

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARGARET MACNISH,

Claimant,

vs.

CRST VAN EXPEDITED, INC.,

Employer,  
Self-Insured,  
Defendant.

File No. 5059211

ARBITRATION

DECISION

Head Note No.: 1100, 2502

**STATEMENT OF THE CASE**

Margaret MacNish, claimant, filed a petition in arbitration seeking workers' compensation benefits against CRST Van Expedited, Inc., a self-insured employer, for an alleged injury date of July 10, 2016.

This case was heard on July 26, 2019, in Cedar Rapids, Iowa, and considered fully submitted on September 13, 2019, upon the simultaneous filing briefs. The record consists of Joint Exhibits 1-13; Claimant's Exhibits 1-6; Defendants' Exhibits A-K, and the testimony of claimant, Deb Mentzer, and Jackie McFetridge.

**ISSUES**

1. Whether claimant sustained a work-related injury on or about July 10, 2016;
2. Whether claimant is entitled to temporary benefits from August 23, 2016 through September 30, 2018; or, in the alternative whether claimant is entitled to a running award;
3. The appropriate commencement date of benefits;
4. Whether claimant is entitled to reimbursement of out-of-pocket expenses;
5. Whether claimant is entitled to alternate care under Iowa Code section 85.27;
6. Whether claimant is entitled to an Iowa Code section 85.39 Independent Medical Examination (IME);
7. Whether claimant is entitled to costs.

### STIPULATIONS

The parties agree that as of July 10, 2016, claimant was an employee of the defendant employer. If there is a compensable injury found, claimant's disability is industrial in nature.

At the time of the alleged injury, claimant's gross earnings were \$599.96 per week. She was single and entitled to one exemption. Based on the foregoing numbers, the weekly benefit rate is \$373.76.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

### FINDINGS OF FACT

Claimant, Margaret MacNish, was a thirty-two year old person at the time of the hearing. Claimant graduated from high school in 2005 and attended courses at Blue Ridge College in 2008. She completed a short credentialing program for a school that she volunteered for through the service year. This year she began an online course with the goal of obtaining a general associate degree.

Her past work history includes barista, lifeguard, attendant and security personnel. (CE 2:2)

In 2016, she began a training program with defendant employer. She attended a class in Cedar Rapids, passed the permit test, and applied for, and received, a CDL. She also underwent a DOT physical which she passed. The last date she worked for defendant employer was August 23, 2016.

On or about July 10, 2016, claimant was paired with Trainer Glass, an African American male driver. Claimant described herself as uncomfortable at times with Trainer Glass.

While training with Mr. Glass, claimant believed she was sleeping more than 12 to 13 hours at a time and would wake up in pain with "clothes that were almost destroyed." (Trans. p. 19) On July 10, 2016, she discovered a chipped tooth and pain in the back of her head going down to the bottom of her feet. In her answers to interrogatories, she described waking up "with serious pain over a large portion of her body, including her head, neck, left arm and genitalia." (CE 2:3) She "felt like she had a bruise from head to toe, especially in [the] spine. [She] felt like [she] had mutilation" in her groin. (Ex A:31) She testified at her deposition that there was a small amount of bleeding but no visible bruising. (Ex. A:31-32) At hearing, she testified that she had bruises on the inside of her left leg and right thigh. (Trans. p. 20:21-24)

She believed that Trainer Glass had administered sleeping pills and then sexually assaulted her. (CE 2:4) In the October 25, 2017, deposition, claimant stated that she felt she had slept too long on July 10, 2016. (Ex. A:27) She testified that she was a light sleeper who would be woken up if a key is dropped near her so it felt odd to her that she slept for the full shift of eleven hours. (Ex. A:27) When she did wake up, it was dark. (Ex. A:27) She was surprised by the mileage that had yet to be completed on the load and took a photo of the odometer. (Ex. A:30) She took her clothes, placed them in a bag and locked them away, believing that the clothes would have evidence of her assault. (Ex A:30)

The Cedar Rapids police report recorded that between July 9, 2016, and July 11, 2016, claimant purportedly lost a work glove which she found inside the truck with Trainer Glass' belongings. She stated that there was a plastic bag shoved inside of the work glove and while she was unsure of the contents, she described it as "a nasty mess." (Ex D:4) She took the glove, the plastic bag, her clothing and a few other items and placed them in a trash bag. (Ex. D:5)

She no longer has the photos, the clothes, or any photos of outward signs of the assault.

From July 11, 2016, claimant and Trainer Glass moved from California to Utah. The following day, she reported the assault to defendant employer. (Ex. D:5; Ex A:32) In her deposition she admitted that when she first called CRST, she did not report the assault, only that she did not feel comfortable in her current situation. (Ex. A:32) This is consistent with the investigation report of the defendant employer. (Ex J:1) Claimant went on to report that the trainer had consistently changed logs and that the comchecks had been stolen. (Ex J:1) She made similar complaints of improper dealings during her first deposition dated October 25, 2017. (Ex. A: 24) She allegedly observed him talking on the phone, purchasing medication, and overlooking safety issues. Id. She did not see Trainer Glass take any medications, however, only that he purchased "Sleep PM." (Ex. A:27) Later on October 13, 2017, she emailed a screenshot or print out of a sexual offender registry which identified someone, not the defendant as the claimant maintains, as Trainer Glass. (Ex. J:1; Ex K) The following day, per Cedar Rapids Officer Merritt's account, claimant searched Trainer Glass's name on a sex offender site and found that there was a person with a similar name who was a registered sex offender out of Michigan. (Ex. D:4) Per the Cedar Rapids police report, she testified at hearing that the person in the photo was the same as her trainer and that she hoped that the offender had been screened and terminated. (Ex. J:1) The individuals in Exhibit K and C share a first and last name and the same race. (Ex. C, Ex. K) There are no other similarities. They are not the same person.

After contacting CRST on July 13, 2016, claimant was taken off the semi-tractor trailer and moved to a hotel room. She paid for both a rental car and housing. (CE 5)

In a statement taken by Officer Merritt with the Cedar Rapids police department, claimant reportedly believed the assault took place on July 8, 2016.

She stated that they did a multi-day trip that went from Iowa to Pennsylvania, Pennsylvania to Tennessee, Tennessee to California and California to Utah. She said she began riding with Glass on 07/05/16 and last rode with him on 07/12/16. MacNish stated that there were some suspicious circumstances during her trip that led her to believe that she was possibly sexually assaulted while she was sleeping in the semi. She stated that while in the area of Nashville, Tennessee on 07/08/16 she began sleeping more than 16 hours a day which is not normal for her. She discovered a bottle of sleeping pills in the truck belonging to Glass. At that time she became concerned that she was possibly being slipped sleeping pills without her knowledge. She alleges that she must have been drugged. While in Nashville, Tennessee she stated that she first noticed some bruising on her inner right thigh near her vagina, genital pain, and some blood on her right buttock which she believed was possibly a needle stick. She observed that on 07/08/16 after waking up. She also alleges that she started experiencing back and neck pain on the same date. This is when she first became concerned that thought she was possibly assaulted.

(Ex D:4)

She was walking around the city around 1830 hours on July 12, 2016, when she came upon a Salt Lake City Police Officer. (Ex. D:5) She described what had happened to her but the police officer, whom she described as African American, told her that there was not much he could do for her. At hearing, she stated that she reported<sup>1</sup> this incident to the Salt Lake City Police who told her there was nothing she could do and advised her to file a report with her employer. (Trans 23:12-13)

Officer Merritt made a supplemental report on July 16, 2016, after meeting with claimant once again to inspect the trash bag of items. (Ex. D:6) In the bag was a pair of black and tan work gloves. One glove had a plastic bag tucked inside. Also enclosed were a pair of jeans, a black tank top and a white towel. (Ex. D:6) There was a brown spot about the size of a quarter on the white towel. (Ex. D:6) The plastic bag showed no signs of any bodily fluid or mess. (Ex. D:6) Contrary to her deposition testimony, she told Officer Merritt that she did not believe the clothes had any traceable evidence. (Ex. D:6) She also testified that the clothes were not wanted by Officer Merritt so she threw the items away. (Ex. A:30)

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<sup>1</sup> Claimant's Brief stated claimant "filed" a report with the Salt Lake City authorities; however, no report of this exists and from other testimony it appears that no official complaint was made to the Salt Lake City authorities and no official report was filed. (Claimant's Brief, p. 3)

Claimant did not seek out medical care either the day of the alleged incident or in the days the followed. Defendants did not proffer care either.

Claimant's past medical history is significant for a car accident which occurred in 2012, causing injuries to her back and neck. (Ex. B:9) On March 23, 2015, she sought out treatment for back pain as well as pain in her neck, bilateral thoracic, lower lumbar as well as numbness in her feet. (JE 11:1) Catherine Carlson, M.D., concluded that the pain stemmed from a muscle strain and recommended no imaging. (JE 11:2) On July 21, 2015, she was seen by Duane E. Young at a rehabilitation and wellness center for chronic neck and shoulder pain with migraines. (JE 12:1) She attributed this pain to her 2012 MVA. Id. The pain was a 6/10 with intense dullness, migraines, daily cervical spine muscles spasms and leg and foot numbness in a prone position. Id.

On or about August 31, 2016, claimant met with a counselor at Mercy Family Counseling. (JE 1:1) She discussed the alleged assault with much of the discussion centered around claimant's frustration over the way that the defendant employer was not treating her complaints seriously. (JE 1:1) No further treatment was conducted as claimant left the CR area.

On or about October 5, 2016, claimant was seen at Compass Chiropractic located in Hendersonville, NC, alleging bilateral leg pain. (Ex 2:6) The pain was alleviated by sitting. She also complained of postero-lateral headache pain, bilateral cervical pain radiating into the left hand. (JE 2:6) She reported that the genesis of this pain was a hit and run MV incident occurring on or about January 2013. (JE 2:6) In a follow up visit, Kevin McDade, DC, opined that claimant was "experiencing late effects of cervical spine sprain due to improper healing and residual scar tissue." (JE 2:4) X-rays read by Dr. McDade showed "complete loss of lordotic curve and posterior subluxation of C5-C6." (JE 2:16) Later MRI showed only mild degenerative changes in this region of the cervical spine. (JE 4:1) Care appeared to end with Compass Chiropractic on or around October 14, 2016. (JE 2:15) No mention of the assault was raised during those approximately ten days of treatment. Her migraines worsened so she ceased treatment. (JE5:1)

On or about February 23, 2017, claimant "returned after a long hiatus from group" to Blue Ridge Community Health Services for widespread pain, muscle weakness and loss of mobility. (JE 3:1) She reported that a "Dr. H pursued her understanding of the underlying problem prompting discussion of her cervical spine, vertebrae, discs, inflammation, and nerve impingement." Id. The primary diagnosis was pain disorder related to psychological factors. (JE 3:3)

She underwent an MRI on February 24, 2017, which showed mild degenerative changes at C3-C5 and mild spinal stenosis at C5-6. (4:1) Initially medication management was prescribed with some discussions about injections that appeared to be helpful in 2013. (JE 5:1)

She was referred to pain management and Leland Berkwits, M.D., on April 11, 2017. (JE 5:4) Claimant told Dr. Berkwits that her neck pain began February or March of 2013, 4-5 months after a motor vehicle accident. Id.

She states her pain began February or March of 2013, 4-5 months after MVC. States that the symptoms were that of a "herniated disc" – states "she started having migraines" and "could not lift her arms." She states she had migraines "the first day of each recording symptoms." States that she "cannot lift her head freely, because it hurts to lift her head" and reports "being stuck in a chair because it hurts to lift her head." Symptoms resolve after 12 hours in the chair. She states she takes Naproxen and her pain goes away after 12 hours.

Id. There was no mention of the alleged assaults.

On May 8, 2017, she brought up the issue of sexual abuse during group and the need to discuss this issue with someone. (JE 3-11) There is no reference to June 2016 alleged assault but instead a bolded notation says, "she is very upset and concerned about her Landlord being a creepy guy." (JE 3:11) On the same day she was seen at Carolina Spine & Neurosurgery Center. (JE 6:1) She reported "deformities for about 4 years. 3 herniated cervical disc." Id.

29-year-old female who was involved in a head-on MVA at 40 miles an hour and late 2012. She underwent total spine x-ray and apparently there was no fracture. Soon after this she developed chronic neck pain and almost daily headaches which have become gradually worse. She had to stop working as a long-distance truck driver in September, 2016 due to neck pain and headaches.

(JE 6:1)

On May 19, 2017, claimant was seen at the UNC Emergency Department for an alleged sexual assault. (JE 12:3) It was unclear from the records exactly who had assaulted her, but she described it as a situation that had been taking place over the previous two-three months. Id. The pattern of the assault was similar to the one she alleges to have taken place with Trainer Glass. Id.

The patient describes a situation over the last 2-3 months where she awakens in the morning with pain inside of both hips. She has noticed bruises on her back in the past. She states that in March or early April she reported to law enforcement that she thought she was being sexually assaulted during her sleep. There apparently was no official investigation of this. She states this happened 2 weeks ago where she awoke with pains that she had no explanation for. She does have a history of fibromyalgia and saw pain management doctor yesterday. Asked lying

she states she has been actually sitting on a warm [sic] clock at night to wake up every 2 hours because she was for fall [sic] that that [sic] she being assaulted during her sleep without her knowing it. Many of these events seem to coincide with her mother being out of town in New Jersey and usually is living with her. Mother is currently out of town.

The patient states she has never awakened to find anyone assaulting her. She apparently states that the landlord of the place she is renting has a history of sexual abuse. She also states that she thinks that he is in an abusive relationship with his wife.

Id. No rape kit was used despite this report. Id. The examination was positive for pelvic pain but there were no bruises observed. Id. at 5. She returned again on June 27, 2017, and mentioned the 2012 MVA, that she worked as a lifeguard and truck driver, but no mention of the alleged 2016 assault. Id. at 11. An MRI study was performed which revealed mild cervical kyphosis centered at C2-4. Id. The remainder of the study was normal. Id. Claimant was diagnosed with severe somatic symptom disorder with pain, fibromyalgia, and three-month history of low back and neck pain. Id. at 12.

During a June 28, 2017, visit at Carolina Spine & Neurosurgery Center physical therapy, she reported that she was in a MVA four years prior and that she worked as a truck driver, but had fallen from the truck when she attempted to return to work a year ago which resulted in increased headache symptoms. (JE 6:4)

An injection was administered at the Pardee Neurology Associates on July 13, 2017, by Joel Callahan, M.D. (JE 5:38)

The following day she was seen by Dellene Troy, D.O., at Carolina Spine & Neurosurgery Center and identified the genesis of her pain as the MVA. (JE 6:10) She also complained of a fall "inside the truck off of a 3 foot elevation landing on her back and left side." Id.

On July 14, 2017, claimant was seen by Dr. Troy again for neck pain, bilateral upper extremity and lower extremity numbness. (JE 6:12) Etiology of the pain was unclear and Dr. Troy believed there might be some psychosocial component to the pain. Id. Injections were recommended along with therapy<sup>2</sup>. Id. It was not clear whether Dr. Troy was aware of the injection claimant had undergone the day before.

On August 12, 2017, claimant underwent a nerve conduction study and EMG which showed mild bilateral median neuropathy at the wrist. (JE 5:11) She was advised to wear a brace at night and increase her zanaflex for neck pain. (JE 5:13) Dr. Callahan

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<sup>2</sup> Dr. Troy noted that claimant had not had a course of physical therapy although claimant had undergone therapy at Carolina Spine & Neurosurgery Center in June of 2017. (JE 6-6)

noted on October 1, 2017, that her symptoms were "out of proportion to her physical findings." (JE 5:13)

On October 6, 2017, she was seen again at Blue Ridge Community Health Services, reporting the cervical spine injury incurred during the 2012 MVA and a trauma history of "physical, sexual abuse by hx and verbal abuse by brother currently." (JE 3:16) It was noted that "Pt presents with confused, jumbled story of self and conflicts within most areas of her life." (JE 3:17) She also presented a "jumbled account of living in abusive situation-Mother and Pt living in home with angry landlords." (JE 3:17) In the hearing, claimant attempted to deflect and downplay any issues with the landlord.

Q. Then let's move back to the landlord, because this certainly is relevant. You have said in your psychological records that you believe your landlord has – you called him creepy, and you believe he has been sexually assaultive, correct?

A. No I don't believe I was sexually assaulted. I spoke to the police about the issue of finding records out of state that were on a national registry and not the state registry in North Carolina.

(Trans. p. 56)

Q. Do you recall in May of 2017 having a similar situation as it pertains to your landlord where you woke up and you had pain inside your hips, bruising on your back, and it was while you were asleep, do you remember making those claims to your psychologist?

A. That was an issue with a false record.

Q. I'm sorry?

A. I recall that was an issue with a false record. I went there with bleeding issues, I was referred to a May document for an emergency visit.

Q. Right.

(Trans p. 58)

Q. One last question, do you remember telling the psychologist that you believed you had been sexually assaulted by the landlord?

A. No, I don't.

(Trans. p. 59)



The first time she brought up the trucking incident was during a counseling visit on June 9, 2017. (JE 3:19) The account was much different than the one she had told in the deposition and at hearing.

Pt reports to have worked 6 weeks june [sic] thru aug [sic] 2016 with company trainer who is a sex offender that drugged her and let other truckers rape her – numerous times. Reports this resulted in a neck injury from one of these rapes and that Pt also has injury hx with car accident.

(JE 3:19)

At best, claimant's recollection of events is compromised. She is a poor historian and has a poor recollection of events that have occurred in the past.

On March 13, 2018, she took herself to Apple Valley Clinic of Chiropractic with complaints of constant sharp pain with movements, pain in the head/spine, loss of sensation, limited range of motion and extreme weakness in all limbs. (JE 7) In this visit, she maintained the pain started in July and August of 2016. (JE 7:7)

On July 9, 2018, she presented at Mission Orthopedics and Spine for her neck and head pain. (JE 13:1) She rated her head pain as 6-7/10 with symptoms of aching, burning, throbbing, sharp, constant, stabbing, stinging, dull, pressure. Id. She reported that her chiropractor told her that she had a severe spinal cord compression. Id. PAC Henson who saw claimant that day found the physical examination to be limited due to the claimant's pain and effort. Id. A discussion regarding medication management was conducted with PA-C Ryan Groth. Id.

On November 29, 2018, she started physical therapy at the recommendation of Dr. Campbell. (JE 5:14)

Reason for Referral/History of Present Condition/Onset of injury/exacerbation:

31 y.o. year old female presents to outpatient physical therapy with chief complaint of grinding noise at the base of the skull, pain and pressure in my head, like a needle drove into my brain, fluid in my right ear, lying I have numbness in my spine, sensation of numbness in all 4 extremities." Reports old work injury. Consultations with orthopedic, neurology, and neurosurgeon with patient reporting cerebellar tonsil herniation on the right. Patient indicates she was advised by her attorney to hold on surgery to avoid out of [sic] pocket expense and await approval of insurance or disability insurance to cover. Patient reports having a cervical RFA procedure 1 week ago at C 4-5 bilateral, and bilateral occipital ablation.

Id. There is no explanation of the work-related accident, but it is referred to throughout the physical therapy records in November and December 2018. (JE 5: 14-25)

Claimant returned to UNC Healthcare on November 29, 2018, for therapy. (JE 5:14) The working diagnosis was cervical spondylosis without myelopathy and neck pain. Id. In the notes, the claimant related her symptoms to "an old work injury." (JE 5: 19) After several weeks of therapy which appeared to offer no relief, claimant was seen by Tanya Chin, M.D., for the headaches and neck pain. (JE 5:23) She requested a neurology consult which was provided. (JE 5:29, 5:34)

On April 5, 2018, claimant was seen by neurologist Javid Baksh, D.O. (JE 8:1) Claimant cited the 2012 car accident and a 2016 work incident as the source of her pain. (JE 8:1) She also reported that she was on hydrocodone for teeth that she had extracted. (JE 8:1) There were no dental records as part of the evidence. Facet joint injections were administered on July 31, 2018, August 27, 2018, September 24, 2018, October 16, 2018, November 6, 2018, December 11, 2018, January 28, 2019, March 11, 2019 (JE 8:5, 8:10, 8:15, 8:20, 8:22, 8:24, 8:25) On July 8, 2019, an occipital nerve block was administered. (JE 8:33) Claimant received only temporary relief from these procedures.

On August 1, 2018, claimant began treatment at Universal Mental Health Service. (JE 9:1) The purpose of the visit was to address depression, poor sleep and decreased appetite arising out of an alleged sexual assault while on the job for defendant employer. Id. It was the first time claimant specifically sought out treatment for this assault. The therapist, Cynthia Bradley, found claimant guarded and unwilling to discuss the assault in any detail nor fully explain a 2013 incident involving a person who had "scammed" the claimant. (JE 9:8) Therapist Bradley recommended therapy, medication, and peer support services. (JE 9:16)

On September 13, 2018, she was seen by Scott Marder, M.D., at UMHS. (JE 9:18) He documented a more detailed account of claimant's complaints:

She continues to have some pain issues in her neck and spine. She describes several traumatic events in her life which includes being physical abused by her father's partner when she was younger, being purposefully hit in a motor vehicle accident in 2012 and then the same person from that accident has been stalking and assaulting her in 2013. In 2016 she was assaulted by a supervisor on the job for CRST Trucking and found out later that he was a registered sex offender and this assault exacerbated her spinal injury from the motor vehicle accident in 2012. At this point she is still working on getting injections to help with pain and she will likely get surgery for this condition eventually. She denies any psychotic symptoms. She has never been a good sleeper and she gets about two or three hours a night. She has a hard time falling asleep and there has been some occasional nightmares. She does not like to take sleep medications so that issue continues. There is also some

endorsement of PTSD symptoms including hypervigilance, exaggerated startle reflex, flashbacks and avoidance.

(JE 9:18) Dr. Marder recommended therapy, a trial of Cymbalta, and psychological testing. (JE 9:19) She continued to treat with Dr. Marder through the spring of 2019 and for management of her Cymbalta prescription.

Dr. Bansal's report included the following description of the alleged work-related incident.

She was on company property, and had been given some sleeping medication by her supervisor. She fell asleep for 12 to 14 hours, then woke up in pain and on the floor and realized that she had been assaulted. After a month the company filed a complaint for her injuries. She was not covered by any services for six weeks following the assault. Two of her teeth had been cracked, and she had an aggravation of an old injury to her neck. She had a sensation of blackout and pressure in her head, with numbness and tingling of her arms and her legs.

(CE 1:10) In the subjective report, Dr. Bansal documented that the force of the head trauma was so severe that she cracked two of her teeth. *Id.* Yet Dr. Bansal had no records of any dental work. No records are in evidence to support this claim. At hearing, claimant did not demonstrate any evidence of cracked teeth. She did claim she had never been provided any dental treatment despite requests being made for it. There was a notation in a medical record that she had teeth extracted but no documentation of this.

Dr. Bansal diagnosed claimant with an aggravation of the cervical facet syndrome suffered in the 2012 MVA as a result of the alleged assault. He did not address the claimant's lack of reporting this assault nor the subsequent injuries such as the potential assault by the landlord and/or the fall from the truck he referenced on page 7 of his report. (CE 1:7, 1:12) Dr. Bansal opined that the cause was the impact of the assault but does not describe what impact. Dr. Bansal's opinions lack detail, do not address potential superseding causes, or the contradictory statements of the claimant. His report is given low weight.

The gravamen of the claimant's allegation come from an incident she asserts occurred on or about July 8, 2016, while she was training as a driver for defendant employer. While she was sleeping, claimant believes she was sexually assaulted by the trainer. Per her testimony, she believes that she was drugged, raped while unconscious, and had her head bashed against some solid surface during the attack.

Claimant asserted and maintained the person in Defendant's Exhibit C and Exhibit K were one and the same. Not only do the parties have different statistics such as their date of birth, height and weight, but also their faces are distinctly different. The only similarity the two men in Exhibit C and K share is that they are both African American and share a name. Claimant's insistence that the two men were the same

person was a fatal blow to her credibility as it related to the person in defendant's exhibit C being the claimant's assaulter. The testimony regarding the cracked teeth was also not corroborated by the medical records or the claimant's in person appearance at the hearing. This scenario was not supported by the evidence.

I do not find the facts that claimant did not immediately report the incident to a police officer or that she did not seek medical attention as proof the assault did not happen. There is no typical or predictable response to an assault and I would not put a burden on a victim to follow a prescribed set of actions in reporting the assault or be found not credible. However, claimant felt comfortable during certain medical visits to raise the issue of assault by her landlord but did not discuss the alleged assault of July 10, 2016, with any health professional until summer of 2017 except for an initial meeting with a counselor in Iowa on August 31, 2016. When claimant sought out treatment for her neck and back pain in 2016 and 2017, she related her injuries to the 2012 motor vehicle collision.

Claimant maintained at hearing that she did not bring up the assault because she worried her care would be rejected due to it being work related, yet, she did make claims of a work injury in later medical records and at one point stated she was injured because she fell either inside the truck or outside the truck while driving. Her explanation at hearing is not consistent with her prior actions.

Given that the man she found in the sex offender registry is not the same as Trainer Glass and that there is confusion and misrepresentation about the injuries that allegedly occurred on July 10, 2016, it is determined that claimant has low credibility on the events that took place on that day and the previous day.

#### CONCLUSIONS OF LAW

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

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. Cihā, 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).

Unfortunately, because it was determined claimant's account of what occurred to her person on July 10, 2016, has been deemed not credible, there is little evidence of any work-related injury. Multiple times in medical records and in her sworn testimony, claimant was unable to identify the exact nature of the incident. While part of her claim rests on an alleged drugging and therefore incidents that took place while claimant was not conscious, claimant had a difficult time articulating a consistent timeline of when the events occurred, how they occurred, and what took place before or after.

Further, even assuming that she had been assaulted, there is not sufficient evidence to connect her complaints to the purported assault. She relies on Dr. Bansal to make the causal connection. Dr. Bansal opined claimant sustained injuries to her head, neck, left upper extremity, lower left extremity, and left lower hip from an assault but the facts upon which his opinion was based have been rendered not credible and therefore his medical opinion does not carry sufficient weight.

Even if the causation issue had been ruled in claimant's favor, the records suggest that she has had multiple complaints of similar conditions preceding the alleged July 10, 2016, as well as possible triggers following the July 10, 2016, incident including but not limited to another assault.

In writing this decision, I am well aware of the statistics regarding assaults on women, the lack of prosecution, and the trauma that can be inflicted during investigation and trial. It is brave for women to speak up about this topic and I am not unsympathetic to how painful revisiting an assault is for any victim, regardless of gender.

However, in this case, there is not sufficient evidence to find that the claimant sustained an assault on July 10, 2016, or that her work for defendant employer contributed to her injury.

The remainder of the issues but for the Iowa Code section 85.39 examination request are moot by the above findings.

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). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

None of the elements in section 85.39 have been triggered and therefore claimant is not entitled to reimbursement under Iowa Code section 85.39.

No costs are awarded to either party.

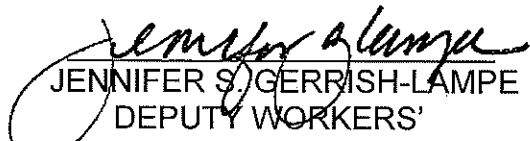
ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing.

Each party shall bear their own costs except that the cost of the hearing transcript shall be split between both parties.

Signed and filed this 31<sup>st</sup> day of October, 2019.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Eric Loney (via WCES)

Chris Scheldrup (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 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.