BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KATINA WESLEY, Claimant, vs. TYSON FRESH MEATS, INC, Self-Insured Employer, Defendant.	File Nos. 5050508, 5049297 ARBITRATION DECISION Head Note Nos.: 1801, 1803, 2500, 2700

STATEMENT OF THE CASE

Katina Wesley, claimant, filed a petition in arbitration seeking workers' compensation benefits from Tyson Fresh Meats, self-insured, as a result of alleged injuries she sustained on April 2, 2013, and March 21, 2014, that allegedly arose out of and in the course of her employment. This case was heard in Des Moines, Iowa, and was fully submitted on June 22, 2015. The evidence in this case consists of the testimony of claimant and claimant's exhibits 1 through 15 and defendant's exhibits A through C.

ISSUES

FOR FILE NO. 5050508 — DATE OF INJURY APRIL 2, 2013.

1. Whether claimant is entitled to payment of an independent medical examination.
2. Whether claimant is entitled to alternate medical care.
3. Assessment of costs.

The stipulations contained in the Hearing Report are accepted and incorporated into this decision as if fully set forth.

FOR FILE NO. 5049297 — DATE OF INJURY MARCH 21, 2014.

1. Whether claimant is entitled to temporary total disability benefits.
2. Whether claimant is entitled to a running award of temporary total benefits.
3. Whether claimant is entitled to payment of medical expenses.
4. Whether claimant is entitled to alternate medical care.

5. Whether claimant is entitled to payment of an independent medical examination.
6. Assessment of costs.

The stipulations contained in the Hearing Report are accepted and incorporated into this decision as if fully set forth. Permanency was not an issue to be determined in this case file.

FINDINGS OF FACT

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

Katina Wesley, claimant, was 41 years old at the time of the hearing. Ms. Wesley has a high school diploma. She attended a community college for interior design, but did not complete the program. At one time she had a CNA license, but her license expired. Claimant has worked as a CNA assisting adults to rehabilitate and in a nursing home. She has also worked at APAC, doing telemarketing. (Exhibit 13, page 2) Claimant has walked with a limp since she was a child due to lead poisoning. Claimant did not have any back problems as a result of her altered gait. (Transcript, page 14)

In 2005, Ms. Wesley started working for Tyson Foods, Inc. (Tyson). Ms. Wesley's first job at Tyson was to pull casings (intestines). Her next position was inspecting stomachs. For the last three to four years her position at Tyson was to operate the drop bung gun. This job involves using a "gun" that is dipped into two liquids and then is inserted into the rectum of a hog that is coming down the line. The gun is counter balanced and has a blade that cuts the rectum. A video of the job claimant does showed how the job was performed. The work was done at shoulder height or below. (Ex. 1, DVD) Claimant would process up to 5,000 hogs during her shift. (Tr. pp. 20, 21)

The task that precedes claimant's job requires the clipping of the H-bone. The clipping of the H-bone allows the operator of a drop bung gun to freely inset the gun without resistance. (Tr. p.23) When the H-bone is properly clipped claimant's job is fairly easy. When the H-Bone is not properly clipped her job requires more force. (Tr. p. 24)

Ms. Wesley's job does not involve bending but there is some limited twisting. The drop bung gun requires her to stand during the day and use a counter-balanced gun on the hogs. (Tr. pp. 45, 46)

In the three to four weeks before the March 21, 2014, alleged injury, a new person had the job of clipping the H-bone. This person was not performing the job properly. (Tr. p. 24) During this time, about six to eight times per hour, she would

encounter an improperly clipped H-bone, requiring her to use additional force. (Tr. p.26; Ex. 12, p. 5) On a report of injury form signed on March 27, 2014, Ms. Wesley wrote that she injured herself due to an unclipped H-bone. (Ex. 1, p. 5) She stated it was the improperly clipped H-bone that caused her left shoulder and neck injury. (Tr. pp. 26, 27; Ex. 12, p. 8) Ms. Wesley saw a number of physicians. Eventually she saw David Segal, M.D., a surgeon who referred her to Mark Kline, M.D., for an injection. The injection provided brief relief. Dr. Segal recommended a cervical fusion. Ms. Wesley had cervical fusion on March 27, 2015.

On April 2, 2013, claimant was performing the drop bung job when she injured her low back when twisting a hog that was facing the wrong way on the line. (Tr. p. 29) Ms. Wesley reported her injury and received treatment from Tyson. (Ex. 1, p. 4) Ms. Wesley was seen at Tyson Occupational Health (MOHA) on April 25, 2013, for low back pain. Ms. Wesley was placed on light duty for a time. (Ex. 11, p. 2) She saw Robert Gordon, M. D., on May 7, 2013. Dr. Gordon's diagnostic impression was, "Lumbosacral strain, overall improving but still somewhat symptomatic." (Ex. 11, p. 3) On May 14, 2013, Sandra Elliott, APN-C, at MOHA examined claimant. She noted a slow but non-antalgic gait. (Ex. 11, p. 4) Dr. Gordon found claimant at maximum medical improvement (MMI) on June 10, 2013, and returned her to full duty. (Ex. 11, p. 8; Ex A, p. 9) Ms. Wesley retuned to Dr. Gordon in July and August with complaints of back pain that increased with work activity. (Ex. 11, pp. 9, 10) On October 10, 2013, Dr. Gordon recommended an MRI. (Ex. 10, p. 3) After reviewing the MRI results Dr. Gordon wrote:

> Sacral/posterior pelvic pain, primarily on the right. She did have MRI of the sacrum/coccyx, which per the radiologist did reveal mild nonspecific edema around the sacroiliac joint raising the question of sacroiliitis. She did have MRI also of her hip, which did reveal stress reaction of the medial aspect of the femoral neck but no distinct fracture line. It is of note, on exam, she does not have any symptoms of a primary hip joint disorder. She does have tenderness over her right sacroiliac region. Today, she did report that she recalls having a fall weak [sic] prior to her incident from April of 2013. I did discuss with her at length that I was not certain what these MRI's mean, and it is nonspecific.
>
> These MRI findings could be secondary to her chronic antalgic gait due to her chronic left ankle/foot condition. However, will provide a trial of sacroiliac injection for diagnostic and therapeutic purposes. Will plan on following up with her thereafter. She may apply heat applications to the area two times per day. She may perform full duty at this time of the job of "Drop Bungs". We did discuss this, and she agrees that she is fit for full duty. With regards to medication, she may utilize over-the-counter anti-inflammatories per the manufacturer's recommendations, as she reports the prescription Voltaren was not particularly helpful.

(Ex. 10, pp. 5-6)

Ms. Wesley had an S1 injection on December 20, 2013. On January 6, 2014, Dr. Gordon noted some relief with the injection. He also noted that he wanted to clarify that while he wrote that claimant did not have an antalgic gait, that conclusion was based upon not having an antalgic gait due to her back injury. He said that claimant did have an antalgic gait due to her chronic left foot problems. (Ex. 10, p. 9) He recommended a second injection. Ms. Wesley had a second injection on January 22, 2014. (Ex. 7, p. 3) On July 28, 2014, Dr. Gordon responded to questions from Tyson. In his response he stated that claimant's S1 joint pain was not related to her April 2, 2013, work injury. (Ex. 11, p. 12; Ex. A, p. 29) He wrote that Ms. Wesley was back to her pre-existing (pre-injury) state. (Ex. 11, p. 13) Dr. Gordon examined claimant on February 25, 2015. At that time he discharged her from care for her low back. He noted that claimant may have waxing and waning of pain due to her non-work related gait issues. (Ex. 10, p. 11) Claimant's back was still bothering her at the time of the March 21, 2014, injury. (Tr. p. 33)

On April 15, 2014, Dr. Gordon saw Ms. Wesley for problems with her left arm and shoulder. Ms. Wesley reported to Dr. Gordon that she believed that an individual was not properly cutting a bone, which caused her to use more force operating the bung gun. He diagnosed left shoulder pain. (Ex. 10, pp. 12, 13) On July 28, 2014, Dr. Gordon examined claimant for left shoulder and cervical pain. His impression was "Left shoulder girdle region pain." (Ex. 10, p. 20) He recommended an MRI. The MRI showed:

1. Anterior superior labral fraying versus SLAP 2A tear with biceps labral anchor involvement, suspicious for a small SLAP 2A lesion in the appropriate clinical setting. However, there is considerable variation in the anterior superior quadrant.

(Ex. 5, p. 3)

After reviewing the MRI, his diagnostic impression on August 12, 2014, was:

1. Cervical/left shoulder girdle region pain. The majority of her symptoms today are of the left paracervical region and left trapezius region. No notable exam findings of the glanohumeral region. Her exam is not consistent with a SLAP tear nor would her reported mechanism of injury cause or aggravate a SLAP tear.

(Ex. 10, p. 22)

An MRI of the cervical spine on August 19, 2014, revealed:

1. Multilevel degenerative disc disease predominantly from C4 through C7 with evidence of disc bulge at C4-C5, C5-C6 and C6-C7 with disc protrusion near the midline at C5-C6.

2. Cord compression at C4-C5, C5-C6.
3. Bilateral neural foraminal stenosis C4-C5, C5-C6 and C6-C7.

(Ex. 5, p.5)

On August 13, 2014, Dr. Gordon responded to questions from Tyson. When asked if his treatment for the left shoulder pain was casually related to her work injury he stated that the SLAP tear was not related. (Ex. 11, p.14; Ex. A, p. 32)

Claimant saw Chad Abernathey, M.D., on September 24, 2014. Dr. Abernathy did not recommend surgery. Ms. Wesley continued to have difficulties with the neck. Her family physician referred her to David Segal, M.D. Dr. Segal referred claimant for an injection that only provided temporary relief. After conservative treatment failed, he performed a cervical fusion on March 27, 2015. Ms. Wesley had not returned to work at the time of the hearing. (Tr. p. 37)

On March 5, 2015, Stanley Mathew, M.D., performed an independent medical examination (IME) (Ex. 2, pp. 10 -15) Concerning claimant's low back complaints arising from the March and April 2013 incidents at work, he diagnosed chronic low back pain, myofascial pain and DJD. He recommended additional treatment including physical therapy, medication management, MRI of the lumber spine and injection therapy, along with referral to a pain specialist. He found claimant to be at maximum medical improvement for her low back. (Ex. 2, p. 13) Concerning claimant's hip he opined that claimant's fall in March 2013, along with her antalgic gait, may have caused her hip condition to develop over time. (Ex. 2, p. 13) Dr. Mathew opined that the claimant's shoulder and neck injuries were caused by the work injury of March 21, 2014, due to repetitive motion, twisting and overhead activities. (Ex. 2, p. 14) He placed claimant at MMI for both her shoulder and neck. He provided a 39 percent whole body impairment for all of her injuries. (Ex. 2, p. 14)

Farid Manshadi, M.D., performed an IME on February 25, 2015, and issued his report on March 16, 2015. (Ex. 3, pp. 10 - 18) Dr. Manshadi noted claimant' s medical history is remarkable for the lead poisoning claimant suffered as a child, which caused chronic problems with her left foot and left her with an altered gait. (Ex. 3, p. 11)

Dr. Manshadi noted claimant fell injuring her low back, shoulder and head at work on March 23, 2013, and was briefly treated by a nurse at Tyson. Claimant reported an injury on April 2, 2013, when she felt a pull on her lower back when she turned a hog around on the line. Claimant reported this injury and was referred to Dr. Gordon, who put claimant on restrictions. Dr. Gordon eventually released claimant to return to work on January 6, 2014. (Ex. 3, p. 12) Claimant reported to Dr. Gordon of a March 21, 2014, injury to her left shoulder and neck. Dr. Manshadi wrote:

> For the causation, I believe that the 03/23/13 and the April 2, 2013 incidents were both materially contributing factors in causing and/or

> aggravating the current diagnosis of her right SI joint sacroiliitis. As I indicated earlier, in the first accident of 03/23/13 the mechanism of injury was that she hit her back against the steps as well as her left shoulder and head. I believe that the work injury of April 2, 2013 not only caused but also aggravated that right sacroiliac joint further.

(Ex, 3, p. 16)

Dr. Manshadi placed claimant at MMI on February 25, 2015, and recommended Ms. Wesley avoid repetitive twisting, bending or stooping. He assigned a 5 percent impairment rating. (Ex. 3, p.16) Concerning Ms. Wesley's hip, he noted there was evidence of edema in the hip. He did not believe this was chronic. He provided no permanent impairment rating for the hip. (Ex. 3, p. 16)

Concerning the left shoulder, Dr. Manshadi opined that Ms. Wesley had clinical findings of left shoulder impingement as well as MRI findings of a SLAP tear. (Ex. 3, p. 16) He stated that the claimant's use of her left arm for the bung gun chronically strained her left shoulder and the incident on March 21, 2014, further aggravated her shoulder. He recommended arthroscopic surgery for the left shoulder. (Ex. 3, p. 17)

Dr. Manshadi stated Ms. Wesley had neck pain with spondyloarthropathy with evidence of disc disease at C6 and C7. He opined that her neck condition was significantly aggravated by the March 21, 2014, incident. (Ex. 3, p. 17) He agreed with Dr. Abernathey and Dr. Segal that Ms. Wesley should try injections and if that did not work, then surgery. (Ex. 3, p. 17)

Ms. Wesley was examined by Dr. Abernathey on September 24, 2014. He noted Ms. Wesley presented with chronic neck and shoulder pain which claimant attributed to her work. Ms. Wesley was not interested in surgery at that time. (Ex. 4, p. 1) He recommended ESI if her symptoms persisted or worsened. September 24, 2014, Dr. Abernathey responded to a letter from the defendants. In this letter Dr. Abernathey stated the claimant's cervical condition was not related to her work at Tyson. He did state that the work at Tyson did cause a temporary aggravation of her cervical condition. He also said claimant was back to her baseline or back to her pre-existing/pre-injury state. (Ex. 4, p. 5) He recommended no further neck treatment and deferred to Dr. Gorsche for treatment of the shoulder. (Ex. 4, p. 6) On February 20, 2015, Dr. Abernathey signed-off on a letter from Ms. Wesley's counsel. In this letter, Dr. Abernathey agreed that the claimant's degenerative arthritic condition in her cervical spine predated the March 2014 injury. After reviewing the video of the "Bung Gun" job he believed that work was a material and aggravating factor in aggravating her underlying degenerative arthritic condition in her cervical spine. (Ex. 4, p. 3) On April 2, 2015, Dr. Abernathey stated that his opinions of September 24, 2014, were accurate. (Ex. B, p. 1)

On September 30, 2014, Thomas Gorsche, M.D., examined Ms. Wesley for her left shoulder. (Ex. 8, pp. 1, 2) He opined that claimant's symptoms could be related to her cervical spine. He stated, "I agree with Dr. Gordon that the job analysis summary would not cause a SLAP tear and clinically there is no evidence for a SLAP tear causing her symptoms." (Ex. 8, p. 2) On September 23, 2014, Dr. Gorsche responded to questions from Tyson. He did not believe that the left shoulder condition was related to her work at Tyson. He felt the symptoms are myofacial or related to a cervical condition. (Ex. 8, p. 3)

On November 13, 2014, David Segal, M.D., examined claimant for her neck pain. His assessment was:

1. Degeneration of cervical intervertebral disc – 722.4 (Primary)
2. Cervical spondylosis with myelopathy – 721.1
3. Spinal stenosis in cervical region – 723.0

(Ex. 9, p. 2)

At that time, he tried an epidural steroid injection and noted she could be a good surgical candidate. (Ex. 9, pp. 2, 5) On February 26, 2015, Dr. Segal agreed with a letter prepared by claimant's counsel. This letter stated that Ms. Wesley's operation of the bung gun was a material aggravating factor to aggravating her underlying degenerative arthritic condition in her neck and left shoulder pain, along with numbness and tingling in her left arm. (Ex. 9, pp. 7-8) On March 15, 2015, Dr. Segal performed surgery on the claimant's neck. His pre and post-operative diagnosis was:

1. Left cervical radiculopathy.
2. Degenerative disc disease, disc bulge C4-C5, C5-C6, C6-C7.
3. Disc protrusion C5-C6.
4. Spinal stenosis, foraminal stenosis.

(Ex. 9, p. 3)

As of the date of the hearing Ms. Wesley was still recovering from surgery and had not returned to work.

Ms. Wesley has requested payment of medical expenses of $22,335.00. (Ex. 14, p. 1) These expenses are for the epidural injection and anesthesia services provided by David Segal, M.D., and, Mark Kline, M.D.

The claimant has requested costs in the amount of $3,298.07 (Ex. 15, pp. 1, 2) Among these cost are the filing fees and service cost for three original notices and one alternate care petition. The original notice and petition for the January 30, 2015, claim was dismissed.

I found the testimony of the claimant to be credible. Ms. Wesley's demeanor was believable at the hearing. Claimant was not evasive in her answers and her testimony was consistent with the other evidence in the record.

REASONING AND CONCLUSIONS OF LAW

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

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

"When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the

duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion." Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995).

There are, as in most claims that come to hearing, conflicting expert medical opinions in this case. Ms. Wesley, as the claimant, has the burden of persuasion in this case. I find Ms. Wesley has met her burden in both claim files.

Ms. Wesley's unrebutted testimony was that she would need to apply more force when the H-bone was not properly clipped before she operated the bung gun. Claimant would operate the bung gun on approximately 5,000 hogs per shift. The claimant testified that shortly before she experienced problems with her left shoulder there was a new employee who was not properly clipping H-bones. Claimant's report of injury form from March 2014 also identified the unclipped H-bone as causing her to feel her injury in her arm and upper extremity. Ms. Wesley informed her supervisors and medical providers that she was experiencing shoulder problems due to using more force due to unclipped H-bone.

Dr. Gordon and Dr. Gorsche never addressed whether applying of additional force to the bung gun materially aggravated her back, left shoulder or neck. While they reviewed the job analysis summary and Dr. Gordon was sent a job video, there was no discussion as to the effect of having to apply more force when the H-bone was not clipped. Claimant reported her injury promptly to Tyson. The shoulder symptoms started only when she had to apply additional pressure. When the H-bone was properly clipped Ms. Wesley testified her job was easy. However, for the couple of weeks leading up to her injury the job became more difficult due to the unclipped H-bone.

The claimant has not proved that either work injury has caused a compensable injury to her hip. Dr. Manshadi, who addressed this issue, did not find there was a ratable impairment.

It is difficult to reconcile Dr. Aberthaney's opinions of September 24, 2014, and April 6, 2015, with his opinion of February 20, 2015. In the September 24, 2015, letter Dr. Abernathey concluded claimant was back to baseline for cervical treatment. Ms. Wesley continued to have difficulty due to her neck at this time and thereafter. In fact she failed conservative treatment and had a cervical fusion. Ms. Wesley was not having shoulder and neck issues before April 2, 2014. I do not find Dr. Abernathey's opinions of September 24, 2014, and April 6, 2015, to be convincing.

Given claimant's credible testimony that she was not having low back or shoulder and neck symptoms before either work accident, I find that the opinions of Dr. Segal, Dr.

Manshadi and Dr. Mathew to be the most convincing. Drs. Mathew[1], Manshadi and Segal were of the opinion that Ms. Wesley's cervical complaints were a result of her April 2, 2014, injury at Tyson. Dr. Segal performed a cervical fusion on the claimant. I found his causation report to be consistent with the medical records and the symptoms that claimant presented to medical providers, as well as claimant's description of her injuries.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Ms. Wesley had not returned to work after her fusion surgery. She is entitled to a running award of temporary total disability benefits.

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

As claimant has prevailed in both files, defendants shall provide medical care to the claimant for her low back, left shoulder and cervical injuries. Defendant shall reimburse claimant for the medical expenses she incurred as identified in Exhibit14.

Defendant has denied payment for the independent medical evaluation for the April 2, 2013, injury under Code section 85.39. This code section provides, in pertinent part:

> After an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is

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[1] While Dr. Mathew incorrectly stated claimant did overhead work, I found his report generally credible.

> entitled to have a physician or physicians of the employee's own selection present to participate in the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. The refusal of the employee to submit to the examination shall suspend the employee's right to any compensation for the period of the refusal. Compensation shall not be payable for the period of suspension.

(Iowa Code section 85.39)

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

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

While the defendant denies that the injury caused a permanent impairment, they admitted liability for a temporary injury. (Hearing Report) Defendant stated in the Hearing Report, "Defendants [sic] only stipulate that the claimant suffered a temporary aggravation to her back. Defendants [sic] deny that claimant suffered injury to her right hip." Defendant retained a physician who provided a zero percent impairment rating. (Ex. A, p. 9; Ex. 11, p. 8)

Defendant argued in its brief that the claimant is not entitled to two IMEs in this case, that the IMEs of Dr. Manshadi and Dr. Matthew were done close in time (February 25, 2015, and March 5, 2015) and the second IME was duplicative. As there are two files alleging different dates of injury, claimant is entitled to an IME in each file provided defendant has obtain the opinion of a physician concerning permanency.

Defendant argues that the second IME is not a reasonable expense. Defendant obtained an opinion by a physician retained by the defendant concerning permanency of the March 21, 2014, injury. As such, claimant has shown that she is entitled to

reimbursement of her IME expense under Iowa Code section 85.39. I find the costs of Dr. Mathew to be reasonable. Defendant shall pay claimant the cost of her IME performed by Dr. Mathew in the amount of $1,063.20.

Iowa Code section 86.40 states:

> 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 part:

> Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be ... (3) costs of service of the original notice and subpoenas, ... (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate,

Claimant requested costs of $3,298.07. In my discretion I award claimant costs listed in exhibit 15 with an exception of costs and service fees for the petition that was dismissed of $106.48 and the costs of phone conferences with Dr. Abernathey of $200.00 and with Dr. Segal of $150.00. I also do not approve the service fee for the alternate medical care petition in the amount of $6.48. Defendant had agreed to pay the cost of one IME. I order defendant to pay for the IME that was obtained for a second case file. Defendant shall pay costs in the amount of $2,835.11[$3,298.07 - $106.48 - $200.00 - $150.00 - $6.48 = $2,835.11].

ORDER

THEREFORE IT IS ORDERED:

FOR FILE NO. 5050508 — DATE OF INJURY APRIL 2, 2013:

Defendant shall provide medical care for claimant's lower back condition.

FOR FILE NO. 5049297 — DATE OF INJURY MARCH 21, 2014:

Defendant shall pay unto the claimant temporary total disability benefits at the rate of four hundred eight and 48/100 dollars ($408.48) per week commencing March 27, 2015,until such time claimant is entitled to permanent benefits..

Defendant shall provide medical care for claimant's left shoulder and cervical conditions.

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

Defendant shall pay any past due amounts in a lump sum with interest.

FOR BOTH FILES:

Defendants shall pay costs of two thousand eight hundred thirty-five and 11/100 Dollars ($2,835.11) as set forth in this decision.

Defendant 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 23rd day of November, 2015.

JAMES F. ELLIOTT
DEPUTY WORKERS' COMPENSATION
COMMISSIONER

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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.