

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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 FIKRETA NUSINOVIC,

Claimant,

vs.

UNITYPOINT HEALTH-WATERLOO/  
ALLEN HEALTH SYSTEMS, INC.,Employer,  
Self-Insured,  
Defendant.
 File Nos. 19001748.01, 20009674.01,  
20700556.01, 21700201.01,  
21700202.01, 21700203.01

## ARBITRATION DECISION

 Headnotes: 1402.30, 1402.40,  
1403.10, 1803, 1803.1,  
2501, 2701, 2907
 

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On June 16, 2020, Claimant Fikreta Nusinovic filed three petitions in arbitration against Defendant UnityPoint Health-Waterloo/Allen Health Systems ("Allen Health"), File Numbers 19001748.01, 20009674.01, 20700556.01. In File Number 19001748.01, Nusinovic alleges she sustained an injury to her right shoulder on May 3, 2019, from repetitive trauma while working for Allen Health. Allen Health filed an answer on July 6, 2020. Nusinovic later amended her petition to also allege an injury to her right upper extremity. In File Number 20009674.01, Nusinovic alleges she sustained an injury to her left upper extremity and left shoulder from repetitive trauma and overuse from her right upper extremity injury on May 30, 2019. Allen filed an answer on July 7, 2020. In file Number 20700556.01, Nusinovic alleges she sustained an injury to her back and right lower extremity while working for Allen Health on September 10, 2019. Allen Health filed an answer on July 7, 2020.

On March 2, 2021, Nusinovic filed three additional petitions in arbitration against Allen Health, File Numbers 21700201.01, 21700202.01, 21700203.01. In File Number 21700201.01, Nusinovic alleges she sustained an injury to her back while attending a functional capacity evaluation for Allen Health on January 14, 2021. In File Number 21700202.01, Nusinovic alleges she sustained an injury to her right upper extremity and right shoulder from lifting, pushing, pulling, and repetitive trauma while working for Allen Health on February 1, 2021. In File Number 21700203.01, Nusinovic alleges she sustained an injury to her left shoulder from lifting, pushing, pulling, and repetitive trauma while working for Allen Health on February 10, 2021. Allen Health filed answers on March 29, 2021.

An arbitration hearing was held *via* CourtCall video conference on October 29, 2021. The transcript Allen Health filed provides Deputy Workers' Compensation Commissioner Joseph Walsh presided over the hearing, which is a scrivener's error. Deputy Workers' Compensation Commissioner Heather Palmer presided over the hearing. Attorney Tom Drew represented Nusinovic. Nusinovic appeared and testified.

Attorney Jennifer Clendenin represented Allen Health. Mary Peterson appeared on behalf of Allen Health, but did not testify. Joint Exhibits ("JE") 1 through 15, and Exhibits 1 through 10 and A through N were admitted into the record. The record was held open through January 7, 2022, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

The parties submitted Hearing Reports, listing stipulations and issues to be decided. Allen Health raised the affirmative defense of refusal of suitable work under Iowa Code section 85.33 in all six files and unauthorized care under Iowa Code section 85.27 in File Numbers 20009674.01, 20700556.01, 21700201.01, 21700202.01, and 21700203.01, and waived all other affirmative defenses. The Hearing Reports were approved at the conclusion of the hearing.

**FILE NO. 19001748.01**

**STIPULATIONS**

1. An employer-employee relationship existed between Allen Health and Nusinovic at the time of the alleged injury.
2. Nusinovic sustained an injury on May 3, 2019, which arose out of and in the course of her employment with Allen Health.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. Entitlement to temporary benefits is no longer in dispute.
5. The alleged injury is a cause of permanent disability.
6. At the time of the alleged injury, Nusinovic's gross earnings were \$680.76 per week, she was married and entitled to two exemptions, and the parties believe the rate is \$456.92.
7. Medical benefits are no longer in dispute.
8. Costs have been paid.

**ISSUES**

1. What is the nature of the alleged injury?
2. What is the extent of the disability?
3. Is Nusinovic permanently and totally disabled under the statute or common law odd-lot doctrine?
4. What is the commencement date for permanency?
5. Did Nusinovic refuse suitable work under Iowa Code section 85.33(3), precluding her from receiving temporary disability benefits?

6. Did Nusinovic refuse an offer of work at the same or greater salary, wages, or earnings than she received at the time of the injury, and if so, is she only entitled to the functional rating under Iowa Code section 85.34(2)(v)?
7. If the injury is found to be a cause of permanent disability, what is the commencement date for permanent partial disability benefits, if any are awarded?
8. Does the successive disabilities provision of Iowa Code section 85.34(7) apply?
9. Did Allen Health pay Nusinovic 20 weeks of permanent partial disability benefits at the rate of \$466.68 per week for a total of \$9,333.60, and was she paid 4 weeks and 5 days of temporary disability benefits at the rate of \$466.68, for a total of \$2,199.93?
10. Is Allen Health entitled to a credit for excess payments or overpayments under Iowa Code section 85.34(4) or (5)?
11. Should costs be assessed against either party?

**FILE NO. 20009674.01**

**STIPULATIONS**

1. An employer-employee relationship existed between Allen Health and Nusinovic at the time of the alleged injury.
2. While entitlement to temporary benefits cannot be stipulated to, Nusinovic has been off work since February 26, 2021.
3. At the time of the alleged injury, Nusinovic's gross earnings were \$682.87 per week, she was married and entitled to two exemptions, and the parties believe the rate is \$458.14.

**ISSUES**

1. Did Nusinovic sustain an injury which arose out of and in the course of her employment with Allen Health on May 30, 2019?
2. Is the alleged injury a cause of temporary disability during a period of recovery?
3. Is the alleged injury a cause of permanent disability?
4. What is the nature of the alleged injury?
5. Is Nusinovic entitled to a running award of temporary benefits commencing on February 26, 2021?
6. Did Nusinovic refuse suitable work under Iowa Code section 85.33(3), precluding her from receiving temporary disability benefits?
7. What is the extent of the disability?

8. Is Nusinovic permanently and totally disabled under the statute or common law odd-lot doctrine?
9. Did Nusinovic refuse an offer of work at the same or greater salary, wages, or earnings than she received at the time of the injury, and if so, is she only entitled to the functional rating under Iowa Code section 85.34(2)(v)?
10. If the injury is found to be a cause of permanent disability, what is the commencement date for permanent partial disability benefits, if any are awarded?
11. Does the successive disabilities provision of Iowa Code section 85.34(7) apply?
12. Is Allen Health entitled to a credit for excess payments or overpayments under Iowa Code section 85.34(4) or (5)?
13. Is Nusinovic entitled to payment of medical expenses?
14. Is Allen Health entitled to a credit for medical/hospitalization expenses set forth in Exhibit 8?
15. Should costs be assessed against either party?

**FILE NO. 20700556.01**

**STIPULATIONS**

1. An employer-employee relationship existed between Allen Health and Nusinovic at the time of the alleged injury.
2. Nusinovic sustained an injury on September 10, 2019, which arose out of and in the course of her employment with Allen Health.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. Although entitlement to temporary benefits cannot be stipulated to, Nusinovic has been off work since February 26, 2021.
5. The alleged injury is a cause of permanent disability.
6. At the time of the alleged injury, Nusinovic's gross earnings were \$632.34 per week, she was married and entitled to two exemptions, and the parties believe the rate is \$429.52.
7. Medical expenses are no longer in dispute.

**ISSUES**

1. What is the nature of the injury?
2. Is Nusinovic entitled to a running award of temporary benefits from February 26, 2021?

3. Did Nusinovic refuse suitable work under Iowa Code section 85.33(3), precluding her from receiving temporary disability benefits?
4. What is the extent of disability?
5. Is Nusinovic permanently and totally disabled under the statute or common law odd-lot doctrine?
6. Did Nusinovic refuse an offer of work at the same or greater salary, wages, or earnings than she received at the time of the injury, and if so, is she only entitled to the functional rating under Iowa Code section 85.34(2)(v)?
7. What is the commencement date for permanent partial disability benefits, if any are awarded?
8. Does the successive disabilities provision of Iowa Code section 85.34(7) apply?
9. Was Nusinovic paid 35 weeks of permanent partial disability benefits at the rate of \$429.52 per week for a total of \$15,033.20, prior to the hearing?
10. Is Allen Health entitled to a credit for excess payments or overpayments under Iowa Code section 85.34(4) or (5)?
11. Should costs be assessed against either party?

**FILE NO. 21700201.01**

**STIPULATIONS**

1. An employer-employee relationship existed between Allen Health and Nusinovic at the time of the alleged injury.
2. Temporary benefits are no longer in dispute.
3. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.
4. At the time of the alleged injury, Nusinovic's gross earnings were \$640.97 per week, she was married and entitled to two exemptions, and the parties believe the rate is \$436.68.

**ISSUES**

1. Did Nusinovic sustain an injury which arose out of and in the course of her employment with Allen Health on January 14, 2021?
2. Is the alleged injury a cause of temporary disability during a period of recovery?
3. Did Nusinovic refuse suitable work under Iowa Code section 85.33(3), precluding her from receiving temporary disability benefits?
4. Is the alleged injury a cause of permanent disability?

5. What is the extent of the disability?
6. Did Nusinovic refuse an offer of work at the same or greater salary, wages, or earnings than she received at the time of the injury, and if so, is she only entitled to the functional rating under Iowa Code section 85.34(2)(v)?
7. If the injury is found to be a cause of permanent disability, what is the commencement date for permanent partial disability benefits, if any are awarded?
8. Does the successive disabilities provision of Iowa Code section 85.34(7) apply?
9. Is Nusinovic entitled to payment of medical expenses?
10. Is Allen Health entitled to a credit for medical/hospitalization expenses set forth in Exhibit 8 for payments made under a group plan under Iowa Code section 85.38?
11. Should costs be assessed against either party?

**FILE NO. 21700202.01**

**STIPULATIONS**

1. An employer-employee relationship existed between Allen Health and Nusinovic at the time of the alleged injury.
2. Temporary benefits are no longer in dispute.
3. At the time of the alleged injury, Nusinovic's gross earnings were \$640.97 per week, she was married and entitled to two exemptions, and the parties believe the rate is \$436.68.

**ISSUES**

1. Did Nusinovic sustain an injury which arose out of and in the course of her employment with Allen Health on February 1, 2021?
2. What is the nature of the injury?
3. Is the alleged injury a cause of temporary disability during a period of recovery?
4. Did Nusinovic refuse suitable work under Iowa Code section 85.33(3), precluding her from receiving temporary disability benefits?
5. Is the alleged injury a cause of permanent disability?
6. What is the extent of the disability?
7. Is Nusinovic permanently and totally disabled under the statute or common law odd-lot doctrine?

8. Did Nusinovic refuse an offer of work at the same or greater salary, wages, or earnings than she received at the time of the injury, and if so, is she only entitled to the functional rating under Iowa Code section 85.34(2)(v)?
9. If the injury is found to be a cause of permanent disability, what is the commencement date for permanent partial disability benefits, if any are awarded?
10. Does the successive disabilities provision of Iowa Code section 85.34(7) apply?
11. Is Allen Health entitled to a credit for excess payments or overpayments under Iowa Code section 85.34(4) or (5)?
12. Is Nusinovic entitled to payment of medical expenses?
13. Is Allen Health entitled to a credit for medical/hospitalization expenses set forth in Exhibit 8 for payments made under a group plan under Iowa Code section 85.38?
14. Should costs be assessed against either party?

**FILE NO. 21700203.01**

**STIPULATIONS**

1. An employer-employee relationship existed between Allen Health and Nusinovic at the time of the alleged injury.
2. Although entitlement cannot be stipulated to, Nusinovic has been off work since February 26, 2021.
3. At the time of the alleged injury, Nusinovic's gross earnings were \$640.97 per week, she was married and entitled to two exemptions, and the parties believe the rate is \$436.68.

**ISSUES**

1. Did Nusinovic sustain an injury which arose out of and in the course of her employment with Allen Health on February 10, 2021?
2. What is the nature of the injury?
3. Is the alleged injury a cause of temporary disability during a period of recovery?
4. Is Nusinovic entitled to a running award of temporary benefits from February 26, 2021?
5. Did Nusinovic refuse suitable work under Iowa Code section 85.33(3), precluding her from receiving temporary disability benefits?
6. Is the alleged injury a cause of permanent disability?
7. What is the extent of the disability?

8. Is Nusinovic permanently and totally disabled under the statute or common law odd-lot doctrine?
9. Did Nusinovic refuse an offer of work at the same or greater salary, wages, or earnings than she received at the time of the injury, and if so, is she only entitled to the functional rating under Iowa Code section 85.34(2)(v)?
10. If the injury is found to be a cause of permanent disability, what is the commencement date for permanent partial disability benefits, if any are awarded?
11. Does the successive disabilities provision of Iowa Code section 85.34(7) apply?
12. Is Allen Health entitled to a credit for excess payments or overpayments under Iowa Code section 85.34(4) or (5)?
13. Is Nusinovic entitled to payment of medical expenses?
14. Is Allen Health entitled to a credit for medical/hospitalization expenses set forth in Exhibit 8 for payments made under a group plan under Iowa Code section 85.38?
15. Should costs be assessed against either party?

### **FINDINGS OF FACT**

Nusinovic was born in Bosnia and graduated from high school in 1991. (Ex. K, p. 129; Tr., p. 24) Nusinovic is married and she has lived in Waterloo for 18 years. (Ex. K, p. 129; Tr., p. 23) According to the first reports of injury, at the time of the hearing she was 49.

After moving to Waterloo, Nusinovic worked for Home Shopping Network for one year and Beef Products for five and a half years. (Tr., p. 23) On December 24, 2006, Nusinovic commenced employment with Allen Health as a housekeeper. (Tr., p. 23)

As a housekeeper at Allen Health Nusinovic mopped floors, cleaned bathrooms, cleaned patient beds, moved patient beds in and out of rooms, picked up laundry, and removed the garbage. (Tr., pp. 24-25) Nusinovic reported when she worked on laundry she would have to lift between 10 and 20 or 30 pounds. (Tr., p. 25)

Nusinovic testified the morning of May 3, 2019, "I was mopping the PACU, the recovery room, mopping the floors, and I felt a lot of heavy pain in my arm along the shoulder, along down the arm, and I couldn't handle the pain." (Tr., p. 25) Nusinovic relayed she told her supervisor she was not able to mop because of pain in her shoulder going down her hand into her elbow and fingers. (Tr., p. 25) The first report of injury provides Nusinovic's right shoulder had constant pain "from recurring motion from work duty." (JE 1, p. 1)

Nusinovic was examined by Jonathan Fields, M.D., an occupational medicine specialist with UnityPoint – Allen Occupational Health ("Allen Occupational Health"). (JE 2, p. 6) Nusinovic relayed she had noticed pain, aching, tingling, and a loss of strength in her right shoulder with symptoms going down her arm into her finger tips



while mopping and scrubbing, which worsened over time. (JE 2, p. 6) During a follow-up appointment, Dr. Fields diagnosed Nusinovic with a right rotator cuff shoulder strain and bilateral carpal tunnel syndrome. (JE 2, p. 11)

On May 16, 2019, Nusinovic underwent electrodiagnostic testing with Sangeeta Shah, M.D., regarding her shoulder pain, elbow pain, wrist pain, and carpal tunnel syndrome. (JE 10) Dr. Shah noted the needle EMG of her bilateral upper extremities was normal, there was no evidence of radiculopathy or plexopathy, he listed an impression of "[b]orderline grade 1/6 median nerve and treatment and bilateral wrist," he assessed Nusinovic with right shoulder pain and paresthesias and pain of the wrist secondary to mild borderline carpal tunnel syndrome, he recommended she follow-up with her workers' compensation physician, and he documented Nusinovic would benefit from wrist braces for bilateral carpal tunnel syndrome. (JE 10, pp. 202-03)

On May 17, 2019, Nusinovic underwent right upper extremity magnetic resonance imaging. (JE 3, p. 62) The reviewing radiologist listed an impression of tendinosis with high-grade partial-thickness articular surface insertional tear of the infraspinatus tendon and mild bursitis. (JE 3, p. 62)

Nusinovic reported after her work injury she performed her job duties using her left upper extremity. (Tr., pp. 28-29) Nusinovic testified she has pain on the top of her shoulder that goes down her arm toward her hand. (Tr., p. 30) Nusinovic completed a first report of injury form reporting she injured her left upper extremity by using her left arm too much while she had restrictions for her right upper extremity. (JE 1, p. 2)

On June 3, 2019, Nusinovic attended an appointment with Thomas Gorsche, M.D., an orthopedic surgeon, for her right shoulder. (JE 4, p. 73) Dr. Gorsche noted nerve conduction studies showed she has mild carpal tunnel syndrome. (JE 4, p. 73) Dr. Gorsche examined Nusinovic, assessed her with right shoulder pain, administered an injection, and restricted her to light duty. (JE 4, p. 75)

Nusinovic reported a 25 percent improvement from the injection, but she continued to complain of global shoulder pain radiating up into her neck. (JE 4, pp. 76, 79) Dr. Gorsche performed another injection and continued her restrictions. (JE 4, pp. 77-80) During an appointment on July 23, 2019, Dr. Gorsche recommended a diagnostic arthroscopy, subacromial decompression, rotator cuff repair if indicated, and biceps tenotomy, if needed. (JE 4, pp. 83-84)

Nusinovic testified on September 10, 2019, while walking from the parking lot into the hospital she fell on her back and injured her wrist and back. (Tr., p. 32) Nusinovic completed a first report of injury form stating she fell on the parking lot and slid on her back injuring her right foot, right ankle, and right and left wrists. (JE 1, p. 3)

Allen Health sent Nusinovic to Allen Occupational Health. (JE 2, p. 14) Kenneth McMains, M.D., examined Nusinovic and diagnosed her with right hip and right foot contusions and an abrasion of her right great toe and anterior right foot. (JE 2, p. 17) Dr. McMains prescribed tramadol and ice and heat as needed, and imposed restrictions of no prolonged standing, walking, or sitting and to sit, stand, and walk as necessary. (JE 2, p. 18)

Nusinovic returned to Allen Occupational Health on September 17, 2019, reporting she was still feeling pressure on her spine and hips. (JE 2, p. 19) Dr. McMains diagnosed Nusinovic with low back pain, right shoulder pain, and right great toe and foot pain and he released her to full duty. (JE 2, pp. 21-22)

On September 23, 2019, Nusinovic attended an appointment with Matthew Bollier, M.D., an orthopedic surgeon with the University of Iowa Hospitals and Clinics ("UIHC"). (JE 5, p. 85) Dr. Bollier found her reported symptoms, physical examination findings, and magnetic resonance imaging correlated well, opined her work for Allen Health over the past seven years was a "significant factor/aggravation in causation of the patient's pain, imaging findings, and pathology," and concluded "her work there is a significant factor in her rot cuff tear and need for treatment." (JE 5, p. 88) Dr. Bollier diagnosed Nusinovic with chronic right shoulder pain, imposed restrictions of no lifting, pulling, or pushing more than 5 pounds with the right arm, and no repetitive reaching away from the body or above shoulder height with the right arm, and recommended right shoulder arthroscopy, rotator cuff repair, biceps tenotomy, distal clavicle excision, debridement and decompression. (JE 5, pp. 88, 90) Nusinovic underwent a right shoulder arthroscopy, SLAP repair, subacromial decompression, distal clavicle excision, and biceps tenotomy on October 23, 2019. (JE 5, p. 91)

On November 7, 2019, Nusinovic returned to the UIHC, complaining of aching right shoulder and arm pain. (JE 5, p. 94) Elayne Gustoff, ARNP, with Dr. Bollier's office, examined Nusinovic, recommended she remain in a sling for an additional two weeks and remove the sling three to four times per day for gentle elbow, wrist, and hand range of motion exercises, ordered physical therapy, and imposed restrictions of no lifting, pushing, pulling, or reaching with the right arm. (JE 5, pp. 95-96)

Nusinovic testified after her surgery at the UIHC, her hand was heavy, swollen, numb, and a very dark color. (Tr., p. 27) Nusinovic relayed after the surgery her right shoulder was "[v]ery bad." (Tr., p. 27) Nusinovic reported she had difficulty grabbing, squeezing, and reaching and severe pain from the top of her right shoulder extending up toward her right trapezius area, and down to her elbow and into her wrist and fingers. (Tr., pp. 27-28)

On December 6, 2019, Nusinovic returned to Dr. Bollier reporting her pain had improved from before the surgery, but she was experiencing pain with increased activity and stretching during physical therapy, and relaying she had returned to work with restrictions. (JE 5, p. 97) Dr. Bollier told Nusinovic she needed to push her range of motion and stretching through the pain, continued her pain medication and physical therapy, and imposed restrictions of no reaching, no pushing, pulling, or reaching over five pounds, and to take 20 minute breaks every four hours for stretching and icing her shoulder. (JE 5, pp. 101-02)

On February 3, 2020, Nusinovic attended an appointment with Sarvenaz Jabbari, M.D., with Allen Occupational Health, complaining of back and right leg pain that is stabbing and heavy since her fall that is worse when moving. (JE 2, p. 23)

During an appointment with Dr. Bollier on February 14, 2020, Dr. Bollier continued Nusinovic's physical therapy, imposed restrictions of no lifting, pushing, or

pulling over 15 pounds, and below shoulder height only, and ordered an injection. (JE 5, pp. 105-15)

Nusinovic returned to Dr. Jabbari on March 2, 2020. (JE 2, p. 24) Dr. Jabbari imposed restrictions of no lifting over 15 pounds, occasional bending, and to sit, stand, and walk as needed. (JE 2, p. 24)

Nusinovic underwent lumbar spine magnetic resonance imaging on March 9, 2020. (JE 3, p. 66) The reviewing radiologist listed an impression of mild lumbar spine levocurvature, and a right posterior disc herniation at L4-L5 that had developed since the prior lumbar magnetic resonance imaging. (JE 3, pp. 66-67)

On March 10, 2020, Nusinovic attended a follow-up appointment with Dr. Jabbari. (JE 2, p. 25) Dr. Jabbari continued her restrictions and referred her to neurosurgery. (JE 2, p. 25)

On April 3, 2020, Nusinovic attended a telemedicine visit with Dr. Bollier, complaining of sharp pain of the anterior right shoulder extending into her shoulder blade when reaching overhead. (JE 5, p. 118) Nusinovic reported some improvement in her pain following the previous injection and improvement in range of motion and strength with physical therapy. (JE 5, p. 118, 120) Dr. Bollier imposed a 20 pound lifting restriction and below shoulder height. (JE 5, p. 121)

Nusinovic returned to Dr. Bollier on May 18, 2020, complaining of achy pain over the lateral deltoid of the right shoulder with a burning sensation down her arm and numbness into the long finger of her right hand. (JE 5, p. 122) Nusinovic had completed physical therapy and had transitioned to a home exercise program. (JE 5, p. 122) Dr. Bollier found Nusinovic had reached maximum medical improvement and using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Bollier assigned Nusinovic a permanent partial impairment of 5 percent to the right upper extremity, which is equivalent to 3 percent of the whole person, based on "loss of forward flexion (2% upper extremity) and extension (1% upper extremity) per figure 16-40 on page 476, loss of abduction (1% upper extremity) and adduction (0% upper extremity) per figure 16-43 on page 477, loss of internal rotation (1% upper extremity) per figure 16-46." (JE 5, pp. 125-26) Dr. Bollier imposed a 20 pound lifting restriction below shoulder height and ordered a functional capacity evaluation to determine permanent restrictions. (JE 5, pp. 125-26, 128)

On May 20, 2020, Nusinovic attended an appointment with Chad Abernathy, M.D., a neurosurgeon, complaining of low back pain radiating into her right lower extremity with numbness and tingling extending into the right buttocks, thigh, and calf following a September 10, 2019, work injury. (JE 6, p. 159) Dr. Abernathy noted lumbosacral spine magnetic resonance imaging showed a small right L4-L5 disc extrusion extending into the neuroforamen. (JE 6, p. 159) Dr. Abernathy recommended surgery and an orthopedic evaluation of her right hip since she complained of passive and active range of motion pain. (JE 6, p. 159)

Nusinovic underwent a functional capacity evaluation on May 22, 2020. (Ex. G) The evaluation was considered invalid due to an inconsistent performance. (Ex. G, p. 72)

Dr. Bollier sent Allen Health a letter on May 27, 2020, noting Nusinovic underwent a functional capacity evaluation on May 22, 2020, which was invalid. (JE 5, p. 130) Dr. Bollier noted she had a small rotator cuff tear that was repaired and she had good shoulder range of motion and he did not assign her any permanent restrictions. (JE 5, p. 130)

On July 27, 2020, Dr. Abernathey performed a right L4-L5 partial hemilaminectomy and discectomy. (JE 6, p. 162) Dr. Abernathey listed a post-operative diagnosis of right L5 radiculopathy and right L4-L5 disc extrusion. (JE 6, p. 162)

Nusinovic returned to Dr. Abernathey after surgery, reporting she received excellent relief of her preoperative pain. (JE 6, p. 160) Dr. Abernathey noted Nusinovic had reported having hip pain since her injury and he recommended she undergo an evaluation of her hip pain. (JE 6, p. 160)

Nusinovic returned to Allen Occupational Health on August 20, 2020, complaining of continuing right hip pain. (JE 2, pp. 26-27) The examining physician diagnosed her with right trochanteric bursitis, administered an injection, continued her physical therapy, and imposed restrictions of sitting, walking, and standing as tolerated. (JE 2, pp. 26, 28) During a recheck with Dr. Abernathey on September 14, 2020, Nusinovic continued to complain of low back and right hip pain. (JE 6, p. 160)

On September 17, 2020, Nusinovic underwent right lower extremity magnetic resonance imaging. (JE 3, p. 68) The reviewing radiologist listed an impression of:

1. Fluid/intra-articular gadolinium contrast filled cleft greater than ½ the labral thickness with a wedge shaped appearance involving the superior acetabular labrum coursing posteriorly-posterior inferiorly more suspicious for tear (under surface labral detachment) than sub labral sulcus; at least suggestion of additional anterosuperior-anterior acetabular labral tear as well.

2. Suggestion of very low-grade partial-thickness tearing of the lateral rotators and gluteus minimus upon their insertion on the greater trochanter.

3. Mild bilateral trochanteric bursitis.

4. Very mild right hip osteoarthritis.

(JE 3, p. 69)

On September 30, 2020, Nusinovic attended a follow-up appointment with Allen Occupational Health. (JE 2, p. 29) The examining physician diagnosed her with a right hip labral tear and continued her restrictions of sitting, standing, and walking as tolerated. (JE 2, p. 30)

Nusinovic attended an appointment with Robert Westermann, M.D. with the UIHC on October 12, 2020, complaining of persistent right hip pain radiating from her low back down to her right foot following a September 10, 2019 work injury. (JE 5, p. 133) Dr. Westermann examined Nusinovic, assessed her with acute right hip pain, opined her mechanism of injury is consistent with her pain and related to her work injury, ordered an ultrasound guided intra-articular hip injection, and he deferred to Dr. Abernathey's work restrictions. (JE 5, p. 134)

On November 3, 2020, Nusinovic returned to Dr. Westermann complaining of sharp posterior radiating pain down the back of her leg that is worse with bending down and forward and with excessive physical activity, with numbness and tingling into her foot. (JE 5, p. 136) Dr. Westermann opined Nusinovic would not benefit from surgical intervention given her lack of improvement following a diagnostic injection, recommended she see an ultrasound/injection specialist for evaluation of gluteus tendons for possible tendonitis, and recommended she follow up with Dr. Abernathey because she could be having symptoms from her low back. (JE 5, p. 138)

Nusinovic attended an appointment with Ryan Kruse, M.D. with the UIHC Tendinopathy Clinic on November 23, 2020, for evaluation of chronic low back/right hip/leg/foot pain after a September 10, 2019 work injury. (JE 5, p. 141) Dr. Kruse noted he reviewed her right hip magnetic resonance imaging from September 17, 2020, which showed a possible labral tear, mild gluteal tendinopathy and greater trochanteric bursitis and she underwent a diagnostic ultrasound that day. (JE 5, p. 144) Dr. Kruse opined his exam was consistent with mild glute tendinopathy and greater trochanteric bursitis, but he believed the majority of her symptoms were coming from her back based on her pain distribution and he recommended she follow up with Dr. Abernathey. (JE 5, p. 144)

On December 2, 2020, Dr. Abernathey sent a letter to Allen Health's counsel stating, "I would consider her work incident on September 10, 2019 to be the material cause for her presentation of a right L4-5 disc extrusion with lateral migration which subsequently required surgical intervention." (Ex. B, p. 30)

On December 14, 2020, Nusinovic underwent lumbar spine magnetic resonance imaging. (JE 3, p. 63) The reviewing radiologist listed an impression of a right hemilaminectomy and right facetectomy at L4-L5, enhancing granulation tissue at L4-L5 surrounding the right L5 nerve root, no recurrent or residual disc herniation, and no spinal stenosis or neural foraminal stenosis. (JE 3, p. 64)

Nusinovic returned to Dr. Abernathey on December 21, 2020. (JE 6, p. 161) Dr. Abernathey noted Dr. Westermann noted she had hip issues, but her condition did not warrant an aggressive surgical approach, and lumbosacral magnetic resonance imaging did not demonstrate a recurrence or residual herniation. (JE 6, p. 161) Dr. Abernathey did not recommend any aggressive neurosurgical management and he deferred future management of Nusinovic to Dr. Fields. (JE 6, p. 161)

Nusinovic reported that after the surgery she had the same pain that felt like a boiling heat in her back and that she has trouble sitting. (Tr., p. 34) Nusinovic relayed

since her fall she has had pain in her back going through her hip and down into her right leg. (Tr., p. 35)

Nusinovic returned to Allen Occupational Health on December 31, 2020, complaining of right hip pain and reporting her right shoulder "is killing me." (JE 2, pp. 31-32) The examining physician diagnosed her with right hip and groin pain with a labral tear and chronic low back pain, ordered a functional capacity evaluation, and restricted her from working. (JE 2, pp. 33, 35)

On January 22, 2021, Nusinovic attended an appointment with Allen Occupational Health for her right hip and lumbar pain. (JE 2, p. 36) The examining physician diagnosed her with chronic right hip pain with a small labral tear and chronic low back pain, placed her at maximum medical improvement without restrictions, and discharged her from care. (JE 2, pp. 36, 40)

On January 27, 2021, Nusinovic attended an appointment at UnityPoint Clinic Express complaining of back pain after returning to work that day. (JE 7, p. 163) Shanon Bennett, PA-C, examined Nusinovic, assessed her with acute midline low back pain with sciatica, prescribed pain medication, excused her from work that day and the next day, and recommended Nusinovic follow up with workers' compensation. (JE 7, pp. 164, 166)

Nusinovic returned to Allen Occupational Health on January 29, 2021, complaining of low back and right hip pain. (JE 2, p. 41) The examining physician diagnosed her with right hip pain and low back pain, recommended she work four hours per day for two weeks and then return to her regular duties, found she was at maximum medical improvement, discharged her from care, and recommended she follow up with her primary care provider. (JE 2, pp. 41, 43)

On February 1, 2021, Nusinovic completed a first report of injury reporting she sustained injuries to her right upper extremity, shoulder, and wrist. (JE 1, p. 4) Nusinovic reported, "I was doing all housekeeping duties, such as mopping, pushing the scrubber, stocking supplies, and wiping everything. I had sharp pain in the R shoulder radiating down the arm." (JE 1, p. 4) That day Nusinovic attended an appointment with Jessica Shea-Hebrink, ARNP, with UnityPoint Express, complaining of right shoulder pain, when pushing a mop at work. (JE 8, p. 169) Shea-Hebrink examined Nusinovic, assessed her with right shoulder acute pain, administered a Toradol injection, provided her with an arm sling, and directed her to follow up with her primary care provider the next day. (JE 8, p. 170)

Nusinovic attended an appointment with Vinko Bogdanic, M.D., with UnityPoint Internal Medicine to establish care on February 1, 2021. (JE 9, p. 187) Nusinovic reported she injured her low back and right shoulder at work and underwent low back and shoulder surgery. (JE 9, p. 187) Nusinovic complained of pain from her neck, shoulder, low back, and right hip. (JE 9, p. 187) Dr. Bogdanic assessed her with chronic right shoulder pain, chronic midline low back pain without sciatica, cervical herniated disc, chronic pain syndrome, and chronic right hip pain. (JE 9, p. 190) Dr. Bogdanic recommended a referral to an orthopedic surgeon, and he stated he could not restrict her from working. (JE 9, p. 190)

Nusinovic attended an appointment with Dr. Jabbari on February 4, 2021, reporting she sustained an injury the first day she returned to full duty work following right shoulder surgery. (JE 2, p. 44) Nusinovic complained of pain in her right shoulder and down her arm with mopping and numbness and tingling through her lower arm into her hand and fingers. (JE 2, p. 44) Dr. Jabbari found her range of motion was severely limited in her right shoulder, elbow, and wrist, diagnosed Nusinovic with right shoulder and arm pain, stated the cause of her problem was not known, prescribed meloxicam and cyclobenzaprine, recommended restricted duty, and referred her to Dr. Bollier. (JE 2, pp. 45-47)

On February 8, 2021, Nusinovic attended an appointment with Katie Wilcox, ARNP with UnityPoint Express, complaining of low back pain that goes into her buttocks hip area. (JE 8, p. 174) Nusinovic relayed she had been wiping and dusting at work and started having pain in her back all of a sudden and left work due to the pain. (JE 8, p. 174) Wilcox assessed Nusinovic with chronic back pain, prescribed a Medrol dosepak, and directed her to follow up with workers' compensation and with Dr. Abernathey. (JE 8, p. 175)

Nusinovic completed a first report of injury on February 10, 2021, reporting she injured her left arm "when pulling the fire door loose from the magnet for the purpose of dusting behind it," noting she felt a "pop" in her left shoulder and burning, sharp pain. (JE 1, p. 5)

The next day Nusinovic attended an appointment with Dr. Jabbari, reporting she heard a pop in her left shoulder with sharp, burning pain while pulling a fire door while dusting. (JE 2, pp. 49-50) Dr. Jabbari diagnosed Nusinovic with acute on chronic left shoulder pain, imposed restrictions of no lifting, pulling or pushing over five pounds with the left arm, and referred her to Dr. Bollier. (JE 2, pp. 49-52)

On February 11, 2021, Dr. Fields provided an impairment rating for Allen Health. (Ex. C) Dr. Fields opined, "Mrs. Nusinovic's current complaints do not correlate with the objective findings on lumbar MRI or right hip arthrograms," and stated he did not have an objective basis for which to perform an impairment rating under the AMA Guides. (Ex. C, p. 44)

On February 15, 2021, Nusinovic attended an appointment with Dr. Bollier regarding right shoulder pain following a new work injury when opening fire doors. (JE 5, p. 149) Dr. Bollier noted Nusinovic had been off work for over a year and that her tenderness was consistent with myofascial pain related to transitioning back to work. (JE 5, p. 152) Dr. Bollier recommended a home exercise program with finger walks, light stretching and strengthening to improve her pain with NSAIDs, heat and ice and he released her to return to work without restrictions. (JE 5, pp. 152, 154)

Nusinovic returned to Dr. Bogdanic on February 16, 2021, complaining of significant pain. (JE 9, p. 197) Dr. Bogdanic recommended she see a neurosurgeon and a pain specialist, and he restricted her from working until February 25, 2021. (JE 9, pp. 197-98)

On February 18, 2021, Nusinovic underwent left shoulder magnetic resonance imaging. (JE 3, p. 71) The reviewing radiologist listed an impression of tendinosis with partial-thickness tears of the supraspinatus and infraspinatus tendons and anterior superior labral tear with multi septated paralabral cysts. (JE 3, p. 72)

Dr. Abernathey examined Nusinovic on February 22, 2021, for an impairment rating. (JE 6, p. 161) Dr. Abernathey noted she continued to demonstrate excellent relief of her pre-operative symptomatology, but she reported residual low back pain and right groin pain. (JE 6, p. 161) Dr. Abernathey opined Nusinovic had reached maximum medical improvement and “[b]ased upon the AMA Guidelines for chronic pain, decreased range of motion of the lumbosacral spine, previous disc extrusion, and subsequent surgery, I would consider the patient to have a 7% whole body impairment rating.” (JE 6, p. 161) Pursuant to a request from counsel for Allen Health, Dr. Abernathey issued a letter, opining Nusinovic reached maximum medical improvement as of February 22, 2021, he did not believe she needed additional treatment for her lumbar spine noting her recent magnetic resonance imaging was unrevealing, her neurologic function is intact, and her symptoms are subjective without objective findings, and he did not believe she needed any permanent work restrictions. (Ex. B, p. 38)

On February 23, 2021, Nusinovic returned to Dr. Jabbari following magnetic resonance imaging. (JE 2, pp. 54-55) Dr. Jabbari noted the imaging showed partial thickness tears of the supraspinatus and infraspinatus, subchondral cysts, and a labral tear. (JE 2, p. 55) Nusinovic reported her whole left arm was numb with a needle-like sensation starting in her shoulder that radiates down. (JE 2, p. 55) Dr. Jabbari diagnosed Nusinovic with acute on chronic left shoulder pain that is “now not work related.” (JE 2, p. 55) Dr. Jabbari noted her symptoms and physical examination did not match well with her magnetic resonance imaging results and noted she could not relate her pathology on examination to be the result of reaching to open the door at work, noting “[a]n event like this could not cause a material aggravation of shoulder pathology,” recommended she see her primary care provider for an evaluation of the etiology of her pain, and released her to full duty. (JE 2, pp. 55-57)

On February 24, 2021, Nusinovic returned to Dr. Shah for an evaluation of her left shoulder pain on a referral from Dr. Fields. (JE 10, p. 206) Nusinovic reported she had been working using her left upper extremity and she heard a snap at her left shoulder when lifting heavy boxes, and since that time she was experiencing severe left shoulder pain, some paresthesias, and pain radiating from her shoulder down into her arm. (JE 10, p. 206) Dr. Shah performed electrodiagnostic testing of the upper extremities, found her needle EMG of the bilateral upper extremities was normal, there was no evidence of radiculopathy, and he listed an impression of “[b]orderline grade 1/6 median nerve and treatment and bilateral wrist.” (JE 10, p. 211)

Nusinovic returned to Wilcox with UnityPoint Express on February 25, 2021, complaining of terrible pain in her right shoulder and arm after mopping at work. (JE 8, p. 180) Nusinovic reported she had undergone right rotator cuff surgery and she reported she had never been the same since surgery. (JE 8, p. 180) Wilcox administered a Toradol shot, prescribed a Medrol Dosepak, and imposed a restriction of



no use of the right upper extremity and shoulder until she followed up with occupational medicine. (JE 8, pp. 179, 181-82, 184)

On March 3, 2021, Nusinovic returned to Dr. Fields following electromyography. (Ex. C, p. 44a) Dr. Fields noted her electromyography study of her bilateral upper extremities was normal, with no evidence of radiculopathy, and noted she exhibited "borderline grade 1 out of 6 median nerve at the bilateral wrists." (Ex. C, pp. 44a-44b) Dr. Fields diagnosed Nusinovic with chronic bilateral wrist pain that is a personal condition not related to her work activities at Allen Health. (Ex. C, p. 44b) Dr. Fields released Nusinovic from treatment, found she could return to regular duty, and due to her concern about her ability to perform her job he recommended a fitness for duty examination. (JE 2, p. 59; Ex. C, p. 44b)

Nusinovic returned to Dr. Bollier on March 8, 2021, regarding her left shoulder. (JE 5, p. 155) Nusinovic relayed her left shoulder pain started when she was using her left arm at work and she reported a fall at work on September 10, 2020. (JE 5, p. 155) Dr. Bollier listed an impression of a left shoulder degenerative partial rotator cuff tear related to preexisting tendinosis and degeneration and concluded her condition was related to wear and tear of the left shoulder over many years. (JE 5, p. 157) Dr. Bollier opined, "the mechanism of opening the fire doors in February 2021 would not be expected to cause the left partial rotator cuff tear seen on MRI," noting she had left shoulder pain before this episode, and he found her "left shoulder overcompensation is not deemed a work injury." (JE 5, p. 157)

Robin Sassman, M.D., an occupational medicine physician, conducted an independent medical examination for Nusinovic on April 6, 2021, and issued her report on May 10, 2021. (Ex. 1) Nusinovic underwent a functional capacity evaluation with WorkWell, ordered by her attorney on April 12, 2021. (Ex. 2) The physical therapist found the exam was valid and that Nusinovic is capable of work in the sedentary demand level, finding she can front carry up to 5 pounds on an occasional basis and 10 pounds on a rare basis. (Ex. 2, pp. 36-37) Dr. Sassman reviewed and used the report as part of her report.

Dr. Sassman reviewed Nusinovic's medical records and examined her. (Ex. 1) Dr. Sassman diagnosed Nusinovic with a right shoulder rotator cuff tear, status post right shoulder arthroscopy, SLAP repair, subacromial decompression, distal clavicle excision, and biceps tenotomy, left shoulder pain with magnetic resonance imaging evidence of a labral tear and partial thickness tears of the supraspinatus and infraspinatus tendons, right hip pain with magnetic resonance imaging evidence of a right hip labral tear and symptoms of trochanteric bursitis, low back pain with magnetic resonance imaging evidence of a disc herniation status post right L4-L5 partial hemilaminectomy and discectomy, and right SI joint pain. (Ex. 1, p. 19)

Dr. Sassman opined Nusinovic sustained an injury to her right shoulder causing her need for surgery and ongoing symptoms on May 3, 2019, and opined she aggravated her right shoulder on February 1, 2021, when she was mopping and noted increased pain in her right shoulder. (Ex. 1, p. 19)

Nusinovic alleges she injured her left shoulder by using it more when she was on restrictions for her right upper extremity in May 2019. Dr. Sassman documented Nusinovic noted symptoms in her shoulder when she was on restrictions for her right upper extremity, and opined pulling on a fire door caused Nusinovic to sustain a left shoulder labral tear and tendinosis with partial thickness tears of the supraspinatus and infraspinatus tendons on February 10, 2021. (Ex. 1, p. 20) Dr. Sassman opined the September 10, 2019 fall caused her L4-L5 disc herniation and right hip problems. (Ex. 1, p. 20)

Dr. Sassman opined Nusinovic had not reached maximum medical improvement, but stated if she did not seek additional treatment, she would place her at maximum medical improvement on April 12, 2021, the date of the second functional capacity examination. (Ex. 1, p. 26) Dr. Sassman recommended repeat right shoulder magnetic resonance imaging for Nusinovic's ongoing symptoms, a second opinion from an orthopedic specialist of the left shoulder to determine if any further surgical recommendations would be made, a second opinion from an orthopedic specialist of her right hip, and an evaluation by a pain management specialist to determine if an SI joint injection would be of value. (Ex. 1, pp. 26-27)

For the May 3, 2019 injury to the right shoulder, using Figures 16-40, 16-43, and 16-46 of the AMA Guides, Dr. Sassman assigned Nusinovic a 5 percent upper extremity impairment for loss of flexion, 1 percent upper extremity impairment for loss of extension, 4 percent upper extremity impairment for loss of abduction, 0 percent upper extremity impairment for loss of adduction, 2 percent upper extremity impairment for loss of internal rotation, and 1 percent upper extremity impairment for loss of external rotation, for a total 13 percent upper extremity impairment. (Ex. 1, p. 27) For the distal clavicle excision, using Table 16-27, Dr. Sassman assigned a 10 percent upper extremity impairment. (Ex. 1, p. 27) Using the combined values chart, Dr. Sassman assigned a 22 percent upper extremity impairment, which she converted to a 13 percent whole person impairment. (Ex. 1, p. 27)

For the February 10, 2021, injury to the left shoulder, using Figures 16-40, 16-43, and 16-46 of the AMA Guides, Dr. Sassman assigned Nusinovic a 5 percent upper extremity impairment for loss of flexion, 1 percent upper extremity impairment for loss of extension, 4 percent upper extremity impairment for loss of abduction, 0 percent upper extremity impairment for loss of adduction, 2 percent upper extremity impairment for loss of internal rotation, and 0 percent upper extremity impairment for loss of external rotation, for a total 12 percent upper extremity impairment, which she converted to a 7 percent whole person impairment. (Ex. 1, p. 28)

For the September 10, 2019, injury, Dr. Sassman found Nusinovic falls within DRE Lumbar Category II, and assigned a 5 percent whole person impairment. (Ex. 1, p. 28) For the right hip, Dr. Sassman assigned a 20 percent lower extremity impairment for loss of flexion, which she converted to an 8 percent whole person impairment. (Ex. 1, p. 28) Using the combined values chart, she combined the impairments and found Nusinovic sustained a 13 percent impairment. (Ex. 1, p. 28)

Dr. Sassman recommended restrictions for lifting, pushing, pulling, and carrying from floor to waist up to 10 pounds occasionally, and 20 pounds from waist to shoulder level with her elbows at her sides occasionally, no lifting, pushing, pulling, or carrying with her arms outstretched away from her body or above shoulder height, no use of vibratory or power tools, and to limit standing and walking to an occasional basis with the ability to frequently change positions. (Ex. 1, p. 29)

Dr. Abernathey responded to a check-the-box letter on August 18, 2021, stating his opinions set forth in his February 22, 2021 letter continued to be his opinions. (Ex. B, p. 39) Dr. Abernathey agreed he did not have any specific recommendations for Nusinovic's hip and he deferred to Dr. Fields to determine whether she needed additional treatment. (Ex. B, p. 40)

On August 20, 2021, Dr. Smith responded to a check-the-box letter from counsel for Allen Health agreeing he became a personal medical provider for Nusinovic in 2012, and when he evaluated her on September 25, 2019 for dysuria, his office note did not reflect she reported any specific back, hip, or shoulder complaints. (Ex. E, pp. 61-62) Dr. Smith further agreed when he evaluated Nusinovic in December 2019 she reported she had been off work after shoulder surgery, he treated her for sinus congestion and blood pressure issues, but his office notes do not reflect she reported any back or hip complaints. (Ex. E, p. 62) Dr. Smith agreed when he evaluated Nusinovic in August 2020 for sinus pressure she told him her back was doing better and she did not have any other concerns. (Ex. E, p. 62) Dr. Smith agreed when he evaluated Nusinovic on March 11, 2021 for sinus congestion and pressure, his office notes do not reflect she reported any issues with back and shoulder pain. (Ex. E, p. 62) Dr. Smith agreed when he evaluated Nusinovic on March 17, 2021 for left shoulder pain she had weakness in grip strength and requested a referral to Dr. Hart, but his office was notified Dr. Hart was not in her network for her insurance. (Ex. E, p. 63) Dr. Smith agreed he evaluated Nusinovic again on April 7, 2021, for her annual physical and her mood and sleep were good, her back exam was negative, her gait was normal, and he instructed her to diet, exercise, and lose weight. (Ex. E, p. 63) Dr. Smith agreed he had no opinion on whether Nusinovic's left shoulder problems and need for any medical treatment for her shoulder is in any way related to a work injury at Allen hospital. (Ex. E, p. 63) Dr. Smith agreed he has not issued any work restrictions for Nusinovic. (Ex. E, p. 64) When asked whether he believed she could return to work he responded no "that's not up to me – up to ortho." (Ex. E, p. 64) Dr. Smith has not evaluated Nusinovic since April 7, 2021. (Ex. E, p. 63)

Dr. Bollier sent a letter to Allen Health's counsel on August 30, 2021, responding to questions she posed. (Ex. A) Dr. Bollier noted he last evaluated Nusinovic's right shoulder on February 15, 2021, and her left shoulder on March 8, 2021. (Ex. A, p. 17) Dr. Bollier stated he did not recommend any additional treatment for her right shoulder and maintained she sustained a 5 percent permanent impairment to her right shoulder. (Ex. A, pp. 17, 19) Dr. Bollier further stated,

I disagree with the 22% right upper extremity impairment given by Dr. Sassman. We use the 5<sup>th</sup> edition Guides to calculate the impairment rating and use the same approach to determine impairment in every case.

We don't assign the 10% upper extremity impairment for distal clavicle resection as this is a chronic degenerative condition and the need for AC joint arthroplasty was not caused by the work injury. We did perform distal clavicle excision at the time of her October 2019 right shoulder surgery because we wanted to address all pain generators. However, her work injury didn't cause the AC joint arthroplasty. This is a chronic degenerative condition. In addition, our determination of range of motion impairment is based on the accepted method of calculating active shoulder range of motion in all planes. We stand by our range of motion determination from May 2020.

(Ex. A, p. 18)

Dr. Bollier does not recommend any additional treatment for the February 2021 work injury, stating he did not believe any new structural damage occurred in February 2021 and he did not believe she sustained any permanent impairment related to the February 1, 2021 work incident. (Ex. A, p. 20)

With respect to the February 10, 2021 work injury, Dr. Bollier stated he reviewed Nusinovic's left shoulder magnetic resonance imaging and examined her after the incident, and opined:

I disagree with Dr. Sassman's assessment that the February 10<sup>th</sup> 2021 work injury was a direct and causal factor in relationship to the left shoulder MRI findings. The reported mechanism of injury would not be expected to cause the MRI findings. In addition, the left shoulder MRI showed degenerative tendinosis and tearing which develops over many years. I don't believe the February 10<sup>th</sup> 2021 caused a material aggravation or was a contributing factor to the left shoulder MRI findings. In addition, I don't believe that the May 30<sup>th</sup> 2019 work incident caused a left shoulder injury.

(Ex. A, p. 20) Dr. Bollier stated while Nusinovic may need additional treatment for her left shoulder, the need for treatment is related to her preexisting degenerative shoulder condition and not the February 10, 2021 incident. (Ex. A, pp. 20-21) Dr. Bollier did not assign any permanent work restrictions for the May 2019 or February 2021 incidents. (Ex. A, p. 21)

On August 31, 2021, Dr. Kruse responded to a check-the-box letter from Allen Health's counsel agreeing he administered an injection in her right shoulder in February 2020 and an injection in her right hip in November 2020 and performed a diagnostic ultrasound of her right hip in November 2020. (Ex. D, p. 47) Dr. Kruse agreed he believes the possible labral tear on her right hip magnetic resonance imaging scan was an incidental finding unrelated to her September 2019 fall, and that he is not recommending any additional treatment for her right hip/groin for any of the possible findings on the magnetic resonance imaging scan. (Ex. D, p. 47) Dr. Kruse further agreed he did not issue any work restrictions for Nusinovic. (Ex. D, p. 48)

On October 1, 2021, Dr. Bogdanic's office sent a check-the-box letter by facsimile to Allen Health's counsel, which is signed by Dr. Bogdanic, but not dated. (Ex. F) Dr. Bogdanic agreed he evaluated Nusinovic on two occasions, February 1, 2021, and February 16, 2021 and she had not returned to his office since February 16, 2021. (Ex. F, p. 66) Dr. Bogdanic agreed on February 16, 2021, he issued a temporary work restriction of no work until February 25, 2021, and he did not extend the restriction and has not issued any temporary or permanent work restrictions for Nusinovic since the February 25, 2021 restriction expired. (Ex. F, p. 67)

## **CONCLUSIONS OF LAW**

### **I. Applicable Law**

These cases involve the issues of nature and extent of disability, entitlement to temporary benefits, refusal of suitable work, an offer of work at the same or greater salary, wages, or earnings, recovery of medical bills, and recovery of costs under Iowa Code sections 85.27, 85.33, 85.34, and 86.40. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. The alleged injuries in these cases all occurred after the changes to the statute, therefore, the new provisions of the statute apply to these cases.

The calculation of interest is governed by Deciga-Sanchez v. Tyson Foods, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of 10 percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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.

### **II. Arising Out of and in the Course of Employment**

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those

duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability is found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

The parties agree Nusinovic sustained injuries arising out of and in the course of her employment with Allen Health on May 3, 2019, and on September 10, 2019, but disagree on nature and extent of disability. Nusinovic alleges she sustained injuries to her left shoulder on May 30, 2019, back and hip on January 14, 2021, right shoulder on February 1, 2021, and left shoulder on February 10, 2021. Allen Health rejects her assertions.

**A. May 30, 2019 Left Shoulder/Upper Extremity Injury**

No physician has opined Nusinovic sustained a temporary or permanent impairment to her left shoulder or upper extremity as a result of the alleged May 30, 2019 injury. I find Nusinovic has failed to establish she sustained an injury to her left shoulder on May 30, 2019, arising out of and in the course of her employment with Allen Health. Given this finding, the remaining issues involving the May 30, 2019 injury date are moot.

**B. January 14, 2021 Back and Hip Injury**

Nusinovic alleges she sustained an injury to her back and hip during a January 14, 2021, functional capacity evaluation. No physician has opined Nusinovic sustained a temporary or permanent impairment to her back or hip as a result of the alleged January 14, 2021 injury. I find Nusinovic has failed to establish she sustained an injury to her back on January 14, 2021, arising out of and in the course of her employment with Allen Health. Given this finding, the remaining issues involving the January 14, 2021 injury date are moot.

**C. February 1, 2021 Right Shoulder/Upper Extremity Injury**

Nusinovic alleges she sustained an injury to her right shoulder or upper extremity on February 1, 2021. No physician has opined Nusinovic sustained a temporary or permanent impairment to her right shoulder as a result of the alleged February 1, 2021 injury. I find Nusinovic has failed to establish she sustained an injury to her right shoulder on February 1, 2021, arising out of and in the course of her employment with Allen Health. Given this finding, the remaining issues involving the February 1, 2021, injury date are moot.

**D. February 10, 2021 Left Shoulder Injury or Upper Extremity**

Nusinovic alleges she sustained an injury to her left shoulder or upper extremity on February 10, 2021, when she opened a fire door at work. Three physicians have given causation opinions in this case, Dr. Jabbari, a treating occupational medicine physician, Dr. Bollier, a treating orthopedic surgeon, and Dr. Sassman, an occupational medicine physician who performed an independent medical examination for Nusinovic. I find the opinion of Dr. Bollier, as supported by Dr. Jabbari, to be the most persuasive.

Dr. Sassman causally related Nusinovic's left shoulder magnetic resonance imaging findings to her work, finding she reported left shoulder symptoms after she sustained an injury to her right shoulder,

[t]hen on 2/10/2021 she injured her left shoulder when she was pulling on a fire door and heard and felt a pop in her left shoulder. A subsequent MRI of the left shoulder on 2/18/2021 showed tendinosis with partial thickness tears of the supraspinatus and infraspinatus tendons. Anterior superior labral tear was also noted. She has not had further treatment on her left shoulder to date. It is my opinion that the injury of 2/10/2021 is a direct and causal factor of the abnormalities noted on the MRI. Supporting

this opinion is the mechanism of injury and the fact that her left shoulder symptoms have been persistent since that time.

(Ex. 1, p. 20)

Before Dr. Sassman provided her opinion, Dr. Jabbari opined Nusinovic's left shoulder problems were not work-related, noting her symptoms and physical examination did not match well with her magnetic resonance imaging results and noted she could not relate her pathology on examination to be the result of reaching to open the door at work, finding, "[a]n event like this could not cause a material aggravation of shoulder pathology," and recommending she see her primary care provider for an evaluation of the etiology of her pain, and then released her to full duty. (JE 2, pp. 55-57) Likewise, Dr. Bollier, a treating physician who is a recognized expert at the UIHC, also opined her left shoulder degenerative partial rotator cuff tear was related to preexisting tendinosis and degeneration, concluding her condition was related to wear and tear of the left shoulder over many years and finding "the mechanism of opening the fire doors in February 2021 would not be expected to cause the left partial rotator cuff tear seen on MRI," noting she had left shoulder pain before this episode and "left shoulder overcompensation is not deemed a work injury." (JE 5, p. 157) Dr. Sassman did not address the opinions of Dr. Jabbari and Dr. Bollier or explain how opening a fire door could cause the pathology seen on imaging and exam.

Dr. Bollier reviewed Dr. Sassman's opinion, noting he had reviewed Nusinovic's magnetic resonance imaging and examined her after the incident, opining,

I disagree with Dr. Sassman's assessment that the February 10<sup>th</sup> 2021 work injury was a direct and causal factor in relationship to the left shoulder MRI findings. The reported mechanism of injury would not be expected to cause the MRI findings. In addition, the left shoulder MRI showed degenerative tendinosis and tearing which develops over many years. I don't believe the February 10<sup>th</sup> 2021 caused a material aggravation or was a contributing factor to the left shoulder MRI findings. In addition, I don't believe that the May 30<sup>th</sup> 2019 work incident caused a left shoulder injury.

(Ex. A, p. 20) Dr. Bollier noted Nusinovic's imaging taken eight days after the alleged injury showed degenerative tendinosis and tearing that develops over many years. Dr. Sassman's report does not address the degenerative nature of the findings. She does not describe a lighting up of a preexisting condition, rather she described an alleged acute injury when Nusinovic heard a pop in her left shoulder while opening the fire door. I do not find her opinion persuasive. Based on the foregoing, I find Nusinovic has failed to prove she sustained an injury to her left shoulder or left upper extremity caused by the alleged February 10, 2021 work injury. Given this finding, the remaining issues involving the February 10, 2021, injury date are moot.

### **III. Nature and Extent of May 3, 2019 Injury**

#### **A. Nature of the Injury**



Nusinovic alleges the May 3, 2019 injury to her right upper extremity/shoulder extends into her body as a whole, and should include impairment related to the distal clavicle excision. Allen Health rejects her assertion she has sustained an impairment to her body as a whole.

Workers' Compensation Commissioner Joseph Cortese, II has issued three opinions governing the nature of alleged shoulder injuries, which are binding in this case and are incorporated by reference. Deng v. Farmland Foods, Inc., File No. 5061883, 2020 WL 5893577 (Sept. 29, 2020 Iowa Workers' Comp. Comm'n) (injuries to the infraspinatus and labrum are included in the definition of the shoulder); Chavez v. MS Technology, LLC, File No. 5066270, 2020 WL 6037534 (Sept. 30, 2020 Iowa Workers' Comp. Comm'n) (claimant who underwent extensive debridement of the labrum, biceps tendon, and subacromial space with biceps tenotomy and a subacromial decompression sustained an injury to the shoulder and not the body as a whole), Welch v. Seneca Tank, File No. 1647781.01, 2021 WL 4977381 (Oct. 20, 2021 Iowa Workers' Comp. Comm'n) (claimant's distal clavicle excision for a shoulder surgery should be compensated as a shoulder injury).

On October 23, 2019, Dr. Bollier performed a right shoulder arthroscopy, SLAP repair, subacromial decompression, distal clavicle excision, and biceps tenotomy on Nusinovic. (JE 5, p. 91) Nusinovic did not sustain a break of her clavicle itself at work, rather, the distal clavicle excision was performed to improve her shoulder symptoms and function. The Commissioner has opined the above injuries are to be compensated as injuries to the shoulder. I am bound to follow his opinions. I find Nusinovic sustained an injury to her shoulder and not to her body as a whole.

#### **B. Extent of Disability, Credit, and Alleged Overpayment**

Iowa Code section 85.34(2) governs compensation for permanent partial disabilities. The law distinguishes between scheduled and unscheduled disabilities. The Division of Workers' Compensation evaluates disability using two methods, functional and industrial. Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983).

The Division applies the functional method for a scheduled injury to each part of the body listed in the statute, including the loss of an arm and loss of a shoulder. Iowa Code § 85.34(2); Westling v. Hormel Foods Corp., 810 N.W.2d 247, 252 (Iowa 2012). Each of these subsections provides a maximum number of weeks of compensation for the complete loss of a scheduled member or body part.

Since 2017, compensation or functional loss for scheduled injuries is determined by taking the number of weeks allowed for a complete loss of the body part or scheduled member, multiplied by a percentage of impairment determined using the AMA Guides. Iowa Code § 85.34(2)(x). The statute also requires compensation be awarded for functional loss if an employee returns to work or is offered work "for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury." Id. § 85.34(2).

The Division uses the industrial method for “all cases of permanent partial disability other than those” set forth in Iowa Code section 85.34(2)(a) through (u). All other cases are classified as “unscheduled injuries.” Westling, 810 N.W.2d at 252-53. Compensation for unscheduled injuries is determined examining the reduction of earning capacity. Id. at 53.

In 2017, the Iowa Legislature made substantial changes to Iowa Code chapter 85, including a change to how compensation is determined for an injury “for a loss of a shoulder.” Before 2017, shoulder injuries were treated as injuries to the body as whole and were compensated industrially under what is now Iowa Code section 85.34(2)(v) (2017), formerly Iowa Code section 85.34(2)(u) (2016). Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). In 2017, the Legislature enacted Iowa Code section 85.34(2)(n), which provides “compensation shall be paid as follows . . . .(n) For the loss of a shoulder, weekly compensation during four hundred weeks.”

As analyzed above, I found Nusinovic sustained a loss to her shoulder, a scheduled member and her recovery is limited to functional loss under the statute. Two physicians have given impairment ratings in this case, Dr. Sassman and Dr. Bollier. I find Dr. Sassman’s rating to be the most persuasive.

On May 18, 2020, Dr. Bollier assigned Nusinovic a permanent partial impairment of 5 percent to the right upper extremity, based on “loss of forward flexion (2% upper extremity) and extension (1% upper extremity) per figure 16-40 on page 476, loss of abduction (1% upper extremity) and adduction (0% upper extremity) per figure 16-43 on page 477, loss of internal rotation (1% upper extremity) per figure 16-46.” (JE 5, pp. 125-26) He listed range of motion findings for the right shoulder of abduction to 140 degrees, forward flexion of 160 degrees, internal rotation of 70 degrees, external rotation of 80 degrees, adduction of 40 degrees and extension of 40 degrees. (JE 5, p. 125) Dr. Bollier did not list any comparison findings for the left shoulder.

On April 6, 2021, Dr. Sassman examined Nusinovic, and later issued her report, opining she reached maximum medical improvement if she did not seek additional treatment on April 12, 2021, the date of the second functional capacity evaluation. Dr. Sassman assigned Nusinovic a 5 percent upper extremity impairment for loss of flexion, 1 percent upper extremity impairment for loss of extension, 4 percent upper extremity impairment for loss of abduction, 0 percent upper extremity impairment for loss of adduction, 2 percent upper extremity impairment for loss of internal rotation, and 1 percent upper extremity impairment for loss of external rotation, for a total 13 percent upper extremity impairment. (Ex. 1, p. 27) For the distal clavicle excision, using Table 16-27, Dr. Sassman assigned a 10 percent upper extremity impairment. (Ex. 1, p. 27) Using the combined values chart, Dr. Sassman assigned a 22 percent upper extremity impairment. (Ex. 1, p. 27) Dr. Sassman recorded her findings on exam, as follows: flexion of 110 degrees for the right and left shoulders, extension of 30 degrees for the right shoulder and 45 degrees for the left shoulder, abduction of 100 degrees for both shoulder, adduction of 40 degrees for the right shoulder and 50 degrees for the left shoulder, external rotation of 30 degrees for the right shoulder and 70 degrees for the left shoulder, and internal rotation of 50 degrees for the right shoulder and 60 degrees for the left shoulder. (Ex. 1, p. 17)

Dr. Bollier challenged Dr. Sassman's rating on August 30, 2021, noting he last evaluated Nusinovic's right shoulder on February 15, 2021, and that he maintained she had sustained a 5 percent permanent impairment to her right shoulder. (Ex. A, pp. 17, 19) Dr. Bollier stated he did not assign a 10 percent upper extremity impairment for the distal clavicle resection because it "is a chronic degenerative condition and the need for AC joint arthroplasty was not caused by the work injury. We did perform distal clavicle excision at the time of her October 2019 right shoulder surgery because we wanted to address all pain generators. However, her work injury didn't cause the AC joint arthroplasty. This is a chronic degenerative condition." (Ex. A, p. 18) He further stated he stood by his range of motion calculations. (Ex. A, p. 18)

During an appointment on September 23, 2019, Dr. Bollier found Nusinovic's reported symptoms, physical examination, and findings on examination and magnetic resonance imaging correlated well, and opined her work for Allen Health over the past seven years was a "significant factor/aggravation in causation of the patient's pain, imaging findings, and pathology," and that "her work there is a significant factor in her rot cuff tear and need for treatment." (JE 5, p. 88) He then recommended right shoulder arthroscopy, rotator cuff repair, biceps tenotomy, distal clavicle excision, debridement and decompression. (JE 5, pp. 88, 90) Dr. Bollier did not state the need for a distal clavicle excision was unrelated to the work injury at that time. Moreover, his opinion on August 30, 2021, does not address whether the right shoulder injury aggravated, accelerated, or lit up her condition, causing the need for the distal clavicle excision. Dr. Sassman most recently examined Nusinovic's right shoulder. For these reasons, I find her rating most persuasive.

In her post-hearing brief, Nusinovic conceded that if it is found she has reached maximum medical improvement for the May 3, 2019 work injury, the conversion date for permanency is May 18, 2020, the date of Dr. Bollier's rating. (Claimant's Brief at 12) I find Nusinovic has sustained a 22 percent impairment to her right shoulder caused by the work injury, entitling her to 88 weeks of permanent partial disability benefits, at the stipulated rate of \$456.92, commencing on May 18, 2020.

The parties stipulated her weekly rate for this claim is \$456.92. Allen Health paid Nusinovic 4 weeks and 5 days of temporary disability benefits at the rate of \$466.68 per week, for an excess of \$45.88 beyond what she was entitled to receive, and 20 weeks of permanent partial disability benefits at the rate of \$466.68 per week, \$195.20 beyond what she was entitled to receive under Iowa Code section 85.34(5). Iowa Code section 85.34(5) provides,

[i]f an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for any current or subsequent injury to the same employee.

Under the plain meaning of the statute, Allen Health is entitled to a credit for the excess \$45.88 paid in temporary benefits and \$195.20 paid in permanent partial disability benefits based on the incorrect rate.

#### **IV. September 10, 2019 Injury**

Nusinovic alleges she is entitled to industrial disability benefits for permanent injuries she sustained to her low back and right hip when she fell in the parking lot at work on September 10, 2019. Allen Health admits Nusinovic sustained a permanent impairment to her low back caused by the work injury, but denies Nusinovic sustained a permanent impairment to her hip or that she needs additional treatment for her right hip condition. Allen Health alleges Nusinovic is not entitled to any additional benefits beyond the 7 percent rating it paid because she refused an offer of work at a greater wage and she is only entitled to recover for her functional loss in this case. Nusinovic disputes Allen Health's contention.

##### **A. Nature of the Injury**

The parties agree Nusinovic sustained a permanent impairment to her low back caused by the work injury. Both Dr. Abernathey and Dr. Sassman opined Nusinovic sustained a permanent impairment to her low back caused by the work injury. Nusinovic alleges she sustained a permanent impairment to her right hip caused by the work injury. Allen Health rejects her assertion. Four physicians have provided causation opinions on her hip condition, Dr. Westermann, a treating physician at the UIHC, Dr. Kruse, a treating physician at the UIHC, Dr. Sassman, an occupational medicine physician who conducted an independent medical examination for Nusinovic, and Dr. Fields, a treating occupational medicine physician. I find Dr. Sassman's opinion to be the most persuasive, as supported by Dr. Westermann's opinion.

Shortly after Dr. Abernathey performed surgery on her low back, Nusinovic complained of right hip pain. She was referred to Dr. Westermann at the UIHC. Dr. Westermann examined Nusinovic, assessed her with acute right hip pain, opined the mechanism of her injury is consistent with her work injury and ordered an ultrasound-guided intra-articular hip injection. (JE 5, p. 134) When Nusinovic returned to Dr. Westermann, she continued to complain of hip pain. (JE 5, p. 136) Dr. Westermann opined Nusinovic would not benefit from surgical intervention given her lack of improvement with diagnostic injection, recommended she see an ultrasound/injection specialist for evaluation of gluteus tendons for possible tendonitis and to follow up with Dr. Abernathey because she may be having symptoms from her low back. (JE 5, p. 138) Dr. Westermann never opined Nusinovic's acute right hip pain was unrelated to the work injury.

Dr. Westermann referred Nusinovic to Dr. Kruse, also with the UIHC. Dr. Kruse reviewed right hip magnetic resonance imaging from September 17, 2020, which showed a possible labral tear, mild gluteal tendinopathy and greater trochanteric bursitis and she underwent a diagnostic ultrasound that day. (JE 5, p. 144) Dr. Kruse opined his exam was consistent with mild glute tendinopathy and greater trochanteric bursitis, but he believed the majority of her symptoms were coming from her back based on her pain distribution and he recommended she follow up with Dr. Abernathey. (JE 5, p. 144) Dr. Kruse later responded to a check-the-box letter, agreeing he did not recommend additional treatment for her right hip and that he believes "the possible tear on her right hip MRI scan was an incidental finding unrelated to the September 2019

fall.” (Ex. D, p. 47) Dr. Kruse did not provide any handwritten comments or explain his finding.

Dr. Fields placed Nusinovic at maximum medical improvement for her right hip on January 22, 2021 and found he “did not have a medical explanation for her pain symptomatology,” and further opined “Mrs. Nusinovic’s current complaints do not correlate with the objective findings on lumbar MRI or right hip arthrograms,” stating he did not have an objective basis for which to perform an impairment rating under the AMA Guides. (Ex. C, p. 44) Thus, Dr. Fields found no objective evidence supporting she sustained a permanent impairment to her lumbar spine or right hip. His findings regarding her lumbar spine are contrary to Dr. Abernathey’s finding she sustained a permanent impairment to her lumbar spine. I do not find Dr. Fields’ opinion persuasive.

Dr. Sassman diagnosed Nusinovic with right hip pain with magnetic resonance imaging evidence of a right hip labral tear and symptoms of trochanteric bursitis. (Ex. 1, p. 19) Dr. Sassman opined her fall was a causal factor in the hip condition, noting,

[a]n MRI of the hip on 9/17/2020 showed a tear of the superior acetabular labrum and the suggestion of an additional anterosuperior-anterior acetabular labral tear as well. There was very low-grade, partial thickness tearing of the lateral rotators and gluteus minimus at the insertion on the greater trochanter. Mild bilateral trochanteric bursitis and very mild right hip osteoarthritis was also noted. The treatment done to-date on the right hip has not been successful.

(Ex. 1, p. 20) Dr. Sassman then assigned a 20 percent lower extremity impairment for loss of flexion of the right hip, which she converted to an 8 percent whole person impairment. (Ex. 1, p. 28)

There is no evidence Nusinovic complained of right hip pain before the November 2019 injury. Following lumbar spine surgery Nusinovic consistently complained of right hip pain, which is documented in her medical records, and is consistent with Dr. Sassman’s opinion, as supported by Dr. Westermann’s findings. I find Nusinovic sustained a permanent injury to her right hip caused by the fall.

## **B. Extent of Disability**

Dr. Abernathey assigned Nusinovic a 7 percent permanent impairment rating “[b]ased upon the AMA Guidelines for chronic pain, decreased range of motion of the lumbosacral spine, previous disc extrusion, and subsequent surgery.” (JE 6, p. 161) Dr. Sassman assigned Nusinovic a 5 percent permanent impairment rating for her lumbar spine. (Ex. 1, p. 28) Dr. Abernathey’s training is superior to Dr. Sassman’s training. He also performed surgery on Nusinovic and I find his opinion most persuasive regarding the extent of her functional disability to her back.

Dr. Sassman also assigned Nusinovic an 8 percent permanent impairment for her right hip. (Ex. 1, p. 28) Under the Combined Values Chart on Page 604 of the AMA Guides, Nusinovic has sustained a 14 percent whole person impairment.

Dr. Abernathey did not assign Nusinovic any permanent restrictions. Dr. Sassman assigned restrictions that are based, in part, on limitations caused by her right and left lower extremities.

Allen Health avers Nusinovic is only entitled to her functional rating because Allen Health offered her a position in May 2021 making greater earnings than she was making at the time of the September 10, 2019 work injury. Nusinovic rejects Allen Health's assertion.

One of the many changes to Iowa Code section 85.34 involves the return to work or offer of work at the same or greater salary, wages, or earnings the employee received at the time of the injury. Under Iowa Code section 85.34(2)(v), governing industrial disabilities,

[i]f an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability

The parties stipulated Nusinovic has not returned to work since February 26, 2021. There was no evidence presented Allen Health terminated Nusinovic's employment prior to the hearing. The parties also stipulated at the time of the alleged injury Nusinovic's gross earnings were \$632.34 per week. Nusinovic worked full-time, and under the stipulation her hourly wage was \$15.80 per hour.

Allen Health avers Nusinovic is only entitled to her functional impairment for the September 10, 2019, because in May 2021, Allen Health offered her a position as an administrative assistant consistent with Dr. Sassman's restrictions, earning \$17.75 per hour, which is more than her wages at the time of the work injury.

Allen Health' counsel sent Nusinovic's counsel a letter on May 17, 2021, offering her a full-time administrative assistant position within Dr. Sassman's recommended restrictions, earning wages of \$17.75 per hour, and attaching the job description. (Ex. 4, pp 74-78) On cross-examination, Nusinovic admitted after Dr. Sassman issued her report and recommended permanent restrictions, Allen Health offered her a position within Dr. Sassman's restrictions, at a higher wage than she was earning at the time of the work injury, as follows,

Q. A week later you're offered a new job from Allen. Do you recall that?

A. **Correct.**

Q. Okay. It's not in housekeeping work that you were doing before in 2021. This one is more of a sedentary administrative job; is that fair to say?

A. **Yes.**

Q. All right. So you got an offer of the job within Doctor Sassman's restrictions on April 17, 2021 [sic]; correct?

A. **Correct.**

Q. And I think they even said they'd be willing to work with you, you can sit or stand, and wanted you even just to come in and look at the job and see how they could arrange your work stations for you and to accommodate you. Do you recall that?

A. **Yes.**

Q. Did you go back to Allen and look at the job?

A. **No.**

Q. Did you call Allen and talk to them about the job?

A. **No.**

Q. At any time since May 17, 2021, have you ever gone in and looked at the job or called Allen to talk about the job and how you could do the work?

A. **No.**

Q. This was going to be a full-time job paying \$17.75 an hour; correct?

A. **Correct.**

Q. Okay. And you did not accept the job; is that fair to say?

A. **Due to pain, no.**

Q. In fact, you rejected the job at that time and said if we would provide treatment and surgery for your left shoulder you would review jobs from Allen; isn't that correct?

A. **Correct.**

(Tr., pp. 92-93)

Allen Health offered Nusinovic work at a greater wage than she was earning at the time of the work injury consistent with Dr. Sassman's recommended permanent

restrictions and she refused the work. As analyzed above, I also found Nusinovic failed to prove she sustained an injury to her left shoulder arising out of and in the course of her employment with Allen Health. Under the statute, Nusinovic is only entitled to recover the functional loss for her low back and right hip injury, or 70 weeks of permanent partial disability benefits, at the stipulated rate of \$632.34 per week, commencing on April 12, 2021, the date Dr. Sassman found she reached maximum medical improvement if additional treatment was not provided for her shoulders. Given my finding Nusinovic reached maximum medical improvement for her low back and right hip, I find she is not entitled to a running award of temporary benefits from April 26, 2021, for her low back and right hip conditions.

## **V. Medical Bills**

Nusinovic seeks to recover medical bills for treatment she received on January 27, 2021, February 1, 2021, February 8, 2021, February 16, 2021, and February 25, 2021. (Ex. 8) The bills total \$1,391.00. Nusinovic's insurer paid \$397.26, Nusinovic paid copayments, and the total outstanding balance after adjustments is \$725.32. Allen Health avers Nusinovic is not entitled to recover the bills because the bills are for unauthorized treatment.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

The bills that are the subject of Exhibit 8, with the exception of the February 25, 2021 bill, are for treatment for Nusinovic's back complaints. I do not find Nusinovic is entitled to recover the bill from the February 25, 2021, treatment. The amount outstanding for this visit is \$279.00. Based on the evidence presented at hearing, I find the remainder of the treatment provided to Nusinovic set forth in Exhibit 8 was reasonable and beneficial to Nusinovic. Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 206; Brewer-Strong v. HNI Corp., 913 N.W.2d 235 (Iowa 2018). I find Allen Health is responsible for the bills set forth in Exhibit 8, with the exception of the bill for the treatment she received on February 25, 2021, and must reimburse Nusinovic for the



copayments she paid. Allen Health is entitled to a credit for all medical bills paid by Nusinovic's group health insurance through Allen Health.

## **VI. Costs**

Nusinovic seeks to recover the \$103.00 filing fees for each case, \$992.00 for the functional capacity evaluation, and \$1,750.00 for the vocational evaluation. (Ex. 9)

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 Iowa Administrative Code 4.33, provides costs may be taxed by the deputy workers' compensation commissioner for: (1) the attendance of a certificated shorthand reporter for hearings and depositions; (2) transcription costs; (3) the cost of service of the original notice and subpoenas; (4) witness fees and expenses; (5) the cost of doctors' and practitioner's deposition testimony; (6) the reasonable cost of obtaining no more than two doctors' or practitioners' reports; (7) filing fees; and (8) the cost of persons reviewing health service disputes. The rule allows for the recovery of the filing fees, and for the cost of two reports. Nusinovic was only successful in two of the six cases she filed. I find she is entitled to recover \$206.00 for the filing fees for File Numbers 19001748.01 and 20700556.01. I also find she is entitled to recover the cost of the second functional capacity evaluation, which was used by Dr. Sassman in her report. I did not find she was successful in proving she sustained a loss of earning capacity. Using my discretion, I decline to award the cost of the vocational evaluation

## **ORDER**

IT IS THEREFORE ORDERED, THAT:

**For File Numbers 20009674.01, 21700201.01, 21700202.01, and 21700203.01:**

Claimant shall take nothing.

**For File Number 19001748.01:**

Defendant shall pay Claimant 88 weeks of permanent partial disability benefits, at the stipulated weekly rate of four hundred fifty-six and 92/100 dollars (\$456.92), commencing on May 18, 2020.

Defendant is entitled to a credit of two hundred forty-one and 08/100 dollars (\$241.08) for overpaid benefits paid based on an incorrect rate and for all weekly benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendant shall reimburse claimant one hundred three and 00/100 dollars (\$103.00) for the filing fee.

**For File 20700556.01:**

Defendant shall pay Claimant 70 weeks of permanent partial disability benefits, at the stipulated weekly rate of six hundred thirty-two and 34/100 dollars (\$632.34), commencing on April 12, 2021.

Defendant is entitled to a credit for all weekly benefits paid to date.

Defendant is responsible for the medical bills set forth in Exhibit 8 consistent with this decision.

Defendant shall reimburse claimant one hundred three and 00/100 dollars (\$103.00) for the filing fee.

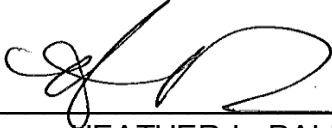
**For File Numbers 19001748.01 and 20700556.01:**

Defendant shall reimburse claimant nine hundred ninety-two and 00/100 dollars (\$992.00) for the cost of the functional capacity evaluation.

**For All Files:**

Defendant shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 24<sup>th</sup> day of February, 2022.

  
\_\_\_\_\_  
HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Tom Drew (via WCES)

Jennifer Clendenin (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.