) Dr. Dery is a pain management and physical medicine and rehabilitation specialist with Steindler Orthopedics. According to Dr. Dery's medical notes from the August 12, 2020, appointment, Ms. Chavez relayed that the ESI resolved her arm pain, but she continued to experience pain in her right trapezius, anterolateral neck, and anterior glenohumeral region without obvious radicular pain. (JE3, p. 124) On examination, Ms. Chavez demonstrated painless range of motion in the cervical spine. (Id.) Her grip strength was limited due to poor participation, bilaterally. (Id.)

Prior to the August 12, 2020, evaluation, Dr. Dery analyzed Ms. Chavez's diagnostic imaging and opined the cervical MRI showed minimal degenerative changes in the neck, and no evidence of stenosis or disc herniation. (JE3, p. 125) Dr. Dery assessed right trapezius pain that was myofascial in nature, and opined there was no evidence of shoulder or cervical pathology. (Id.) Dr. Dery prescribed Voltaren gel and acupuncture treatments. He also ordered an EMG of the right upper extremity, and restricted Ms. Chavez from lifting anything greater than 10 pounds with her right arm. (Id.)

Initially, Ms. Chavez disagreed with Dr. Dery's assessment and declined his recommendations as she believed her pain was coming from her spine. (See Id.) However, after speaking with Dr. Dery's medical assistant in Spanish, Ms. Chavez determined she misunderstood Dr. Dery's assessment. According to Ms. Chavez, her son did not do a good job of translating for her. (JE3, p. 126) After a detailed discussion with Dr. Dery's medical assistant, Ms. Chavez accepted Dr. Dery's recommendations. (Id.)

The EMG of the right upper extremity returned unremarkable for evidence of radicular signs. (See JE3, p. 128)

On August 26, 2020, Ms. Chavez presented to Hussain Banu, M.D. of UIHC, reporting low back pain and left-sided neck pain. (JE1, p. 56)

Ms. Chavez returned to Dr. Dery on September 29, 2020, and reported that she was doing better until approximately one week prior when some of her pain returned. (JE3, p. 127) She relayed that the vast majority of her pain was located in her neck, without radiation. (JE3, p. 127) She also complained of low back pain. (JE3, p. 128) On examination, Ms. Chavez demonstrated predominantly left-sided trapezius myofascial pain with palpation. (Id.) Ms. Chavez requested, and Dr. Dery approved, a renewed prescription for physical therapy. (Id.) After reviewing the EMG, Dr. Dery diagnosed myofascial neck pain and released Ms. Chavez to return to work without restrictions on September 30, 2020. (Id.)

Unfortunately, Ms. Chavez was not able to pursue the treatment recommendations provided by Dr. Dery in a timely fashion as her family contracted COVID-19 and had to quarantine. (See JE3, p. 130)

On October 12, 2020, Ms. Chavez presented to UIHC and reported some back and neck pain, as well as anterior neck discomfort, since returning to full duty work. (JE1, p. 67)

By the time Ms. Chavez returned to Dr. Dery's office on December 2, 2020, the tingling in her right upper extremity had returned. (JE3, p. 130) Ms. Chavez requested and received a repeat epidural steroid injection. (JE3, p. 131) Dr. Dery continued to recommend physical therapy and acupuncture for her neck and right upper extremity pain. (Id.) He ended his notes by reporting that outside of repeat injections, he had nothing else to offer. (Id.) As such, Dr. Dery opined Ms. Chavez would be at maximum medical improvement once she completed physical therapy and acupuncture treatments. (Id.)

On December 22, 2020, Ms. Chavez was seen for back pain at UIHC. (JE1, p. 96) More specifically, Ms. Chavez complained of thoracic and low back pain. (Id.) She reported the back pain was recurrent, and this particular episode started one to four weeks prior. According to Ms. Chavez, the pain radiated into her shoulders and arms. (Id.) She also reported progressively worsening numbness in the groin and thighs, as well as weakness. On examination, her neck had normal range of motion and was supple. (JE1, p. 99) Due to the possibility of cauda equina, Ms. Chavez was transferred to the emergency room via EMS. (JE1, pp. 99-100) X-rays of the thoracic and lumbar spine returned normal. (See Ex. 2, p. 14)

On December 28, 2020, Ms. Chavez told Dr. Abou-Arab that she was doing well with her right shoulder and neck pain; however, she had recently experienced new, mid-thoracic paraspinal pain. (JE1, pp. 108-109; Hr. Tr., p. 39)

Ms. Chavez returned for a follow-up appointment with Dr. Dery on January 6, 2021. (JE3, p. 133) On interview, Ms. Chavez reported that she was hurting all over her body, "from head to toe." (Id.) She described muscle aches and feeling as though her arms were asleep. She further reported that she was "essentially incapacitated" and needed to stay in bed when she was not at work. (Id.) She also relayed that her most recent injection did not provide any relief. (Id.) On examination, Ms. Chavez demonstrated "diffuse patchy tenderness without any focal active trigger points throughout the cervical and thoracic region" and normal motor function in both upper extremities. (JE3, p. 134) Dr. Dery opined Ms. Chavez's diffuse pain was most consistent with fibromyalgia. (Id.) Given this diagnosis, Dr. Dery suggested a treatment plan consisting of physical therapy, treatment with a pain psychologist, and an oral antidepressant. Ms. Chavez was amenable to physical therapy and taking antidepressant medication. (Id.) Dr. Dery opined that he did not see anything concerning by history, physical examination, or imaging to suggest that Ms. Chavez had any nefarious pathology going on. (Id.)

Although she was initially against treating with a pain psychologist, it appears Ms. Chavez eventually changed her mind. (See JE3, p. 138; Hr. Tr., p. 27) Dr. Dery referred Ms. Chavez for an initial consultation with Barbara O'Rourke, Ph.D. (JE3, p. 138; see JE3, p. 140) The evidentiary record is void of any medical notes from Dr. O'Rourke.

Ms. Chavez returned to Dr. Dery on May 6, 2021, and told him for the first time that she had a pending workers' compensation case and that his fibromyalgia assessment was not helping her case. (JE3, p. 140) Dr. Dery's notes provide, "She did

not ask that we change anything about the diagnosis but wanted us to know." (Id.) Later in his report, Dr. Dery assessed Ms. Chavez with diffuse symptoms indicative of fibromyalgia and explained that he did not feel such a diagnosis had anything to do with her workers' compensation claim. (JE3, pp. 141, 142)

As referenced throughout the above medical summary, this is not the first time Ms. Chavez has complained of symptoms in her neck and right upper extremity.

On April 13, 2020, Ms. Chavez reported that the joints in her hands felt inflamed. (JE1, p. 1) She also reported tingling in her hands. (Id.) On April 14, 2020, Ms. Chavez endorsed intermittent paresthesia of her left arm. (JE1, p. 4)

Medical records indicate that when Ms. Chavez presented to UIHC on May 4, 2020, she reported chronic right shoulder pain, with radiating pain in the arm and wrist. It is noted that the pain started three years ago when she was working in housekeeping. (JE1, p. 23) The record also notes that Ms. Chavez's right shoulder pain improved when she made the transition to nursing assistant. (Id.)

When Ms. Chavez was seen on May 18, 2020, she reported right shoulder pain that started four months prior with pain and tingling in her hands. She stated she previously went to physical therapy, which was helpful, but her symptoms returned after the physical therapy ended. The medical record also provides Ms. Chavez's right shoulder pain is a longstanding issue that has occurred over the course of three years, and "it worsened acutely over the last 4 months and then again over the last week." (JE1, pp. 33, 37)

Defendant's post-hearing brief mentions that Ms. Chavez's pre-existing medical records reference a diagnosis of cervical dysplasia and "cervical procedures" which occurred in 2003. (JE1, p. 2) It is important to note that cervical dysplasia is not a condition of the cervical spine. Similarly, the full text of the surgical history reveals that Ms. Chavez had, "Colposcopy/Cervical Procedures 2003." Such procedures would not involve the cervical spine.

At this juncture, it is worth noting that the evidentiary record does not contain any physical therapy records relating to Ms. Chavez's pre-existing or current condition. However, according to claimant's counsel's letter to Dr. Bansal and Dr. Bansal's medical records summary, Ms. Chavez started physical therapy at UIHC on November 26, 2019, for her low back, left knee, and right elbow.[1] (See Ex. 1, p. 1; Ex. 2, p. 15) Similarly, according to Exhibit 5, Ms. Chavez consistently presented for physical therapy at Select Physical Therapy from May 21, 2020, through April 29, 2021. (See Ex. 5, pp. 27-29) Ms. Chavez testified that physical therapy has helped her condition. As an example, Ms. Chavez testified she can now move her hand, which she could not do prior to physical therapy. (Hr. Tr., p. 41)

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[1] The Third Party Administrator denied Ms. Chavez's claim in a letter dated June 11, 2020. The letter asserts Ms. Chavez was aware of her condition and its potential relationship to work prior to November 26, 2019. (Ex. 7, p. 37)

Similarly, the evidentiary record does not contain the pre-existing medical records referenced by claimant's counsel in a letter to Dr. Bansal, and by defendant in its denial letter. (Ex. 1, p. 1; Ex. 7, p. 37)

Ms. Chavez continued working for UIHC after the alleged April 23, 2020, injury. She was off work and recovering between May 4, 2020, and July 29, 2020. (Hearing Report) Since her claim was ultimately denied by UIHC, Ms. Chavez had to use vacation and sick time for her absence. (See Hr. Tr., p. 37) She returned to full duty work as a nursing assistant on September 30, 2020; however, she eventually transferred to a less physically demanding position in the visual monitoring department. (See JE1, p. 112; JE3, p. 128)

Ms. Chavez sought an independent medical evaluation, performed by Sunil Bansal, M.D. Dr. Bansal performed the evaluation on January 29, 2021. (Ex. 2, p. 1) Dr. Bansal opined Ms. Chavez's constellation of right shoulder, right arm, neck, trapezius, and shoulder blade pain is related to a cervical discogenic problem. (Ex. 2, p. 17) Citing to medical literature, Dr. Bansal explained that inflammation from discogenic disease can manifest clinically to the surrounding musculature, including the trapezius. (Ex. 2, p. 18) It is worth noting that unlike Ms. Chavez, all patients in the study cited had nerve root compression. While the May 27, 2020, MRI revealed small paracentral disc protrusions at C5-6 and C6-7, there was no spinal canal stenosis or foraminal narrowing. (JE4, p. 145) Moreover, both Dr. Abou-Arab and Dr. Dery noted that the August, 2020 EMG was normal. (See JE3, p. 128; JE1, p. 61)

Nevertheless, Dr. Bansal diagnosed C5-C6 and C6-C7 disc bulging and opined Ms. Chavez's pathology is to the cervical spine. (Ex. 2, p. 19) He placed Ms. Chavez at maximum medical improvement as of January 29, 2021, and assessed permanent impairment. (Ex. 2, p. 19) Based on Ms. Chavez's radicular complaints, guarding, and loss of range of motion, Dr. Bansal placed Ms. Chavez in DRE Category II and assigned 5 percent whole person impairment. (Ex. 2, p. 20) With respect to restrictions, Dr. Bansal advised against lifting anything weighing greater than 25 pounds. He further advised against lifting greater than 10 pounds overhead. (Ex. 2, p. 19) Lastly, he recommended she avoid work or activities that require repeated neck motion, or that place her neck in a posturally flexed position for any appreciable duration of time. (Id.)

Dr. Bansal's IME report is concerning for several reasons. First, it does not appear as though Dr. Bansal had a complete medical history. The medical records summary contained in Dr. Bansal's report does not provide a summary of any medical records prior to May 22, 2020. (See Ex. 2, p. 9) The summary does not include the May 4, 2020, or May 18, 2020, medical records from UIHC wherein Ms. Chavez provided that her right shoulder pain began 3-4 years prior, and that she underwent physical therapy to address the same. (See Ex. 2, p. 12)

The undersigned is cognizant of the fact claimant's counsel documented the medical records that were produced to Dr. Bansal for review. According to the January 27, 2021, letter, Dr. Bansal was provided, "Medical Records from University of Iowa Hospitals and Clinics (5/4/20-7/27/20)." (Ex. 1, p. 3) Presumably, the May 18, 2020, medical records referenced above were included in this set of records. That being said,

some key medical records, such as the May 4, 2020, and May 18, 2020, medical records from UIHC, are not referenced in his report. The records are not included in the medical records summary and Dr. Bansal never discusses Ms. Chavez's 3-year history of chronic right shoulder pain in the IME report.

Dr. Bansal's condensed summary of Ms. Chavez's treatment is problematic for similar reasons. The summary provides, "Ms. Chavez was evaluated by a physician at the University, and was sent to physical therapy. Her pain continued, and she was referred to an orthopedist." (Ex. 2, p. 15) While it is true that Ms. Chavez was evaluated by physicians at UIHC shortly after the alleged work injury, those physicians were not evaluating and treating Ms. Chavez for the alleged workers' compensation injury. Dr. Bansal's understanding of the same appears skewed by the fact he was not privy to medical records from UIHC predating July 6, 2020. Moreover, the medical team at UIHC did not refer Ms. Chavez to an orthopedic surgeon as implied by Dr. Bansal's summary. Rather, an attending physician in the emergency department at Mercy Hospital referred her for an orthopedic evaluation when she suspected Ms. Chavez's condition could be the result of a pinched nerve. (JE2, p. 114) Lastly, Dr. Bansal's summary inaccurately provides that Dr. Dery has recommended no further treatment. The most recent medical record from Dr. Dery, available to Dr. Bansal at the time, was dated January 6, 2021. In the January 6, 2021, medical record, Dr. Dery recommended physical therapy, pain psychology, and an oral antidepressant. (JE3, p. 134) Again, Dr. Bansal's understanding of Ms. Chavez's medical history is inaccurate or incomplete.

From my review of Dr. Bansal's summary and of the medical evidence he was provided, many of the records that would be adverse to Ms. Chavez or suggest potential other causes of her symptoms were not provided, were not reviewed, or at least were not deemed significant enough for Dr. Bansal to summarize. This is concerning and damages the credibility of Dr. Bansal's opinions in this case.

Perhaps most concerning is the lack of analysis provided by Dr. Bansal with respect to causation. It is possible the lack of analysis is due to an inaccurate belief that causation was not a disputed issue in this case. The explanatory paragraph Dr. Bansal pulled from counsel's letter essentially asked Dr. Bansal to assume causation had already been established. The paragraph states, "On April 23, 2020, Ms. Chavez sustained an injury to her neck, right shoulder, and right upper extremity arising out of and in the course of her employment with the University of Iowa Hospitals and Clinics." After the explanatory paragraph, Dr. Bansal outlined the first question: "Did Ms. Chavez sustain an injury on or about April 23, 2020, as a result of her work activities with the University of Iowa Hospital and Clinics?" Dr. Bansal simply answered, "Yes." (Ex. 2, p. 17)

While later responses were comparatively more thorough, I did not find them to be any more helpful. Instead of analyzing how the alleged injury caused the bulging discs at C5-6 and C6-7, Dr. Bansal spent the majority of his report attempting to explain how the symptoms in Ms. Chavez's shoulder could be attributed to a cervical injury.

Dr. Bansal opined the diagnosis of bulging discs at C5-C6 and C6-C7 is consistent with the mechanism of injury. He explained, "Essentially, she had an acute

mechanical load to her neck while she was lifting a patient to boost her up in bed." This is the extent of Dr. Bansal's causation analysis. He goes on to quote the American Academy of Orthopedic Surgeons on risk factors for disc herniation, asserting, "Many jobs are physically demanding. Some require constant lifting, pulling, bending, or twisting." The citation provided by Dr. Bansal leads to an electronic article, titled, "Herniated Disk in the Lower Back."[2] While one can reasonably assume the same risk factors apply whether a herniated disk is in the lumbar, thoracic, or cervical spine, the lack of attention to detail throughout the report detracts from the overall credibility afforded to Dr. Bansal in this instance. The excerpt relied upon by Dr. Bansal does not offer any additional insight into the diagnosis being consistent with the mechanism of injury. Rather, the excerpt simply establishes that disc herniation can occur with physically demanding work.

The need for a thorough explanation is particularly necessary in cases like this where it is disputed whether the injury arose out of and in the course of employment. The need for a thorough explanation is heightened in this instance as Dr. Bansal's report describes two distinctly different mechanisms of injury. At one point in his report, Dr. Bansal describes Ms. Chavez's injury as follows, "She was helping with pushing a patient up in bed, and felt a pop in her right shoulder." (Ex. 2, p. 15) Later in his report, Dr. Bansal provides, "Essentially, she had an acute mechanical load to her neck while she was lifting a patient to boost her up in bed." (Ex. 2, p. 18) It is unclear whether Dr. Bansal believed Ms. Chavez's injury was a result of pushing a patient or lifting a patient. It is similarly unclear whether Dr. Bansal knew how Ms. Chavez pushed or lifted the patient. It is reasonable to assume the mechanical load shifts depending on whether an individual is pushing, pulling, or lifting. Similarly, it is reasonable to assume a number of factors can impact the location of the mechanical load, such as how the individual is pushing, pulling, or lifting, i.e., from waist level, shoulder level, or overhead.

Lastly, Dr. Bansal's conclusion that Ms. Chavez's symptoms stem from bulging discs at C5-C6 and C6-C7 is at odds with the diagnostic imaging and the medical opinions of the physicians who regularly treated Ms. Chavez. The May 27, 2020, MRI revealed no spinal canal stenosis or foraminal narrowing at any level. (JE4, p. 145) Ms. Reed opined that based on the MRI findings there was no pathologic neurologic impingement. (JE3, p. 119) Following his initial evaluation, Dr. Dery found no evidence of shoulder or cervical pathology. (JE3, p. 125) He further opined Ms. Chavez's MRI showed minimal degenerative change throughout the neck, with no evidence of stenosis or disc herniation. (Id.) He believed her pain was myofascial in nature. (Id.) Dr. Abou-Arab reviewed the MRI and found no spinal canal stenosis. (JE1, pp. 38, 42) Ms. Chavez's EMG also returned unremarkable. (See JE1, p. 61) Dr. Bansal's report does not address the diagnosis of fibromyalgia made by Dr. Abou-Arab and Dr. Dery. The report similarly fails to address Ms. Chavez's pre-existing right upper extremity complaints, and the potential diagnosis and recommendation for further exploration of carpal tunnel syndrome. (See JE1, pp. 27, 42, 46-47; JE3, p. 134)

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[2] http://orthoinfo.aaos.org/topic.cfm?topic=A00534

Having considered the medical opinions in the evidentiary record, I find the opinions of Dr. Dery and Ms. Reed to be most convincing and credible. Ms. Chavez selected the medical staff at Steindler Orthopedic. Dr. Dery and Ms. Reed largely provided care and offered their medical opinions without knowledge of Ms. Chavez's workers' compensation claim. Neither party sought out Dr. Dery's causation opinion. In fact, Dr. Dery only provided a causation opinion once Ms. Chavez notified him of her pending workers' compensation claim. Dr. Dery's diagnosis of fibromyalgia is consistent with the opinions of Ms. Chavez's personal physician, Dr. Abou-Arab. Dr. Dery's assessment of Ms. Chavez's diagnostic imaging is consistent with the findings of Ms. Reed and Dr. Abou-Arab.

In contrast, Dr. Bansal was hired as a medical expert by claimant's counsel after Dr. Dery had released Ms. Chavez to return to work and provided a diagnosis of fibromyalgia. Dr. Bansal has only examined Ms. Chavez on one occasion. As previously discussed, I did not find Dr. Bansal's causation opinion to be particularly detailed or convincing. Moreover, Dr. Bansal operated with an incomplete medical history and provided no discussion of the complicating factors in this case, including pre-existing conditions, inconsistent reporting, and the diagnoses of carpal tunnel syndrome and fibromyalgia as alternative explanations for Ms. Chavez's presentation. For these reasons, I reject the opinions of Dr. Bansal in this case.

Ultimately, this case comes down to the credibility of Ms. Chavez's testimony and how the injury allegedly occurred. Ms. Chavez's testimony at hearing is not corroborated by the contemporaneous medical records. The initial medical records do not refer to an acute injury. In fact, the alleged April 23, 2020, injury is not discussed in any medical record until after the emergency department at Mercy Hospital referred Ms. Chavez for a surgical evaluation at Steindler Orthopedic on May 21, 2020. Similarly, the alleged April 23, 2020, injury was not formally reported to the employer until May 25, 2020. Ms. Chavez did not provide an explanation as to why she did not report or describe the alleged April 23, 2020, injury until at least May 22, 2020.

I acknowledge there are medical notes in the evidentiary record that could support a finding that an acute work injury occurred on April 23, 2020. One such note is the May 4, 2020, UIHC medical record. The record provides that Ms. Chavez's right shoulder pain was "back" and radiating into her trapezius muscle. She also reported a "new" right elbow pain that started the week prior. Given this description, it could reasonably be argued that the pain Ms. Chavez was describing began on April 23, 2020. That being said, there is still the question of what caused the symptoms to occur, and the May 4, 2020, medical note does not point to an acute work injury. Ms. Chavez did not report an acute injury to the medical staff or correct them when they relayed their impression that her symptoms were the result of an overuse injury due to her work activities. She did, however, report the pain in her right elbow, wrist, and hand as a repetitive use work injury to defendant on the same day. (See Ex. 2, p. 9; Ex. 1, p. 2)

At hearing, Ms. Chavez testified that she reported the April 23, 2020, incident to defendant approximately eight days after the date of injury. (Hr. Tr., p. 25) Ms. Chavez's testimony is not supported by the evidentiary record as a whole. Rather, the contemporaneous medical records, Ms. Chavez's answers to interrogatories, and the

April 23, 2020, injury report, dated, May 25, 2020, support a finding that Ms. Chavez only reported her symptoms, not the alleged acute injury, to her employer approximately eight days after April 23, 2020.

According to the medical records in evidence, Ms. Chavez reported symptoms in her right shoulder and arm to at least three different medical professionals between April 23, 2020, and May 22, 2020; however, she never attributed her symptoms to an acute injury. (See JE1, pp. 22-28, 32-38; JE2) Instead, she related her symptoms to her past work as a housekeeper, and eventually her repeated handling of materials while restocking rooms. (See Ex. 2, p. 9) It is difficult to understand how Ms. Chavez would fail to mention such a seemingly significant event to multiple medical professionals. It is similarly difficult to accept Ms. Chavez's testimony that she reported the April 23, 2020, work injury to her employer approximately eight days after the injury occurred, but failed to report the injury to any medical professionals between the date of injury and May 22, 2020.

I acknowledge the potential language barrier between Ms. Chavez and her physicians; however, it does not appear as though any potential language barrier played a significant role in the reporting of Ms. Chavez's condition/injury. At hearing, Ms. Chavez testified she can read, write, and speak the English language "a little bit." (Hr. Tr., p. 17) Ms. Chavez further testified that there were medical appointments where she did not have an interpreter present. (Hr. Tr., p. 40) However, she also testified that her primary physician speaks Spanish, and she would sometimes have her son interpret for her. (See id.) There is also evidence that Ms. Chavez sometimes declined interpretation services. (See JE1, p. 22) While I acknowledge the impact a language barrier can have, Ms. Chavez has not asserted that she reported her injury to the medical professionals and the medical professionals failed to document the same. Moreover, the medical records in evidence are fairly detailed and consistent. It is hard to imagine there was a significant language barrier given such consistent reporting.

The April 23, 2020, injury report, dated May 25, 2020, similarly supports a finding that Ms. Chavez reported her symptoms, but not the alleged acute injury, to her employer approximately eight days after April 23, 2020. (Ex. 6) The injury report notes that Ms. Chavez spoke with her supervisor on April 30, 2020, and told him of the symptoms she was experiencing in her right shoulder, arm, and hand. (Ex. 6, p. 35) The report does not provide that Ms. Chavez told her supervisor of an acute injury occurring on April 23, 2020. (See Id.) According to Ms. Chavez, the supervisor recommended she have her own physician evaluate her condition. (Id.) The injury report further provides Ms. Chavez presented to her physician on May 4, 2020. (Id.) According to the evidentiary record, the only medical professional Ms. Chavez presented to on May 4, 2020, was Ms. Carr of UIHC Family Medicine. (JE1, p. 22) A complete summary of this medical record can be found on page 4 of this decision. Importantly, Ms. Chavez did not report an acute injury to Ms. Carr, and Ms. Carr assessed her with an overuse injury related to her work activities. (JE1, pp. 22, 27) It is difficult to believe Ms. Chavez reported the alleged acute injury to her employer on or about April 30, 2020, was told by her supervisor to present to her own physician for an

evaluation of said injury, and then failed to detail an acute injury when she presented to her physician of choice.

Further contradicting Ms. Chavez's testimony is the fact she formally reported the pain in her right elbow, wrist, and hand as a repetitive use work injury on May 4, 2020. (See Ex. 2, p. 9; Ex. 1, p. 2) She did not formally report the April 23, 2020, injury until May 25, 2020. Ms. Chavez provided no explanation as to why she chose to formally report the symptoms in her right elbow, wrist, and hand as a repetitive use injury on May 4, 2020, three weeks prior to formally reporting the alleged April 23, 2020, acute injury, on May 25, 2020.

While it is possible Ms. Chavez did not immediately connect her symptoms to the April 23, 2020, work injury, such an assertion contradicts Ms. Chavez's hearing testimony that she reported the April 23, 2020, incident to her employer approximately eight days after it happened. Given her statements on the symptoms she experienced on the date of injury and their impact on her functional abilities, it would be difficult to find Ms. Chavez did not immediately connect her symptoms to the alleged April 23, 2020, work injury. (See Ex. 9, pp. 46-47; Hr. Tr., pp. 23-24)

After comparing Ms. Chavez's testimony to the evidentiary record as a whole, I find that there are simply too many discrepancies to accept Ms. Chavez's testimony that she reported the alleged April 23, 2020, incident to her supervisor approximately eight days after the date of injury. Instead, I find Ms. Chavez did not report the alleged April 23, 2020, work injury to her employer until May 25, 2020.

As previously alluded to, the evidentiary record leaves much to be desired. It is concerning to the undersigned that the pre-existing medical records, physical therapy records, and the occupational health records mentioned in Joint Exhibit 1, page 33, are referenced throughout the evidentiary record, however, they were not submitted into evidence. It is equally as concerning that these seemingly relevant records were not provided to Dr. Bansal for review.

Given the two theories of injury initially asserted by Ms. Chavez, and the noted deficiencies in the evidentiary record, claimant needed to provide convincing and credible testimony to explain the actual cause or mechanism of injury. Similarly, given the lack of contemporaneous medical records detailing the mechanism of injury, Ms. Chavez needed to produce a medical opinion that clearly and convincingly addressed causation. It is possible Ms. Chavez sustained an injury on April 23, 2020. It is also possible the injury occurred as a result of Ms. Chavez's work activities on or about May 4, 2020, or the cumulative effect of her job duties over time. Of course, it is also possible this injury could be the result of pre-existing or degenerative conditions. Unfortunately, Ms. Chavez did not present sufficiently credible testimony and the evidentiary record does not make any of these possibilities more likely than the others.

Having accepted the opinions of Dr. Dery and Ms. Reed, I find that Ms. Chavez failed to carry her burden of proving that her neck, right shoulder, and right upper extremity injuries and related conditions are causally related to, or were materially and significantly aggravated by, her work activities at UIHC on April 23, 2020. Having reached this finding, I similarly find that none of the medical expenses sought by Ms.

Chavez are causally related to the alleged April 23, 2020, work injury, and Ms. Chavez has not proven she sustained temporary or permanent disability as a result of the alleged work injury on April 23, 2020.

With respect to Ms. Chavez's request for reimbursement of Dr. Bansal's independent medical evaluation, I find that Dr. Bansal is the only physician that rendered a permanent impairment rating in this case. I specifically find that defendant did not obtain a permanent impairment rating from a physician of their choosing prior to Dr. Bansal's record review and independent medical evaluation report being authored.

All other issues, including whether Ms. Chavez is entitled to alternate medical care pursuant to Iowa Code section 85.27, and whether defendant is entitled to credit under Iowa Code section 85.38(2) are moot.

CONCLUSIONS OF LAW

The initial disputed issue is whether claimant sustained an injury arising out of and in the course of her employment on April 23, 2020.

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" refer 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).

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).

In this case, I found inconsistencies between claimant's testimony and the contemporaneous medical records. I rejected Dr. Bansal's causation opinion and accepted the opinions of Dr. Dery and Ms. Reed as most convincing. Having accepted those opinions, I ultimately found that claimant failed to prove by a preponderance of the evidence that her work activities on April 23, 2020 caused, or materially aggravated, accelerated, or lit up her neck, shoulder, or upper extremity condition(s). Having found claimant failed to prove the necessary causation issues, I conclude that claimant failed to carry her burden of proof to establish a compensable work injury on April 23, 2020. I further conclude that claimant failed to establish her conditions and medical treatment are causally related to her employment activities at UIHC. Therefore, I conclude that claimant failed to establish entitlement to any weekly or medical benefits related to her alleged injuries.

The next disputed issue I must address is whether claimant is entitled to reimbursement of Dr. Bansal's independent medical evaluation fees pursuant to Iowa Code section 85.39. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

The Iowa Supreme Court has strictly interpreted the requirements of Iowa Code section 85.39. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015).

In this instance, claimant failed to establish that the defendant obtained a permanent impairment rating from a physician of its choosing before Dr. Bansal's evaluation. Therefore, I conclude that claimant failed to establish the necessary pre-

requisites to qualify for reimbursement of an evaluation pursuant to Iowa Code section 85.39. Claimant's request for reimbursement of Dr. Bansal's evaluation fee must be denied.

All other disputed issues are rendered moot by the above findings of fact and conclusions of law.

Lastly, claimant seeks assessment of her costs. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Claimant was not successful in this case. As such, I conclude it is not appropriate to assess claimant's costs. I conclude that all parties shall bear their own costs.

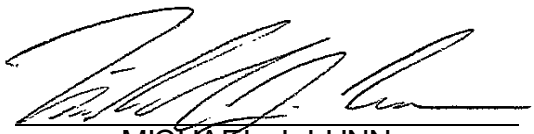
ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing.

Each party shall bear their own costs.

Signed and filed this ____11th____ day of February, 2022.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Gabriela Navarro (via WCES)

Amanda Rae Rutherford (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.