BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIDZA HALIDOVIC,	FILED	
Claimant,	OCT 25 2016	File No. 5051369
vs.	WORKERS COMPENSATION	ARBITRATION
TYSON FRESH MEATS, INC.,		DECISION
Employer, Self-Insured, Defendant.		Head Note Nos.: 1802, 1803

STATEMENT OF THE CASE

Tidza Halidovic, claimant, filed a petition in arbitration seeking workers' compensation benefits from Tyson Fresh Meats, Inc., her self-insured employer, as a result of an injury she sustained on February 17, 2014 that arose out of and in the course of her employment. This case was heard in Waterloo, Iowa and fully submitted on March 21 2016. The evidence in this case consists of the testimony of claimant, claimant's exhibits 1 – 11, and defendant's Exhibits A – F. The record was held open after the hearing. Defendant submitted a November 9, 2015 report by Robert Gordon, M.D (Exhibit D, pages 83a - 97a) and a November 25, 2015 statement from Chad Abernathey, M.D. (Ex. F, pp. 90, 91) Claimant submitted a December 15, 2015 report by Arnold Delbridge, M.D. (Ex. 2, pp. 23 - 25[1]) The hearing was interpreted.

ISSUES

Whether the alleged injury is a cause of temporary disability and, if so, the extent;

Whether claimant is entitled to a running award of temporary disability benefits;

Whether claimant is entitled to payment of medical expenses; and

Assessment of costs.

[1] Claimant has referred to the report as Exhibit 2, pages 14 – 16. However as there were deposition exhibits for pages 14 – 18, I have numbered the document pages 23 – 25.

STIPULATIONS

The parties have agreed the claimant is married and entitled to 5 exemptions[2] and her workers' compensation indemnity rate is $422.64. I accept this stipulation and find claimant's weekly workers' compensation rate is $422.64. All other stipulations found in the hearing report are accepted as if fully set out in this decision.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Tidza Halidovic was 51 years old at the time of the hearing. She was born in Bosnia and graduated from high school in Bosnia. She had training as a Construction Tech in high school. (Ex. A, p. 6) From 1987 through 2002 she and her husband ran a small grocery store. She lived in Bosnia until 2000. She lived in Croatia for two years and came to the United States in 2002. When she came to the United States she worked briefly in Kentucky and moved to Iowa to work for IBP in Waterloo, Iowa. (Transcript, p. 20) IBP has subsequently become Tyson Fresh Meats (Tyson). Claimant can speak some English. She can go to the grocery store and bank without an interpreter, but needs assistance in any communication other than simple tasks. (Tr. p. 22) She is able to work on the line at work without an interpreter. She has taken some English classes. (Ex. 8, p. 2)

Claimant had a physical for her employment at Tyson on November 29, 2002. The physical revealed no medical problems with claimant's neck, shoulders or upper extremities. (Ex. 9, pp. 3, 4) Claimant began her employment at Tyson on December 3, 2002. For the first four to five years she worked with Whizard knives. In 2007 she worked as a membrane skinner. (Ex. A, p. 11) Claimant worked in the membrane skinner job until she was placed on light duty on February 17, 2014, the date of claimant's work injury. (Tr. p. 23)

Claimant testified that she first reported pain in 2013 to her supervisor and to the company nurse. (Tr. pp. 24, 45, 46) Claimant reported pain and problems with her right arm and shoulder. (Ex. A, p. 21) She was provided some over-the-counter medication and ice packs, as well as reassigned to lighter duty for short periods. (Tr. p. 24) Claimant was seen by physicians at Tyson who prescribed medications and physical therapy. (Tr. p. 26)

Claimant saw Thomas Gorsche, M.D. at Allen Hospital. Dr. Gorsche ordered MRIs and referred claimant to Dr. Abernathey for her neck condition. (Tr. p. 26)

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[2] The parties incorrectly identified four exemptions on the hearing report. After the hearing the parties agree that claimant was entitled to five exemptions.

Claimant testified that Dr. Abernathey recommended surgery, but she did not have the surgery as Tyson informed her that her injury was not work related. (Tr. p. 29)

Claimant testified that she worked 80 percent as a membrane skinner and 20 percent packaging. (Tr. p.34) Claimant described that her work as a membrane skinner involved fast-paced working with pieces of meat of 3 to 5 pounds. She would use a device to work the pieces of meat. Claimant described that her work on the membrane skinner required her to take a piece of meat from a line at waist height and put it on the membrane skinner, also at waist height. (Tr. p. 48) After completing the processing of the meat, she would put the meat on a different line at head height. She would use her right arm to throw the pieces on the higher line and reach for a new piece with her left arm. (Ex. A, p. 16) Claimant said that she would do a new piece of meat every 12 seconds. (Tr. p. 32; Ex. 8, p. 4) A DVD showing the operation of the membrane skinner position was reviewed. (Ex. C, p. 55) Claimant's description of her work on the membrane skinner was consistent with DVD and job description. (Ex. C, p. 53)

Claimant worked about 20 percent of her time in packaging. Claimant described that she would put fresh meat in a bag. The weight would vary from 10 to 20 pounds. Claimant said that she would have to shake the bag to get the meat to bottom of the bag. (Tr. pp. 36, 37) She would not lift the bag to move it to another line, but would stay on the same line. (Tr. p. 56)

On December 11, 2014, Gregory Brandenberg, M.D., Ph.D., examined claimant. His impression was,

> Paracervical pain mostly in the suprascapular trapezius region, seems to be musculoskeletal. It could possibly be related to her shoulder pathology or impingement. Diffuse vague symptoms in the right arm of uncertain etiology with some numbness in the medial three fingers of her right hand.

(Ex. 5, p. 2) He recommended a referral to an orthopedist, trigger point injections and an EMG of the right upper extremity. (Ex. 5, p. 2) On December 18, 2014, Ivo Bekavac, M.D., Ph.D., neurologist, performed an EMG. His impression was,

> Extensive EMG examination and nerve conduction studies in both upper extremities discloses evidence of
>
> 1. Bilateral Median neuropathy at/or distal to the wrist, consistent with carpal tunnel syndrome, moderate in degree electrically on the left side and mild on the right side.
>
> 2. Bilateral ulnar neuropathy probably distal at the elbow, mild in degree electrically.

3. There is no EMG evidence for cervical motor radiculopathy, polyneuropathy or myopathy.

(Ex. 6, p. 4)

After Tyson denied additional treatment when they determined claimant did not have a work injury, claimant was referred by her family physician to see Arnold Delbridge, M.D. on January 2, 2015. Dr. Delbridge prescribed medication and provided her restrictions, which Tyson accommodated. (Tr. p. 40; Ex. 1, p. 1) On January 30, 2015, Dr. Delbridge noted pain in claimant's right shoulder and that she could reach about 90 degrees. (Ex. 1, p. 3) On March 27, 2015, Dr. Delbridge noted that he had provided her a shot under fluoroscopy on March 4, 2015 and continued her restrictions. (Ex. 1, pp. 5, 6)

On July 13, 2015, Dr. Delbridge performed surgery. His diagnosis was, "Rt ulnar nerve compression, left carpal tunnel, and Dupuytrens [*sic*] contracture ring and small finger." (Ex. 3, p. 1) Claimant testified that Dr. Delbridge wanted her surgery to heal before he considered shoulder surgery. (Tr. p. 42) At the time of the hearing, claimant had been off work since her surgery of July 13, 2015. (Tr. p. 42) Claimant's inability to return to work was due to her hand and elbow surgery. (Tr. p. 52)

Dr. Delbridge was deposed on October 5, 2015. (Ex. 2, pp. 1- 10) Dr. Delbridge stated he diagnosed claimant with an impingement syndrome of the right shoulder. (Ex. 2, p. 3) He made the medical decision to perform the carpel tunnel surgery first before any right shoulder surgery. (Ex. 2, p. 2) He testified that claimant has by x-ray, a U-shaped acromion, which predisposes her to impingement syndrome and she will need acromioplasty in the future. (Ex. 2, p. 3)

Dr. Delbridge was asked as to whether the work claimant performed could cause or materially aggravate her symptoms. His response was,

A. I base that conclusion on the fact that she had worked at that job for a number of years and then as she got older and had to do that extremely repetitive job, including membrane skinner and also tossing the meat onto a conveyer line and also bagging meat, she began having impingement syndrome and pain in her shoulder radiating down her arm and also involving her median and ulnar nerve.

Q. And as far as the specific risk factors for the – as far as specific risk factors, are we talking repetitiveness, are we talking forcefulness? What are the problems?

A. Well, in terms of membrane skinner, we're talking extremely repetitive work. I mean, you know, we're talking several pieces a minute; we're talking, you know, hundreds of repetitions a day. We're talking

> about 400 of these an hour. Multiplying that out by a day or a week, it's tremendously repetitive.
>
> There wasn't a lot of stress involved in the membrane skinner, except she mentioned that her machinery wasn't always up to par. And when that happened she had to squeeze harder and push harder and that was a problem. And sometimes the machine would break down and then she would go to bagging.
>
> The work was extremely repetitive, and then on top of the repetitive work she had to lift her arm probably up to 60 or 70 or 80 degrees, at least, or even to shoulder level to put the meat that she had done on the membrane skinner into the belt to go on to someone else.

(Ex. 2, pp. 3, 4) Dr. Delbridge noted that putting the meat on the belt many times a day, abducting her shoulder, she developed an impingement syndrome. (Ex. 2, p. 4) Dr. Delbridge noted that claimant would perform over 400 repetitions per hour and had to lift her arm to 60 - 80 degrees. (Ex. 2, p. 3) Dr. Delbridge noted that claimant would catch meat in a bag and shake it and send it on its way in the ham bagging job. (Ex. 2, p. 4) Dr. Delbridge agreed with Mr. Kruzich's E3 report that there may be a relationship to claimant's job on the membrane skinner and her right shoulder condition, although he modified the conclusion to say it was probable that it caused her condition. (Ex., 2, p. 4) Dr. Delbridge did not believe claimant's work caused her herniated disks, but did believe her neck movement was a material aggravation to her neck condition. (Ex. 2, p. 5) Dr. Delbridge did not see the DVD or see, in person, the job of membrane skinner. (Ex. 2, p. 9)

On December 15, 2015, Dr. Delbridge responded to Dr. Gordon's report of November 9, 2015. Dr. Delbridge stated that Dr. Gordon's statement that the anatomic cause of claimant's right shoulder had not been elucidated was incorrect. He stated that the repeated abduction of her shoulder caused her impingement syndrome. (Ex. 2, p. 23)

On March 18, 2014, Jeffrey Lee, M.D., examined claimant for upper right extremity pain. He assessed claimant with upper right extremity pain, prescribed medication and provided restrictions. (Ex. D, p. 62) Robert Gordon, M.D., provided care to claimant on April 27, 2014. His diagnostic impression was,

> Right shoulder girdle pain/right upper extremity pain. Nonphysiological examination.

(Ex. D, p. 69) On May 5, 2014, Dr. Gordon recommended a referral to an orthopedic surgeon. (Ex. D, p. 76)

Dr. Gordon visited the work site of the claimant in September 2014. It was his conclusion that the membrane skinner position would not induce a disorder of the cervical spine. (Ex. D, p. 80)

On May 5, 2014, Thomas Gorsche, M.D., examined claimant for right shoulder issues. Dr. Gorsche's impression was,

> #1 RIGHT trapezial and RIGHT upper extremity pain. Some findings on exam point to subacromial bursitis.
>
> #2 [S]ome subjective complaints of paresthesias on ulnar side of the RIGHT hand and the trapezius.
>
> #3 Dupuytren's contracture RIGHT hand unrelated to work.

(Ex. B, p. 41) On that day he provided a diagnostic/therapeutic injection. (Ex. B, p. 41) At this time, the injury was treated as an occupational illness. (Ex. B, p. 42) On June 6, 2014, Dr. Gorsche ordered an MRI. On June 17, 2014, Dr. Gorsche reviewed the MRI, which did not show a rotator cuff tear but did show moderate acromioclavicular arthropathy and some tendinosis of the rotator cuff. Dr. Gorsche noted that claimant's upper right extremity symptoms might be coming from her cervical spine. He ordered an MRI of the C-spine. (Ex. B, p. 47) On June 30, 2014, Dr. Gorsche reviewed the MRI of the C-spine. He found a very large disk at C6-7. His impression was,

> Impression:
> #1 RIGHT upper extremity pain, failed cortisone injection subacromial space with no relief. No specific findings on the MRI of the RIGHT shoulder.
> #2 [V]ery large disc C6-C7 just LEFT of the midline.
>
> Plan:
> I think we should have her seen by neurosurgery. I don't know if this is the cause of her contralateral symptoms or not but it is very large, and should be evaluated. We will continue light duty work. We will have her evaluated by a neurosurgeon.

(Ex. B, p. 50)

On November 9, 2015, Dr. Gordon provided a report after reviewing a number of medical reports and Dr. Delbridge's deposition. (Ex. D, pp. 83a - 89a)

On October 1, 2014, Dr. Abernathey provided "check box" answers to questions provided to him by Tyson. According to the letter, Dr. Abernathey, on July 16, 2014, indicated that claimant's February 17, 2014 injury was responsible for the C6-7 disc extrusion with osteophyte formation and stenosis and the need for surgical intervention. (Ex. F, p. 88) (See Ex. 2, p. 20) Dr. Abernathey was asked to reconsider his opinion in

light of the evaluation performed by E3 (Ex. E, pp. 83 - 86) and Dr. Gordon's evaluation (Ex. D, p. 80). The July 18, 2014 letter stated the following,

> 1. The work injury of 2-17-14 presumably is responsible for the C6-7 disc extrusion with osteophyte formation and stenosis demonstrated on MRI.
>
> 2. This should be a temporary aggravation if the disc extrusion is properly treated.
>
> 3. No. I would consider the need for surgical intervention to be associated with the 2-17-14 work injury.
>
> 4. No.
>
> 5. The association of her findings to the 2-17-14 work injury are primarily due to history as provided by the patient.

(Ex. 2, p. 20) Dr. Abernathey changed his opinion to hold that the membrane skinner job did not cause the June 24, 2014 MRI findings and that the condition he recommended treatment for was not work related. (Ex. F, p. 88) Dr. Abernathey checked for question four that the work at Tyson was a temporary aggravation. (Ex. F, p. 89) Dr. Abernathey's response to question number five is unclear and I will not speculate on his answer. (Ex. F, p. 89) Dr. Abernathey was sent Dr. Delbridge's deposition and was asked if he changed any of his opinions and that the MRI showed degenerative changes that were not related to claimant's job at Tyson. On November 25, 2015, Dr. Abernathey signed that he agreed and that he had not changed his opinions. (Ex. F, p. 91)

Dr. Gordon noted that claimant reported an injury to her upper extremity on February 17, 2014. At that time he reported that claimant attributed her symptoms to her membrane skinner job and did not mention anything about her bagging job. (Ex. D, p. 83a) Throughout the report Dr. Gordon points out that claimant related her symptoms to the membrane skinner position, rather than the ham bagging position. Dr. Gordon described the lifting and movements required by the ham bagging position. He stated that in ham bagging, the meat comes down a chute into a bag that is in a box. When the bags are full, the worker levels the box and pushes the box on rollers. (Ex. D, p. 93a) There was no job analysis summary for this position as there was for membrane skinner in the record. Dr. Gordon stated that even if claimant performed the ham bagging job 100 percent of the time it would not have caused or aggravated any condition in her neck. (Ex. D, p. 93a)

As to the right shoulder, Dr. Gordon noted that, " . . . [T]he anatomical cause of her right shoulder pain has not been elucidated. She has had multiple injections performed by Dr. Gorsche and Dr. Delbridge, none of which have been of any benefit.

Her MRI was relatively benign and did not reveal any rotator cuff tears." (Ex. D, p. 94a) Dr. Gordon opined that he would expect claimant's right shoulder symptoms to improve after her injections, but has not as well as he would have expected improvement after she stopped working. He was not certain that there was an organic cause for her complaints for her shoulder and would not recommend further medical treatment for the right shoulder. (Ex. D, p. 94a)

Dr. Gordon stated,

> I do believe that the physical demands of the job of a Membrane Skinner, based upon my review of the data within Mr. Kruzich's thorough jobsite evaluation report and my recent independent assessment of this job could contribute to a carpal tunnel syndrome or a cubital tunnel syndrome in a susceptible predisposed individual.

(Ex. D, p. 95a)

At the time of the hearing claimant was not at maximum medical improvement from her surgeries and from her neck and shoulder symptoms. She had been off work since July 13, 2015. Claimant was off work from December 27, 2015 through January 15, 2015 due to her work related injuries.

Claimant has requested payment of medical expenses as set forth in Exhibit 10. Defendant denied these costs, but stipulated that they were causally related to the medical conditions for which claimant's claim of injury is based. (Hearing Report, p. 2)

Claimant has requested other costs in the amount of $2,487.00. The costs are a filing fee of $100.00, deposition fees for Dr. Delbridge of $2,150.00, and the deposition transcription fee of $237.00. (Ex. 11, p. 1)

RATIONALE AND CONCLUSIONS OF LAW

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985)

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Defendant stipulated only to the fact that claimant had a temporary aggravation. Defendant has not agreed that claimant has any permanent impairment. The primary issue in this case is whether claimant has a permanent impairment to the right upper extremity and neck that arose out and in the course of her employment with Tyson. If so, claimant is entitled to a running award.

Claimant alleges a cumulative trauma injury due to her work in the membrane skinner and ham bagging positions.

As outlined below, I find that the job analysis used by Mr. Kruzich in the E3 report and reports by Dr. Gordon to be flawed. The E3 report does not consider the ham bagging position. Dr. Gordon does discuss the ham bagging job in his rebuttal report. While it is not clear from the record where he obtained the description of the job performed by claimant of ham bagging, presumably he spoke to persons at Tyson. (Ex. D, p. 93a) Claimant explained that the pieces of meat were fresh and she shook the bag to get them to the bottom. Her testimony was under oath and subject to cross-examination. I find that her description is the most convincing evidence of her job duties in bagging hams.

Dr. Gordon commented on the fact that claimant did not initially identify the ham bagging position as a possible cause of her upper extremity and neck symptoms. I do not find that the fact that claimant initially attributed her symptoms to the membrane skinner job rather than the bagging job to be significant. Claimant's primary job was on the membrane skinner job. Claimant's upper extremity symptoms were not caused by a traumatic injury. It is not surprising that clamant was not able to identify which job could be the cause of her symptoms, especially when it is difficult for trained medical personnel to make such a determination.

I find the opinions of Dr. Delbridge to be the most convincing. Dr. Delbridge is an orthopedic surgeon who has a long-standing treatment relationship with claimant. The E3 report identified that the membrane skinner position was at risk for shoulder problems due to the action of putting the meat on another line at about shoulder level. Claimant has significant repetitive activity in putting meat on a higher line. I find that the claimant has proven by a preponderance of the evidence that her work as a membrane skinner has caused right upper extremity and right shoulder conditions.

I also find convincing Dr. Delbridge's opinion that claimant's work at Tyson aggravated her neck condition. I find the claimant has proven that her work at Tyson has caused a permanent aggravation and lighted-up her neck condition.

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 Rule of Appellate Procedure 6.14(6).

Dr. Abernathey originally opined that claimant's neck condition was related to her work and recommended surgery. He later changed his opinion. He changed his opinion after receiving the E3 report and Dr. Gordon's report. It appears that he concluded that work was a temporary aggravation of her neck; however he does not explain how her symptoms remain. While there have been times that claimant's shoulder had been more symptomatic, it does not appear that claimant's aggravation of her neck has abated.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

Claimant was unable to work due to work related injuries from December 27, 2015 through January 15, 2015 and is due temporary total/healing period benefits during this time.

Claimant is entitled to be awarded a running award of temporary total/healing period benefits at this time commencing July 13, 2015.

As all of the medical costs are causally related to the work related conditions, defendant shall pay the medical costs in Exhibit 10 and reimburse claimant directly any out-of-pocket expenses she paid.

Iowa Code section 86.40 provides;

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states in relevant parts:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be . . . (2) transcription costs when appropriate, . . . (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[3], . . . (7) filing fees when appropriate . . . .

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[3] Iowa Code section 622.72 limits the deposition fee to $150.00.

> Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, shall receive additional compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed one hundred fifty dollars per day while so employed.

Iowa Code 622.72.

Under these rules claimant may only receive $150.00 for deposition testimony. In my discretion I allow as costs the deposition testimony of Dr. Delbridge, ($150.00), the filing fee, ($100.00) and the transcription fee, ($237.00). Defendant shall pay claimant a total of $487.00 in costs.

ORDER

Defendant shall pay claimant temporary benefits at the rate of four hundred twenty-two and 64/100 dollars ($422.64) per week for the period from December 27, 2015 through January 15, 2015.

Defendant shall pay claimant temporary benefits at the rate of four hundred twenty-two and 64/100 dollars ($422.64) per week commencing on July 13, 2015 and continuing until claimant has returned to work, is capable of returning to substantially similar employment, or has achieved maximum medical recovery.

Defendant shall pay claimant four hundred eighty-seven and 00/100 dollars ($487.00) for costs.

Defendant shall pay the medical costs as set forth in this decision.

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

Signed and filed this 25th day of October, 2016.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Adnan Mahmutagic
Attorney at Law
PO Box 178
Waterloo, IA 50704-0178
adnan@beecherlaw.com

Brian L. Yung
Deena A. Townley
Attorneys at Law
4280 Sergeant Rd., Ste. 290
Sioux City, IA 51106
yung@klasslaw.com
townley@klasslaw.com

JFE/srs

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.