

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KIM TRANEL,

Claimant,

vs.

TRINITY HEALTH CORPORATION,  
d/b/a MERCYONE - DUBUQUE,Employer,  
Self-Insured,  
Defendant.

File No. 1663007.01

## ARBITRATION DECISION

Head Notes: 1801, 1803.1, 2501,  
2502, 2907**STATEMENT OF THE CASE**

Claimant, Kim Tranel, filed a petition in arbitration seeking workers' compensation benefits from Trinity Health Corporation, d/b/a MercyOne – Dubuque (MercyOne), self-insured employer. This matter was heard on May 16, 2023, with a final submission date of June 14, 2023.

The record in this case consists of Joint Exhibits 1-17, Claimant's Exhibits 1-9, Defendant's Exhibits A-K, and the testimony of claimant.

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

**ISSUES**

1. Whether claimant is entitled to temporary benefits.
2. Extent of claimant's entitlement to permanent partial disability benefits.
3. Commencement date of permanent partial disability benefits.
4. Whether there is a causal connection between the injury and the claimed medical expenses.
5. Whether claimant is entitled to reimbursement in full for an independent medical evaluation (IME) under Iowa Code section 85.39.

6. Costs.

**STATEMENT OF THE CASE**

Claimant was 61 years old at the time of the hearing. She graduated from high school. Claimant completed a two-year program at a community college as a radiology technician. (Hearing Transcript, page 39)

Claimant worked at MercyOne for approximately 20 years. Claimant has also worked on a farm and in a daycare center. She has worked in retail sales and as a customer service representative. At the time of the hearing claimant was doing clerical work for Medical Associates Clinic in Dubuque, IA. (Claimant's Exhibit 4, pages 92-95)

Claimant's prior medical history is relevant. Claimant had a right knee surgery in 1981. Between 1994 and 1996 claimant had a right knee surgery. In 1995 and 2006 claimant had left knee arthroscopies. Claimant had a total knee replacement on the right in 2016 or 2017. (Defendant's Exhibit E, pages 28-29)

On February 11, 2004, claimant fell while going down stairs. In July of 2004, claimant had an MRI of the cervical spine. It showed a small disk herniation at C6-7. (Joint Exhibit 8, page 155) Claimant had two epidural steroid injections (ESI) for this injury. The first injection gave claimant significant reduction in symptoms. The second did little to reduce symptoms. (JE 1, p. 21) The record indicates claimant last saw a care provider for the 2004 fall and cervical injury in November of 2005. (JE 10, p. 190; Ex. E, pp. 28-29)

On February 6, 2019, claimant and a co-worker tried to assist a large patient out of a wheelchair. On the first attempt claimant indicated that she felt pain in her right shoulder. On the second attempt to lift the patient, she said she felt right shoulder and neck pain. (Tr., pp. 14-16)

On February 11, 2019, claimant was treated by Julie Muenster, ARNP, for an injury to the right shoulder and neck. Claimant was assessed as having a neck and shoulder strain. She was prescribed physical therapy. (JE 1, p. 23)

Claimant returned in follow-up with Nurse Practitioner Muenster on February 25, 2019, for her shoulder and neck. Claimant's neck was still tight, but improving. (JE 1, p. 26)

Claimant had physical therapy between February 15, 2019, and April 23, 2019. (JE 10, pp. 192-206) On February 27, 2019, claimant's range of motion in her neck was found to be within normal limits. (JE 10, p. 200)

Physical therapy records from March of 2019 indicate claimant still had complaints of neck pain. (JE 10, pp. 201-204)

On March 4, 2019, claimant returned to Nurse Practitioner Muenster for a recheck of her right shoulder pain. Claimant was uncomfortable with any movement of the right shoulder. She was returned to work with restrictions and told to return to physical therapy. (JE 1, p. 27)

Records from April of 2019 indicate claimant still had shoulder pain. These records do not indicate claimant had any neck pain. (JE 10, pp. 205-206)

On March 13, 2019, claimant was evaluated by Judson Ott, M.D. Claimant had right shoulder pain while lifting a patient out of a wheelchair. An MRI showed a partial thickness rotator cuff tear. Claimant was given a cortisone injection in the right shoulder. (JE 14, p. 426)

Claimant returned to Dr. Ott in follow-up on May 22, 2019. Conservative treatment had failed to significantly decrease symptoms, and surgery was chosen as a treatment option. (JE 14, p. 430)

On June 25, 2019, claimant underwent a rotator cuff debridement, biceps tenotomy, chondroplasty and acromioplasty. Surgery was performed by Dr. Ott. (JE 14, p. 432)

Claimant returned for follow-up with Dr. Ott on July 26, 2019. Claimant was making progress, and her pain was diminishing. Claimant was continued on physical therapy and work restrictions. (JE 14, p. 435)

Claimant saw Dr. Ott in follow-up appointments for her right shoulder on September 23, 2019 and October 23, 2019. (JE 14, pp. 438-441) Claimant saw Dr. Ott on November 20, 2019, with continued complaints of right shoulder pain that had flared up due to work hardening. Claimant was assessed as having impingement of the right shoulder. (JE 14, p. 442)

Claimant returned to Dr. Ott on February 17, 2020, with continued shoulder pain. Claimant was given a subacromial injection for pain. (JE 14, p. 448)

Claimant went to approximately 39 physical therapy appointments between July 9, 2019 and March 23, 2020. Notes from this period indicate claimant had pain in the right shoulder. There is no mention in any of the physical therapy notes from this period of time regarding neck pain. (JE 10, pp. 207-275)

Claimant was referred to Matthew Bollier, M.D., at the University of Iowa Hospitals & Clinics (UIHC) on May 1, 2020. (JE 6, pp. 117-118) On May 15, 2020, Dr. Bollier performed a second surgery on claimant's right shoulder consisting of a rotator cuff repair, capsular release, debridement, subacromial decompression and distal clavicle excision. (JE 6, pp. 122-125)

Claimant was evaluated by Dr. Bollier's staff on August 17, 2020. Claimant was progressing well in physical therapy and began strengthening exercises. Claimant was limited in lifting, pushing and pulling up to 15 pounds. (JE 6, pp. 126-129)

On October 9, 2020, claimant was evaluated by Dr. Bollier. Claimant continued to have mild shoulder pain in physical therapy and felt she had plateaued in her progress. Dr. Bollier believed claimant would benefit from a glenohumeral and subacromial cortisone injection. Claimant was told to discontinue therapy, but was told to continue to exercise on her own. (JE 6, pp. 130-134)

Between June 1, 2020 and October 15, 2020, claimant underwent approximately 50 physical therapy visits. Records indicate claimant had routine right shoulder pain and difficulties with range of motion. There is no indication in any of the physical therapy records from this time of neck pain. (JE 10, pp. 278-364)

On October 20, 2020, claimant underwent a glenohumeral and subacromial injection as recommended by Dr. Bollier. (JE 6, pp. 135-137)

Claimant returned to Dr. Bollier on November 20, 2020. Claimant had no change in her symptoms after the injections. Dr. Bollier believed that claimant's symptoms might be related to her neck. Claimant was found to be at maximum medical improvement (MMI) for the shoulder. Dr. Bollier found that claimant had a 4 percent permanent impairment to the right upper extremity, converting to 2 percent body as a whole. He limited claimant to lifting no more than 10 pounds overhead and 30 pounds to shoulder level. (JE 6, pp. 138-140)

Claimant testified she spoke with Dr. Bollier regarding her neck pain. She said Dr. Bollier told her that he specialized in shoulders and that she needed to see another physician regarding her neck. (Tr., pp. 23-24) She said she asked the workers' compensation insurer for treatment for her neck, but was told that it was not covered. (Tr., p. 24)

Claimant testified that after the workers' compensation insurer told her that the neck complaints were not covered, she saw her primary care physician, Jennifer Burds, ARNP. She said that Nurse Practitioner Burds referred her to Stanley Mathew, M.D., at St. Luke's Pain Clinic. (Tr., p. 24) Shortly after getting her restrictions from Dr. Bollier, claimant met with her employer to find a job that met her restrictions. Claimant said she was offered a dietary aide job. Claimant said she turned down the job because of the hours and the decrease in pay. She said the dietary aide job paid \$10 an hour less than she had been making as a radiology tech, and she did not accept the job. Claimant was terminated from MercyOne on or about January 4, 2021. (Tr., pp. 31-33; Ex. D, pp. 21-24)

Claimant collected unemployment insurance benefits for approximately 26 weeks. On August 26, 2021, claimant applied for a job with Medical Associates. (Ex. H, pp. 54-62) On her job application claimant indicated she had lifting restrictions that limited her to lifting up to 30 pounds from floor to chest and 10 pounds above her chest. (Ex. H, pp. 54, 62) Claimant indicated she had a prior work injury to her right shoulder. (Ex. H, p. 64)

On February 17, 2021, claimant slipped and fell off her deck at home, resulting in a right wrist fracture. (Tr., p. 65) Claimant was assessed as having a right distal radius intra-articular fracture. (JE 16, pp. 451-452)

On March 1, 2021, claimant was evaluated by Dr. Mathew. She was assessed as having a cervical dystonia and right shoulder rotator cuff tendinitis. Claimant was given a cervical injection. (JE 2, pp. 29-31)

Claimant was referred to physical therapy by Dr. Mathew. (JE 11, p. 365) Records indicate that claimant did not improve with her symptoms through physical therapy. (JE 11, p. 393)

Claimant returned to Dr. Mathew on April 12, 2021. Dr. Mathew recommended a cervical and right shoulder MRI. (JE 2, p. 34)

Claimant underwent a cervical MRI in May of 2021. The MRI showed a mild disk bulge at the C5-6 level. (JE 2, p. 42)

Claimant was evaluated by Timothy Miller, M.D., on June 16, 2021. Claimant complained of neck pain with radiculopathy into her right hand. (JE 3, pp. 86-88) On July 12, 2021, Dr. Miller gave claimant a cervical ESI. (JE 3, pp. 89-91) Claimant had no benefit from the ESI. She was referred to a neurosurgeon. (JE 3, pp. 92-93)

On August 31, 2021, claimant was evaluated by Matthew Howard, M.D., at the University of Iowa Hospitals & Clinics. Claimant denied significant neck pain. She had pain radiating into her fingers. Dr. Howard believed claimant's symptoms were more likely due to musculoskeletal pain and not due to radiculopathy. Dr. Howard recommended claimant continue treatment with the pain clinic. (JE 6, p. 148)

Claimant returned to Dr. Mathew on October 7, 2021. Claimant had continued right shoulder and neck pain. Dr. Mathew noted that her recent cervical MRI showed some degenerative disk changes. (JE 2, p. 39) Dr. Mathew noted claimant had responded well to injections and recommended trigger point and Botox injections. (JE 2, p. 39)

Records indicate claimant was referred by Dr. Mathew to Kendra's Healing Hands for massage therapy in November of 2021. (JE 9, p. 160; Tr., p. 25) Claimant had massage therapy with Healing Hands from November of 2021 into 2023. (JE 9, pp. 161-183)

In a March 22, 2022, report, David Segal, M.D., gave his opinions of claimant's condition following an IME. Claimant had continued pain in the right shoulder. She had tingling and numbness down her right arm and her fingers, but was unsure if it came from her neck, shoulders or both. Claimant indicated her neck symptoms had not changed from the date of injury. (Ex. 1, p. 15)

Dr. Segal found claimant's work injury caused claimant's right shoulder and cervical injury. (Ex. 1, pp. 24, 27) He assessed claimant as status post two rotator cuff tears, supraspinatus tendinopathy, right cervical radiculopathy caused by the C6 and 7 nerve root and a C5-6 disk bulge and annular tears. (Ex. 1, pp. 26-31)

Dr. Segal found that claimant had reached MMI for her injuries on August 31, 2021. (Ex. 1, p. 43) Dr. Segal found that claimant had a 15 percent body as a whole permanent impairment, converting to a 25 percent permanent impairment of the right upper extremity. (Ex. 1, pp. 44-45) He opined that claimant had a 17 percent permanent impairment to the body as a whole for the cervical spine. (Ex. 1, pp. 46-47)

Dr. Segal recommended permanent restrictions for claimant that included, but were not limited to, rarely reaching overhead on the right, occasionally carrying 5 pounds below shoulder height, and no use of ladders. (Ex. 1, p. 48)

Dr. Segal recommended future medical care including, but not limited to, claimant considering a reverse total shoulder arthroplasty, cervical ESIs, more physical therapy, and a TENS unit. (Ex. 1, p. 50)

In a December 27, 2022, report, Trevor Schmitz, M.D., gave his opinions of claimant's condition following an IME. Dr. Schmitz is an orthopedic surgeon specializing in spinal conditions. Claimant complained of a 2-1/2-year history of neck and right shoulder pain. Claimant had pain in the neck and numbness in the right upper extremity and right hand. (Ex. 1, pp. 75-76)

Dr. Schmitz deferred to Dr. Bollier regarding claimant's right shoulder injury of February 6, 2019. Dr. Schmitz did not believe claimant had a neck injury on February 6, 2019. This was because there was no evidence of neurological compromise in diagnostic reports that would cause claimant's right arm symptoms. An EMG done in May of 2021 did not show evidence of radiculopathy. Claimant had an ESI in her cervical spine that gave no relief. Given these three findings, Dr. Schmitz thought it was outside the realm of possibility that claimant's symptoms were due to her cervical pain. Dr. Schmitz opined that findings on claimant's MRI were age based and not due to an acute injury. (Ex. 1, p. 84)

Dr. Schmitz did not believe claimant had permanent impairment to her cervical spine. He did not believe claimant required further medical care for her cervical spine. He opined that claimant did not require restrictions regarding her cervical spine. (Ex. 1, pp. 84-85)

In a January 6, 2023, letter, Dr. Bollier indicated "I maintain my previous opinion that Ms. Tranel's neck pain is not related to the February 6<sup>th</sup> 2019, work injury." (Ex. K)

In a March 28, 2023, letter, Dr. Ott indicated there was no indication in his records claimant sustained a significant or permanent injury of her neck as a result of the February 6, 2019, work injury. He opined that claimant's dysfunction was due to her shoulder condition and not her neck. (Ex. J, p. 94)

In a March 31, 2023, letter, Dr. Mathew gave his opinion regarding claimant's February 6, 2019, injury. He assessed claimant as having cervical dystonia, chronic neck pain and clinical radiculopathy. He agreed with Dr. Segal's opinions detailed in the March 22, 2022, report. Dr. Mathew opined that it was more likely than not that claimant's work injury of February 6, 2019, was a direct result of her current cervical condition. (Ex. 2, p. 82)

Claimant testified she routinely has neck injections from Dr. Mathew. She says the neck injections are beneficial to her. (Tr., pp. 27-28)

Claimant says she has problems due to arm pain. She says she has headaches on a weekly basis. She said she has pain on the base of her skull, across her shoulders. Claimant said she has pain going down her shoulder into the bicep area, the

bicipital groove, and in the AC joint. She says she has loss of strength in her right upper extremity. She has numbness and tingling in her right hand. (Tr., pp. 49-52) Claimant testified she has problems with range of motion with her neck. (Tr., p. 49)

At the time of hearing, claimant worked for Medical Associates in the release of information department. She said the job is not physically demanding and consists of reviewing records to be released to patients and other facilities. Claimant said she works approximately 40 hours every 2 weeks in this job. (Tr., pp. 33-35) Claimant said she limits her work to 40 hours every 2 weeks due to neck pain. (Tr., pp. 35-36)

### **CONCLUSIONS OF LAW**

The first issue to be determined is whether claimant's injury resulted in a temporary disability.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The

expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

One of the central issues in this case is whether claimant sustained a permanent neck injury as a result of the February 6, 2019, work injury. Claimant contends she sustained both the right shoulder and neck injury. Defendant accepts liability for the shoulder injury, but denies that claimant had a permanent neck injury arising out of and in the course of the February 6, 2019, injury.

Medical records do indicate that claimant initially had right shoulder and neck pain at the time of the injury. (JE 1, p. 23) Physical therapy records indicate claimant complained of both shoulder and neck pain in February and March of 2019. (JE 10, pp. 192-204)

Physical therapy records beginning in April of 2019 indicated claimant still complained of right shoulder pain. There is no mention of neck symptoms in the records at this time. (JE 10, pp. 205-206)

Claimant was ultimately referred to an orthopedic specialist for right shoulder pain in May of 2019. Claimant had a rotator cuff repair on June 25, 2019. (JE 14, pp. 430-432)

Claimant returned to physical therapy on July 9, 2019. Claimant underwent physical therapy for her right shoulder from July 9, 2019, until October 15, 2020. (JE 10, pp. 207-364) Records from that period of time indicate that claimant complained of right shoulder issues. There are no indications that claimant complained of neck pain during that period of time.

In brief, claimant had approximately 90 physical therapy visits from April 16, 2019 through October 15, 2020, with 6 different physical therapists. There is no reference in these records, spanning approximately 1-1/2 years, of complaints of neck pain.

Five experts have opined regarding the causal connection between the February 6, 2019, injury, and claimant's neck condition.

Dr. Bollier is an orthopedic surgeon who treated claimant for an extended period of time and performed one of claimant's shoulder surgeries. He opined that claimant's current neck problems were not causally connected to her February 2019 injury. (Ex. K)

Dr. Ott is also an orthopedic surgeon who treated claimant for an extended period of time. He also performed one of claimant's shoulder surgeries. Dr. Ott also



opined that claimant's current neck condition was not causally connected to her February 6, 2019, injury. (Ex. J)

Dr. Schmitz evaluated claimant once for an IME. Dr. Schmitz also did not believe claimant's current neck pain was related to her February of 2019 injury. Dr. Schmitz based the opinion on the fact that claimant had an EMG in May of 2021 that did not show evidence of radiculopathy. He also opined that there was little evidence of neurological compromise that would cause claimant's upper extremity symptoms. This opinion was supported by Dr. Howard at the University of Iowa Hospitals & Clinics. (JE 6, p. 148) Finally, Dr. Schmitz noted that claimant had an ESI in the cervical spine that gave no relief. Because of these three findings, he did not believe claimant had a neck injury on February 6, 2019. (Ex. I, p. 84)

Dr. Mathew has treated claimant for an extended period of time. He opined that claimant's February 6, 2019, injury was a direct result of claimant's current cervical condition. (Ex. 2, p. 82) There are several problems with Dr. Mathew's causation opinion. First, Dr. Mathew indicates that "... since February 6, 2019 lifting of the patient, the work injury has caused severe pain and discomfort in her neck and right upper extremity." (Ex. 2, p. 80) This opinion is not reflected in the medical records in this case. As noted above, for approximately 1-1/2 years over the course of approximately 90 physical therapy visits, there is no reference of any neck pain. (JE 10, pp. 205-364) As noted, claimant had an EMG in May of 2021 that did not show any cervical radiculopathy. Third, as noted, claimant had a cervical ESI that did not result in relief of symptoms. Dr. Mathew ignores these three factors in his causation opinion. As Dr. Mathew offers no explanation for the approximately 1-1/2-year lapse of any reference to symptoms in the neck, and for the other reasons as detailed above, his opinions on causation are found not convincing.

Dr. Segal evaluated claimant once for an IME. He opined that claimant's February 6, 2019, work injury caused her current neck condition. Dr. Segal does address claimant's May of 2021 EMG study that did not show any radiculopathy. (Ex. 1, p. 32) However, as detailed above, claimant saw 6 physical therapists over a period of 1-1/2 years on approximately 90 visits. Physical therapy records indicate in March of 2019 that claimant had neck symptoms. Physical therapy records from April of 2019 through October of 2020 make no reference of neck symptoms. Dr. Segal offers no rationale why records for 1-1/2 years indicate no cervical symptoms, yet claimant's current neck condition is caused by the February 6, 2019, injury. Because Dr. Segal fails to address the significant break in the causal link between claimant's February of 2019 injury and claimant's symptoms, Dr. Segal's opinion regarding causation is found not convincing.

There is no record of cervical symptoms in physical therapy records for approximately 1-1/2 years. Dr. Ott and Dr. Bollier treated and performed surgery on the claimant. They opine that claimant's current condition in her neck and upper extremities are not related to the February of 2019 injury. Their opinions are corroborated by the IME opinion from Dr. Schmitz. The opinions of Dr. Mathew and Dr. Segal regarding

causation are found not convincing. Given this record, claimant has failed to carry her burden of proof she sustained a permanent cervical condition that arose out of and in the course of employment.

Claimant seeks temporary benefits from January 11, 2021, through August 30, 2021 (Hearing Report). Dr. Segal opined that claimant reached MMI on August 31, 2021. That is the date that Dr. Mathew evaluated claimant for her neck condition. (JE 1, p. 43) As claimant failed to carry her burden of proof she sustained a permanent injury to her neck that arose out of and in the course of employment, claimant has failed to carry her burden of proof she is entitled to temporary benefits from January 11, 2021, through August 30, 2021.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

In 2017, the Iowa Legislature amended Iowa Code section 85.34. Before the 2017 changes, shoulder injuries were considered proximal to the arm and compensated as a body as a whole injury, under Iowa Code section 85.34(2)(u). Prior to the 2017 changes to Iowa Code section 85.34, a shoulder injury was compensated as an unscheduled injury, and based on industrial disability. See Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161(1949).

One of the changes made to Iowa Code section 85.34 in 2017, dealt with the shoulder. The legislative changes added the shoulder to the list of scheduled members. Iowa Code section 85.34(2)(n) states: "[f]or the loss of a shoulder, weekly compensation during four hundred weeks." Iowa Code section 85.34(2)(n)(2018). This amendment went into effect on July 1, 2018. The legislature did not define the term "shoulder."

Claimant's injury involves a supraspinatus tear and arthroscopic rotator cuff repair with subacromial decompression and biceps tenotomy. (JE 8, pp. 148-159) Injuries to the rotator cuff and biceps tendon constitute injuries to the shoulder under Iowa Code section 85.34(2)(n). Deng v. Farmland Foods, Inc., 972 N.W.2d 727, 728 (Iowa 2022); Chavez v. MS Tech. LLC, 972 N.W.2d 662, 665 (Iowa 2022)

Claimant failed to prove she sustained a permanent impairment to her neck that arose out of and in the course of employment. Claimant had two rotator cuff repairs. Given this record and the cases as detailed above, claimant's condition is evaluated as a scheduled member shoulder injury under Iowa Code section 85.34(2)(n).

Two experts have opined regarding claimant's permanent impairment to her right shoulder. Dr. Bollier treated claimant and performed her surgery. He found claimant had a 4 percent permanent impairment to the right upper extremity in his November 2020 report. (JE 6, pp. 138-140)

Dr. Segal evaluated claimant once for an IME. He found that claimant had a 25 percent permanent impairment to her right upper extremity. (Ex. 1, pp. 44-45)

Dr. Segal's rationale for his impairment is more detailed than that of Dr. Bollier. Records indicate that Dr. Bollier performed a distal clavicle excision on claimant. (JE 6, p. 122) Dr. Bollier's rating does not appear to include this procedure. See AMA Guides to the Evaluation of Permanent Impairment (Fifth Edition), Table 16-27; Jay v. Archer Skid Loader Services, File No. 19003586.01, pp. 7-8 (App. August 23, 2022)

Dr. Segal's opinion regarding permanent impairment is more detailed than that of Dr. Bollier. I am able to follow how he arrived at his rating for claimant's permanent impairment using the Guides. Dr. Segal's rating was done closer to the time of hearing and is more of an accurate picture of claimant's condition at the time of hearing. Dr. Bollier's rating appears not to include the resection of claimant's distal clavicle as required by the Guides. As noted, Dr. Segal's opinion regarding causation of the cervical condition is found not convincing. However, based on these facts, it is found that the rating of Dr. Segal for claimant's shoulder is more convincing than that of Dr. Bollier. Claimant is due 100 weeks of permanent partial disability benefits (400 weeks x 25 percent).

The next issue to be determined is the commencement date of benefits. Dr. Bollier found that claimant was at MMI as of January 20, 2020. As noted, Dr. Segal's findings of MMI are based on claimant having a work-related cervical condition, which claimant has failed to prove. Based on this, claimant's commencement date of permanent partial disability benefits is November 20, 2020.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

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

As discussed, claimant has failed to carry her burden of proof her present cervical issues arose out of and in the course of employment. As a result, claimant has failed to carry her burden of proof that defendant is liable for any medical costs related to treatment of the cervical condition after April of 2019.

The final issue to be determined is whether claimant is entitled to full reimbursement for Dr. Segal's IME.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

The Iowa Workers' Compensation Commissioner has noted that the Iowa Supreme Court adopted a strict and literal interpretation of Iowa Code section 85.39 in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015) (hereinafter "DART"). See Cortez v. Tyson Fresh Meats, Inc., File No. 5044716 (App. December 2015). If an injured worker wants to be reimbursed for the expenses associated with a disability evaluation by a physician selected by the worker, the process established by the legislature must be followed. This process permits the employer, who must pay the benefits, to make the initial arrangements for the evaluation and only allows the employee to obtain an independent evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. DART, 867 N.W.2d at 847 (citing Iowa Code § 85.39).

In P.M. Lattner Manufacturing Corp. v. Rife, No. 22-1421, slip op. at 7 (Iowa Court of Appeals) (June 7, 2023), the Iowa Court of Appeals found an employer was not liable for the costs of an IME that did not relate to a compensable injury. The Court held an employer was only responsible to reimburse cost for an IME that related to the "... impairment rating of the compensable-that is, work-related-injury to Rife's right shoulder."

Claimant failed to prevail on the issue her work injury resulted in a permanent impairment to the cervical spine. However, defendants admit and accepted liability for claimant's cervical injury as a compensable temporary disability. (Defendants' Post-Hearing Brief, page 16)

Because defendants admitted liability for the temporary injury to claimant's neck, defendants are liable for reimbursement for Dr. Segal's IME as it related to both the shoulder and cervical injury.

The final issue to be determined are costs.

Rule 876 IAC 4.33(6), provides:

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or

presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The administrative rule expressly allows for recovery of the cost of a doctor's report. Claimant is awarded the cost for Dr. Mathew's report.

### **ORDER**

THEREFORE IT IS ORDERED:

That defendant shall pay claimant one hundred (100) weeks of permanent partial disability benefits at the rate of five hundred sixty-five and 60/100 dollars (\$565.60) per week commencing on November 20, 2020.

That 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.

That defendant shall be given credit for benefits previously paid.

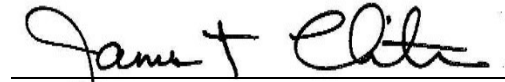
That defendant shall not be liable for medical costs associated with claimant's cervical injury.

That defendant shall reimburse claimant for the full amount of Dr. Segal's IME report.

That defendant shall pay costs including the costs associated with Dr. Mathew's report.

That defendant shall file subsequent reports of injury with this agency as required by Rule 876 IAC 3.1(2).

Signed and filed this 23<sup>rd</sup> day of October, 2023.

  
\_\_\_\_\_  
JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Lee P. Hook (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.