BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MIGUELINA VARGAS, Claimant, vs. TYSON FOODS, Employer, Self-Insured, Defendant.	: : : : : : : : : : : :	File No. 5041132 REVIEW-REOPENING DECISION Head Note No.: 2905

STATEMENT OF THE CASE

Miguelina Vargas filed a petition for review-reopening seeking workers' compensation benefits from, the employer, Tyson Foods, a self-insured employer.

The matter came on for hearing on August 28, 2018, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Davenport, Iowa. The record in the case consists of Joint Exhibits 1 through 14; Claimant's Exhibits 1 through 11; Defense Exhibits A through H; as well the sworn testimony of claimant. Tammy Guenther served as the court reporter. Maria Orozco was approved to serve as the Spanish-language interpreter. This was her first legal hearing.

This matter was briefed and the matter was fully submitted on October 15, 2018.

ISSUES AND STIPULATIONS

The primary issue in this case is whether the claimant has proven the prerequisites to demonstrate she is entitled to review-reopening benefits under Iowa Code section 86.14.

The parties have stipulated, and it has been legally established, that the claimant suffered an injury, which arose out of and in the course of her employment on January 20, 2011. There is an Agreement for Settlement in the record (and the case file) demonstrating that claimant suffered an injury on that date. The defendant stipulated that this injury caused a temporary disability during a period of recovery, as well as a 20 percent permanent industrial disability. The claimant is not seeking any further temporary disability benefits at this time.

The claimant alleges she is entitled to additional industrial disability under Section 86.14. The defendant concedes that claimant's disability is industrial, however, they allege that no further benefits are owed. The parties have agreed upon the appropriate commencement date for benefits as being the date the review-reopening petition was filed, September 30, 2016.

The parties have stipulated to all of the elements which comprise the claimant's rate of compensation. Again, these are established in the Agreement for Settlement. They believe the appropriate rate of compensation is $489.69 per week. Affirmative defenses have been waived. The claimant is seeking medical expenses as set forth in Claimant's Exhibit 8, page 81. The parties agree that some medical bills have been paid under claimant's group health plan through her employer. The claimant is merely seeking to have the expenses set forth in Claimant's Exhibit 8, page 81 paid through workers' compensation. The claimant is also seeking payment for an independent medical evaluation. Defendants deny claimant is entitled to an IME. Claimant alternatively seeks payment of this evaluation as a cost. Finally, the claimant seeks alternate medical care in the form of an order for continued medical care for her conditions she alleges are work related.

The parties have stipulated that the claimant has been paid 100 weeks of permanent partial disability benefits at the rate of $489.69 per week.

FINDINGS OF FACT

Miguelina Vargas was 46 years old as of the date of hearing. She is a mother and grandmother. She was born in the Dominican Republic and primarily communicates in Spanish. She does not read or write in English. She is married to Julio Vargas and lives in Conesville, Iowa. Her husband does not work and Miguelina supports him and helps their children. Her English language skills are quite limited.

Ms. Vargas testified live and under oath at hearing through a Spanish language translator. Her hearing testimony was generally credible and consistent. She did not appear to be exaggerating. Her testimony was largely consistent with the balance of the record, including her previous testimony under oath. There was nothing about her demeanor in particular which caused the undersigned any concern about her truthfulness.

Ms. Vargas suffered an injury which arose out of and in the course of her employment for Tyson Foods on January 20, 2011. In June 2012, she filed a petition seeking industrial disability benefits for a right shoulder disability. In July 2014, Ms. Vargas and Tyson settled her claim on an Agreement for Settlement (AFS). (Claimant's Exhibit 1) The AFS included an agreement that the injury occurred in Iowa, the elements comprising her rate of compensation and the payments to which she was entitled. "Permanent partial disability for 20% loss of BAW resulting in 100 weeks of compensation under Iowa Code Section 85.34 (2)(V) payable commencing July 26, 2011." (Cl. Ex. 1, p. 1) It is noted that both parties had different attorneys at this time.

The AFS attached medical reports from respective physicians which indicated that the permanent disability involved her right shoulder. (Cl. Ex. 1, pp. 5-10) In January 2012, Robert Gordon, M.D., had provided a 1 percent body as a whole impairment rating the loss of range of motion in her shoulder. (Cl. Ex. 1, p. 5) Dr. Gordon released her from care for her right shoulder in March 2012 without any medical restriction. (Cl. Ex. 1, pp. 6-7) Robert Milas, M.D., evaluated her in October 2012, and diagnosed "derangement of the right shoulder." (Cl. Ex. 1, p. 9) He also noted that she had developed symptoms in her left shoulder as well. "She has developed symptoms now in the left shoulder and has been taken off of her light duty status at work." (Cl. Ex. 1, p. 8) He assigned an 18 percent whole person rating based upon strength loss and recommended severe functional restrictions placing her in the light duty category. (Cl. Ex. 1, p. 9) In January 2013, Tuvi Mendel, M.D., placed her at maximum medical improvement for her left shoulder and returned her to work without any restrictions. He opined the following.

> With regard to the left shoulder, I did not see significant findings to suggest any need for surgical management. We obtained an EMG which did not reveal any significant findings as it relates to her neck or shoulder. However, she does have evidence of moderate to severe bilateral carpal tunnel symptoms. She is still complaining of moderate discomfort and pain in her left shoulder. At this point, as it relates to her right shoulder, as previously mentioned, we placed her at MMI back to normal activities.
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> PLAN: With regard to the left side, I am not exactly sure what is going on. From a shoulder standpoint I would not recommend any surgical management. I think there are other issues going on there and she could potentially seek additional evaluation as it relates to her neck and possibly carpal tunnel type symptoms. However, from the shoulder standpoint, I would not recommend any surgical management. I am going to go ahead and put her at MMI as it relates to the left shoulder. I will refer her back to Dr. Clem in occupational medicine for continued management of her symptoms. We will see her back in the future if she has any problems.

(Cl. Ex. 1, p. 10) There are no other records attached to the AFS and nothing further is explained regarding the basis for the AFS. Nevertheless, it is clear that her medical situation during this period of time was more involved. Throughout 2012 and 2013, Ms. Vargas underwent significant treatment on her left shoulder, as well as her neck or upper back. (Jt. Ex. 7, pp. 1-4; Jt. Ex. 8, pp. 4-5; Jt. Ex. 9, pp. 1-2; Jt. Ex. 13, pp. 1-4; Jt. Ex. 14, pp. 1-4) I find at the time of the AFS on July 10, 2014, her left shoulder and upper back/neck were still symptomatic, but stable.

Claimant subsequently filed ten petitions seeking benefits from Tyson in 2015. Two of the petitions involved either the upper back/neck or her shoulders. File No. 5049103, alleged an injury to claimant's left shoulder from overuse. In an April 12, 2016 decision, the Deputy made the following relevant findings and conclusions.

File No. 5049103 (Date of injury October 2, 2012). Affected body parts: Upper body, neck, and left shoulder.

Claimant asserts she sustained repetitive use injuries to her upper body, neck, and left shoulder as a result of an "accident" date of October 2, 2012. Claimant signed a "Statement of Injury/Illness" on this date which reported pain in the left upper extremity from using her left hand to move and cut the fat off loins. (Ex. Y, p. 1) Claimant was then seen by Dr. Clem on October 25, 2012, with complaints of left shoulder symptoms. Dr. Clem diagnosed claimant's left shoulder problems as secondary to the right shoulder due to compensation. She began physical therapy on the left shoulder on October 26, 2012. (Ex. 3, p.12-14)

She reiterated her belief that her left shoulder pain was not due to a new injury to Dr. Mendel. Dr. Mendel recorded in his notes on November 30, 2012, "[s]he feels that she is overcompensating for the right and that gradually increased her symptoms on the left. She denies any specific injury to her left shoulder." (Ex. B, p. 12)

The objective tests did not show any signs of injury. Dr. Gordon did not assign any additional restrictions above and beyond the left shoulder restrictions that were already in place when she saw him in January 2013. Ultimately she was returned to duty without restrictions on February 12, 2013. She consulted with Dr. Hall on April 11, 2013, for bilateral shoulder pain. Dr. Hall concluded she suffered from myosfascial [sic] pain and tendon overuse likely related to repetitive work activities. She did not receive treatment for the left shoulder again until April 2014.

Dr. Milas, an independent medical examiner, did not give any rating for the shoulder on November 3, 2015, because of the normal range and function. She did receive an injection to her right shoulder on November 20, 2015.

While Dr. Bedell did treat the claimant for shoulder complaints, he did not provide a causal opinion. The causal opinion as it relates to the left shoulder include Dr. Clem who found the left shoulder pain to be sequelae to the right shoulder injury that was part of an accepted and settled claim. The claimant argues that Dr. Milas provided an expert opinion on the causation between claimant's left shoulder pain and work, but Dr. Milas' reports only provide causation on the right shoulder, cervical and thoracic spine issues, and bilateral carpal tunnel. He does state that the impairment to the left shoulder would be difficult to rate, but does not provide an opinion statement about causation as to the left shoulder. (Ex. I, p. 8-9)

Thus, the claimant's left shoulder pain was not a condition of overcompensation and does not arise out of a November 2, 2012, injury, but rather is sequalae of the right shoulder injury. However, there is no opinion as to any impairment to the left shoulder. Dr. Milas did not provide a rating. During her October 16, 2015, examination, all four extremities were within normal limits. Her strength and deep tendon reflexes were symmetrical.

Therefore there is no finding of permanency as it relates to the left shoulder injury.

The claimant also claims upper body and neck injuries. She was seen by Dr. Bedell beginning on March 30, 2012, for a four-month history of left neck pain radiating into her shoulder. The November 30, 2012, EMG did not result in an abnormal finding related to the neck. She did not have further complaints of neck pain until May 7, 2014.

Dr. Milas concluded in his multiple reports that the ligamentous injury to claimant's neck and thoracic region was the result of repetitive injury. Dr. Phillips concluded that the claimant's neck muscle spasms were compensatory for her chronic shoulder pain. (Ex. M, p. 3) By February 2015, she reported a decline in neck symptoms and Dr. Clem noted that her neck pain was largely resolved. However, she continued to treat for neck pain throughout 2015.

Dr. Milas' October 16, 2015 note states that claimant described her neck and thoracic pain as progressively worsening after her right shoulder surgery. She denied any specific traumatic injury. The radiographs showed nothing more than mild, degenerative disc changes.

Claimant's report and Dr. Milas' historical account more accurately match that of Dr. Phillips' conclusion that claimant's neck and muscle spasms relate to her chronic shoulder pain and not a new, traumatic injury.

It is found as to File No. 5049103 that claimant's left shoulder, upper body, and neck injuries are sequalae or symptomatology arising out of claimant's right shoulder injury of 2011.

Claimant has not met her burden of proof that the left shoulder, upper body, and neck injuries were related to an October 2, 2012, work injury. The remaining issues as to medical bills are rendered moot by the finding of no causation. These would be more appropriately addressed in a review-reopening.

(Cl. Ex. 2, pp. 33-34) This determination was appealed to the Commissioner who affirmed the Deputy on November 8, 2017. (Cl. Ex. 3)

Following her July 2014 AFS, Ms. Vargas was seen by Gregory Clem, M.D. He examined her noting a "little bit of tenderness over the left trapezius." (Jt. Ex. 8, p. 8) He opined her left shoulder function is normal and diagnosed "neck pain with some occasional left radicular symptoms, resolved." (Jt. Ex. 8, p. 8) In March 2015, she returned to her primary physician, David Bedell, M.D. Dr. Bedell documented ongoing left shoulder and neck symptoms. He diagnosed left-sided neck pain and fibromyalgia. (Jt. Ex. 2, pp. 8-9) He started her on some medications and gave her exercises to deal with the fibromyalgia symptoms. There were no acute abnormalities. (Jt. Ex. 2, p. 9) In August 2015, she had an MRI of her cervical and thoracic spine. (Jt. Ex. 9, p. 4) Dr. Bedell also reviewed the MRI in September 2015. (Jt. Ex. 2, p. 12) He recommended following up with the authorized orthopedist. (Jt. Ex. 2, p. 13)

Ms. Vargas returned to Dr. Milas on October 16, 2015. He diagnosed a ligamentous injury of the cervical and thoracic spine, and assigned a 15 percent impairment rating for these conditions and opined her work for Tyson was the direct cause of the condition. (Jt. Ex. 3, p. 2) He recommended that Ms. Vargas not engage in repetitive twisting. (Jt. Ex. 3, p. 2)

Joseph Chen, M.D., evaluated Ms. Vargas on January 8, 2016. She was referred there in relation to an alleged July 23, 2014, work injury "when she was using a vibrating whiz knife." (Jt. Ex. 10, p. 1) He reviewed her MRI and accurately recounted her medical history, including on claims unrelated to those herein. (Jt. Ex. 10, p. 1) He diagnosed chronic myofascial pain and fibromyalgia, which he stated were not related to any specific work injury. He opined there were no permanent restrictions or impairment associated with a July 2014, work incident. (Jt. Ex. 10, p. 3)

After following up with Dr. Clem and Dr. Bedell, Ms. Vargas underwent MRI's of each of her shoulders in January and February 2016. (Jt. Ex. 11, pp. 1-3) She was then seen by James Nepola, M.D., in February 2016, for her shoulder symptoms. (Jt. Ex. 1, p. 1) He diagnosed an acute temporary exacerbation of her chronic shoulder pain and provided a series of injections in February, March and September 2016. (Jt. Ex. 1, pp. 1-9) Ms. Vargas reported significant temporary improvement from the injections. (Jt. Ex. 1, p. 7)

In December 2016, Dr. Bedell wrote an opinion letter stating a number of his medical opinions. His diagnosis was fibromyalgia. "I do agree with the physiatry is that she has fibromyalgia which is unrelated to her work although may often be exacerbated by it." (Jt. Ex. 2, p. 21) After discussing her various work-related conditions, he recommended various work accommodations (limit standing, bending, and repetitive movements). (Jt. Ex. 2, p. 21)

Steve Rippentrop, M.D., evaluated Ms. Vargas on December 12, 2016. He performed an examination and a review of the relevant records. He diagnosed right shoulder pain, status post subacromial decompression, acromioplasty, and debridement, left shoulder pain and fibromyalgia. (Def. Ex. F, p. 7) He opined that her ongoing pain complaints were most likely related to chronic myofascial pain and fibromyalgia. "Given her repeated injections by Dr. Nepola with minimal subjective improvement, it is unlikely to be related to either the bursitis or tendinopathy, demonstrated on MRI." (Def. Ex. F, p. 7) He opined that there is no causal connection between her work injury and her shoulder condition. (Def. Ex. F, p. 8) He did opine that work activities may temporarily aggravate her fibromyalgia, which is a personal condition. (Def. Ex. F, p. 8) He concurred with Dr. Gordon's 2012 impairment rating on the right shoulder and found no ratable impairment on the left. (Def. Ex. F, pp. 9-10)

Ms. Vargas returned to Dr. Hartely in December 2016, reporting increased bilateral shoulder and upper back symptoms. (Jt. Ex. 4, p. 5) Dr. Hartley noted inconsistencies in her range of motion. He released her with no restrictions and recommended she follow up for treatment of fibromyalgia. (Jt. Ex. 4, pp. 5-6)

On July 29, 2017, Dr. Bedell wrote a letter to claimant's former counsel outlining the causation of her medical problems. (Jt. Ex. 2, p. 22) The letter does not shed much light on this case regarding her bilateral shoulders or neck. He did make a poignant observation when discussing the level of her disability.

> The question then becomes what level of pain or discomfort is reasonable for a person to endure in order to continue working. I have recommend [sic] for several years that she seek work that is less physical and doesn't have the degree of repetitive motion that food processing jobs have. Unfortunately her lack of English fluency and level of education make it very difficult for her to find employment that will provider [sic] her close the financial compensation she receives at Tyson.

(Jt. Ex. 2, p. 23)

In April 2018, Ms. Vargas requested additional treatment and was again evaluated by Dr. Hartley in June 2018. He evaluated her, reviewed her medical history and opined that she had not experienced a substantial change in her chronic diffuse musculoskeletal symptoms since her last evaluation. (Jt. Ex. 4, p. 9)

In June 2018, Ms. Vargas was evaluated by Sunil Bansal, M.D., for an IME at the direction of her new attorney. Dr. Bansal reviewed her history accurately and performed a thorough evaluation. He documented the following regarding her current condition.

> Ms. Vargas continues to have pain in the back of her shoulders, more into her shoulder blades, as well as into the center of her chest. After her right shoulder surgery, she relied heavily on her left upper extremity. This is when her pain transferred to her left shoulder as well as her neck. She

> has numbness of both hands, involving the second through forth fingers bilaterally. At work she wears a support brace on her shoulders that enables her to be able to lift. From the floor to table height she is able to lift 5 pounds, but she does not use her left arm as much. She can lift very little overhead because of her pain, and she frequently drops objects.
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> She takes Tylenol and a prescription pain medicine when her he pain [sic] is particularly severe. She has had a recent injection into her shoulder, which has helped a little bit.

(Cl. Ex. 6, p 66) Dr. Bansal diagnosed cervical myofascial pain syndrome with characteristic of discogenic pathology, right shoulder impingement syndrome and left shoulder subacromial bursitis and tendinitis. (Cl. Ex. 6, pp. 68-69) He opined that her left shoulder and cervical conditions were worsened by favoring her right shoulder during her recovery. (Cl. Ex. 6, p. 69) He recommended a cervical MRI for the neck and upper back, as well as intermittent steroid injections for both shoulders. (Cl. Ex. 6, p. 72) Dr. Bansal further assigned a 5 percent whole body rating related to the cervical spine, a 6 percent whole body rating for the right shoulder and a 5 percent whole body rating for the left shoulder. (Cl. Ex. 6, p. 74) He recommended restrictions of no lifting more than 10 pounds and no lifting over the shoulder level with either arm, and only occasional reaching with either arm. (Cl. Ex. 6, p. 73)

An MRI was performed on August 2, 2018 on claimant's bilateral shoulders and cervical spine. (Jt. Ex. 11) It was deemed unremarkable.

For her part, Ms. Vargas has continued to work at Tyson, removing the fat from meat. Her job has not changed although she has worked on light-duty at various times. She uses an electric knife.

CONCLUSIONS OF LAW

The first and primary question is whether the legal elements for review-reopening have been met in light of the findings of facts set forth above. The claimant alleges she has proven that her left shoulder and upper back/cervical area became permanent following her July 2014 AFS, necessitating an increase in industrial disability. The defendants argue that her condition has not changed and she has now been diagnosed with fibromyalgia, a non-work related condition, which better explains her constellation of ongoing symptoms.

In a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.14, 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. Iowa Code section 86.14(2) (2017). In order to demonstrate eligibility for an increase of compensation under section 86.14(2), the claimant must demonstrate what her physical or economic condition was at the time of the original award or settlement. At a subsequent review-reopening hearing, claimant has the

burden to prove that there is a substantial difference in such condition which warrants an increase in compensation. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009). The difference can be economic or physical. Blacksmith v. All-American Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). Essentially, two snapshots of the claimant's condition are taken; one in each hearing or settlement. The claimant must prove that there is something substantially different between the two snapshots such that it warrants an increase in benefits. Gosek v. Garmer & Stiles Co., 158 N.W.2d 731, 735 (Iowa 1968).

The principles of res judicata apply and the agency should not reevaluate facts and circumstances that were known or knowable at the time of the original action. Kohlhaas at, 392. Review-reopening is not intended to provide either party with an opportunity to relitigate issues already decided or to give a party a "second bite at the apple." The agency, however, is forbidden from speculating as to what was contemplated at the time of the original snapshot. Id.

The burden remains upon the injured worker to prove by a preponderance of the evidence that the current condition is proximately caused by the original injury. Kohlhaas, 777 N.W.2d at 392. When a work-related injury causes another injury to the worker, this new injury (sequela) may also be considered as a work-related injury under Iowa's workers' compensation laws.

Where an employee suffers from a compensable injury and another condition or injury arises that is the consequence or result of the previous injury, the sequelae rule applies. If the employee suffers a compensable injury and later suffers further disability, which is the proximate result of the original injury, such further disability is compensable. If the employee suffers a compensable injury and thereafter returns to work and, as a result, the first injury is aggravated and accelerated so that the employee is more greatly disabled than they were before returning to work, the entire disability may be compensable. The employer is liable for all consequences that naturally and proximately flow from the accident. Oldham v. Scofield & Welch, 222 Iowa 764, 767-68, 266 N.W. 480 (1936).

In order to apply the facts to the law, the two snapshots must be contrasted and compared. The first snapshot was claimant's condition in July 2014. The snapshot of claimant's condition as of that date is murky. There was an AFS for a 20 percent industrial disability. The medical records attached to the AFS demonstrated an accepted right shoulder claim with vastly disparate medical opinions concerning the extent of claimant's functional disability. Tyson's physician found a 1 percent body impairment and no restrictions, while claimant's physician opined a 18 percent whole body impairment with massive restrictions. Dr. Milas recommended a 10-pound lifting restriction and no working with her arms above shoulder level.

There is also reference to her left shoulder and her upper back/cervical area, although the record at that time is quite unclear regarding the precise status of those conditions at that time. Dr. Milas documented her difficulty in 2012, "performing repetitive activity with her upper extremities because she is favoring her right shoulder." (Cl. Ex. 1, p. 8)

It is particularly challenging in this case to ascertain a clear understanding of the precise nature of the first snapshot. One might say the snapshot is blurry. There was certainly no clear determination which delineated what her condition was at the time of the July 2014 AFS, as there may have been had the matter been determined through a hearing and arbitration decision. Instead the parties simply attached dramatically differing medical opinions and agreed that her industrial disability was 20 percent. I find that the only factor which is certain about the July 2014 AFS is that the parties agreed her industrial disability was 20 percent. It is speculative, however, to determine what the parties understood her condition was at that time in order to reach that number. The burden in this action, however, is on the claimant to show that her condition is worse in the second snapshot. Any ambiguity caused by uncertainty of the meaning of the first snapshot weighs against the claimant.

The second snapshot taken was the date of hearing, August 28, 2018. The claimant did undergo some additional treatment between the two snapshots, however, she did not have surgery. She was prescribed medications and light-duty at various times and she had a few injections. She never had a clear diagnosis from her authorized physicians. None of the objective testing found anything conclusive in her left shoulder or upper back/cervical area. The most consistent and credible diagnosis was fibromyalgia, which none of the physicians in this record have convincingly causally connected to her 2011 work injury.[1]

Dr. Bansal did provide a clear diagnosis. He opined her diagnosis is cervical myofascial pain syndrome with characteristic of discogenic pathology and left shoulder subacromial bursitis and tendinitis. (Cl. Ex. 6, pp. 68-69) He opined these conditions resulted in permanent impairment. By virtue of Dr. Bansal's IME report, the claimant does have evidence of permanent impairment which did not exist at the time of the original hearing. Dr. Bansal's opinion regarding diagnosis, causation, and impairment, however, stand in opposition to the opinions of Dr. Hartley, Dr. Rippentrop, Dr. Nepola and Dr. Chen. While I could find flaws in each of their opinions, I find that cumulatively their opinions are difficult to dismiss. Perhaps most importantly, Dr. Bansal's report does not address the diagnosis of fibromyalgia by Dr. Bedell (and others), or its relationship to her ongoing symptoms. Based upon the record before the agency, I find it likely that she does have fibromyalgia. While this does not preclude the possibility that she has real diagnoses in her neck and shoulder, I find it very difficult to make such

[1] In January 2016, Dr. Chen noted that work activities may aggravate the symptoms associated with her fibromyalgia, but did not provide a convincing causation opinion which allows claimant to meet her burden of proof.

a finding based upon an opinion which does not even address the fibromyalgia diagnosis. Moreover, the restrictions he recommended (which were never followed) in 2018 are very similar to the restrictions Dr. Milas recommended (which were never followed) in 2012.

The burden of proof is on the claimant to show that there is an increase in her industrial disability from the first snapshot. While this is a close case, I find that the claimant has failed to meet this burden of proof.

The claimant also seeks medical expenses and alternate medical care under Section 85.27.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

All of claimant's care set forth in Joint Exhibit 8 was unauthorized: Dr. Bedell and Dr. Nepola. (Jt. Ex. 1, p. 1) The claimant has failed to prove beneficial care for this unauthorized care and these claims are denied. The claimant's request for alternate medical care is denied, however, defendants shall continue to authorize a physician to evaluate and treat her right shoulder condition if necessary.

ORDER

THEREFORE IT IS ORDERED:

Claimant shall take nothing further from this action.

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

Defendant shall pay the IME expense of Dr. Bansal in the amount of three thousand three hundred seventy-two and no/100 dollars ($3,372.00).

Costs are taxed to defendant.

Signed and filed this __30th__ day of January, 2020.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew W. Bribriesco (via WCES)

Jason Wiltfang (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.