BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| BARBARA FLEETWOOD,<br><br>Claimant,<br><br>vs.<br><br>FANSTEEL WELLMAN DYNAMICS,<br><br>Employer,<br><br>and<br><br>COMMERCE & INDUSTRY,<br><br>Insurance Carrier,<br>Defendants. | File No. 5022736<br><br>REVIEW-REOPENING<br><br>DECISION<br><br><br><br>Head Note No.: 2905 |

FILED
JUL 17 2018
WORKERS' COMPENSATION

## STATEMENT OF THE CASE

Barbara Fleetwood, claimant, filed a petition for review-reopening of the Appeal Decision filed December 8, 2005, which affirmed the arbitration decision. The review-reopening hearing was held on February 12, 2018, in Des Moines, Iowa.

The evidentiary record includes Joint Exhibits 1 through 11, Claimant's Exhibits 1 through 7, and Defendants' Exhibits A through G. At the hearing, claimant was the only witness to testify.

The parties submitted post-hearing briefs on March 26, 2018, and the case was considered fully submitted at that time.

At the hearing, the parties submitted a hearing report, which contained numerous stipulations. The parties' stipulations are accepted. No factual findings or conclusions of law will be made in this decision regarding the parties' stipulations. The parties are now bound by their stipulations.

## ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained a change in condition, causally related to the original work injury, such that the extent of her permanent partial disability as found at the arbitration hearing on February 1, 2008, should be reassessed, and if so, the extent thereof.

2. Entitlement to medical expenses contained in claimant's exhibit 5.

3. Costs.

## FINDINGS OF FACT

On March 2, 2005, claimant tripped over an air hose while at work and injured her right shoulder, upper back and the right side of her neck. (April 10, 2008, Arb., p. 2) The claim proceeded to arbitration hearing on February 1, 2008. The issue for determination was the extent of permanent partial disability benefits. (April 10, 2008, Arb., p. 7) Claimant was determined to have sustained 70 percent industrial disability and was awarded 350 weeks of industrial disability benefits. The decision was appealed to the commissioner and affirmed on December 5, 2008.

Prior to the arbitration hearing, claimant had right shoulder arthroscopy with debridement of a partial labral tear, acromioplasty with ligament release, and a distal clavicle excision on June 27, 2005. (April 10, 2008, Arb., p. 2) On August 17, 2006, claimant had surgery on her cervical spine, which was an anterior cervical discectomy, a partial corpectomy, and a fusion at the C5-6 level. (April 10, 2008, Arb., p. 4)

Following the February 1, 2008, arbitration hearing, the deputy awarded industrial disability based upon his findings, which included: Dr. Kuhnlein's assessment of 3 percent whole person impairment for claimant's shoulder injury and 28 percent whole person impairment for her cervical spine injury; claimant's limitation to sedentary work based on the functional capacity evaluation (FCE); and, her demonstrated ability to lift up to 15 pounds in a horizontal lift, 10 pounds from waist to over-head, and up to 5 pounds horizontally on an occasional basis. (April 10, 2008, Arb., p. 5) Also, the deputy noted that two vocational reports concluded that "claimant's employment options were compromised due to physical problems," and "that claimant could probably not perform any of her prior occupations." (April 10, 2008, Arb., p. 9) The deputy relied more heavily on the vocational report that contained a labor market survey, which found "some potential employment opportunities for claimant." (Id.) The deputy also found that claimant was 48 years old at the time of the arbitration hearing and she had a 9th grade education with no GED. The deputy noted that Dr. Kuhnlein recorded that claimant was "tolerating her job, fairly well, as a pipe driller with Fansteel in June 2007," when she "voluntarily left her employment with Fansteel in July 2007." (Id.) The deputy noted that claimant had been "working within her restrictions when she quit her employment with Fansteel." (Id.) At the time of the arbitration hearing, claimant had made no attempt to obtain employment after leaving Fansteel, nor did she seek to further her education, retrain or otherwise return to the job market. (Id.)

At the time of the review-reopening hearing claimant was 58 years old. She had not obtained any additional education or training, nor had she sought any employment since the arbitration hearing. (Tr. pp. 12, 22, 72) Claimant agreed in her testimony that she had not looked for any type of work since 2007 and that she "made absolutely no attempt to go back to work," or obtain any vocational training. (Tr. p. 72)

Following the 2008 arbitration hearing, claimant was seen at Mosaic Life Care, for pain management. (Ex. JE4) A portion of that treatment focused on low back pain and leg pain. There were no permanency benefits awarded based on a low back injury at the time of the arbitration hearing and claimant does not now argue that the low back is a basis for this review-reopening. (Ex. JE4, pp. 42 – 52, 55, 59, 64) Claimant also continued to have neck pain while treating at Mosaic Life Care. (Ex. JE4, pp. 54, 57, 59, 60, and 62) On August 28, 2009, claimant was prescribed physical therapy for her neck and arm pain. (Ex. JE4, pp, 57-58) She later reported that the therapy did not help. (Ex. JE4, p. 59)

On October 2, 2010, claimant was seen by David Cathcart, D.O., who saw claimant related to chronic pain after she was no longer being seen at Mosaic Life Care, for "reasons that [were] not completely clear" to Dr. Cathcart. (Ex. JE6, p. 73) The purpose of claimant's treatment with Dr. Cathcart was to "wean off of the Percocet down to some, yet to be defined dose, of Lortab." (Ex. 6, p. 1) In January, 2011, it was recorded that claimant was struggling to maintain control of her pain on the reduced medication. (Ex. JE6, p. 77) However, on February, 11, 2011, Dr. Cathcart recorded that claimant was off of Percocet and taking Lortab. (Ex. JE6, p. 79) On May 13, 2011, claimant was noted to be doing "fairly well," being off Percocet. (Exc. JE6, p. 82) In August, 2011, claimant was "doing well," and was "satisfied that her condition seems to have stabilized," although she still rated her pain at 6-8/10. (Ex. JE6, p. 84) In August, 2012, claimant continued to complain of numbness and tingling in her right arm, and Dr. Cathcart suggested an MRI or myelogram. (Ex. JE6, p. 96) Claimant reported to Dr. Cathcart that she never heard from the workers' compensation insurance carrier regarding approval and she dropped it because her arm condition seemed to be improving. (Ex. JE6, p. 98) However, by February 13, 2013, her pain was no longer improving, and was increasing. (Ex. JE6, p. 100)

In August 2013, claimant was seen again at Mosaic Life Care, and an MRI of the cervical spine was ordered. (Ex. JE7, p. 108)

The cervical MRI was obtained on September 4, 2013, which revealed mild multilevel spondylosis without significant stenosis, with mild loss of disc height and disc desiccation along with other changes at the C4-5 and C6-7 levels adjacent to the fusion at C5-6, and "at most mild levels of neural foraminal narrowing;" and "[s]light cord atrophy at C6." (Ex. JE1, p. 4) A series of cervical injections and physical therapy was recommended. (Ex. JE7, pp. 110, 111) On September, 26, 2013, I note that claimant was receiving Percocet. (Ex. JE7, p. 116) It appears that at the end of September, 2013, claimant began her series of cervical injections. (Ex. JE7, pp. 120, 128)

On July 9, 2014, claimant reported to the Emergency Department at Northwest Medical Center with neck and shoulder pain and that it 'hurts to touch her shoulder, neck and chest wall muscles." (Ex. 8, p. 1)

On September 5, 2014, claimant was seen by Alexander Bailey, M.D., for the purpose of an independent medical examination (IME). (Ex. E) Dr. Bailey opined that

there was not sufficient evidence to conclude that claimant's low back condition is related to the work injury and assigned no permanent impairment related thereto. (Ex. E, p. 20) Significantly, he did not offer an opinion concerning permanency related to the cervical spine or shoulder injury.

On November 2, 2015, claimant was seen by N. Oliver Soghrati, D.O., reporting a history of chronic neck and right shoulder pain and presenting "primarily for medication refill." (Ex. JE10, p. 136) Claimant continued to treat with Dr. Soghrati, who "spoke extensively" with claimant "regarding a gradual decrease in [patient's] opioid" use. (Ex. JE10, p. 143) On July 25, 2016, claimant was described by Dr. Soghrati as having "chronic pain syndrome and opioid dependency." (Ex. JE10, p. 144) Claimant continued to treat with Dr. Soghrati, through June, 2017. (Ex. JE10, p. 153)

On November 29, 2017, claimant was seen by P. Brent Koprivica, M.D., for the purpose of an independent medical evaluation (IME) at the request of claimant's counsel. (Ex. 1) Dr. Koprivica recorded that it "is very clear that she has severe ongoing impairment based on ongoing neck pain and right shoulder pain." (Ex. 1, p. 25) Dr. Koprivica records that claimant outlined a "progression of deficits in her ability to do activities of daily living since the [arbitration hearing] on February 1, 2008." (Id.) He noted that "there was no specific new traumatic injury. Rather, the increased impairing symptoms were flowing from the original injury to the neck and right shoulder sustained on March 2, 2005." (Ex. 1, p. 21)

Concerning the cervical spine, Dr. Koprivica referred to the September 4, 2013 MRI scan he stated that it "revealed adjacent segment changes," at the C4-5 and C6-7 levels including mild loss of disk height, disk desiccation, a posterior disk osteophyte, and mild foraminal narrowing at both levels. (Ex. 1, p. 22) He assigned 1 percent whole person impairment for changes at C4-5 and an additional 1 percent whole person impairment for the changes at C6-7. (Ex. 1, p. 32) These were in addition to the previous 28 percent permanent impairment and were based on "further impact in reduction of ability to do activities of daily living as she reports subjectively and noted on the objective physical impairment changes on MRI scanning." (Id.) Dr. Koprivica referred to page 4 of the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides), stating that impairment ratings are assessed based on decreases in "the individual's ability to perform common activities of daily living (ADL)," and noting that "Ms. Fleetwood clearly presents with a history of greater loss of ability to do activities of daily living since the February 1, 2008, hearing regarding the assignment of impairment for the March 2, 2005, injury." (Id.) Relying on the combined values chart on page 604 of the AMA guides, I note that the total impairment for the cervical spine asserted by Dr. Koprivica is 30 percent to the whole person.

Concerning the right shoulder, Dr. Koprivica stated that he noted weakness and reduced range of motion during his examination. (Ex. 1, pp. 29, 30) He recorded claimant's range of motion of her right shoulder, which is noted by the undersigned to demonstrate less mobility in all measured ranges than claimant's range of motion

recorded by Dr. Kuhnlein in June, 2007. Dr. Kuhnlein's range of motion measurements at that time indicated that "in many cases the right shoulder range of motion was better than the left, and so no impairment would be assigned for decrements in range of motion." (Ex. JE3, p. 34) However, Dr. Koprivica found that in all categories, claimant's right shoulder had less range of motion than the uninvolved left shoulder, some quite significantly. (Ex. 1, p. 29) In assessing impairment, he also did not decrease the percentage applicable to the distal clavicle resection, which Dr. Kuhnlein did. (Ex. 1, p. 33) However, excluding the difference of opinions between Dr. Koprivica and Dr. Kuhnlein concerning the distal clavicle, Dr. Koprivica assigned 15 percent permanent impairment based solely on loss and range of motion. (Ex. 1, p. 34) This is in addition to the 10 percent for the distal clavicle and resulted in a total impairment of 24 percent to the upper extremity, which was converted to 14 percent of the whole person. (Ex. 1, p. 34) This is compared to the 3 percent whole person impairment found by Dr. Kuhnlein following the June, 2007 evaluation. (JE3, p. 35)

Dr. Koprivica also assigned restrictions, which include: no climbing with reliance on her right upper extremity; no repetitive push/pull against resistance; no whole body vibration or jarring of the head and neck, such as heavy equipment operation; no repetitive overhead reaching or sustained activities above shoulder level; rarely lift overhead and limited to less than 10 pounds; occasional lifting and carrying tasks of less than 10 pounds; and, restricted commercial driving due to narcotic medication. (Ex. 1, p. 36) The deputy at the arbitration hearing accepted the restrictions set forth in the FCE, which included: work in the sedentary category; and an ability to lift "up to 15 pounds horizontally and up to 10 pounds from the waist to an over-head lift." (April 10, 2008, Arb., p. 8) I find that the restrictions assigned by Dr. Koprivica are more restrictive than those assigned per the 2007 FCE.

On January 12, 2018, Carma Mitchell, of Mitchell Rehabilitation Services, issued a report following an interview of claimant on December 13, 2017. (Ex. 3, p. 1) Ms. Mitchell referred to the restrictions assigned via the 2007 FCE and the restrictions assigned by Dr. Kuhnlein. (Ex. 3, pp. 55, 56) She also discussed the findings of Dr. Bailey and his conclusion that no further restrictions are needed, from his September, 2014, IME. (Ex. 3, p .56) However, she does not appear to consider the restrictions assigned by Dr. Koprivica. (Ex. 3, p. 57) Ms. Mitchell opined that "[b]ased on the restrictions outlined in the medical information reviewed, Ms. Fleetwood is limited to less than the full range of sedentary work," and "[s]he would be unable to return to her past work," and "has no acquired skills that would transfer to other occupations." (Id.) She stated that claimant's "limited ability to lift, reach and sustain positions would not allow her to maintain full-time competitive employment without accommodations," and that she "has lost access to 100% of the occupations she had access to prior to her March 2, 2005 work injury." (Ex. 3, p. 58) However, I note again that claimant has made no effort whatsoever to seek employment since 2007 and has not tested Ms. Mitchell's opinion in a real world effort to obtain work.

Claimant applied for Social Security Disability benefits in January 2008, prior to the arbitration hearing and was awarded benefits with an onset of disability date of March 2, 2005. (Ex. 3, p. 54)

Considering claimant's extent of industrial disability, I note that her age, education, functional impairment, and restrictions, among other factors would contribute to a high percentage of industrial disability. However, claimant's lack of any effort at all to seek any employment of any kind since 2007, work against a conclusion that she has sustained a high percentage of industrial disability.

Considering all of the appropriate factors for the assessment of industrial disability, I find that claimant is permanently and totally disabled. In addition to the above factors, this finding is supported by the vocational assessment of Carma Mitchell, the only recent vocational assessment in evidence. (Ex. 3) There is no medical opinion contrary to the permanent impairment findings of Dr. Koprivica regarding an increase in functional impairment of the neck and shoulder injuries. Neither is there a current vocational assessment contrary to that of Carma Mitchell, who opined that claimant "is not capable of engaging in full-time competitive employment". (Ex. 3, p. 58)

## CONCLUSIONS OF LAW

1) The first issue is whether claimant sustained a change in condition causally related to the original work injury following the Arbitration Hearing on February 1, 2008, and if so the extent of impairment.

Iowa Code section 86.14(2) provides: "[i]n a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon."

In a review-reopening, "[t]o justify an increase in compensation benefits, the claimant carries the burden of establishing by a preponderance of the evidence that, subsequent to the date of the award under review, he or she has suffered an impairment or lessening of earning capacity proximately caused by the original injury." (Quoting E.N.T. Assocs. v. Collentine, 525 N.W.2d at 829 (Iowa 1994)). Simonson v. Snap-On Tools Corp., 588 N.W.2d 430, 434 (Iowa 1999).

The Supreme Court stated in Kohlhaas v. Hog Slat, Inc., "The review-reopening claimant need not prove, as an element of his claim, that the current extent of disability was not contemplated by the commissioner (in the arbitration award) or the parties (in their agreement for settlement)." Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

The Supreme Court also stated in the case of Kohlhaas v. Hog Slat, Inc., that:

> A compensable review-reopening claim filed by an employee requires proof by a preponderance of the evidence that the claimant's current condition is "proximately caused by the original injury." See Simonson, 588 N.W.2d at 434 (original emphasis omitted) (quoting Collentine,525 N.W.2d at 829). While worsening of the claimant's physical condition is one way to satisfy the review-reopening requirement, it is not the only way for a claimant to demonstrate his or her current condition warrants an increase of compensation under section 86.14(2). See Blacksmith v. All–Am., Inc., 290 N.W.2d 348, 354 (Iowa 1980) (holding a compensable diminution of earning capacity in an industrial disability claim may occur without a deterioration of the claimants physical capacity).

Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

The principles of res judicata apply in a review-reopening situation. "The agency, in a review-reopening petition, should not reevaluate an employee's level of physical impairment or earning capacity if all of the facts and circumstances were known or knowable at the time of the original action." Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 393 (Iowa 2009)

"[S]ection 86.14(2) does not provide an opportunity to relitigate causation issues that were determined in the initial award or settlement agreement." Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 393 (Iowa 2009).

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).

On February 1, 2008, the underlying claim proceeded to hearing and the deputy made findings detailed above. Those findings included the adoption of impairment ratings assigned by Dr. Kuhnlein of 3 percent whole person regarding claimant's right shoulder and 28 percent whole person impairment for her cervical spine, along with a finding that the FCE restrictions were the most convincing restrictions. (April 10, 2008,

Arb., p. 8) Concerning claimant's current condition, the only opinion concerning present impairment of claimant's right shoulder and cervical spine are from Dr. Koprivica who stated that it "is very clear that she has severe ongoing impairment based on ongoing neck pain and right shoulder pain." (Ex. 1, p. 25) He confirmed a causal relationship to the work injury when he said that "the increased impairing symptoms were flowing from the original injury to the neck and right shoulder sustained on March 2, 2005." (Ex. 1, p. 21) He then assigned an additional 2 percent whole person impairment on top of the prior 28 percent for the cervical spine and assigned 14 percent whole person impairment for the shoulder, a significant increase from Dr. Kuhnlein's 3 percent rating. (Ex. 1, p. 32; Ex. 1, p. 34) Dr. Koprivica found significantly reduced range of motion in the shoulder, which supported the rating he assigned. In addition, Dr. Koprivica assigned restrictions more restrictive than those previously indicated from the 2007 FCE. (April 10, 2008, Arb., p. 8; Ex. 1, p. 36)

Claimant has carried her burden of proof that she has sustained a substantial change in circumstances that requires the previous Arbitration Decision be reevaluated. This is supported by claimant's increased functional impairment, the more restrictive restrictions and the physical changes of claimant's decreased shoulder range of motion and the condition of her cervical spine at the C4-5 and C6-7 levels adjacent to the C5-6 fusion.

Because claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 593; 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man." Functional impairment is an element to be considered in determining industrial disability, which is the reduction of earning capacity. However, consideration must also be given to the injured worker's medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured workers' qualifications intellectually, emotionally and physically; the worker's earning before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted. Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior

experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

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

I have found above that claimant is permanently and totally disabled, which is not to say that she is totally helpless or incapable of all work. Rather that she is unable to perform work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit her to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

2) The next issue is the claimant's entitlement to medical expenses set forth in claimant's Exhibit 5.

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 16, 1975).

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is

evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File No. 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

Exhibit 5 details certain medical expenses consisting significantly of medical mileage. It appears to the undersigned that the medical expenses incurred were authorized and yet remain unpaid. In addition, it is clear that the medical treatment claimant received and detailed in exhibit 5 was appropriate and helpful to treat claimant's work injuries. Defendants are responsible for these medical expenses under Iowa Code section 85.27. See Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010). Defendants shall reimburse claimant directly for her out-of-pocket expenses, including mileage, as set forth in Exhibit 5, and shall pay, reimburse, and or otherwise satisfy all remaining medical expenses contained therein.

3) The final issue is costs.

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I conclude that claimant was generally successful in this claim and therefore exercise my discretion and assess costs against the defendants in this matter. However, in reviewing Claimant's costs set forth in Exhibit 6, I note that claimant seeks $3,850.00 for Dr. Koprivica's IME. It appears to the undersigned that this amount involves both the cost of the report and the examination, contrary to Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). Therefore, in my discretion, I award $3,080.00 (80 percent of the total) as a cost for the report and specifically exclude $770.00, as an appropriate amount attributable to the cost of the examination. Therefore, I assess costs against defendants in the total amount of $3,786.94.

## ORDER

**IT IS THEREFORE ORDERED:**

Defendants shall pay claimant permanent total disability at the stipulated rate of three hundred seventy and 78/100 dollars ($370.78) and continuing during the period of disability.

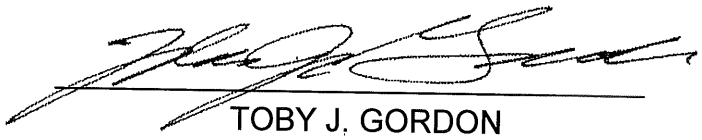
Defendants shall reimburse claimant for her out-of-pocket medical expenses set forth in Exhibit 5, including mileage, and shall pay, reimburse, and or otherwise satisfy all remaining medical expenses contained therein.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendant shall pay costs in the amount of three thousand seven hundred eighty-six and 94/100 dollars ($3,786.94) as detailed above.

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

Signed and filed this 17th day of July, 2018.



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**Right to Appeal**: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.